

Capital Reporting Company  
Formal Case No. 1119 04-01-2015

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PUBLIC SERVICE COMMISSION OF THE  
DISTRICT OF COLUMBIA

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

Washington, D.C.

Wednesday, April 1, 2015

The evidentiary hearing in the  
above-captioned matter began at 10:08 a.m., at the  
Public Service Commission of the District of Columbia,  
1333 H Street, Northwest, Washington, D.C., 20005.

BEFORE: BETTY ANN KANE, Chairman  
          JOANNE DODDY FORT, Commissioner  
          WILLIE L. PHILLIPS, Commissioner

Reported by: Denise M. Brunet, RPR

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(Appearances continued on the next page.)

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1	C O N T E N T S				
2	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
3	JOSEPH RIGBY				
4	BY MR. MEIER	567			
5	BY MR. GRAY		568		
6	BY MS. FRANCIS		642		
7	BY MR. COYLE		738		
8	BY MR. SPECK		792		
9	BY MS. WHITE		820		
10					
11	EXHIBIT NO.		MARKED		RECEIVED
12	OPC Cross 8		573		875
13	OPC Cross 9		577		875
14	OPC Cross 10		637		875
15	AOBA Cross 13		643		876
16	AOBA Cross 14		643		876
17	AOBA Cross 15		644		876
18	AOBA Cross 16		644		876
19	AOBA Cross 17		644		876
20	AOBA Cross 18		645		876
21	AOBA Cross 19		645		876
22	(Exhibits continued on the next page.)				

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1	EXHIBIT NO.	MARKED	RECEIVED
2	AOBA Cross 20	645	876
3	AOBA Cross 21	648	876
4	AOBA Cross 22	676	876
5	AOBA Cross 23	684	876
6	DC SUN Cross 2	795	878
7	Joint Applicants' (B),		
8	(3B) and (3B)-1		875
9	DCG Cross 23 through 28		
10	and 30 through 33		877
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1 P R O C E E D I N G S

2 CHAIRMAN KANE: Good morning. Everyone  
3 had an early evening yesterday and a restful  
4 night. And so we are back on the record on  
5 Wednesday, April 1st -- no jokes about April  
6 Fool's Day. And it is 10:07 a.m. This is the  
7 continuance of the evidentiary hearing in formal  
8 case 1119, the proposed acquisition of PEPCO by  
9 Exelon, et al.

10 You are ready with your next witness,  
11 Mr. Lorenzo. First of all, are there any  
12 preliminary procedural matters from any of the  
13 parties?

14 MR. LORENZO: Yes, Your Honor.

15 CHAIRMAN KANE: Mr. Lorenzo?

16 MR. LORENZO: We just have -- very  
17 quickly, we discovered an error in Mr. Khouzami's  
18 conformed direct testimony last night, and this  
19 morning we have submitted and served on all the  
20 parties, and are serving the Commission with 25  
21 copies of the correction to Exhibit (F)-2. So the  
22 filing that we made this morning should be

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1 substituted for his Exhibit (F)-2 in our conformed  
2 testimony. I'm just letting the Commission and  
3 the rest of the parties to know that.

4 CHAIRMAN KANE: For the record, is it a  
5 substantive error or typographical?

6 MR. LORENZO: It's a -- when we were  
7 conforming the testimony, we took a chart from his  
8 rebuttal testimony and inserted it in his direct  
9 testimony. And now we've gone back to the  
10 original chart that should have been there.

11 The second is we have some scheduling --  
12 because of the length of the hearing, we just have  
13 a little bit of a -- scheduling difficulties I  
14 wanted to inform the Commission of. And the first  
15 is Ms. Lapson is available tomorrow to be crossed,  
16 but because of the Passover holiday, she's not  
17 available Friday. But some of the parties are not  
18 prepared to cross her tomorrow. So we're going to  
19 put Ms. Lapson off till Monday, on the 6th.

20 Similarly, Mr. Gould is coming back from  
21 Spain on Sunday night to be crossed on Monday. So  
22 he also will be on Monday. And we'd like to take

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1 Mr. Gould first, because he's in the middle of a  
2 family vacation and he's scheduled to fly back to  
3 Spain Monday night, so we can do that even if we  
4 have to break a witness -- the cross of a  
5 witness -- to take Mr. Gould.

6 Finally, Mr. McGowan is not available on  
7 Monday, so we'd like to take him on Friday.

8 And I've informed all the parties with  
9 this, and they seem to be okay with that. But  
10 immediately the next order of witnesses will be  
11 Mr. Rigby, Mr. O'Brien and then Mr. Alden.

12 CHAIRMAN KANE: And the parties were  
13 aware of the Passover and the Good Friday holidays  
14 when -- or holy days -- at the time that we did  
15 the scheduling. We had indicated we would be  
16 flexible on people's availability on Friday.

17 MR. LORENZO: Thank you, Your Honor.

18 MR. MEIER: The joint applicants call  
19 Mr. Rigby.

20 WHEREUPON,

21 JOSEPH RIGBY,  
22 called as a witness, and after having been first

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1 sworn by the secretary, was examined and testified  
2 as follows:

3 MR. MEIER: Good morning, Chairman Kane,  
4 Commissioner Fort, Commissioner Phillips. My name  
5 is Peter Meier. I'm an attorney with PEPCO  
6 Holdings. I'm appearing today on behalf of the  
7 joint applicants.

8 DIRECT EXAMINATION

9 BY MR. MEIER:

10 Q Mr. Rigby, could you please state your  
11 name for the record and your position.

12 A Yes. My name is Joseph Rigby. I'm  
13 chairman of the board, president and chief  
14 executive officer of PEPCO Holdings.

15 Q Thank you.

16 MR. MEIER: Your Honor, consistent with  
17 the Commission's order 17790, we're prepared to  
18 stipulate in the testimony of Mr. Rigby. It  
19 consists of two pieces of testimony: Fully  
20 conformed direct testimony filed on March 25th,  
21 2015, which has been marked as Joint Applicant  
22 Exhibit (B), and the fully conformed rebuttal

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1 testimony of Mr. Rigby filed on March 25th, 2015,  
2 marked as Joint Applicant Exhibit (3B), together  
3 with confidential Exhibit (3B)-1. With that,  
4 Mr. Rigby is available for cross-examination.

5 CHAIRMAN KANE: People's Counsel.

6 MR. GRAY: Thank you.

7 CROSS-EXAMINATION

8 BY MR. GRAY:

9 Q Good morning, Mr. Rigby.

10 A Good morning.

11 Q My name is Jason Gray. I represent the  
12 Office of the People's Counsel in this proceeding.  
13 I want to start by asking you about a couple of  
14 names that have come up during the course of this  
15 proceeding. One is Mr. von Hoene. Do you know  
16 who that is?

17 A It's William von Hoene.

18 Q Hoene, excuse me.

19 A He is -- I believe his position is the  
20 senior executive vice president of strategic  
21 planning. I think that's his title.

22 Q Who would Mr. von Hoene's counterpart at

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1 PHI be?

2 A Probably not a direct corollary. The --  
3 our strategic planning falls within the function  
4 of our chief financial officer, which would be  
5 Fred Boyle.

6 Q And you're familiar with Mr. Dave  
7 Velazquez; is that right?

8 A Yes, I am.

9 Q Am I correct that Mr. Velazquez reports  
10 directly to you?

11 A That's correct.

12 Q And if this transaction is approved,  
13 Mr. Velazquez would take over as CEO of PHI; is  
14 that right?

15 A That's correct.

16 Q Did you review the June 2014 application  
17 before it was filed in this proceeding?

18 A Yes, I did.

19 Q Do you have a copy of that application  
20 available?

21 A I'm about to.

22 Q It's a 30-page application, and then

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1 there are two verifications following page 30, one  
2 by Mr. Bradford from Exelon and then one by  
3 Mr. Velazquez for PHI. And I would ask you to  
4 turn to Mr. Velazquez's verification. Let me know  
5 when you're there, please.

6 A Yes, I'm there. This is the one he  
7 signed, right?

8 Q Yes.

9 A Yes, I'm there.

10 Q The joint applicants did not present  
11 Mr. Velazquez as a witness, so I can't ask him,  
12 but I want to get your understanding. Do you see  
13 the last sentence where it states, The contents of  
14 this filing are true and correct to the best of  
15 his knowledge, information and belief?

16 A Yes.

17 Q Are the contents of the application true  
18 and correct to the best of your knowledge,  
19 information and belief?

20 A Yes, it is, sir.

21 Q Are you aware that on February 17th of  
22 2015, the joint applicants filed supplemental

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1 direct testimony and exhibits that modified some  
2 of the provisions in the applications?

3 A This is the (4A)-2? Is that the exhibit  
4 number?

5 Q I think it's a little broader than that.  
6 I think some of the narrative testimony would  
7 modify some of the provisions.

8 A Okay. I'm familiar with that, yes.

9 Q And to your knowledge, the June 2014  
10 application has not been supplemented; is that  
11 right?

12 A I'm not aware of that, no.

13 Q Okay. Thank you. I want to talk a  
14 little bit about your tenure as --

15 A Sure. Put this aside for now?

16 Q Yes, you can put that down.

17 A Sure.

18 Q I want to talk about your tenure as  
19 president, CEO and chairman of the board at PHI.  
20 You took over in those capacities in early 2009;  
21 is that right?

22 A Yes.

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1 Q And then am I correct that you announced  
2 on January 27, 2014 that you plan to retire  
3 sometime in 2015?

4 A That's correct.

5 Q Let's talk about a couple of main themes  
6 of your six-year-or-so tenure at PHI's helm. When  
7 you became CEO, PHI had been a holding company for  
8 about nine years; is that right?

9 A PHI was formed with the acquisition of  
10 Conectiv by PEPCO, and formed a holding company  
11 called PEPCO Holdings in 2002.

12 Q 2002, thank you. When you took over in  
13 2009, PHI held both regulated and unregulated  
14 assets; is that right?

15 A We still do, yes.

16 Q About a year into your tenure, am I  
17 correct that you oversaw PHI's sale of Conectiv  
18 Energy?

19 A I was the CEO when that transaction took  
20 place, yes.

21 MR. GRAY: Your Honor, at this time, I  
22 would like to mark for identification the document

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1 that's been premarked as OPC Cross-Examination  
2 Exhibit Number 17, I would ask that it be marked  
3 as OPC Cross-Examination Exhibit 8.

4 BY MR. GRAY:

5 Q And while you're looking for that in your  
6 binder, Mr. Rigby --

7 CHAIRMAN KANE: That is so marked. Would  
8 you identify the document?

9 (OPC Cross Exhibit Number 8 was marked  
10 for identification.)

11 MR. GRAY: Yes. Yes.

12 BY MR. GRAY:

13 Q This is a four-page document. It's an  
14 excerpt from a presentation dated April 21st, 2010  
15 and the title is, Overview of Conectiv Energy  
16 sale. Do you see that?

17 A I'm there.

18 Q Do you see on page 1 your name --

19 A Yep.

20 Q -- listed?

21 Do you recognize this document as a  
22 presentation that you provided on April 21st, 2010

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1 regarding PHI's sale of Conectiv Energy?

2 A Yes, I do.

3 Q Am I correct, just as -- by way of  
4 background, that Conectiv Energy was a generation  
5 asset?

6 A It was -- yes, it was a wholesale --  
7 unregulated wholesale generation, yes.

8 Q PHI sold Conectiv Energy to Calpine; is  
9 that right?

10 A That's correct.

11 Q If you would please turn to page 2 of  
12 this exhibit, I want to point your attention to  
13 the second bullet. Do you see where it says,  
14 Clarifies our strategic vision/value proposition?

15 A That's correct.

16 Q And then if you turn to page 3, four  
17 lines down from the top do you see the line that  
18 says, Provides clarity of strategy?

19 A Yes.

20 Q With respect to both of those statements,  
21 am I correct that the strategic vision and the  
22 strategy being referenced there was a reference to

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1 PEPCO's goal to reposition itself as a regulated  
2 utility company?

3 A After months and months of analysis,  
4 interaction with the board, we made the decision  
5 to go forward and attempt to sell these assets,  
6 and -- understanding that if we were successful,  
7 if that transaction took place, that we would be a  
8 fundamentally regulated T&D business.

9 What's not noted in here, but may be  
10 worth mentioning, was in parallel with pursuing  
11 the sale of Conectiv Energy was also the decision  
12 made to wind down the retail energy business at  
13 PEPCO Energy Services.

14 Q Thank you. Two follow-ups on your  
15 answer. The first is the winding down. Can you  
16 just clarify? That was not an actual sale or a  
17 divestiture; it was just --

18 A No, we had attempted to sell, and we  
19 were -- as I'm recalling, we would have had to pay  
20 to sell that business, which didn't seem to make  
21 good economic sense. So we allowed the contracts  
22 to play out over -- which I think may have taken

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1 two to three years for that to fully unwind.

2 Q Okay. Thank you.

3 Then the second follow-up, if you'd go  
4 back to page 2, gets to the effect of the sale of  
5 Conectiv Energy. Do you see the first bullet that  
6 says, Sale of Conectiv repositions PHI as  
7 fundamentally a regulated utility company?

8 A Uh-huh.

9 Q That's the effect you're referring to?

10 A That's correct.

11 Q Thank you. Under the first bullet there  
12 on page 2, there are two sub-points. Do you see  
13 those?

14 A Yes, I do.

15 Q The first essentially states that after  
16 the sale, approximately 90 to 95 percent of PHI's  
17 operating income will come from regulated utility  
18 business. Do you see that?

19 A Yes, I do.

20 Q And the second states that the sale  
21 reduces -- significantly reduces PHI's exposure to  
22 energy commodity markets?

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1 A I see that.

2 Q Thank you.

3 And if you would please turn to page 4.

4 I just want to point your attention to the first  
5 two lines. Do you see where you say, We believe  
6 the transaction will lead to higher shareholder  
7 value, and then the bullet under that states,  
8 Improved risk profile.

9 Do you see both of those references?

10 A Yes, sir.

11 Q All right. Let's leave 2010 and let's  
12 fast-forward a few years to 2013.

13 MR. GRAY: Your Honor, I'd like to mark  
14 at this time a document that's been premarked as  
15 OPC Cross-Examination Exhibit 18. Ask that you  
16 mark that as OPC 9.

17 CHAIRMAN KANE: So marked.

18 (OPC Cross Exhibit Number 9 was marked  
19 for identification.)

20 BY MR. GRAY:

21 Q Mr. Rigby, as you're turning there, this  
22 is a two-page excerpt from PHI's 2013 annual

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1 report. Do you see that?

2 A Yes, I do.

3 Q Would you please turn to page 1 or --  
4 excuse me, to page 2 --

5 A All right.

6 Q -- of this document. Am I correct, just  
7 in terms of timing, that the 2013 annual report  
8 would be presented sometime in the first quarter  
9 of 2014?

10 A Yes.

11 Q And would you accept, subject to check,  
12 that this annual report was presented on  
13 March 25th, 2014?

14 A That's my recollection.

15 Q Thank you. On page 2, do you see the  
16 heading that's down in the space on the -- between  
17 the first two paragraphs that states, Strategic  
18 view?

19 A That's correct.

20 Q The first sentence states, does it not,  
21 After a decade of evolution, PHI has become what  
22 it set out to be: A regulated utility company.

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1 Do you see that?

2 A That's correct.

3 Q And then the next sentence there states,  
4 To achieve this strategic focus, over the past  
5 several years we have taken some significant  
6 steps, including selling our generation  
7 operations, winding down our retail energy supply  
8 business and liquidating certain financial  
9 investments.

10 Do you see that?

11 A Yes, I do.

12 Q The reference to selling generating  
13 operations, that relates to the Conectiv Energy  
14 sale we just discussed?

15 A That's correct.

16 Q And then the reference to winding down  
17 our retail energy supply is what you referenced;  
18 is that right?

19 A Uh-huh. Yes.

20 Q Thank you.

21 As we just established, you made these  
22 statements just about a year ago today. As we sit

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1 here today, a year later, am I correct that PHI no  
2 longer has the strategic goal of being  
3 fundamentally a regulated utility company?

4 A Well, PHI will be part of a different  
5 holding company. And setting aside PES, which  
6 would go in to be part of Constellation, the  
7 predominance of PHI will remain, albeit under a  
8 different parent, a regulated T&D business.

9 Q Does Exelon have a strategy to become  
10 fundamentally a regulated utility company that  
11 you're aware of?

12 A No. I don't think they express their  
13 strategy that way.

14 Q If the transaction is approved, would  
15 Mr. von Hoene be charged with developing the  
16 strategic focus for PHI?

17 A I am not aware of what he might do at  
18 that point in the future. I could speculate as to  
19 how their process might work, but I'm not aware of  
20 exactly what he would be doing vis-a-vis PHI.

21 Q Is it your understanding, then, if the  
22 transaction is approved, that there would be no

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1 change with respect to PHI's strategic focus of  
2 being a regulated utility company?

3 A I would think, for the regulated  
4 utilities under PHI, which as I understand it,  
5 would be housed under Exelon Utilities, it would  
6 become part of a much larger, I guess close to  
7 10 million customers, of a regulated utility. And  
8 I would think that within that construct, they're  
9 going to be extremely focused on running a  
10 regulated T&D business.

11 Q Let's talk about another issue that you  
12 face during your tenure, that's the issue of  
13 reliability.

14 A I recall. Did you get that?

15 Q Let's go through some of the -- track  
16 some of the highs and lows, actually. Yesterday  
17 admitted into evidence as OPC Cross-Examination  
18 Exhibit Number 3, which I believe is Number 6 in  
19 your book, was a one-page excerpt of Business  
20 Insiders 2011 report that named PEPCO the most  
21 hated company in America. Do you recall that?

22 A That would have been one of the lows.

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1 Q Am I correct that your base salary was  
2 frozen in 2011 due to reliability performance?

3 A I had asked the board to do that, yes.

4 Q Am I correct that in December 2012 the  
5 Maryland Public Service Commission issued an order  
6 fining PEPCO \$1 million for poor reliability  
7 performance?

8 A That's correct.

9 Q PEPCO did not appeal that Maryland PSC  
10 order, did it?

11 A No, we did not.

12 Q Just as you have been today, isn't it  
13 true that in 2011 and 2012 you were quite candid  
14 about the fact that you wanted to improve PEPCO's  
15 reliability performance to more closely align it  
16 with customer expectations?

17 A Absolutely.

18 Q And in fact, did you not pen a letter  
19 around that time stating your intent to improve  
20 reliability performance at PEPCO?

21 A That -- I don't want to divert too much  
22 into it, but that dominated our focus.

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1 Q Thank you. In order to start turning  
2 those lows into highs, PEPCO developed a detailed  
3 reliability enhancement plan, did it not?

4 A Along with a -- what we called the ERIP,  
5 which was the emergency restoration improvement  
6 plan. We saw that both the reliability and the  
7 restoration needed to be improved in tandem.

8 Q The reliability enhancement plan, either  
9 on a stand-alone basis or with the ERIP that you  
10 identified, it includes hundreds of millions of  
11 dollars of forecasted reliability-related capital  
12 expenditures, right?

13 A And O&M.

14 Q And O&M expenditures as well. Thank you.  
15 Am I correct that in 2011 and into 2012,  
16 the Commission -- this Commission -- issued a  
17 rulemaking that ultimately led to reliability of  
18 service requirements known as the EQSS?

19 A I'm aware of that, yes.

20 Q And the EQSS established annual  
21 compliance metrics for SAIDI and SAIFI; is that  
22 right?

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1 A That's correct.

2 Q Those annual requirements go out through  
3 2020; is that your understanding?

4 A My understanding is that, yes, they do.  
5 My other understanding is that we can -- I don't  
6 know that the word "appeal" is correct, but if  
7 there's a concern, we could express a concern in  
8 terms of what we would consider to be the  
9 doability in the out years. And I think that that  
10 may -- that may need to be resolved by June of  
11 this year or something. Mr. Gausman could give  
12 more detail on that.

13 Q Sure. There's a reconsideration process?

14 A Right.

15 Q And Mr. Gausman addresses that in his  
16 rebuttal testimony, I believe.

17 A Right.

18 Q Is it your understanding that the EQSS  
19 can only be satisfied by annual compliance with  
20 the SAIDI and SAIFI metrics?

21 A I believe it is set up as an annual  
22 measure.

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1 Q So the EQSS cannot be satisfied on any  
2 type of averaging performance over a period of  
3 years?

4 A Like a three-year average?

5 Q Like a three-year average?

6 A No.

7 Q Just so we're clear, the three-year  
8 average is Exelon's reliability commitment in this  
9 proceeding, right?

10 A Part of it. Yes.

11 Q And that's a stand-alone commitment that  
12 would apply in addition to the Commission's EQSS  
13 requirements; is that correct?

14 A Right. With a proposed penalty within  
15 certain spending.

16 Q Sure. Under that construct where the  
17 EQSS is stand-alone and the reliability commitment  
18 is stand-alone, conceivably PEPCO could pass one  
19 of the other metrics, the EQSS, but fail the  
20 other, the reliability commitment; is that right?

21 A I think it could be mathematically  
22 possible, yeah.

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1 Q And even if it wasn't, that's the intent,  
2 though, that both would apply?

3 A I believe so, yes.

4 Q Thank you.

5 A As a stand-alone.

6 Q Am I correct that after the EQSS metrics  
7 were established, that PEPCO has met the EQSS  
8 requirements in each year?

9 A I believe we have.

10 Q Earlier you mentioned that there is the  
11 reconsideration process that would allow PEPCO to  
12 seek reconsideration in the out years. Regardless  
13 of whether the EQSS are reconsidered or not, is  
14 PEPCO committed to meeting the EQSS every year?

15 A We commit to meet the standards that  
16 we're held to. We do everything we can to do  
17 that.

18 Q Thank you.

19 Am I correct that you were in the hearing  
20 room on Monday when Mr. Crane was testifying?

21 A Yes.

22 Q Do you recall questions from both myself

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1 and Ms. Francis about PEPCO's 2014 reliability  
2 performance?

3 A Yes, I do.

4 Q Is it your recollection that Mr. Crane  
5 and I compared a data response from Mr. Gausman  
6 that showed the 2014 performance to the actual  
7 EQSS metrics, and the result of that comparison  
8 was that the 2014 SAIFI performance would satisfy  
9 the EQSS SAIFI metric through 2020, and the 2014  
10 SAIDI performance would satisfy the EQSS SAIDI  
11 requirement through 2018?

12 A Subject to check, I'll take your word for  
13 it.

14 Q Sure. Thank you.

15 Do you still have in front of you  
16 Cross-Examination Exhibit 18 which was the 20-page  
17 excerpt from the annual report?

18 A Yes, I do.

19 Q I want to call your attention to the  
20 first paragraph, the second line from the bottom  
21 basically saying, In 2013, PHI utilities achieved  
22 one of our best reliability performances ever.

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1 Do you see that?

2 A Yes, I do.

3 Q And with respect to PEPCO, 2014 was even  
4 better; is that right?

5 A Yes, it was. As I recall.

6 Q Do you agree that if we were to exclude  
7 major service outages, PEPCO's SAIFI and SAIDI  
8 performance has improved year over year from 2011  
9 to '12, 2012 to 2013, and 2013 to 2014?

10 A That was our intention.

11 Q Would you agree that, under your  
12 leadership, Mr. Gausman and his team played a  
13 major role in the improvement from -- that we  
14 talked about in 2011 to where PEPCO is in 2014?

15 A I would agree that I had personally  
16 little to do with it, and my employees had  
17 everything to do with it.

18 Q You've been actively involved in  
19 overseeing the improvement; is that correct?

20 A As I said, it has dominated our focus.

21 Q You are co-chair of the D.C. PLUG task  
22 force; is that right?

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1 A I was honored to be asked to do that.

2 Q I want to talk about 2014 and get a  
3 better understanding of PEPCO's ability to have  
4 such improvement from 2011 to 2014. Do you recall  
5 Mr. Crane testifying that the 2014 performance was  
6 a data point, a one-year data point?

7 A Yes.

8 Q Unlike Mr. Crane, who I believe lives in  
9 Illinois and who works in Chicago, you live and  
10 work in the District, right?

11 A That's correct.

12 Q And you lived and worked in the District  
13 in calendar year 2014?

14 A That's correct.

15 Q Is it fair to say that you experienced  
16 firsthand the effects of the anomalous weather  
17 that has been referred to as the polar vortex?

18 A Yes.

19 Q Isn't it true that some of the extreme  
20 weather conditions we experienced during the polar  
21 vortex stressed even the PJM system?

22 A I think -- from what I recall, it was

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1 mostly from a generation and availability of  
2 generation side. We came through it pretty good  
3 at the local distribution level.

4 Q I want to make sure I'm being fair here.  
5 I asked Mr. Crane a hypothetical, so I'm going to  
6 ask one of you as well. And just like that  
7 hypothetical, this one just has a couple of parts.  
8 One, I want you to assume that if the transaction  
9 is not approved, we can know as a fact that  
10 PEPCO's reliability performance will meet but do  
11 no better than the SAIDI and SAIFI metrics  
12 required by the EQSS through 2020. Okay? Do you  
13 understand?

14 A Yeah, I think.

15 Q And then the second component is if the  
16 transaction is approved, we can know as a matter  
17 of fact that PEPCO's performance would exceed the  
18 SAIDI and SAIFI metrics through 2020. Are you  
19 with me?

20 A I think I'm following you.

21 Q So PEPCO could guarantee that it would  
22 meet the EQSS. Exelon could guarantee that it

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1 would exceed the EQSS is basically the assumption  
2 I'm asking you to make.

3 A Okay. Do you want me to respond to that  
4 or --

5 Q No. I'm just --

6 A Okay.

7 Q Just -- this is the question with both of  
8 those assumptions in mind: Isn't it true that in  
9 either case, the reliability investments needed to  
10 meet those performance levels would be paid for  
11 through rates by ratepayers?

12 A Under either scenario?

13 Q Under either.

14 A Could be.

15 Q I'm struggling to understand your answer.  
16 Could you explain a scenario where customers --  
17 ratepayers would not fund those reliability  
18 investments through rates?

19 A It would depend on the Commission's  
20 determinations. I wouldn't prejudge. I mean, it  
21 would -- I think it's likely, but I wouldn't want  
22 to prejudge what a commission would do. I think

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1 they should, but...

2 Q Are you talking about a matter of  
3 prudence?

4 A It could be.

5 Q Let's move on. I want to talk about some  
6 commitments associated with the joint application.  
7 By way of background, some of the commitments  
8 require action by you. For example, there's a  
9 commitment on jobs. My understanding is that  
10 Exelon cannot begin the process of hiring new  
11 people until they own the company. So under your  
12 direction, PHI has begun that process. Is that a  
13 fair statement?

14 A Just maybe -- hopefully helpful  
15 background. There's already job creation underway  
16 within our existing union contracts. So as we had  
17 negotiated the prior round -- you know, not the  
18 extension, but the prior round -- there were  
19 commitments to add to the workforce.

20 I wouldn't say -- it's historically been  
21 somewhat typical that our union would look for  
22 that good faith best effort, if you will, to -- so

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1 to an extent, the replenishment has started. When  
2 we were approached by the unions to consider  
3 extending the contracts, that discussion evolved  
4 to taking that to another level, which -- I think  
5 we've talked about the 102 jobs. So that aspect  
6 of the extension would only go into play if, in  
7 fact, the merger was approved.

8 Q Okay. You jumped ahead of me a little  
9 bit. I was just using jobs as an example. I'm  
10 trying to understand -- there are certain  
11 commitments that cannot even begin until the  
12 transaction is completed, and then there are other  
13 commitments where the groundwork can be laid  
14 before it's completed; is that right?

15 A Yeah. I think there -- as I recall, and  
16 this would be subject to check, groundwork could  
17 be that -- with regard to the 102 that would --  
18 you know, presuming that the merger -- I think  
19 there might be some efforts underway just to kind  
20 of make sure that we would be prepared at the  
21 time.

22 So there's no hiring, but I think there

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1 may be some preparatory work underway to make sure  
2 that we have a good understanding as to what the  
3 demographics are, kind of maybe the -- to the best  
4 that we could determine, because we don't ask  
5 people when they're going to retire, but to just  
6 kind of understand where that need might -- might  
7 start.

8 Q Okay. Thank you. That's really what I  
9 was getting at.

10 Let's talk in particular about the  
11 commitment regarding maintaining PHI's and PEPCO's  
12 corporate headquarters in the District. Absent  
13 the merger, do PHI or PEPCO have any plans to move  
14 their corporate headquarters outside of the  
15 District?

16 A Not that I've been told. That's not in  
17 the plan.

18 Q Okay. Great. Do you have a copy of  
19 Mr. Crane's Exhibit (4A)-2 available?

20 A I'm there.

21 Q I'm going to ask you to turn to page 3  
22 and look at paragraph 10.

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1 A Yes, sir. I'm there.

2 Q It states, PHI and PEPCO will continue to  
3 maintain headquarters in Washington, D.C., at  
4 Edison Place. Do you see that commitment?

5 A Yes, sir.

6 Q There's no language there stating what  
7 time period is associated with this commitment; am  
8 I right?

9 A That's correct.

10 Q Can you please tell me, in your mind,  
11 what is the difference between Exelon's commitment  
12 to maintain PHI's and PEPCO's headquarters in the  
13 District for an unspecified time and the fact that  
14 neither PHI nor PEPCO have any plans to move their  
15 headquarters outside of the District?

16 A It's a statement of certainty from where  
17 I -- how I view it. It provides certainty,  
18 hopefully comfort, to key stakeholders that this  
19 company, in the process of acquiring us, does not  
20 have any intention or any plan to move  
21 headquarters.

22 Q Is it accurate to say that this

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1 commitment is intended to convey to the Commission  
2 and the parties and anyone interested in what a  
3 post-transaction future would look like that there  
4 will be no change in this regard?

5 A That is -- I think it's intended to  
6 provide that degree of certainty that people  
7 should not be concerned that this -- that there  
8 would be a move of headquarters as a result of  
9 this.

10 Q In providing that certainty, do you draw  
11 a distinction between -- this commitment isn't  
12 necessarily designed to provide a benefit, but  
13 it's designed to allay concern?

14 A I won't attempt to argue with you, but I  
15 think you could -- it could be argued that that  
16 certainty is a benefit.

17 Q In addition to the intention or  
18 commitment to maintain PHI's and PEPCO's  
19 headquarters in the District, there are a couple  
20 of other aspects of this case, are there not,  
21 where PEPCO has -- excuse me -- where Exelon has  
22 committed to do something and PEPCO has said, on a

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1 stand-alone basis, we're not committing to do that  
2 same thing?

3 A That is correct.

4 Q Headquarters obviously is one that we  
5 just talked about. Let's talk about Exelon's  
6 commitment to meet the proposed reliability  
7 targets without increasing spending above the  
8 existing budgets. Okay?

9 A With a penalty, yes.

10 Q With a penalty. I'm going to ask you a  
11 few background questions, first. So I'll just ask  
12 you to bear with me --

13 A Sure.

14 Q -- for a second. If you want to go  
15 there, that's fine -- it would be on pages 95 and  
16 96 and 100 to 103 of the transcript -- but do you  
17 recall my discussion with Mr. Crane on Monday  
18 about Exelon having every intention to meet the  
19 reliability targets without increasing spending,  
20 but if --

21 A Yes.

22 Q -- there was a need to increase spending

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1 due to major storms, changes in law --

2 A Right.

3 Q -- D.C. PLUG falling behind or any other  
4 thing, that PEPCO would, in fact, increase  
5 spending to meet the reliability targets? Do you  
6 recall that?

7 A I -- I recall his comment that they would  
8 do everything they could to manage to that budget  
9 amount.

10 Q Do you also recall that if -- I believe  
11 Mr. Crane, to be fair, said he didn't think there  
12 was a likelihood that this would occur, but in the  
13 event spending was -- in the event the budgets  
14 needed to be exceeded, in terms of actual  
15 spending, to meet the reliability commitments,  
16 that the intention was to do that, to increase  
17 spending and meet the reliability commitments?

18 A I think he indicated that they would  
19 obviously consider all the factors, but they would  
20 not take off spending more -- or they wouldn't  
21 take that off the table, if that was going to  
22 negatively impact meeting the standards.

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1           Q       Do you also recall that Mr. Crane  
2 testified to the effect that the delta between the  
3 budget that Exelon committed to maintain and the  
4 actual expenditures, they would want to reserve  
5 the right to talk about recovering that delta in  
6 future rate cases from ratepayers?

7           A       I think he wanted to leave open the  
8 possibility of having that discussion, depending  
9 upon the circumstances that had played out.

10          Q       Sure. And then just one last kind of  
11 background question. We also -- Mr. Crane and I  
12 discussed page 15 of his testimony -- and you can  
13 turn there if you'd like, but the statement I want  
14 to focus on is essentially what we've been talking  
15 about. He stated, quote, to state it simply, if  
16 capital investment is needed, the necessary  
17 resources will be provided.

18                   Do you either accept, subject to check,  
19 that that statement appears on page 15 of his  
20 testimony or that we did have that discussion on  
21 Monday?

22          A       I think he was clearly stating that they

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1 were going to commit the capital necessary to run  
2 the business well.

3 Q Can you say the same for PEPCO? And what  
4 I'm getting at specifically is, if meeting the  
5 EQSS on an annual basis through 2020 is a matter  
6 of making capital expenditures, will PEPCO make  
7 the expenditures necessary to do so?

8 A It would certainly be our intention to  
9 apply the capital to meet the standards.

10 Q Thank you. Could you turn in your  
11 rebuttal testimony, which has been marked as  
12 Exhibit (3B) -- I'd like to point your attention  
13 to page 8, lines 5 to 11. Let me know when you're  
14 there, please.

15 A Page 8, sir?

16 Q Yes.

17 A And which lines again, Mr. Gray?

18 Q Please read to yourself lines 5 to 11. I  
19 have a couple of questions about those -- those  
20 statements.

21 A Yeah, I read it.

22 Q I want to specifically call your

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1 attention to the statement that, PEPCO, as a  
2 stand-alone company, has not and could not commit  
3 to meet target levels without an increase in  
4 spending above the 2014 to 2018 budgets levels  
5 that appears on lines 8 through 10.

6 A Yes, sir.

7 Q Can you explain -- with that statement in  
8 mind, can you explain for me the difference  
9 between Exelon's commitment to meet the  
10 reliability targets even if it has to increase  
11 spending above the budgeted levels and PEPCO's  
12 inability to meet the reliability targets without  
13 exceeding spending above the budgeted levels?

14 A While I think Mr. Gausman can run circles  
15 around me and explain this, I'd say as it  
16 relates -- from us, as a stand-alone, we are and  
17 we remain very concerned about the duration  
18 measure and our capability of meeting that within  
19 the stated budget that we put out there. I think  
20 we -- our best view is that we're going to face  
21 some upward pressure, cost pressure.

22 What Exelon is doing is that they're

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1 saying that they believe that they can come in and  
2 through the benefit of scale, of being able to  
3 probably leverage some of the procurement  
4 synergies as well as what I think Mr. Alden will  
5 speak to, and Mr. O'Brien, around best practices,  
6 they're making a commitment that they're going to  
7 do that within the budget spend.

8 Q Let me see if I can reframe what you said  
9 and see if you agree with my statement, that  
10 Exelon believes it can meet the reliability  
11 targets and there's a likelihood, though a very  
12 small likelihood, that it would need to increase  
13 spending above the budgets to do so, whereas PEPCO  
14 believes it could meet the reliability targets,  
15 but there's a likelihood, and a stronger  
16 likelihood, that it would, in fact, need to  
17 increase spending above budgeted levels to do so.  
18 Is that accurate?

19 A Based on what I've been advised, as we've  
20 been considering the reconsideration of EQSS, that  
21 we have concerns mostly around the SAIDI aspect  
22 and some potential upward pressure on our -- on

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1 our budget, yes.

2 Q Under the way I framed it, is the big  
3 difference in an Exelon-owned distribution company  
4 future versus a PHI-owned distribution company  
5 future, the likelihood that budgets would need to  
6 be increased or not?

7 A Well, I think specifically on this topic  
8 around the reliability, that there's a view that  
9 we have, as a stand-alone, that -- we have some  
10 concerns that we could be facing some upward cost  
11 pressure around the achievement of the SAIDI  
12 measure.

13 Q It's your understanding, is it not, that  
14 both companies, either an Exelon-owned PEPCO or a  
15 PHI-owned PEPCO, would do whatever it took to meet  
16 the applicable standard?

17 A Well, although I won't be here, I doubt  
18 anybody is going to want to relive 2010 through  
19 2012 again.

20 Q I want to run through just one more  
21 example. It relates to charitable contributions.  
22 If you still have your rebuttal testimony in front

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1 of you, I'd like you to look at page 7, lines 7 to  
2 12 in particular.

3 A Yes, sir.

4 Q Do you agree with me that this question  
5 and answer essentially says Exelon commits to  
6 making charitable contributions at a level equal  
7 to the annual average over the last ten years and  
8 that PEPCO has now made the same commitment?

9 A That's correct.

10 Q As a major corporate partner here in the  
11 District, to the District and its communities,  
12 does PEPCO believe it has a responsibility to  
13 support local institutions through charitable  
14 contributions?

15 A Yes. And we do.

16 Q You certainly have, over the past ten  
17 years, provided an annual average of \$1.6 million;  
18 is that right?

19 A No.

20 Q That's not right?

21 A Not over the last ten years.

22 Q What is the annual average over the last

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1 ten years?

2 A I don't know what it is. I don't know  
3 what the annual average is. This is predicated on  
4 the level of spending that we had -- or the level  
5 of contribution we had in the year 2013. I just  
6 don't recall off the top of my head what the  
7 spending level -- I know it has been increasing,  
8 but I don't know what the average is over the last  
9 ten years. It's a -- let me stop there.

10 Q It's an upward trend in PEPCO's  
11 charitable contributions in the last few years?

12 A Sure. Yes.

13 Q Thank you. Has PEPCO give any indication  
14 that that upward trend will end or that it will  
15 cut back on historical spending on charitable  
16 contributions?

17 A It's not our intention. We've not sent  
18 any signals. We revisit this -- in fact, it's  
19 required to be approved by our board of directors  
20 of what our annual contribution budget would be.  
21 So we look at this every year, and we -- although  
22 we have, I'll say, certain components that --

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1 whether it's education, youth, health, things of  
2 that nature, we evaluate that spend every year.

3 Q Thank you. Similar to the questions I  
4 asked you when we talked about the headquarters  
5 commitment and the reliability commitment, can you  
6 explain to me the difference between Exelon's  
7 commitment to make charitable contributions  
8 consistent with PEPCO's historical spending and  
9 PEPCO's inability to make that commitment but the  
10 fact that PEPCO has stated no intention not to  
11 make charitable contributions at those levels?

12 A Well, I'll make a couple of comments. I  
13 think that the -- not in any order of priority,  
14 but I think this is an example of Exelon making a  
15 very strong comment around their commitment to the  
16 community and sending a signal of certainty to the  
17 whole range of organizations that we have  
18 supported, understanding that the components of  
19 those organizations may change over time, but they  
20 are setting a bar as to what it is they intend to  
21 do and sending a signal to the community.

22 I think Mr. Crane talked a couple of

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1 times yesterday about their intention to be  
2 relevant in the community, and this is actually  
3 one of those aspects.

4           We have a similar view that -- we take it  
5 as a high responsibility to be supportive of the  
6 community and help make the community better.  
7 What we are not doing -- and it's recognition that  
8 we're just not going to be in a position where  
9 we're going to hold that bar at 1.6 million for  
10 the next ten years. We'll have to address that as  
11 we go forward as circumstances may play out.

12       Q     Is it foreseeable that the charitable  
13 contributions to which Exelon is committing could  
14 match what PEPCO would make on a stand-alone  
15 basis?

16       A     It is conceivable.

17       Q     Thank you. Let's talk about a couple of  
18 other issues in your rebuttal testimony while you  
19 have that out.

20       A     Sure.

21       Q     I'm going to ask for you to turn to  
22 page 9, please. On lines 1 to 13 is where I want

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1 you to focus, but take a look at as much of that  
2 range as you need to to get comfortable with it.

3 Let me know when you've had a chance to  
4 review that passage.

5 A I'm there, sir.

6 Q Okay. I want to call your attention just  
7 to a couple of components of your answer. You  
8 note, do you not, that PEPCO deferred its 2014  
9 rate case while the merger is pending? Is that  
10 right?

11 A We deferred all rate cases other than --  
12 there were rate cases that were in process, but we  
13 have not filed any new cases.

14 Q Did Exelon ask you to defer rate cases  
15 while the merger proceedings are pending in the  
16 various jurisdictions?

17 A We discussed a couple of things. Subject  
18 to check, but this is my recollection, is that  
19 while we have the authority to file a case, we  
20 would have to get the consent of Exelon. I think  
21 that's how it played out.

22 We felt that -- and I think it was well

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1 stated on Monday -- that this is a very  
2 significant transaction and that this would be a  
3 very important decision being made by our  
4 respective commissions and that it would probably  
5 be more efficient, if I can use that term, to make  
6 sure that we weren't trying to then, in parallel,  
7 prosecute or litigate a rate case while this was  
8 underway.

9 Q Is another way of saying that, perhaps a  
10 little bit less diplomatically, is that it would  
11 spread PEPCO fairly thin to litigate rate cases  
12 and the merger proceedings at the same time and  
13 could also tax the resources of the various  
14 commissions?

15 A Yeah, that's -- yes. Among other things,  
16 but yeah, I agree.

17 Q You also state in this answer that PEPCO  
18 will be in a less robust financial position if the  
19 merger is not approved because of the investments  
20 that you're continuing to make --

21 A Right.

22 Q -- during the pendency. Do you see that?

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1           A       Yes.

2           Q       Am I correct that that reference there is  
3 to a timing issue and you're not saying PEPCO  
4 would not recover the cost of the investments  
5 being made during the pendency of the rate case,  
6 but cost recovery would be deferred?

7           A       I think for the most part I agree with  
8 that. I think that, as we thought through this,  
9 that while it's hard to ascribe financial impact,  
10 that I think that if for some reason this  
11 transaction was not approved, clearly we have --  
12 clearly all the utilities will be even further  
13 below their allowed return.

14                   I don't know what the number would be. I  
15 know you may ask me this, but coming in -- it  
16 should be very shortly thereafter -- if the  
17 transaction failed, it would be, I think, fairly  
18 sizable rate requests. It's hard to project, I'll  
19 say, generally, what the regulatory environment  
20 might be in a post-failed merger.

21           Q       Am I correct that if the transaction is  
22 not approved by the -- any of the various

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1 commissions, that there's what's called a reverse  
2 breakup fee?

3 A Yes, we already have it.

4 Q Can you explain to me what a reverse  
5 breakup fee is?

6 A It was a negotiated item going into the  
7 transaction, with the assumption that -- I'll say  
8 it less diplomatically -- we would be out of the  
9 rate case business, and was intended to provide a  
10 cash -- positive cash infusion during the pendency  
11 of this -- of this merger process.

12 Q When you say you already have it and  
13 providing the cash infusion during the pendency of  
14 the case -- let me see if you would agree with my  
15 understanding of how exactly that works. Did  
16 Exelon contribute funds upfront in a certain  
17 amount, and then I believe -- is it accurate that  
18 there's a time period where, if approval is not  
19 received, Exelon contributes more funds? Is that  
20 essentially how it works?

21 A My recollection is that -- well, the  
22 amount is 180 million, and my recollection is that

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1 half of it was received very shortly after the  
2 merger agreement was executed. And then, as I'm  
3 recalling, there would be quarterly -- we were  
4 going to receive, over several quarters, the other  
5 90 million.

6 I would have to check with Mr. McGowan,  
7 but I believe we have received the last of that.  
8 But that's subject to check.

9 Q Of that total 180 million, is that for  
10 PEPCO D.C. or is that for all of the PHI  
11 utilities?

12 A It's for PHI.

13 Q Let's turn back to one more question on  
14 your rebuttal testimony. If you look at page 8,  
15 the passage we were discussing on lines 5 through  
16 11 about PEPCO's inability to commit to meeting  
17 the targeted reliability levels without increasing  
18 spending, am I correct that PEPCO has -- PEPCO  
19 prepares five-year capital expenditure budgets and  
20 then annual O&M budgets?

21 A We have a detailed O&M and capital budget  
22 for the current year. And then there are

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1 four-year projections beyond that. Little more  
2 specificity on the capital because there's the  
3 identification of specific projects.

4 I would say that the O&M is a little bit  
5 more trend-line based on the base year unless we  
6 know specifically around the timing of a  
7 particular O&M-related project.

8 Q Is it fair to say you have a better idea  
9 of what specific capital projects will go into  
10 place, and O&M you kind of look at what's  
11 historically happened and project what your  
12 spending may be, and that's the difference between  
13 those two budgets?

14 A Unless we have specific knowledge -- for  
15 example, we just put in a new customer information  
16 system, and we knew, even going back two years,  
17 that we would have, say, on a relevant level, a  
18 specific expenditure in the second year of the  
19 forecast. And so if we have that level of  
20 information, we would reflect that in that  
21 forecast. But you're right.

22 Q Is it your position that PEPCO has

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1 developed those long-term budgets in a manner that  
2 will not allow it to meet the EQSS or the  
3 reliability targets proposed in this case?

4 A No, it's not done with any plan to not  
5 meet. It's our best estimate.

6 Q That was a bad question. I wasn't  
7 asking --

8 A It was a great question.

9 Q Trust me. If I can restate it.  
10 I wasn't intending to say you developed  
11 those budgets with a plan to not meet the  
12 standards. What I'm trying to ask is, did you  
13 develop budgets that the effect of those budgets  
14 is that you don't think you will meet the  
15 standards those budgets were intended to meet?

16 A No. No. But as time goes on and we get  
17 more information or we get closer to a particular  
18 standard, you know, we -- we become better  
19 informed, and therein is where, as Mr. Gausman has  
20 informed me, there's concern around the SAIDI  
21 measure.

22 Q Do you know today whether PEPCO has plans

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1 to seek reconsideration of the Commission's EQSS  
2 standards?

3 A I'm not aware that that decision has been  
4 made. We can -- obviously you have a chance to  
5 talk to Mr. Gausman. He would be in a better  
6 position on that.

7 Q Do you still have Mr. Crane's  
8 Exhibit (4A)-2 available?

9 A Yes. I'm there.

10 Q Am I correct that this exhibit, 17-page  
11 exhibit, contains 91 paragraphs that are -- that  
12 comprise the joint applicants' merger commitments  
13 in this proceeding?

14 A Yes, sir.

15 Q I'd like you to turn to paragraph 21.  
16 It's on page 4.

17 A Yes, sir.

18 Q It states, PEPCO will maintain its  
19 low-income customer assistance programs pursuant  
20 to current requirements and commitments.

21 What is your understanding of what Exelon  
22 is committing to there?

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1           A       I think that -- I guess -- and I recall  
2 Chair Kane had mentioned this. Certainly the  
3 commitment to continue with the RAD program. And  
4 I look at this in many ways -- and just a similar  
5 statement of we're not intending to come in here  
6 and change anything that we know is critically  
7 important to the community or to the Commission.

8           Q       I have similar questions -- if you look  
9 at paragraph 19, there's a commitment to continue.  
10 Similarly, paragraph 20, a commitment to maintain.  
11 Paragraph 21, as we just discussed, is maintain.  
12 Paragraph 23 is a commitment to maintain.  
13 Paragraph 24 is a commitment to continue.

14                   Does that language, in your view, convey  
15 any incremental benefit that results directly from  
16 the merger or is that language intended to provide  
17 certainty that harm will not arise because the  
18 status quo will be maintained?

19           A       I think -- in some ways, I see it as  
20 both. I think it's -- in my view, anyway, the  
21 overarching intention is to articulate a set of  
22 commitments that underscore certainty going

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1 forward.

2 On a stand-alone basis, it would  
3 obviously be our intention to do all of that as  
4 well.

5 Q Is it your position that the avoidance of  
6 a harm is an incremental benefit?

7 A The avoidance of a harm? That's kind of  
8 a --

9 Q I can ask it more specifically --

10 A Can you give me an example?

11 Q Sure. Let's take paragraph 19 for  
12 example, which states, PHI and PEPCO will also  
13 continue their commitments to workforce diversity.

14 Am I correct that this language is  
15 intended to show that there will not be any  
16 degradation in the current commitment to workforce  
17 diversity?

18 A Right. And part of the commitment is to  
19 enhance. That is embedded in that. That's  
20 certainly -- that's been our -- that's been our  
21 approach as well. And I'm somewhat familiar with  
22 what Exelon has done from a workforce diversity --

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1 actually, in many ways, more robust than what  
2 we've been able to do.

3 But I think that, again, this is a case  
4 where, you know, Exelon, as one of the joint  
5 applicants, is trying to send a very strong signal  
6 that the path that PEPCO has been on, as a  
7 stand-alone, people should expect that going  
8 forward.

9 Q Okay. I've got two follow-ups based on  
10 your answer. The first one -- you said -- you  
11 used the term "enhance." And I'm confused. The  
12 term "enhance" is not in paragraph 19. Are you  
13 saying that what's currently going on right now at  
14 PEPCO is a workforce diversity culture or program  
15 that has embedded within it the understanding that  
16 PEPCO will enhance that commitment year over year?

17 A We look at, while obviously, you want to  
18 achieve -- we have tried to embed in our culture  
19 that achieving is good, but you need to be  
20 constantly moving ahead and developing and having  
21 that progress from your performance.

22 So I take it to be -- and maybe I'm

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1 reading more into it, but that has been our  
2 mindset. And I believe, from what I've seen from  
3 Exelon, that I think they -- they share that same  
4 mindset.

5 Q Okay. So Exelon's commitment isn't to do  
6 anything different. It's just that PEPCO  
7 currently strives to always do better, and Exelon  
8 commitments to continue to strive to do better?

9 A That's how I -- that's how I view their  
10 basic culture.

11 Q Okay. Thank you.

12 And the second follow-up gets back to my  
13 initial line of questioning on this paragraph.  
14 The commitment to do just that, to maintain and  
15 continue to enhance, just as PEPCO would  
16 otherwise, is to provide certainty that that  
17 aspect of PEPCO's corporate culture will not go  
18 away, and you're saying that certainty is a  
19 benefit. Is that right?

20 A I believe, to stakeholders, that that  
21 statement of certainty, that level of commitment,  
22 I believe gets perceived by stakeholders as a

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1 benefit.

2 Q Is there any difference in your  
3 perception of the benefit that Exelon is conveying  
4 here and the benefit that would otherwise come  
5 with PEPCO continuing to enhance and promote its  
6 workforce diversity programs?

7 A Oh. I think clearly this -- you know,  
8 the whole genesis, as a result of the change, that  
9 is anticipated. So I think that the benefit, as I  
10 ascribe -- you know, with the certainty, is linked  
11 to the potential transaction.

12 Q Are you saying without the transaction  
13 there's no certainty that PEPCO would continue?

14 A We don't have an articulation like this,  
15 and I think it's -- and my sense is that it's most  
16 likely assumed that we would.

17 As a result of a new parent coming in,  
18 there was a sense that these are very important  
19 things to be very clear to state so that the whole  
20 range of stakeholders understand what the  
21 intention of the new owner would be.

22 Q Okay. That's very helpful. But these

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1 paragraphs we had talked about with "continue,"  
2 "maintain," "maintain," it's the articulation of  
3 that commitment that's the benefit. Is that what  
4 you're getting at?

5 A I think that in some aspects it is.  
6 There's some things that I think are clearly  
7 things that we're not -- don't have any intention  
8 of doing as a stand-alone company.

9 Q Thank you. I want to change gears a  
10 little bit. Have you read the March 23rd, 2015  
11 testimony submitted in this proceeding by OPC  
12 witness Dr. Dismukes?

13 A A while back. I -- I did review, getting  
14 ready for this -- yeah, I do recall going through  
15 that.

16 Q Do you understand that one of OPC's  
17 criticisms in this proceeding has been the manner  
18 in which the joint applicants have presented their  
19 proposal and their merger commitments?

20 A Yes.

21 Q I want to expand on that point a little  
22 bit and get your understanding. Were you in the

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1 hearing room -- I believe it was Monday  
2 afternoon -- when Chairman Kane noted the  
3 distinction between there's settlement and there's  
4 the litigated phase of the case, and we're in the  
5 litigated phase of the case, and the Commission  
6 must make a decision based on evidence in the  
7 record?

8 A Yes, sir.

9 Q Although this filing was rejected, are  
10 you aware that on February 4th, the joint  
11 applicants submitted a filing that attached the  
12 New Jersey settlement?

13 A I believe -- I -- I think that's correct,  
14 yeah. I certainly accept that.

15 Q Okay. This is an exhibit to  
16 Dr. Dismukes' March 23rd testimony, excerpts from  
17 that filing. Would you agree or accept, subject  
18 to check, that in presenting the New Jersey  
19 settlement, that February 4th filing asked --  
20 excuse me -- informed the Commission and the  
21 parties that the joint applicants would not object  
22 if the Commission were to apply the value and

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1 framework of the New Jersey settlement to a  
2 complete resolution of the issues in this case?

3 MR. MEIER: Your Honor, he's discussing a  
4 superseded -- in fact, not even superseded -- a  
5 never-entered testimony that the Commission  
6 expressly rejected and directed that be refiled  
7 under the conforming testimony.

8 I don't see how that testimony is either  
9 before this Commission, but moreover, is relative  
10 to the current proposal. So we object to that  
11 line of questioning.

12 CHAIRMAN KANE: Mr. Gray?

13 MR. GRAY: Your Honor, as I just  
14 discussed with the witness, one of OPC's problems  
15 with this case is we've been having trouble --  
16 difficulty determining what exactly the proposal  
17 is. And I would offer what I intend to ask the  
18 witness is a similar question that I asked,  
19 without objection, of Mr. Crane is, was there a  
20 difference between the February 4th filing that  
21 was rejected, which contained the New Jersey  
22 settlement as an attachment, and the February 17th

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1 filing, which was accepted, which also contained  
2 the New Jersey settlement as an attachment. And  
3 in asking those questions, my intent is to get a  
4 better understanding of what exactly the joint  
5 applicants' proposal is, given that it has evolved  
6 over time.

7 MR. MEIER: May I just note Mr. Rigby did  
8 not submit testimony on February 4th. The New  
9 Jersey settlement was not attached to Mr. Rigby's  
10 testimony. It was attached to Mr. Crane's.

11 So to the extent was appropriate at all,  
12 counsel had the opportunity to discuss this with  
13 Mr. Crane.

14 CHAIRMAN KANE: The question that you  
15 said the second time was different than the way  
16 you asked it the first time.

17 MR. GRAY: It certainly was, and my first  
18 question was foundational. The question that I  
19 asked next was the question that indeed I was  
20 going to ask next.

21 CHAIRMAN KANE: You may ask the second  
22 one and not the first one.

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1 MR. GRAY: Sure.

2 COMMISSIONER FORT: Could the reporter  
3 read the question that the chair said he could  
4 ask? Not give him another chance to do it  
5 because --

6 CHAIRMAN KANE: Exactly.

7 COMMISSIONER FORT: -- it may not change,  
8 so we can all hear the second question.

9 (The reporter read the record as  
10 requested.)

11 CHAIRMAN KANE: That was the correct  
12 question about whether there was a difference or  
13 what the difference was.

14 MR. MEIER: Can I respond now?

15 We'd note our objection for the record,  
16 but we understand your ruling.

17 MR. GRAY: And, Your Honor, I would just  
18 note that the question I asked of Mr. Crane is on  
19 page 73 of the transcript, if anyone want to look  
20 at it.

21 CHAIRMAN KANE: So you may ask that --

22 MR. GRAY: Sure.

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1 CHAIRMAN KANE: -- question about whether  
2 there's any difference between the two filings  
3 specifically in regard to the fact that the New  
4 Jersey settlement was attached.

5 MR. GRAY: Yes.

6 THE WITNESS: Can I respond?

7 CHAIRMAN KANE: Yes.

8 THE WITNESS: I don't know what the  
9 difference is between the two, but I -- my  
10 understanding is that what's marked as (4A)-2 is  
11 what is in front of this Commission in this  
12 proceeding for their consideration.

13 BY MR. GRAY:

14 Q Thank you. And that's really where I  
15 want to go with this line of questioning because  
16 yesterday the New Jersey settlement was admitted  
17 into evidence. So we have a settlement that's in  
18 evidence. And I'm trying to kind of unring that  
19 bell of what's the intended merger commitment  
20 versus something else.

21 Do you recall, on Monday, Mr. Crane  
22 answered several questions where he -- and I can

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1 give you some examples -- but where he stated, if  
2 the Commission required us to do that, we  
3 certainly could?

4 A I recall him saying that.

5 Q For example, with regard to the EQSS --  
6 this can be found on page 87 of the transcript --  
7 Mr. Crane testified, Whatever the Commission has  
8 required, we're committing to meet, and if that's  
9 a point, it's a point.

10 Do you recall hearing that testimony?

11 MR. MEIER: Your Honor, I'm going to  
12 object again. We're going through a back door to  
13 reintroduce the whole notion of negotiating  
14 settlement terms, which was not an approved  
15 process in this hearing. So I don't know where  
16 Mr. Gray can take this that isn't going to run  
17 afoul of that. So I would like to note my  
18 objection to that line of questioning.

19 CHAIRMAN KANE: And I would note,  
20 Mr. Gray, the witness has indicated that the  
21 proposal that is before the Commission is the  
22 proposal that is in Exhibit (4A)-2.

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1 MR. GRAY: And that's my question. I  
2 think I can wrap it up with one more question.

3 BY MR. GRAY:

4 Q Given that the New Jersey settlement is  
5 in the record as of yesterday, the Maryland  
6 settlement is in the record as of yesterday, and  
7 the statements that Mr. Crane made yesterday  
8 regarding what the companies may or may not be  
9 willing to do -- a two-part question. Do you have  
10 an understanding of what the firm merger  
11 commitments are that the joint applicants are  
12 asking the Commission to approve, and if you do  
13 have such an understanding, is it different than  
14 what is shown on Exhibit (4A)-2?

15 A My understanding is that what is in front  
16 of this Commission for their consideration is in  
17 Exhibit (4A)-2.

18 Q Thank you. Do you recall there was a lot  
19 of discussion with Mr. Crane about jobs over the  
20 last two days?

21 A Yes, sir.

22 Q Isn't it true that neither you nor any

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1 PEPCO representative has ever communicated to this  
2 Commission that PEPCO lacks the resources to hire  
3 new employees?

4 A I don't recall us ever saying that.

5 Q To your knowledge, has the Commission  
6 ever disallowed cost recovery of costs associated  
7 with operational employees?

8 A I'm not aware that there's been a  
9 specific disallowance.

10 Q I'm sorry. You're not aware that there  
11 has been?

12 A That there's ever been a specific  
13 disallowance.

14 Q Thank you.

15 Isn't it true that PEPCO submitted rate  
16 case filings before this Commission in 2011 and  
17 2013?

18 A Yes, sir.

19 Q We discussed earlier, I believe, but if  
20 you could confirm, PEPCO had planned to submit a  
21 rate case filing in 2014; is that right?

22 A I recall that was our plan at the time.

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1 Q Thank you. Do you recall our discussion  
2 earlier about laying the groundwork for some of  
3 the commitments, and in particular, we were  
4 talking about hiring new employees?

5 A Sure.

6 Q Have you begun that process?  
7 Specifically, have you started identifying  
8 prospective employees or interviewing employees?

9 A Not with regard to the effort that's  
10 linked to the contract extension. We are in the  
11 process of hiring people. That's a very typical  
12 thing for us to be doing. And there were  
13 good-faith efforts that were embedded in prior  
14 contracts that I know we're working towards.

15 Q Is there a difference between the  
16 commitments in those prior contracts and the  
17 commitment to hire -- to make good-faith efforts  
18 to hire 102 new employees?

19 A I view it as -- yeah, I do.

20 Q You view it as different?

21 A Yes, I do.

22 Q Thank you.

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1           Are you aware of whether the commitment  
2 to hire 102 new employees has embedded within it  
3 an effort to strategically target prospective  
4 employees that are District residents?

5           A     We don't -- we don't go into hiring with  
6 any restrictions as to where the person lives  
7 other than the fact that, obviously, we want them  
8 to not have to travel cross country every day.  
9 But there's no -- I'm not aware of any presumption  
10 or any requirement that a person working for PEPCO  
11 has to live in D.C.

12          Q     You're aware that there's a commitment to  
13 transfer 50 employees from PEPCO Energy Services  
14 from Arlington to the District, are you not?

15          A     Yes. To our corporate headquarters.

16          Q     Do you know, of those 50 employees that  
17 will be transferred, how many are residents of the  
18 District?

19          A     No, I do not.

20          Q     I believe yesterday Mr. Crane said that  
21 Mr. Khouzami may know. Do you know who would have  
22 that information?

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1           A       I would assume, if he said that, that  
2 Mr. Khouzami is currently working to get that  
3 information.

4           Q       Let me ask you this, if would you agree  
5 with this statement. There's a business side to  
6 this transaction which presents both risks and  
7 rewards to shareholders, and then there's a  
8 regulatory side to this transaction which presents  
9 both risks and rewards to ratepayers, and the  
10 purpose of the proceeding that we're in right now  
11 is to balance those risks and rewards consistent  
12 with the public interest standard.

13          A       I guess I'm trying to point to the risk  
14 to our customers -- I'm trying to understand that  
15 distinction. I think in terms of the risk and  
16 reward to the shareholders, obviously, if the  
17 merger completes, there's the achievement of the  
18 share price at transaction end. If it doesn't, I  
19 think we're going to see a fairly significant  
20 impact to the share price. So I think that right  
21 now that, to me, is kind of a risk that our  
22 shareholders could face.

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1           And commenting further back to my  
2 testimony about the less robust position going  
3 forward, I think that that would linger.

4           I think it's -- given what I've seen and  
5 my understanding of Exelon and what they've put on  
6 the table, I'm -- I'm a little hard-pressed to  
7 understand the risk to the customer vis-a-vis our  
8 stand-alone plan. I don't know -- maybe I'm not  
9 being helpful there, but I'm having a hard time  
10 seeing that.

11         Q       Certainly. I'm not asking you to agree  
12 necessarily, but I -- are you aware that OPC and  
13 the other intervenors in this proceeding have  
14 identified risks associated with joining a company  
15 that has a large component of nuclear generation,  
16 that Exelon's view on renewables may be contrary  
17 to the District's policies, those types of risks?

18         A       I'm aware that people have those views,  
19 yes, sir.

20         Q       And is it your understanding that the  
21 purpose of this proceeding is to balance those  
22 views with the views that the joint applicants are

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1 presenting and determine in the public --

2 determine whether the transaction --

3 A I understand that the issue here is  
4 whether -- what the Commission would determine as  
5 to whether I think the seven-factor test has been  
6 satisfactorily met.

7 Q Thank you.

8 As is originally filed and as currently  
9 stated in the joint application, am I correct that  
10 the customer investment fund for the District of  
11 Columbia would result in a rate credit of about  
12 either \$50 per customer or \$50 per meter? There's  
13 some debate on that, but I want to focus on the  
14 \$50 component.

15 A Okay. We were -- well, I look at it that  
16 it's on metered customers, so I'm trying to marry  
17 the two terms. There's a certain number of  
18 customers that we have, and that is I think how  
19 the math worked out.

20 Q Thank you. That's a helpful  
21 clarification.

22 In the February 17th filing that we've

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1 discussed on several occasions, the joint  
2 applicants increased that amount to about \$114 per  
3 customer; is that right? Per metered customer?

4 A Yeah, I think it was 33.7 million, as I  
5 recall.

6 Q 33.7 million would be compared to the  
7 original proposal of --

8 A 14.

9 Q -- 14 million --

10 A That's correct. Yes, sir.

11 Q Am I correct that the customer investment  
12 fund would just be a one-time payment?

13 A I believe so, yes.

14 Q Let me ask you --

15 A I think -- as I'm understanding it, it  
16 would be -- it would -- I think in the way it was  
17 proposed, but I think it would also then depend --  
18 really be determined by what the Commission -- how  
19 the Commission wanted to apply that.

20 Q Certainly, and that was a poor question.  
21 Let me rephrase it. Let's assume that the  
22 customer investment fund is ultimately paid out as

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1 a rate credit to customers. That would be a  
2 one-time payment of about \$114; is that your  
3 understanding?

4 A I accept the math.

5 Q Were you in the hearing room yesterday  
6 when Mr. Crane was discussing Exelon's initial \$22  
7 bid for PHI?

8 A Yes, sir.

9 Q Do you recall that he referred to that  
10 bid as a directional bid?

11 A I recall him saying those words.

12 Q Do you recall Mr. Crane also testified  
13 that that directional bid was the first lob over  
14 the fence?

15 A I recall him saying that.

16 Q I'm curious, would you apply that same  
17 characterization of a directional bid to the  
18 original proposal of the \$14 million customer  
19 investment fund?

20 A No, I wouldn't put that -- I think  
21 that -- I wouldn't put it that way. I think the  
22 process that the joint applicants went through was

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1 to put together a very serious offer in the form  
2 of its commitments and the application, and one  
3 that we believe, and believed, would satisfy the  
4 standards across our service territory.

5 MR. GRAY: Your Honor, at this time, I  
6 would like to mark for identification as OPC  
7 Cross-Examination Exhibit 10 the document that's  
8 been preliminarily identified as OPC  
9 Cross-Examination Exhibit Number 19. This  
10 document is a two-page excerpt of the definitive  
11 proxy statement that PHI filed with the Securities  
12 and Exchange Commission on August 12th, 2014.

13 BY MR. GRAY:

14 Q Do you have that document in front --

15 A I'm there, sir.

16 CHAIRMAN KANE: It is so marked.

17 (OPC Cross Exhibit Number 10 was marked  
18 for identification.)

19 MR. GRAY: Thank you.

20 BY MR. GRAY:

21 Q Please turn to page 2 of this document.

22 Let me first ask, have you seen this document

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1 before?

2 A Yes, I have.

3 Q Would you please turn to page 2.

4 A I'm there.

5 Q Do you see the heading Golden parachute  
6 compensation?

7 A Yes.

8 Q It's my understanding that a golden  
9 parachute is compensation that's paid to senior  
10 executives when their company is acquired by  
11 another company. Is that accurate?

12 A Yes. As I understand it, it has  
13 implications to tax -- taxability for the  
14 executive in terms of what gets considered under a  
15 certain excise tax.

16 Q Those tax considerations you discussed,  
17 those are driven by the acquisition, though; is  
18 that right?

19 A That's correct, yes.

20 Q There are five individuals listed on the  
21 table on page 2, one of which is you. Is that  
22 right?

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1           A       That's correct.

2           Q       In the first row, do you see where it  
3 says, You will receive a payment of approximately  
4 \$10.8 million if the transaction is approved?

5           A       That is correct.

6           Q       Would you agree, subject to check, that  
7 if we add the totals for each of these five  
8 individuals, the total golden parachute  
9 compensation is \$30,137,182?

10          A       I would accept that.

11          Q       Is it your position that it is reasonable  
12 for these five individuals to receive over  
13 \$30 million in association with this transaction  
14 when the District of Columbia, as a whole, would  
15 receive \$33.75 million?

16          A       Couple of comments. The individuals --  
17 for example, Mr. Velazquez will not receive this.  
18 He will not receive that entire amount because he  
19 will not be getting severed. So you only get the  
20 entirety of it, in the way that the plan is laid  
21 out, if, in fact, it's a, quote/unquote, double  
22 trigger. So you -- the transaction would be

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1 concluded, and then you would be severed from the  
2 company.

3 I think the broader question you asked me  
4 around fairness is -- I would just simply comment  
5 that these plans have been in place for -- it's  
6 related to our long-term incentive plan. These  
7 are determined -- the plan itself is determined by  
8 the board. These individuals do not design that  
9 plan. That plan is informed by a compensation  
10 consultant that reports right to the compensation  
11 committee of the board.

12 But in juxtaposing the numbers that you  
13 added up to the customer investment fund, I think  
14 the board and management looks at it that,  
15 whatever happens here as a result of this plan, is  
16 in the context of the totality of the transaction  
17 and the benefits that I think will be derived from  
18 that.

19 Q Just a few minute ago you and I had  
20 talked about the fact that OPC and the other  
21 intervenors to this case have identified a number  
22 of risks. For the sake of this question -- I want

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1 you to accept, just for the sake of argument, that  
2 all of those risks are valid.

3 Is it your position, if you could make  
4 that assumption, that all of those risks are  
5 offset by and the ability to serve as the electric  
6 distribution provider in the District of Columbia  
7 can be purchased for about \$128 per customer?

8 MR. MEIER: Objection, Your Honor.

9 Mr. Rigby is a fact witness. We've entertained  
10 hypotheticals before, but now he's asking the  
11 witness to reach the ultimate conclusion whether  
12 this transaction is in the public benefit if you  
13 assume a bunch of hypotheticals that he's  
14 rejected.

15 That's not an appropriate question for  
16 this witness. That sounds like an argument on  
17 brief.

18 MR. GRAY: Your Honor, this is the chief  
19 executive officer of one of the joint applicants.  
20 His testimony goes to the heart of the public  
21 interest issue, as does my question.

22 MR. MEIER: My objection isn't the

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1 questioning Mr. Rigby on his views and his  
2 testimony. It's on a hypothetical that is not  
3 appropriate.

4 CHAIRMAN KANE: The objection is  
5 sustained.

6 BY MR. GRAY:

7 Q That's all I have for you, Mr. Rigby.  
8 Thank you very much.

9 A Thank you, sir.

10 CHAIRMAN KANE: Ms. Francis.

11 MS. FRANCIS: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. FRANCIS:

14 Q Good morning, Mr. Rigby.

15 A Good morning, Ms. Francis.

16 Q Do you have before you the  
17 cross-examination exhibits that AOBA submitted?

18 A Yes, I do, ma'am.

19 Q I'd like to start by identifying several  
20 exhibits. Please look first at what's been  
21 preliminarily identified as AOBA Exhibit 16.

22 A Yes, ma'am. I'm there.

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1 MS. FRANCIS: For the record, Your Honor,  
2 that is the joint applicants' response to  
3 D.C. government data request 24 -- excuse me,  
4 D.C. government 8-24. I'd like to have that  
5 marked for the record as AOBA 13.

6 CHAIRMAN KANE: So marked.

7 (AOBA Cross Exhibit Number 13 was marked  
8 for identification.)

9 MS. FRANCIS: The next exhibit is what's  
10 been preliminarily identified as AOBA 17, which is  
11 the D.C. government's response -- excuse me -- the  
12 joint applicants' response to DCG 8-29, which I  
13 would like to identify for the record as AOBA 14.

14 CHAIRMAN KANE: So marked.

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

17 MS. FRANCIS: The next is what's been  
18 preliminarily identified as AOBA 18, which is  
19 DCG's response -- excuse me -- joint applicants'  
20 response to DCG data request 8-37, which I'd like  
21 to mark as AOBA 15.

22 CHAIRMAN KANE: So marked.

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1 (AOBA Cross Exhibit Number 15 was marked  
2 for identification.)

3 MS. FRANCIS: The next is what's  
4 preliminarily identified as AOBA 19, which is the  
5 joint applicants' response to OPC data request  
6 18-11, which I'd like to mark as AOBA 16.

7 CHAIRMAN KANE: So marked.

8 (AOBA Cross Exhibit Number 16 was marked  
9 for identification.)

10 MS. FRANCIS: The next is the joint  
11 applicants' response to OPC data request 18-4.  
12 And that document was preliminarily identified as  
13 AOBA 20, which I'd like to have marked as AOBA 17.

14 CHAIRMAN KANE: So marked.

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

17 MS. FRANCIS: The next is the joint  
18 applicants' response to DCG data request 8-2,  
19 which was preliminarily identified as AOBA 21,  
20 which I'd like to have marked for the record as  
21 AOBA 18.

22 CHAIRMAN KANE: So marked.

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1 (AOBA Cross Exhibit Number 18 was marked  
2 for identification.)

3 MS. FRANCIS: The next is what's been  
4 preliminarily identified as AOBA 22, which is the  
5 joint applicants' response to AOBA data  
6 request 1-19, which I'd like to have marked for  
7 the record as AOBA 19.

8 CHAIRMAN KANE: So marked.

9 (AOBA Cross Exhibit Number 19 was marked  
10 for identification.)

11 MS. FRANCIS: The next is the joint  
12 applicants' response to AOBA data request 1-8,  
13 which is preliminarily identified as AOBA 25,  
14 which I'd like to have marked for the record as  
15 AOBA 20.

16 CHAIRMAN KANE: So marked.

17 (AOBA Cross Exhibit Number 20 was marked  
18 for identification.)

19 BY MS. FRANCIS:

20 Q Mr. Rigby, could you just take a moment  
21 and tell me if, for the purposes of identifying  
22 the accuracy of these data responses -- are you

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1 able to confirm that they are true and correct for  
2 purposes of entering them into the record?

3 A To the best of my knowledge.

4 Q Now, Mr. Rigby, I'd like to start by  
5 asking you just briefly to refer to page 2 of your  
6 direct testimony.

7 And am I correct that you have been part  
8 of the senior management of PHI since May of 2004  
9 when you became senior vice president and chief  
10 financial officer of PHI?

11 A This is page 2 of my direct?

12 Q Correct.

13 A Okay. I'm there.

14 Q I'm looking starting on line 3. Shall I  
15 ask the question again?

16 A Yes, if you would, please. Thank you.

17 Q Am I correct that you've been part of the  
18 senior management of PHI since May 2004 when you  
19 became senior vice president and chief financial  
20 officer of PHI?

21 A No.

22 Q That's not correct?

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1           A       No. I was -- at the time of the merger  
2 in '02, I was the president of Conectiv Power  
3 Delivery, and that was considered part of the  
4 senior leadership team of PHI.

5           Q       Okay. Excuse me. So the date should be  
6 May 2002?

7           A       I believe so, yes.

8           Q       Yes. Okay. Thank you.

9                   And when did you become president and  
10 chief executive officer of PHI?

11          A       That was in March of 2009.

12          Q       Am I correct that your planned retirement  
13 as president and CEO of PHI had been announced  
14 prior to the initiation of merger discussions with  
15 Exelon?

16          A       Yes.

17          Q       And prior to the announcement of the  
18 merger, when was your retirement scheduled to  
19 become effective?

20          A       Would have been likely sometime in the  
21 first half of 2015.

22          Q       As a result of the decision of the PHI

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1 board of directors to enter into the merger  
2 agreement with Exelon, have your plans for  
3 retirement from PHI been altered?

4 A Yes.

5 Q Now, I'm going to ask you to please  
6 reference what's been preliminarily identified as  
7 AOBA Exhibit 36.

8 A This is the form 8-K?

9 Q Correct.

10 MS. FRANCIS: For the record, Your Honor,  
11 that is -- excuse me. For the record, that is the  
12 form 8-K, 42 pages. It's the form 8-K as of  
13 April --

14 (Interruption to the proceedings.)

15 THE WITNESS: Just for the record, that  
16 wasn't a power outage.

17 MS. FRANCIS: Okay. Thank you.

18 I'd like to have the form 8-K as of  
19 April 29th, 2014, marked for the record as  
20 AOBA 21.

21 CHAIRMAN KANE: That will be so marked.

22 (AOBA Cross Exhibit Number 21 was marked

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1 for identification.)

2 BY MS. FRANCIS:

3 Q Now, please focus on page 2 where it  
4 says, CEO employment extension agreement. Do you  
5 see that?

6 A Yes.

7 Q Now, does the second sentence of the  
8 third paragraph on that page express the desire of  
9 the PHI board of directors and its anticipation  
10 that you will be an important factor contributing  
11 to the successful completion of the merger and  
12 securing regulatory approval necessary to  
13 consummate the merger?

14 A That's what it says.

15 Q Mr. Rigby, other than the testimony that  
16 you present here today and in the other merger  
17 proceedings, could you please tell me, what have  
18 you contributed in this proceeding and the others  
19 that would make you an important factor in  
20 obtaining necessary regulatory approvals?

21 A Keeping the lights on, delivering a  
22 focused set of employees, well-performing assets.

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1 I think the outreach that I've been involved with  
2 with community political leaders.

3 I think all those ingredients factor into  
4 having a successful regulatory outcome.

5 Q Are you responsible for the formulation  
6 of the joint applicants' regulatory proposals in  
7 this proceeding and/or the manner in which those  
8 proposals have been presented?

9 A Am I responsible for the formulation?

10 Q Correct.

11 A No, I was not involved in that.

12 Q You were not involved in it at all?

13 A I was advised of it, but I was not a  
14 direct participant in the formulation of those  
15 commitments.

16 Q Now, please turn to page 3 of your direct  
17 testimony. On lines 4 through 9, do you indicate  
18 that part of the purpose of your direct testimony  
19 is to provide PHI's perspective on the proposed  
20 merger?

21 A Yes.

22 Q Now, at lines 21 through 22 on page 3 of

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1 your direct testimony, you present PHI's vision  
2 stating in part that, We -- PHI -- aspire to  
3 become the best in class in safety, reliability,  
4 customer service and innovation.

5 Can you tell us, when was this vision  
6 statement for PHI created?

7 A It was born out of the -- it's evolved.  
8 My recollection, it was born out of a statement --  
9 it was an aspiration statement, as I recall, that  
10 we used internally, probably going back to 2009,  
11 2010.

12 It's been modified as we've shifted the  
13 strategy and other things have played out, for  
14 example, the introduction of the smart grid. I  
15 would imagine -- and I'd have to go back and  
16 check -- this has probably been in place for  
17 several years now.

18 Q So in other words, it existed before the  
19 merger?

20 A Yes.

21 Q At pages -- excuse me. At page 4,  
22 lines 3 through 5, you explain that the phrase

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1 "best in class," as it is used in the  
2 aforementioned vision statement, is intended to  
3 reflect PHI's goal of outperforming its peers  
4 while meeting the needs of customers.

5           When that vision statement was created,  
6 was it your assessment that outperforming your  
7 peers in the industry was a realistic objective  
8 for PHI and its utility subsidiaries?

9           A     Realistic objective? It was something  
10 that we would strive for. I think, in a granular  
11 way of looking at the components of what we would  
12 say as important performance considerations, we  
13 recognize that, you know, particularly after we  
14 start -- well, when we started this journey  
15 several years ago, we were performing in the  
16 fourth quartile. And we wanted to purposefully  
17 set the bar very high.

18           You know, I think any goals should be  
19 stretched. So -- you know, it would be our  
20 intention over some period of time to be able to  
21 achieve that.

22           Q     So it was an attainable objective; is

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1 that correct?

2 A I believe that it would be our intention  
3 to attain that over a period of time.

4 Q Given that you had announced your  
5 retirement plans before a merger was even  
6 considered by PHI, what steps had you taken prior  
7 to the merger to ensure that PHI would have the  
8 necessary senior management to ensure that the  
9 stated vision for the company could be achieved in  
10 your absence?

11 A Well, we have a very strong leadership  
12 team -- seasoned, motivated, focused. We have an  
13 annual process that goes through the course of any  
14 year that culminates in terms of succession  
15 planning to do a couple of things. One is to make  
16 sure that we know where the key talent is, that we  
17 have identified key positions across the  
18 organization -- that goes even beyond the senior  
19 leadership team -- and that there's a pipeline of  
20 people that could deal with both short and  
21 long-term succession.

22 Q And you were comfortable with the team

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1 that you had developed?

2 A If I wasn't, they weren't on the team.

3 Q Are there other members of PHI's senior  
4 management who are approaching retirement age and  
5 might be expected to retire within next couple of  
6 years if there is no merger?

7 A When you say the senior management team,  
8 could you just define that, the way that you're  
9 applying it?

10 Q However you would define it, sir.

11 A Okay. Well, we have 59 executives. So,  
12 I mean, that's one way. There's also my direct  
13 reports, which is a smaller group, maybe seven or  
14 eight.

15 Q Well, let's break it down. Let's talk  
16 about the seven or eight, the direct reports. Are  
17 any of them of retirement age who might be  
18 expected to retire in the absence of the merger?

19 A I don't have -- beyond me, I'm not aware  
20 that anybody was planning to retire in the  
21 foreseeable future.

22 Q Could you help me get my arms around

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1 "foreseeable future"? One year? Two years?

2 Three years?

3 A Yes. I --

4 Q That's enough.

5 A No, no, I mean --

6 Q That's enough. That's enough.

7 A I think it's -- it's hard to understand  
8 what might be happening in anyone's life that  
9 might cause them to want to retire. I'm doing  
10 this somewhat from memory.

11 For the people that would believe  
12 retirement-eligible, that could -- that could be  
13 just one or two people within that smaller group.  
14 And I'm not aware that they have plans to retire.

15 Q Okay. Let's -- what measures have you  
16 taken to ensure that capable replacements would be  
17 prepared to replace other senior management who  
18 may retire within the next few years in the  
19 absence of this merger?

20 A It's mostly through the succession plan  
21 and the development plans we have in place for the  
22 individuals that occupy what we consider to be

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1 critical positions. And that probably covers  
2 probably north of 60 positions and may involve  
3 close to 200-some people.

4 Q And, again, you're comfortable with that  
5 plan?

6 A I feel it's a good plan.

7 Q At page 4, lines 18 through 22 of your  
8 direct testimony, you suggest that PHI and Exelon  
9 share a common vision.

10 Don't most utilities often share a common  
11 vision?

12 A I think that you would expect there's  
13 going to be commonality across a business that has  
14 very similar components.

15 Q Don't most utilities strive to maintain  
16 safe and reliable service?

17 A I'm not aware of one that doesn't.

18 Q And don't all utilities, or most  
19 utilities, seek to maintain good customer  
20 relations?

21 A Yes.

22 Q Same with good investor relations?

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1 A Yep.

2 Q And don't most utilities want to be best  
3 in class?

4 A I think people would describe that that's  
5 their aspiration, yes.

6 Q Is there any evidence in this proceeding  
7 of companies operating within the industry that do  
8 not generally share PHI's vision and core values?

9 A I'm not aware that we've introduced any  
10 kind of testimony or exhibits on that.

11 Q So you would have -- there's no  
12 evidence -- you would have no reason to believe  
13 that a company such as Public Service Electric and  
14 Gas, Jersey Central Power and Light, those  
15 companies don't share your vision?

16 A I'm not aware of specifically what  
17 their -- how it's worded for them, but I would  
18 assume that there's some significant commonality.

19 Q Now, please turn to page 7, lines 1  
20 through 3 of your direct testimony. On those  
21 lines, you reference the sharing of services  
22 across jurisdictions. Am I correct that while

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1 Exelon operates utilities in three jurisdictions,  
2 none of its existing utilities has  
3 multi-jurisdictional operations as do PEPCO and  
4 Delmarva?

5 A I think that's correct.

6 Q They currently operate in Illinois,  
7 Pennsylvania and Maryland, correct?

8 A But I'm also aware that they have a -- I  
9 think -- and Mr. Khouzami or Mr. O'Brien could be  
10 more specific than I am. I think they call it a  
11 business services group that I believe provides,  
12 for lack of a better term, shared services across  
13 their operating companies.

14 Q I'm talking about that -- maybe you  
15 misunderstood my question. Am I correct that  
16 Exelon operates utilities in three jurisdictions,  
17 that none of those existing utilities has  
18 multi-jurisdictional operations?

19 A Oh, I'm sorry. I'm sorry. Yeah, that is  
20 correct. I'm sorry.

21 Q What evidence has been presented in this  
22 proceeding to demonstrate Exelon's sensitivity to

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1 issues associated with multi-jurisdictional  
2 utility operations?

3 A Could you help me understand what you  
4 mean by sensitivity?

5 Q Well, understanding of the issues  
6 involved with a multi-jurisdictional utility. For  
7 example, your cost of service allocations between  
8 jurisdictions. Has there -- anything been  
9 presented -- and that's just an example of that  
10 type of sensitivity to those kinds of issues --  
11 that obviously will arise if this merger is  
12 completed?

13 A I'm not aware that they've introduced  
14 evidence around their sensitivity. All I would  
15 say is that they're obviously showing an interest  
16 in developing and -- to expanding their business  
17 into multi-jurisdictional utilities, but I'm not  
18 aware of any specific evidence.

19 Q What evidence have the joint applicants  
20 presented to demonstrate their ability to  
21 effectively manage multi-jurisdictional utility  
22 operations?

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1           A       As I understand maybe the way you're  
2 framing the question, you are -- you're looking at  
3 ComEd, PECO and BG&E individually. I would also  
4 look at it that they're operating, underneath the  
5 umbrella of the Exelon Utilities, multiple  
6 utilities. They're not multiple-jurisdictional  
7 utilities. I think that perhaps is the  
8 distinction you're making.

9           Q       Correct. That's the distinction.

10          A       That was my answer.

11          Q       Now, please focus for a moment on the  
12 discussion that begins on page 7, line 6 of your  
13 direct testimony regarding the merger being in the  
14 best interests of the PHI utilities, their  
15 customers and the communities they serve.

16                   And at lines 11 through 13 on page 7, you  
17 assert that, quote, the PHI utilities have been  
18 placed on a path of continuous improvement and  
19 reliability and customer satisfaction, end quote.

20                   Do you see that?

21          A       Yes, ma'am.

22          Q       During your tenure as PHI's CEO, is that

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1 statement regarding continuous improvement in  
2 reliability and customer satisfaction applicable  
3 to PEPCO's operations in D.C. and Maryland?

4 A Yes. I mean, that's -- it's inclusive of  
5 Delmarva Power and Atlantic City Electric, too.

6 Q Would you accept that, with respect to  
7 such reliability measures as SAIFI and SAIDI,  
8 PEPCO's D.C. operations have not exhibited  
9 continuous improvement and reliability throughout  
10 your tenure as CEO of PHI?

11 A That they did not -- certainly in the  
12 beginning. It was a very, very tough situation.  
13 And obviously with -- the actions we've taken  
14 would be to put it on that path of continuous  
15 improvement.

16 Q When you first met with representatives  
17 of Exelon regarding the possibility of a merger or  
18 an acquisition, what did you present as PHI's most  
19 attractive attributes?

20 A It wasn't me. The -- I don't recall --  
21 when you say when we first met, are you talking  
22 about the initial meeting or --

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1           Q       Well, I don't know what you got into in  
2 your initial -- was it your Valentine's Day phone  
3 call? -- but in the beginning when you first met  
4 with Exelon regarding the possibility of the  
5 merger, what did you present as the most  
6 attractive features of the company that you're in  
7 charge of?

8           A       I don't -- well, I'll just respond --  
9 I'll start with the first meeting. I don't recall  
10 presenting anything that I would have  
11 characterized as attractive attributes. I was  
12 very much in a listening mode.

13                   CHAIRMAN KANE: Ms. Francis, I'm going to  
14 interrupt for one minute. Nothing to do with your  
15 line of questioning. But the court reporter needs  
16 to take a break in order to get the transcript  
17 from yesterday (sic).

18                   MS. FRANCIS: Okay. Certainly, Your  
19 Honor.

20                   CHAIRMAN KANE: And so that would  
21 everybody benefit. So we're going to take a  
22 ten-minute break just to allow that to happen.

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1 MS. FRANCIS: Certainly.

2 CHAIRMAN KANE: Thank you.

3 (Whereupon, a short recess was taken.)

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

5 Let me also say we're going to take our lunch

6 break a little bit -- about ten minutes to

7 1:00 until 2:00.

8 All right, Ms. Francis.

9 BY MS. FRANCIS:

10 Q Mr. Rigby, just before the break, I think

11 there was a question pending, and I don't know

12 whether -- you may have answered it. I just might

13 not have heard you. My question was, when you

14 first met with representatives of Exelon regarding

15 the possibility of an acquisition or a merger,

16 what did you present as PHI's most attractive

17 attributes?

18 A I didn't present anything.

19 Q Now, I would like to investigate with you

20 a little bit more regarding PHI's evaluation of

21 Exelon and other opportunities and what underlies

22 your assessment that the proposed merger is in the

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1 best interests of PHI's customers, and more  
2 specifically, PHI's customers in the District.

3 Now, please would you reference for me  
4 your rebuttal testimony at page 3, lines 6 through  
5 8. At page 3, starting on line 6, you testify  
6 that share price is certainly an important factor,  
7 and that the board has a fiduciary duty to get the  
8 best price; is that correct?

9 A Once a determination is made that it is  
10 the board's basic view that they would sell the  
11 company, as I understand under Delaware law,  
12 there's the fiduciary responsibility to achieve  
13 the best price possible.

14 Q In fact, isn't your fiduciary  
15 responsibility to shareholders to get them the  
16 best returns on investment?

17 A I'm not aware of -- as -- my fiduciary  
18 responsibility as -- as a CEO?

19 Q Let me say it this way. It's not only  
20 share price; isn't it -- doesn't share price only  
21 reflect part of the consideration to what would  
22 yield the best returns or the best result for

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1 investors? Isn't it dividend yield, earnings  
2 yield, expectations; it's not just share price?

3 A In the context of the potential  
4 transaction in front of us, it was only as a  
5 cash -- it was only expressed as cash in terms of  
6 the share price. So I'm not -- I'm sorry if I'm  
7 not following you.

8 Q Would you agree the best price for PHI  
9 shareholders really only comes into play once the  
10 assessment is made that shareholders cannot  
11 achieve an equal or better return through PHI's  
12 own operations?

13 A The board made a determination that  
14 relative to the stand-alone plan and based on  
15 analysis that we did as well as with our financial  
16 advisors, that the more likely value -- again,  
17 just focusing this part of the discussion on the  
18 shareholders -- was with the opportunity that  
19 Exelon afforded us.

20 Q Now, what is your understanding of the  
21 factors that enabled Exelon to offer a substantial  
22 premium above the then current market price for

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1 PHI stock?

2 A Well, I would assume that they probably  
3 had a similar view of what the company could be  
4 worth, as we subsequently kind of passed, I'll  
5 say, some thresholds as to, one, first being in a  
6 position where we articulated that it was not our  
7 plan to sell the company, and then further with  
8 discussion that it would be appropriate to at  
9 least consider offers, potential offers. That  
10 process, I think, further afforded Exelon  
11 closer-in information around our plan.

12 We had executed confidentiality  
13 agreements. There was a data room put together.  
14 So, you know, we -- at that point, we were making  
15 available, as best we could, what Exelon would  
16 consider to be the relevant information to  
17 properly value the company.

18 Q I think we established yesterday that  
19 there was a substantial premium, and I think we  
20 discussed \$1.6 billion. Do you remember that  
21 discussion yesterday?

22 A I've heard that number, yes.

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1           Q       Now, what is it about PHI that would make  
2 Exelon want to pay such a substantial premium for  
3 that company, for your company?

4           A       Well, I think that's really a question  
5 more for the person who made the offer. I could  
6 based on the conversations I've been party to,  
7 they have, one, a very strong commitment to the  
8 regulated T&D business. I think they saw the  
9 possibilities to be able to put into effect what  
10 they consider to be their best practices, be able  
11 to provide more efficiency, and I would assume a  
12 sense that those efficiencies could accrue in  
13 value back to them.

14                   I think, from other conversations, they  
15 felt that our capital program was -- my view would  
16 be very robust, and that they would be able to  
17 grow investment in the T&D business as a result of  
18 this acquisition.

19           Q       So they would see, just as an example,  
20 enhanced cash flows. Would that be one of the  
21 things they'd be looking at?

22           A       Well, I would anticipate that they would

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1 expect any asset acquisition that would ultimately  
2 provide -- whether it's earnings or additional  
3 cash.

4 Q And they would be looking at stability of  
5 earnings. Is that something that your company  
6 would offer?

7 A I think they would have perceived that  
8 regulated T&D businesses, on a relative level,  
9 have more stable earnings.

10 Q And they would see -- particularly with  
11 PEPCO D.C., they would see assured growth in  
12 earnings?

13 A Well, there would be -- I don't know  
14 that -- certainly they assumed. I mean, there's  
15 always the -- other people make determinations as  
16 to what we get in rates. But there would be  
17 obviously a high likelihood that that capital  
18 program would deliver earnings growth.

19 Q Let me just sum up what I'm trying to get  
20 at. Would you agree that key elements of the  
21 value of PHI to Exelon are the comparatively  
22 stable revenues that the PHI utilities generate,

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1 the comparatively low-risk nature of its utility  
2 operations, as well as the aggressive capital  
3 spending programs that they plan to pursue or have  
4 been mandated by regulations or law to pursue? Do  
5 you agree with that?

6 A I agree that they're all components in  
7 the way they look at us.

8 Q In fact, the significant comparatively  
9 reliable earnings growth at the PHI utilities, and  
10 specifically PEPCO's D.C. operations would provide  
11 Exelon, that would serve as a better balance to  
12 the more variable market-sensitive returns than  
13 Exelon derives from its non-regulated generation  
14 and energy market activities. Would you agree  
15 with that?

16 A I think even the way that Mr. Crane and  
17 perhaps even Mr. Thayer, the day after the  
18 announcement -- I think they -- I'm doing this  
19 from memory. I think they commented about stable  
20 T&D-related earnings growth.

21 Q Would you agree that the price Exelon has  
22 offered for PHI represents a windfall profit for

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1 PHI shareholders?

2 A I don't consider it to be a windfall. I  
3 consider it to be the result of a process that the  
4 companies, the respective companies, went through,  
5 and reflects a competitive process that  
6 effectively ends the relationship we would have  
7 with our shareholders.

8 Q Is there any proposal in this proceeding  
9 that provides for PEPCO ratepayers in the District  
10 of Columbia to participate in any of that  
11 substantial \$1.6 billion premium that shareholders  
12 will receive?

13 A Not in the form of the premium. I mean,  
14 the benefits and the commitments are outlined  
15 within the regulatory commitments or the -- what  
16 is now -- I think it's (4A)-2.

17 Q Would you agree that the issues in this  
18 case do not revolve around questions regarding  
19 whether PHI shareholders would benefit from the  
20 premium -- substantial premium they will derive  
21 from the sale of PHI to Exelon, but rather the  
22 real issues are found in whether Exelon and PHI

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1 shareholders are willing to provide sufficient  
2 participation in the economic benefits of the  
3 acquisition to PEPCO ratepayers in D.C. to make  
4 approval of the merger an attractive outcome for  
5 all parties? Is that correct?

6 A I think the decision in front of our  
7 jurisdictional regulators is to determine if --  
8 and I'll be careful. I'll use the word  
9 "settlement" because it actually has been entered  
10 into both in Jersey and Delaware -- is to make a  
11 determination if that proposal, if you will,  
12 satisfies the statutory requirements that the  
13 Commission would impose in making that  
14 determination.

15 Q Am I correct that PEPCO's comparatively  
16 stable revenues and substantial capital investment  
17 plans added to Exelon's assessment of the value of  
18 PHI?

19 MR. MEIER: Objection, Your Honor. I  
20 object as to the form. First of all, let me say I  
21 think he's asked and answered that question. But  
22 moreover, counsel is stating or arguing their

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1 litigation position and then posing it in the form  
2 of a question. And we object to that.

3 MS. FRANCIS: Your Honor, he's free to  
4 disagree with me. I'm asking him a  
5 cross-examination question. He doesn't have to  
6 agree. And he can state his reasons why not.  
7 It's a perfectly appropriate question.

8 CHAIRMAN KANE: I'll allow it.

9 BY MS. FRANCIS:

10 Q Shall I ask it again, Mr. Rigby?

11 A Please.

12 Q Am I correct that PEPCO's comparatively  
13 stable revenues and substantial capital investment  
14 plans added to Exelon's assessment of the value of  
15 PHI?

16 A Added? I think it just all factored into  
17 the way that they looked at us as a potential  
18 acquisition candidate.

19 Q And can you tell me, what influence do  
20 you believe that PEPCO's legislatively mandated  
21 D.C. PLUG initiative had on the perceived value of  
22 PHI to Exelon and other potential suitors?

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1           A       Well, they were obviously aware of it. I  
2 think Mr. Crane commented -- certainly it's a very  
3 innovative approach to deal with a particular set  
4 of circumstances. But I would certainly -- I  
5 don't know what -- you know, to what extent it  
6 did. It certainly factored into their view of us  
7 as a potential candidate to acquire.

8           Q       Let me simplify it. Did it enhance the  
9 economic attractiveness of PHI?

10          A       Oh, I don't know. I don't know what they  
11 did or how they calculated that.

12          Q       As the CEO of the selling company, did  
13 you see it as your obligation to understand where  
14 the value lies in the company you are offering for  
15 sale, its strengths, its weaknesses, and why  
16 various bidders would find PHI an attractive  
17 takeover candidate?

18          A       Notwithstanding selling or acquiring, I  
19 think I have a responsibility to understand the  
20 attributes of my company.

21          Q       Did you see the D.C. PLUG initiative in  
22 the District of Columbia as an attribute of your

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1 company that would enhance its value to a  
2 potential suitor?

3 A That's not how I viewed it.

4 Q Can you tell me, from your perspective,  
5 what characteristics of PHI made PHI an attractive  
6 acquisition candidate?

7 CHAIRMAN KANE: I think that question has  
8 been asked, Ms. Francis.

9 BY MS. FRANCIS:

10 Q Let me ask a more specific question on  
11 that line of questioning. From your perspective,  
12 what demographic or customer characteristics made  
13 PHI an attractive candidate for takeover?

14 A Well, I don't know that I would frame it  
15 as an attractive takeover -- I think there's  
16 attributes of our service territory that we find  
17 attractive within the context of our stand-alone  
18 plan. I could imagine that others, who may be  
19 outside looking in, would see it similarly.

20 It's a very diverse service territory.  
21 Certainly here, within the PEPCO D.C./Maryland  
22 service territory is, you know, I think the --

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1 kind of the economic downturn kind of proof aspect  
2 of the federal government. I would imagine people  
3 would see it that way.

4 I think that in the way that we've talked  
5 about our company in our investor relations  
6 programs is -- you know, the -- where we reside on  
7 a major transportation corridor has -- has  
8 positives. There's also some real challenges  
9 within the service territory, too, that I think  
10 people have to factor in.

11 Q Who is leading the merger negotiations on  
12 behalf of PHI?

13 A The negotiation -- I think that would  
14 have been Mr. Fitzgerald.

15 Q And who is doing that with him? Were you  
16 doing it at all with him?

17 A I was not a party to the negotiation  
18 process.

19 Q Who was doing that with Mr. Fitzgerald?

20 A Mr. Meier may have been involved.  
21 Ms. Stark. There was outside counsel. I'd have  
22 to go back and try to recreate what that was.

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1 Q Your answer is fine.

2 When PHI entered into the merger  
3 agreement with Exelon, what was your understanding  
4 of the considerations that justified the price of  
5 \$27.25 per share that Exelon offered?

6 A I don't know exactly what -- the basis  
7 that Mr. Crane and his board would have used to  
8 justify the price. I just wasn't -- I wasn't  
9 aware of that information.

10 Q Do you believe it was market competition,  
11 or can't you -- don't you know that either?

12 A I don't know.

13 Q Now, please reference for me what's been  
14 preliminarily identified as AOBA 23 --

15 MS. FRANCIS: -- which, Your Honor, is a  
16 United States Securities and Exchange (sic)  
17 statement of changes in beneficial ownership  
18 form 4, which I'd like to have marked as AOBA  
19 Exhibit 22.

20 CHAIRMAN KANE: I'm sorry. The original  
21 number? Thank you. So marked.

22 (AOBA Cross Exhibit Number 22 was marked

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1 for identification.)

2 THE WITNESS: Ms. Francis, did you say  
3 23?

4 BY MS. FRANCIS:

5 Q Yes, preliminarily identified as 23. Do  
6 you see that?

7 A I'm there.

8 Q It's a 12-page document.

9 Now, Mr. Rigby, according to SEC form 4  
10 filings made in your name, would you accept that  
11 your last reported PHI stock transaction prior to  
12 the announcement of the merger was executed on  
13 February 27th, 2014? And you can see that on  
14 page 1 of 12 of this document.

15 A Did you say -- could you give me that  
16 date again, please?

17 Q March 27th, 20 -- excuse me, February --

18 A Oh, okay. Yeah.

19 Q -- 27th --

20 A I'm there.

21 Q -- 2014.

22 A I got it.

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1 Q It's in the bottom left-hand corner.

2 A Yeah, I got it.

3 Q Would you accept that this is your last  
4 reported PHI stock transaction prior to the  
5 announcement of the merger?

6 A Subject to check, sure.

7 Q And in the transaction on that date, am I  
8 correct that you had beneficial ownership of  
9 362,991 shares of PHI common stock, plus indirect  
10 ownership of 10,804 shares of PHI stock held in a  
11 401(k) plan?

12 A That's what it says.

13 Q Okay. Now, please turn to page 9 of 12  
14 of this exhibit. Now, am I correct that on  
15 page 9 -- this exhibit -- this exhibit is a copy  
16 of an SEC form 4 that reports a PHI stock  
17 transaction executed in your name on March 13th,  
18 2015? Bottom left-hand corner.

19 A Yeah, I'm there.

20 Q Would you agree?

21 A Yes. That's what it says.

22 Q As shown in that SEC form 4 filing, after

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1 the transaction on March 13th, 2015 in which you  
2 disposed of 2,000 shares of PHI common stock, your  
3 holdings of PHI common stock were 736,490 shares;  
4 is that correct?

5 A That's what it says.

6 Q Now, based on the foregoing, am I correct  
7 that between February 27th, 2014, your last  
8 reported transaction before the announcement of  
9 the merger, and March 13th, 2015, your most recent  
10 reported transaction, your holdings of PHI common  
11 stock increased from 362,991 shares to 736,490  
12 shares? Would you agree?

13 A That's what the forms indicate.

14 Q In other words, in roughly 10 years --  
15 10, 12 years as an officer of PHI, you had amassed  
16 almost 363,000 shares of PHI common stock, and in  
17 less than one year following the merger  
18 announcement, your holdings of PHI stock have more  
19 than doubled to over 736,000 shares; is that  
20 correct?

21 A Well, other than -- and I don't have the  
22 background -- I don't have the information on

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1 this. Some of the shares that I owned when  
2 Conectiv was traded would have converted over to  
3 PHI shares, which would have been included, I  
4 think, in the first number.

5 But I understand the point you're trying  
6 to get.

7 Q So the answer to my question is?

8 A Yeah -- with that understanding, yes.

9 Q However, that's not the whole story.

10 Over the months since the merger announcement, did  
11 you also dispose, sell or liquidate, approximately  
12 200,000 shares of common stock? And I can take  
13 you through the pages to help you with that.

14 A You mean with regard to the S-4s that are  
15 in this --

16 Q Correct. With regards to the --

17 A Yeah.

18 Q Would you agree with that or should I  
19 take you through it?

20 A Oh, no, no, no. No, I would accept that.  
21 They were for tax withholding.

22 Q Well, if you just take a look for a

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1 moment, just so we can all see the numbers -- if  
2 you take a look at page 3 of 12, you can see sort  
3 of in the middle of the bottom of the page, on  
4 April 30th, 2014, it says 37,284 --

5 A Right.

6 Q -- and D means disposed of, I take it.

7 And underneath that, we see the 55,927  
8 share number. And then again, if we look to  
9 page 5 of 12, we see on 12/31/2014 there were  
10 another 110,181 shares that were disposed of. And  
11 that's how we come up with our approximately  
12 200,000 shares, correct?

13 A Right. They're required for tax  
14 withholding.

15 Q If we recognize the more than 200,000  
16 shares of PHI common stock that you sold since the  
17 announcement of the merger, would you accept that  
18 your stock compensation from PHI during the period  
19 of less than one year since the merger  
20 announcement totals to over 578,000 shares?

21 A If you're trying to put that on a pre-tax  
22 basis, because this is taxable income, I would

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1 accept, I think the math you're trying to get at,  
2 but -- I made my point.

3 Q So your clarification is yes, the answer  
4 is correct; however, you want everyone to  
5 understand that that was on a pre-tax basis?

6 A I pay taxes on my income.

7 Q I think we all do that.

8 Thus, would you accept that during the  
9 period from the merger announcement on April 29th,  
10 2014, to the present you received stock  
11 compensation from PHI that equates to nearly  
12 160 percent of the PHI shares you had amassed  
13 during your entire tenure at PHI prior to the  
14 announcement of the merger?

15 A I understand that's what these forms  
16 indicate, yes.

17 Q Am I correct that on the day of the  
18 merger closing, all shares of PHI common stock  
19 will be exchanged for cash at a rate of \$27.25 per  
20 share?

21 A That's correct.

22 Q If the roughly 578,000 shares of PHI

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1 common stock that you received over the last year  
2 are valued at the merger offer price of 27.25,  
3 would you accept the total value of those shares  
4 would approach \$16 million?

5 A I accept your math.

6 Q In addition to the stock compensation you  
7 have received, am I correct that the contract  
8 extension agreement you entered into following the  
9 merger announcement provides for your potential of  
10 an additional payment of up to \$1.5 million upon  
11 the termination of your contract extension  
12 agreement?

13 A Based on performance, yes.

14 Q Is there any other merger-related  
15 compensation that you will receive?

16 A Not that I'm aware of.

17 Q Now, I'm going to ask you to please  
18 reference what's been preliminarily identified as  
19 AOBA Exhibit 56. It's a five-page document.

20 MS. FRANCIS: Your Honor, it is a  
21 U.S. SEC schedule 14-A, and I would like to have  
22 that marked for the record as AOBA Exhibit 23.

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1 CHAIRMAN KANE: So marked.

2 (AOBA Cross Exhibit Number 23 was marked  
3 for identification.)

4 BY MS. FRANCIS:

5 Q And this document, AOBA Exhibit 23,  
6 contains selected pages from PHI's August 12th,  
7 2014 proxy statement. It comprises the first two  
8 cover pages and pages 78, 79 and 80.

9 Now, please focus for me, Mr. Rigby, on  
10 page 79 of the proxy statement. It's page 3 of  
11 the exhibit, 3 of 5. Do you see the --

12 A Page 3 or page 4?

13 Q Page 3, please.

14 A Okay.

15 Q And I believe this is the same table you  
16 discussed with Mr. Gray, the golden parachute  
17 compensation table. Do you see that?

18 A I'm sorry, Ms. Francis. At least in  
19 my --

20 Q Page 4 of 5.

21 A Okay. That's what I was --

22 Q Page 4 of 5, I'm sorry.

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1           A       That's all right.

2           Q       We're going to talk about the golden  
3 parachute compensation table --

4           A       Yep.

5           Q       -- that was discussed earlier.

6           A       Right.

7           Q       Does this table show that upon the merger  
8 closing, you will receive golden parachute  
9 compensation of \$10,892,194?

10          A       That's what it is communicating. It  
11 assumes board approval of all that, but that's  
12 what it communicates.

13          Q       Have you already received any or all of  
14 the \$9,014,327 of equity compensation indicated  
15 under the golden parachute compensation provision  
16 in line 1?

17          A       I believe what that reflects is the value  
18 at the projected closing price of 27.25 of -- I  
19 think it's the unvested long-term incentive shares  
20 that would then vest at the closing.

21                   I think that's what that number is  
22 intended to reflect.

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1 Q And so you wouldn't have received any of  
2 that yet, correct?

3 A I haven't. It's not income to me. No.  
4 I mean, it's been granted, but it's not vested  
5 yet.

6 Q Now, please turn back to what was just --  
7 so you can get to it easier, it was preliminarily  
8 identified as AOBA Exhibit 23. It is now  
9 identified for the record as AOBA 22.

10 A Okay.

11 Q Now, please just look at page 3 of that  
12 document. Now, looking at the bottom of the  
13 paragraph --

14 A Are we back on 56?

15 Q I think I got my notes out of order for a  
16 moment.

17 Let's stay on 56 for a minute. I'm  
18 sorry. 56, page 7 of 79. Take a look at the  
19 second paragraph under the golden parachute  
20 compensation table, and -- it's two lines up from  
21 the bottom of the paragraph. Do you see that?  
22 There's a reference to 37,284 shares. Do you see

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1 that?

2 A That's correct.

3 Q Okay. And if you look up -- it's six  
4 lines from the bottom of the paragraph -- you see  
5 there's a number 55,927 shares that were  
6 surrendered upon grant? Do you see that number --

7 A Yes, ma'am.

8 Q -- on this exhibit? Okay.

9 Now, if you look back to what was  
10 preliminarily identified as Exhibit 23, and if  
11 we're looking at page 3, we can see that 55,927  
12 number is there again. That ties directly back to  
13 that; is that correct?

14 A That's correct.

15 Q Okay. As well as the \$37,284 number? Do  
16 you see that?

17 A Yes.

18 Q Okay. Now, talking -- still staying on  
19 the golden parachute provision, does this  
20 presentation indicate that, in addition to the  
21 equity benefits, you will receive other benefits  
22 and compensation totalling \$1.9 million?

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1           And what I'm looking at is -- I'm looking  
2 at the \$729,000, I'm looking at the \$16,752, and  
3 I'm looking at the 1,132,115. Do you see that?

4 So --

5           A     Yes, ma'am.

6           Q     Does this presentation indicate that, in  
7 addition to the equity benefits, you will receive  
8 other benefits and compensation totalling  
9 \$1.9 million?

10          A     That's what it says.

11          Q     Does the referenced 1.9 million of other  
12 non-equity benefits and compensation referenced in  
13 that table include the payment of up to  
14 \$1.5 million that the PHI board provided under the  
15 terms of your contract extension?

16          A     No, it does not.

17                MS. FRANCIS: Your Honor, I'm trying to  
18 be sensitive to the Commission's time, and I think  
19 this is a good break point if it's okay with the  
20 Commission.

21                CHAIRMAN KANE: Are you finished the  
22 questions about the golden parachute?

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1 MS. FRANCIS: Well, I'm done with the  
2 questions on the golden parachute, yes.

3 CHAIRMAN KANE: Okay. Then we will  
4 take -- thank you for being sensitive to that.

5 We will recess for lunch now until  
6 2:00 p.m.

7 (Whereupon, at 12:47 p.m., a lunch recess  
8 was taken.)

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1 vested, the remainder of the 9 million-plus  
2 dollars of equity?

3 A Under the scenario of the merger being  
4 approved?

5 Q Correct.

6 A It would be at the merger -- it would be  
7 at the merger completion. It would be at the  
8 final approval.

9 Those grants would -- if the merger  
10 wasn't completed, those grants would go through  
11 their normal cycle.

12 Q They would go -- what does that mean, go  
13 through their normal cycle?

14 A Sure. The -- there are grants provided  
15 at the beginning of each -- at the beginning of  
16 each calendar year that have a three-year period  
17 under -- through which they would potentially be  
18 vested, dependent upon achievement of certain  
19 parameters.

20 If the merger wasn't completed, there  
21 would not be an early vesting. That's  
22 contemplated in that golden parachute schedule.

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1 Q But they would vest at some point and you  
2 would entitled to them, the full 9 million?

3 A No. It would depend.

4 Q Depend on what?

5 A It would depend on, I'd say, primarily  
6 two things. One would be, the way our program is  
7 constructed, two-thirds of the grant is predicated  
8 on achievement of a total shareholder return, and  
9 you have to perform relative to a peer group. So  
10 dependent upon where you would reside in that peer  
11 group -- so it's hard to project what that would  
12 be.

13 And then the board could make -- then the  
14 board has to decide that they -- that they approve  
15 it. So it's not just the completion of it. It's  
16 the board actually has to take action.

17 Q Okay. Thank you.

18 Now I'm going to ask you to please go  
19 back and reference what was preliminarily  
20 identified as AOBA 36 --

21 MS. FRANCIS: -- which has been  
22 identified, for the record, Your Honor, as AOBA

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1 Exhibit 21 --

2 BY MS. FRANCIS:

3 Q -- which is a copy of the SEC form K  
4 filing that contains the contract extension  
5 agreement that you entered at the time that the  
6 merger was announced or shortly following the  
7 announcement of the merger. Tell me when you have  
8 it.

9 A I'm there.

10 Q Now, turning to page 2 of that document,  
11 I would like you to focus on the second sentence  
12 of the fourth paragraph on that page which starts,  
13 During the extension period, Mr. Rigby will be  
14 employed by the company.

15 Do you want to just take a moment to read  
16 that?

17 A Just that sentence or the rest of the  
18 paragraph?

19 Q The next couple of sentences.

20 A I've read through the rest of the  
21 paragraph.

22 Q Thank you.

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1           Does that sentence indicate that, in  
2 addition to the other elements of the  
3 merger-related compensation we've discussed, you  
4 will continue to receive an annual salary of  
5 \$1,015,000 as well as have continued participation  
6 in a number of retirement savings, deferred  
7 compensation, health and insurance plans, as well  
8 as other plans and programs provided by the  
9 company from time to time to its senior  
10 executives?

11           A     Yes, that's what it says.

12           Q     Now, based on all of the elements of your  
13 compensation that we've discussed, am I correct  
14 that from the start of your contract extension  
15 period to the closing of the merger, you can  
16 anticipate total merger-related compensation in  
17 the range of \$20 million that you would not have  
18 received if you had retired as previously  
19 scheduled and if there was no merger?

20           A     It depends. As I think I mentioned just  
21 a minute ago, the long-term incentive grant that I  
22 have that's not yet vested, the board --

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1 historically, the board has made an award to the  
2 retiring CEO of some portion. So -- I don't  
3 project what their action would be, but that's  
4 been their past practice.

5           So it's hard for me to put a number on  
6 what that might be.

7           Q     Well, let's discuss this. I think we  
8 previously established that you'll be receiving  
9 \$1.9 million of non-equity benefits. I think we  
10 established that number earlier.

11          A     If the merger closes.

12          Q     If the merger closes.

13          A     Right.

14          Q     Then we just talked about your annual  
15 salary compensation of 1,015,000, correct?

16          A     That's correct.

17          Q     Okay. Then we talked about the value of  
18 the stock being approximately \$16 million. And  
19 then we talked about the possibility of your  
20 receiving a bonus of \$1.5 million.

21          A     That's correct.

22          Q     When I add those numbers up, I get just

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1 over \$20 million.

2 A I trust the math.

3 Q Okay. So depending on the areas where  
4 the board has some flexibility, you would agree  
5 with me that based on all of the elements of your  
6 compensation from the start of your contract  
7 extension period to the closing of the merger, you  
8 can anticipate total merger-related compensation  
9 in the range of \$20 million?

10 A I understand the way you asked the  
11 question, yes.

12 Q Now, I would like to -- for you to turn  
13 to, please, page 78 of the PHI proxy statement.

14 MS. FRANCIS: Your Honor, that was  
15 preliminarily marked as AOBA 56 and marked for the  
16 record as AOBA 23.

17 BY MS. FRANCIS:

18 Q And I would like you to turn to -- I have  
19 it at the bottom of the page as page 78. At the  
20 top of the page, it's page 3 of 5 where it says,  
21 Merger compensation advisory note. Do you see  
22 that?

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1 A Yes, ma'am.

2 Q I want to direct your attention to the  
3 third bullet point in the right-hand column. The  
4 bullet point references the current named  
5 executive officers. Who are the named  
6 executive -- who are the named executive officers  
7 to which this bullet point applies?

8 A Yes.

9 Q Who are they?

10 A Oh. You mean on the next page?

11 Q Yes.

12 A It's myself, Fred Boyle, our CFO, Dave  
13 Velazquez, who is the head of the power delivery  
14 business, Kevin Fitzgerald, who is our general  
15 counsel, and John Huffman, who is the head of  
16 PEPCO Energy Services.

17 Q Okay. So on this page -- on page 78 when  
18 it refers to each current named executive  
19 officer's employment, they're talking about the  
20 five people you just mentioned?

21 A No.

22 Q They're not? Who are they talking about?

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1           A     Oh, wait a minute. I'm sorry. Hold on a  
2 second. Let me go back and --

3           Q     I didn't mean for it to be a trick  
4 question.

5           A     No, I'm -- oh, I'm sorry. It's on the  
6 table. Yes, it is. I'm sorry.

7           Q     Is it the intent of the joint applicants  
8 that the named executive officers of PHI will have  
9 their employment with PHI terminated without cause  
10 either immediately prior to or simultaneously with  
11 the closing of the merger?

12          A     No.

13          Q     Then why does it say that in this SEC  
14 form? It says, Each current named executive  
15 officer's employment with us will be terminated,  
16 mandatory, without cause as of September 30th,  
17 2015.

18          A     Well, it's based on the opening -- that's  
19 kind of why I got a little bit confused, and I  
20 apologize. The paragraph above the bullet points  
21 on page 78, second sentences reads, The amounts  
22 included in this table have been calculated based

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1 on the following estimates and assumptions.

2           So it is the assumption that they would  
3 be terminated. But that decision has not been  
4 made.

5       Q     It has not. Has this schedule 14A SEC  
6 form been updated at any point?

7       A     Not that I'm aware of.

8       Q     So you're telling me that this paragraph  
9 that we read about the named executive officer's  
10 employment being terminated -- you're saying that  
11 is not final, that that's not a final decision?

12       A     There's only been two -- of those five  
13 people, there's only two decisions been made. One  
14 is me leaving and one is Mr. Velazquez staying.

15       Q     Does that mean that Mr. Velazquez is not  
16 entitled to any of the golden parachute  
17 compensation listed on the next page?

18       A     No, he would be entitled to the equity  
19 and also the other column.

20       Q     So he would be entitled to the --

21       A     The 1.9 and the 320.

22       Q     So he would not be entitled to the 2.8

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1 cash?

2 A Right.

3 Q Or any portion of that?

4 A Right.

5 Q And the other executives listed on that  
6 table, no decision has been made as -- to this  
7 point?

8 A That's correct.

9 Q Who makes that decision?

10 A Well, it would be a combination at this  
11 point. With Mr. Velazquez having been named, it  
12 would be a combination of Mr. O'Brien -- you know,  
13 Mr. Velazquez will have, for the most part -- you  
14 have to ask Mr. O'Brien how they will actually  
15 work that out, but I -- and I'm speculating here.  
16 I think Mr. Velazquez would likely make  
17 recommendations within the power delivery group.  
18 As it relates to -- my terminology -- shared  
19 services, corporate services, that would be likely  
20 made through some combination of Mr. O'Brien,  
21 Mr. Thayer, you know, the leadership of Exelon.  
22 And I would imagine Mr. Velazquez will participate

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1 in that.

2 But, you know, that's probably a better  
3 question for that process for Mr. O'Brien.

4 Q So that's a leadership of Exelon  
5 determination?

6 A Well, if -- as I said, I believe  
7 Mr. Velazquez will also be making -- you know,  
8 participating in that. Now, obviously, at the  
9 time of the merger, he will -- he'll be underneath  
10 the Exelon umbrella.

11 Q Do you see a difference between  
12 participating in discussions and having  
13 decision-making authority?

14 A Sure.

15 Q Will Mr. Velazquez have decision-making  
16 authority over this -- over that decision, the  
17 decision relating to who gets the golden parachute  
18 or whose employment will be terminated?

19 A I'd ask you to talk to Mr. O'Brien around  
20 how that process will work.

21 Q Okay. Is the reference termination of  
22 employment for the named executive officers

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1 necessary to qualify them for golden parachute  
2 compensation?

3 A Termination would be the driver of any --  
4 as I read this, any payments under the cash  
5 column.

6 Q So in other words, you would have to be  
7 terminated before you could receive any of that  
8 compensation?

9 A That's correct. That's the  
10 double-trigger aspect of it.

11 Q That's the double-trigger. Is there  
12 something called a single-trigger so they would be  
13 entitled to half of it?

14 A No. If you look at the -- page 79, under  
15 footnote 2, it starts off, The single-trigger  
16 amounts.

17 Q Yes?

18 A That's what's really, I think, triggering  
19 the equity. I think that footnote equates to the  
20 equity piece of it.

21 And similarly, I think item 3 is kind of  
22 characterized as single-trigger, as is 5,

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1 single-trigger being the closure of the merger.

2 Q You know, I guess I'm a little bit  
3 confused by the provision on page 3 of 5 of  
4 Exhibit 23 where it says, Each current named  
5 executive officer's employment with us will be  
6 terminated without cause.

7 Won't PHI continue to exist after the  
8 merger closing?

9 A PHI will be a subsidiary of Exelon.

10 Q But it will continue to exist,  
11 nevertheless, won't it?

12 A The legal name would exist, as I  
13 understand it.

14 Q Could you please tell me, why is it  
15 necessary that the named executive officers be  
16 terminated if PHI will continue to exist as a  
17 viable entity after the merger closing?

18 A Because they will no longer be employees.

19 Q Can they be rehired and still be entitled  
20 to their -- and still have received their  
21 compensation?

22 A You mean to be --

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1 Q To be eligible for their golden parachute  
2 compensation.

3 A Can you ask that again?

4 Q All right. Let me say it this way:  
5 Under this provision, the named executive officers  
6 are terminated.

7 A That's the assumption in the way that the  
8 table was presented.

9 Q Correct. And then they will receive  
10 their golden parachute compensation. That's a  
11 given.

12 A Right.

13 Q Can they be rehired by PHI?

14 A I don't see how. I'm not aware of any  
15 basis upon which that would happen.

16 Q Okay. Will any or all of the golden  
17 parachute compensation paid to the senior  
18 executives identified on page 79 of the PHI proxy  
19 statement be treated as merger transaction costs?

20 A I believe that's how that will be  
21 treated.

22 Q They will be treated?

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1           A       They will be. I believe that is how it's  
2 going to be.

3           Q       Are these transaction costs recoverable  
4 from ratepayers under the joint applicants' merger  
5 commitments? And I believe it's under  
6 commitment 1. If you want to take a look at  
7 (4A)-2.

8           A       Right. That's -- it's, as I see it,  
9 referenced in 1(b).

10          Q       Correct. I see that also.

11          A       Right.

12          Q       That it refers us to the application,  
13 Exhibit 5. And I looked in Exhibit 5 and I  
14 couldn't find anything about transaction costs.

15                   But where would I find your last position  
16 on what the definition of transaction costs are?

17          A       I don't know.

18          Q       Who would know the answer to that  
19 question?

20                   MR. MEIER: Your Honor, I object.

21 There's been any number of data responses replying  
22 to these types of questions. And I think OPC is

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1 equally -- sorry -- AOBA is equally capable of  
2 reviewing data responses to determine what the  
3 definition is.

4 CHAIRMAN KANE: Ms. Francis?

5 MS. FRANCIS: Your Honor, I believe it's  
6 a perfectly appropriate cross-examination question  
7 to ask the chief executive of PEPCO where are --  
8 or who would be able to address what is included  
9 in the term "transaction costs."

10 THE WITNESS: It would be Mr. Khouzami.

11 BY MS. FRANCIS:

12 Q Thank you.

13 MS. FRANCIS: Sorry, Your Honors.

14 BY MS. FRANCIS:

15 Q Now, please turn to your rebuttal  
16 testimony at page 3, and please focus on lines 2  
17 through 4. And on those lines, you indicate that  
18 the PHI board of directors reviewed the bids  
19 received and determined that the package offered  
20 by Exelon was in the best interest of PHI  
21 shareholders and customers.

22 Could you please tell me what criteria

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1 did the PHI board use to assess what was in the  
2 best interest of PHI's customers?

3 A Would have been through the comparison of  
4 our stand-alone plan, relative to what Exelon was  
5 committing to. No CIF in our stand-alone plan.  
6 The commitment to the reliability at the currently  
7 budgeted cost, putting teeth into that with a  
8 penalty, the access to mutual assistance  
9 resources -- I think our perspective that there is  
10 a fairly strong rigor around best practices. And  
11 then I think also just the impact of the synergies  
12 flowing back to the customers.

13 Q Now, turning to page 4 of your rebuttal  
14 testimony, starting on line 4, you suggest that  
15 transaction benefits include, 1, charitable  
16 contributions, 2, the customer investment fund,  
17 and 3, the application of ring-fencing.

18 And you assert that none of those  
19 benefits would be realized if the merger is not  
20 consummated and PEPCO remained in a stand-alone  
21 plan; is that correct?

22 A Correct.

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1 Q Now, Mr. Rigby, as I read that statement,  
2 it seems to be unclear whether your reference to  
3 PEPCO in that sentence is intended to refer to  
4 PEPCO Holdings, Inc., or to the Potomac Electric  
5 Power Company. Please tell me, which are you  
6 referencing when you speak of a stand-alone  
7 basis -- stand-alone plan?

8 A It's really more the overall PHI utility  
9 plan, which would be inclusive of PEPCO.

10 Q But it's PHI, the corporate holding  
11 company, that you're referencing there, correct?

12 A That's correct. It's the utilities  
13 underneath PHI.

14 Q To your knowledge, has anybody in this  
15 proceeding proposed a plan under which the Potomac  
16 Electric Power Company would once again become a  
17 stand-alone company?

18 A No.

19 Q Just so there's no confusion going  
20 forward, I'd like to be clear that if I refer to  
21 PEPCO in a question, I will be referring to the  
22 Potomac Electric Power Company. And if I intend

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1 to refer to PEPCO Holdings, Inc., I will use the  
2 acronym PHI. Is that understood?

3 A Sure. Thank you.

4 Q Now, turning back to your statement, your  
5 rebuttal testimony, page 4, lines 4 through 9, I'd  
6 like to examine further each of the three  
7 transaction benefits that you've identified in  
8 that sentence, starting with the charitable  
9 contributions, is it your understanding that the  
10 Commission regulates charitable contributions made  
11 by either PHI or PEPCO?

12 A I'm not aware that they regulate our  
13 charitable contributions.

14 Q I didn't hear you. I'm sorry.

15 A I'm sorry. I'm not aware that they  
16 regulate our charitable contributions.

17 Q "Our" meaning PHI and PEPCO?

18 A Yes.

19 Q Are costs associated with PEPCO's  
20 charitable contributions presently recovered  
21 through PEPCO's rates for electric distribution  
22 service in the District of Columbia?

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1 A No.

2 Q At present, when PHI incurs costs for  
3 charitable contributions, are those costs  
4 distributed to PHI's utility subsidiaries through  
5 PHI's cost allocation manual?

6 A It depends. If the -- let me -- was the  
7 opening of -- did you say PHI charitable  
8 contributions?

9 Q Let me ask it again. Presently, when  
10 PHI, holding company, incurs costs for charitable  
11 contributions, are those costs distributed to  
12 PHI's utility subsidiaries through PHI's cost  
13 allocation manual?

14 A I don't believe so, but Mr. McGowan could  
15 confirm that.

16 Q Is it the intent of the joint applicants'  
17 charitable contribution commitment that,  
18 post-merger, this Commission will begin regulating  
19 charitable contributions made to the District of  
20 Columbia organization (sic) by PEPCO, PHI, Exelon  
21 and/or other Exelon subsidiaries?

22 A Just to I -- I want to be responsive.

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1 Can you help me understand, when you ask if  
2 they're going to regulate -- what do you mean by  
3 that term?

4 Q Regulate. They will be able to control,  
5 look at, have full access to books and records, be  
6 able to verify, by verifying on their own, not  
7 just asking Exelon to produce a statement and  
8 reviewing the numbers that are provided, have full  
9 access to books and records to be able to audit,  
10 substantiate, verify, have control over.

11 Clear enough?

12 A What do you mean by control over? I'm  
13 not trying to be --

14 Q Be able to have access to.

15 A Okay. I would -- where I thought you  
16 were going was, would they be able to direct where  
17 the contributions were going?

18 Q No, no, no. That's not where I'm going.

19 A Okay.

20 Q I'm looking for verification that  
21 something --

22 A I'm doing this from memory. I think

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1 Mr. Crane commented that it would be -- be happy  
2 to provide whatever information the Commission  
3 wanted.

4 Q That's what I'm exploring with you. They  
5 would be happy to provide whatever information was  
6 provided. Now, the problem is we have this -- as  
7 it -- let's use a rate case for an example.

8 A Sure.

9 Q In a rate case, the company provides a  
10 lot of information. Not all of it is accepted by  
11 the parties as being true and accurate. Not all  
12 of it is accepted by the Commission as being true  
13 and accurate. And the Commission has the ability  
14 to get to the information that would help them  
15 make that determination.

16 What I'm trying to distinguish here is,  
17 if the Commission doesn't regulate charitable  
18 contributions or doesn't regulate Exelon or --  
19 et cetera, they will not be able to go through the  
20 same verification process with your charitable  
21 contributions that they do, for example, in a rate  
22 case.

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1           A       Okay.  The -- the only discussion that  
2 I've heard around the verification with tracking  
3 has just been what took place here this week.  So  
4 there's not been any -- I've not been a party to  
5 any discussion around how that might be overseen  
6 or -- so the only thing I can really reference to,  
7 that this is done, and I won't be here, that --  
8 you know, it would be what Mr. Crane was saying.

9                   And perhaps Mr. O'Brien or Mr. Khouzami  
10 may have other comments.

11           Q       And that wasn't specifically in any of  
12 the merger commitments, was it?

13           A       The traceability to verification?

14           Q       Yes.

15           A       I'm not -- I'd have to go back and go  
16 through it, but I'm not recollecting that that was  
17 mentioned.

18           Q       Okay.  Are you familiar with the language  
19 of the charitable contribution commitment that the  
20 joint applicants have offered?  It's commitment 22  
21 in (4A)-2.

22           A       The 1 -- minimum of 1.6 million for the

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1 next ten years for PEPCO.

2 Q That they'll provide at least annual  
3 average charitable contributions and traditional  
4 local community support that exceeds PEPCO's 213  
5 (sic) level of 1.6 million?

6 A That's how I read that, yes.

7 Q Since I don't know them by heart, let  
8 me -- yet, let me take a look at the language.

9 Under the language that's in (4A)-2,  
10 commitment 22, do you agree that this Commission  
11 may not be able to assess whether Exelon has  
12 complied with its charitable contributions until  
13 the tenth year after the merger closing has been  
14 completed, since the commitment is premised on a  
15 ten-year annual average result?

16 A I don't read it that they're not going to  
17 be able to ascertain year by year, and I'd only  
18 have to harken back to what Mr. Crane commented  
19 yesterday.

20 Q I guess I'm having trouble with your  
21 answer because it says, line 2, Provide at least  
22 an annual average of charitable contributions and

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1 traditional local community support.

2           And if the commitment is for a ten-year  
3 average, you won't know the ten-year average until  
4 after the tenth year, correct?

5           A     I understand the point you're making.  
6 All I would say is -- kind of repeat what  
7 Mr. Crane said yesterday.

8           Q     Do you agree with what Mr. Crane said  
9 yesterday?

10          A     Not only do I agree with it, I know that,  
11 as we have talked about these, that there's the  
12 expectation that every year for the next ten years  
13 PEPCO will provide charitable contributions at  
14 \$1.6 million a year. That's what -- I believe is  
15 what the intent is.

16          Q     But that isn't what the commitment says.

17          A     And I'm telling you how I interpret that.

18          Q     So you believe the intent is different  
19 than the words that are written on the page?

20          A     I'm -- I'm indicating to you the way I've  
21 understood this.

22                   CHAIRMAN KANE: I think, Ms. Francis,

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1 he's answered.

2 BY MS. FRANCIS:

3 Q Can you tell this Commission how much  
4 money PEPCO, Potomac Electric Power Company,  
5 contributed to the District of Columbia charitable  
6 organizations in 214 (sic)?

7 A I don't know the exact number. I'll be  
8 happy to get that for you. Mr. McGowan could  
9 provide that for you.

10 Q Okay. Thank you.

11 Can you tell the Commission how much  
12 money PHI contributed to D.C. charitable  
13 organizations in 214 (sic)?

14 A I'm not recalling it off the top of my  
15 head. I think there was a data request, but  
16 certainly Mr. McGowan could provide that.

17 Q Thank you.

18 Did the joint applicants' charitable  
19 contributions commitment include a commitment  
20 regarding the information that will be provided to  
21 the Commission to demonstrate compliance with its  
22 proposed charitable contribution?

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1 MR. MEIER: Objection. Asked and  
2 answered.

3 MS. FRANCIS: This was a different  
4 question, Your Honor. He said he agreed with  
5 Mr. Crane. I don't believe Mr. Crane specifically  
6 addressed that portion that I'm referring to now.

7 MR. MEIER: Mr. Crane said that the  
8 information that was needed would be provided to  
9 the Commission.

10 MS. FRANCIS: That wasn't the question.  
11 My question was, does the joint applicants'  
12 charitable contributions commitment listed in  
13 (4A)-2 regarding the information that will be --  
14 include a commitment regarding the information  
15 that will be provided to the Commission to  
16 demonstrate compliance with its proposed  
17 charitable contributions commitment. It's a  
18 different question.

19 CHAIRMAN KANE: The witness may answer.

20 THE WITNESS: I believe it's Mr. Crane  
21 and Exelon's intention to provide the information  
22 annually as to what the charitable contributions

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1 are.

2 BY MS. FRANCIS:

3 Q Do you believe there's a difference  
4 between intent and a difference between (4A)-2 and  
5 what's written on the page?

6 A I understand the words that are on the  
7 page. I'm trying to be responsive in terms of  
8 what I believe the action that they are willing to  
9 commit to do. So that's the best I can do.

10 Q Is it the joint applicants' position that  
11 the \$1.6 million level of charitable contributions  
12 for District of Columbia organizations to which  
13 they are committing represents the highest level  
14 of contributions to charitable organizations and  
15 traditional local community support ever provided  
16 to the District by either PEPCO or PHI?

17 A I believe it is. Certainly in my tenure,  
18 I think 2013 was certainly at the high watermark.

19 Q Under the joint applicants' charitable  
20 contributions commitment, will this Commission  
21 have review authority over which D.C.  
22 organizations are chosen to be recipients of the

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1 contributions from Exelon or one of Exelon's  
2 subsidiaries?

3 CHAIRMAN KANE: Ms. Francis, I think the  
4 witness already answered that the Commission does  
5 not regulate that aspect of PHI or PEPCO's  
6 operations.

7 MS. FRANCIS: Yes, it just seems that  
8 there was some confusion over what I meant by the  
9 word "regulate," so that's why I'm getting say  
10 little bit more specific. And I'd appreciate the  
11 witness answering that question, if Your Honor  
12 will allow it.

13 THE WITNESS: I think you asked me if the  
14 Commission could review it?

15 BY MS. FRANCIS:

16 Q I'm asking you, will they have review  
17 authority over which District of Columbia  
18 organizations are chosen to be recipients of  
19 contributions from Exelon or one of Exelon's  
20 subsidiaries?

21 CHAIRMAN KANE: Ms. Francis, I think the  
22 witness had already answered that the Commission

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1 has no authority over the company's charitable  
2 contributions.

3 MS. FRANCIS: Thank you, Your Honor.

4 BY MS. FRANCIS:

5 Q Without the authority to review and  
6 approve the organizations in the District that  
7 will receive contributions, how can this  
8 Commission ensure that contributions claimed by  
9 Exelon serve the public interest?

10 A Well, I would anticipate that, among the  
11 detail that PEPCO would provide, would not just be  
12 the aggregate amount. I think they would likely  
13 provide who the recipients were and be able to  
14 discern from that that they were for a very good  
15 purpose.

16 Q Let's switch areas. We're going to move  
17 on. Okay?

18 And I'd like now to turn to rebuttal  
19 testimony at page 4, lines 4 through 9 again,  
20 where you also identify ring-fencing as one of the  
21 transaction benefits of the merger that would not  
22 be realized if the merger is not consummated.

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1 Agreed?

2 A Correct.

3 Q What is your understanding of the intent  
4 of the joint applicants' ring-fencing proposal?

5 A To provide not only a sense of assurance,  
6 but an actual legal construct to prevent negative  
7 financial consequences coming on to the utility  
8 from potential issues that could take place within  
9 the Exelon non-regulated -- or other Exelon  
10 entities.

11 Q What is your understanding of why  
12 ring-fencing is offered as an element of the joint  
13 applicants' proposals in this proceeding when it  
14 has never been a matter of discussion for PEPCO in  
15 prior proceedings before this Commission?

16 A I'm not familiar with the history going  
17 back to 2000 when PEPCO not only divested but sold  
18 their generation -- I can't explain to you why,  
19 when PHI had competitive generation, why that  
20 wasn't seen that way. I don't know the history of  
21 why ring-fencing wasn't in place. I do know that  
22 in New Jersey it was.

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1           Clearly, with this transaction and  
2 recognizing the business mix that Exelon brings --  
3 and I think -- I'm doing this somewhat from --  
4 applying my judgment, that this was an important  
5 consideration for the Maryland Public Service  
6 Commission when Exelon purchased Constellation.  
7 And I think that the -- certainly we did, as we  
8 talked about the construct of the application that  
9 ring-fencing would be an important things that  
10 this Commission and others would very likely be  
11 looking to have in place.

12           Q     Well, could one reason be that Exelon's  
13 ownership of PHI will introduce risks not  
14 currently faced by PHI?

15           A     It will introduce the -- it will have a  
16 different business mix, and there are -- as within  
17 any business, there are risks that those  
18 businesses have.

19           Q     Is it your assessment that ring-fencing  
20 is necessary to protect PEPCO's ratepayers in the  
21 District if the merger is not approved?

22           A     I wouldn't anticipate that PEPCO or PHI

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1 on a stand-alone would introduce ring-fencing  
2 unless, for some reason, we decided to get back  
3 into non-regulated generation.

4 Q The other transaction benefits that you  
5 reference at page 4, lines 4 through 9 of your  
6 rebuttal testimony, is the customer investment  
7 fund, correct?

8 A That's in there, yes.

9 Q Was the establishment of a customer  
10 investment fund part of the initial package that  
11 Exelon offered to the PHI board?

12 A Yes, it was.

13 Q At what dollar level did Exelon initially  
14 propose to fund the customer investment fund?

15 A \$100 million.

16 Q Who first proposed the idea of a customer  
17 investment fund? Exelon? PHI? PEPCO?

18 A I don't know.

19 Q Did either PHI management or its board of  
20 directors take a position regarding the manner in  
21 which direct customer benefits should be  
22 distributed among the PHI utilities and

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1 jurisdictions in which they operate?

2       A     The -- as the merger agreement evolved  
3 and the regulatory commitments were being  
4 developed, I'm not recalling exactly when the --  
5 I'll say the basis on metered customers was put  
6 forward. But as I think Mr. Crane commented  
7 yesterday, that seemed -- although I think he said  
8 it's not an art or not a science, that it seemed  
9 like a reasonable approach, recognizing that, you  
10 know, the Commission may make other  
11 determinations.

12       Q     I didn't hear the last part of your --

13       A     I said recognizing that the Commission  
14 may make other determinations as to how they would  
15 want it to be allocated.

16       Q     Are you able to tell me what role did  
17 gaining regulatory support for the merger play in  
18 decisions regarding the proposed distribution of  
19 direct merger benefits among the PHI utilities and  
20 the jurisdictions in which they operate?

21       A     Could you repeat that?

22       Q     What role did gaining regulatory support

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1 for the merger play in decisions regarding the  
2 proposed distribution of direct merger benefits  
3 among the PHI utilities and the jurisdictions in  
4 which they operate?

5 A I'm not recalling -- I'm not recalling  
6 that gaining the support was a driver of the  
7 allocation, if I'm following your question.

8 Q I believe -- you were here yesterday when  
9 Mr. Crane was testifying, and I believe he said --  
10 and I don't mean to misquote him -- that it was  
11 determined to do it on a customer -- I'm not going  
12 to quibble -- customer meter basis because that  
13 was what was -- had been done in Maryland before,  
14 and that passed regulatory scrutiny or it received  
15 regulatory approval.

16 Do you remember him saying that?

17 A I do recall that.

18 Q Okay. So -- now I'm going to ask my  
19 question again. What role did gaining regulatory  
20 support for the merger play in decisions regarding  
21 the proposed distribution of direct merger  
22 benefits among the PHI utilities and the

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1 jurisdictions?

2       A     I apologize. It's a long question. But  
3 maybe parsing this down -- clearly, there is no  
4 transaction if we don't get regulatory approval.  
5 And there is a lot of time and thought to make  
6 sure that, to the best -- that we had satisfied  
7 across the jurisdictions perhaps, although there's  
8 a lot of commonality around what the standards  
9 are, that we would meet them all.

10               The allocation of merger benefits by  
11 jurisdiction -- I mean, apart from parsing out the  
12 charitable contribution level, the other one was  
13 the CIF. And we've I think we've talked about how  
14 that was suggested to be allocated.

15       Q     I guess what I'm getting to is -- and I  
16 know you're not surprised by the this. AOBA  
17 believes that parsing it out on a customer or  
18 meter basis, that it's the -- that gives the  
19 District -- and I'm going to say 14 percent of the  
20 benefits, the smallest amount of benefits is  
21 inappropriate, and we believe that was driven by  
22 the choice of distributing the benefits on a

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1 per meter basis rather than on some other basis,  
2 such as rate base for example.

3 A Right.

4 Q So I just want to know -- I guess my  
5 question is keying into, how did you all determine  
6 that that was appropriate and what role did  
7 gaining regulatory support for the merger play?  
8 In other words, did you say, gee, New Jersey is  
9 going to be a tougher place to get decisions so  
10 let's give them the most? I mean, that's really  
11 what I'm asking you.

12 How did you determine, even though it's  
13 not a perfect science, that the customer count or  
14 customer meter was the appropriate way to go?

15 A We have 2 million customers, and although  
16 all of our jurisdictions have unique  
17 characteristics and there is not a perfect way of  
18 doing this, I think it was -- I don't mean to  
19 oversimplify it, but it seemed to be a fairly  
20 straightforward way of suggest -- or how to  
21 allocate the CIF. I can't give you much more than  
22 that.

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1 Q That's okay. I'll move on.

2 At what point in the merger negotiation  
3 process was the overall dollar amount of Exelon's  
4 initially proposed customer investment fund  
5 established?

6 A You mean the \$100 million?

7 Q Yes.

8 A Obviously it was -- I was not a part of  
9 those discussions. The -- it was -- I think it  
10 was coincidental with the clarity they had on the  
11 level of synergies that they would be able to  
12 realize.

13 Q Am I correct that the overall dollar  
14 amount of Exelon's initially proposed CIF was  
15 established prior to PHI's agreement to enter into  
16 the merger with Exelon?

17 A Well, yeah. I mean, up until -- that was  
18 part of the way to get to finalizing the  
19 agreement.

20 Q Are you able to tell me what criteria the  
21 PHI board used to assess the adequacy and  
22 appropriateness of the overall dollar amount of

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1 the customer investment fund that Exelon initially  
2 offered?

3 A Recognizing that it was linked to the  
4 estimated synergies and with the advice of  
5 counsel, and understanding that to varying degrees  
6 those synergies were provided back to the  
7 customers, some portion of that, whether it's  
8 50 percent or 100, whatever, that -- the board  
9 understood and the board was advised that that  
10 should satisfy and meet the requirements of the --  
11 across our footprint.

12 Q And the board approved that?

13 A That's correct.

14 Q Now, did the PHI board have to approve  
15 the 33.75 now being offered?

16 A No.

17 Q Are you able to tell me if the PHI board  
18 truly looks upon the proposed customer investment  
19 fund as an investment that should, over time,  
20 contribute to earnings?

21 A I'm sorry?

22 Q Well, they're calling it a customer

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1 investment fund. That's the name of it. So I'm  
2 asking, does the PHI board look upon the customer  
3 investment fund as an investment that should, over  
4 time, contribute to earnings?

5 A By PHI?

6 Q That the customer -- an investment is an  
7 investment because you hope it's going to  
8 contribute to earnings, correct?

9 A It's -- it's a fund that's being provided  
10 by Exelon to our customers to provide either some  
11 form of a bill credit or to perhaps be used at the  
12 discretion or direction of the commissions around  
13 energy efficiency. I don't think there was a  
14 notion that it would in any way be a basis of  
15 deriving earnings back to the company.

16 Q I guess I've always had a problem with  
17 the term "customer investment fund," because it  
18 suggests that there should be earnings flowing out  
19 of it. I just thought that, once you call it a  
20 customer investment fund, there's some other  
21 purpose of naming it that way. What was the  
22 purpose of calling it a customer investment fund?

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1           A       Well, it wasn't to create confusion. It  
2 was -- I think it was really intended to be  
3 reflective of a desire to provide funds for the  
4 investment in our customers, whether it's in the  
5 form of a bill credit or other things that could  
6 be helpful to our customers.

7           Q       So it's an investment in your customers?

8           A       That's how I have processed those terms.

9           Q       As the CEO of PHI, would you invest  
10 millions of dollars in a portion of your business  
11 that hadn't made a positive contribution to PHI's  
12 earnings for a number of years?

13                   MR. MEIER: Your Honor, these questions  
14 are -- do not seem relevant. They're, at best,  
15 argumentative, and we object to this line of  
16 questioning.

17                   MS. FRANCIS: Your Honor, they're not  
18 intended to be argumentative. The witness is free  
19 to answer. I am questioning, number one,  
20 obviously, the amount of the fund, the amount  
21 that's allocated to the District of Columbia,  
22 whether any amount allocated to the District of

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1 Columbia would be appropriate, and then once you  
2 design to give it away, how it's allocated down to  
3 the customers.

4           So I'm questioning those  
5 decision-making -- that decision-making on every  
6 level. And I'm on the last level, and I think  
7 it's a perfectly appropriate cross-examination  
8 question.

9           CHAIRMAN KANE: Do you have an  
10 estimate -- I was just looking at it -- not to  
11 rush anybody, but --

12           MS. FRANCIS: I'm on the last few  
13 questions.

14           CHAIRMAN KANE: The last few questions on  
15 the customer investment fund? Or all questions?

16           MS. FRANCIS: All questions.

17           CHAIRMAN KANE: Because I believe both  
18 this witness and Mr. Crane testified that the  
19 customer investment fund, the use of it -- their  
20 intent was that it be at the discretion of the  
21 Commission.

22           MS. FRANCIS: Yes, I do understand that.

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1 But the way it's been discussed in the case has  
2 been on a per customer basis. So that's what I'm  
3 delving into.

4 CHAIRMAN KANE: Thank you.

5 MS. FRANCIS: May I ask it again, ma'am?

6 CHAIRMAN KANE: Yes.

7 BY MS. FRANCIS:

8 Q Now that I forgotten my question, could I  
9 ask you to please read it back?

10 A Sure. I think you asked if I was -- let  
11 me give it a shot. I think you asked me --

12 CHAIRMAN KANE: You have a new job as  
13 court reporter, Mr. Rigby.

14 THE WITNESS: I'm going to be looking for  
15 a job soon.

16 CHAIRMAN KANE: Please go ahead.

17 (The reporter read the record as  
18 requested.)

19 BY MS. FRANCIS:

20 Q That's exactly my question.

21 A Can you give me an example of what you  
22 mean.

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1 Q Okay. Again, it's no secret that AOBA is  
2 concerned that a portion of your customer base  
3 does not provide a positive rate of return. You  
4 are --

5 A You mean our residential customers.

6 Q Correct. You are familiar with that?

7 A I take your comment from you.

8 Q You don't know that on your own?

9 A I -- go ahead. I understand.

10 Q Okay. And so that's really what I'm  
11 asking. When we start talking about allocating or  
12 on a customer basis, I'm asking you, as the CEO of  
13 PHI, would you invest millions of dollars in a  
14 portion of your business that hadn't made a  
15 contribution to your earnings?

16 A Under these facts and circumstances with  
17 this transaction, and what it's intended to try to  
18 create, yes.

19 Q Does the use of the word "investment" in  
20 the label placed on the proposed distribution of  
21 direct merger benefits simply represent a phrase  
22 that you thought would help sell the merger to the

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1 regulators?

2 MR. MEIER: Your Honor --

3 CHAIRMAN KANE: That question has been  
4 asked and answered, the use of the word  
5 "investment."

6 BY MS. FRANCIS:

7 Q When the Commission considers, in writing  
8 its decision, the proposed customer investment  
9 fund for the District of Columbia, why should this  
10 Commission assess that the allocation of CIF  
11 dollars to the District that you are proposing  
12 results in a fair, reasonable and equitable  
13 treatment of the District of Columbia?

14 A You mean the allocation?

15 Q Correct. The District of Columbia.

16 A The allocation of, for purposes here, of  
17 \$33.75 million?

18 Q Yes.

19 A I think -- it reflects, I think, a fair  
20 distribution across our customer base.

21 Q I guess I was asking you, why should the  
22 Commission assess it as fair and reasonable?

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1 A That way?

2 Q Correct.

3 A You mean to the residential customers?

4 Q No, no, no. This I'm asking overall --  
5 I'm getting back to the \$33 million allocation to  
6 the District of Columbia.

7 A Oh. Oh, okay.

8 Q That was what my question is going to.

9 A Okay. I'm sorry, I didn't mean to --  
10 well, obviously, the -- Exelon has, through  
11 discussions elsewhere, what -- it's amended its  
12 provision or the -- excuse me -- the application  
13 has more than effectively doubled the amount of  
14 the CIF which, for purposes of at least the  
15 beginning reference point, was the assumed  
16 synergies. I think that's a fairly significant  
17 level, which is now, if you just add the  
18 jurisdictions up, is well over 200 million.

19 I think that's a fairly significant  
20 statement of projected benefit.

21 Q Just to follow up on your well over  
22 200 million, since there isn't any final number of

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1 what that total number is in the record of this  
2 proceeding, the Commission has really no way to  
3 assess the percent that the District of Columbia  
4 will be allocated as -- overall of that  
5 percentage. Would you agree?

6 A I would agree that that number has not  
7 been introduced, yes.

8 Q Moving on. When your rebuttal testimony  
9 at page 4 discusses the benefits of the merger  
10 that would not be available from PEPCO as a  
11 stand-alone entity, you do not mention reliability  
12 benefits.

13 Should the Commission interpret that  
14 omission of an explicit reference to reliability  
15 benefits as an indication that PEPCO can achieve  
16 this Commission's reliability standards on a  
17 stand-alone basis without the merger?

18 A I think I commented this morning it would  
19 certainly be our intention to achieve the EQSS  
20 standards. We would not be, on a stand-alone  
21 basis, committing to the current budget, nor would  
22 I anticipate that we would be recommending that a

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1 penalty be applied if we did not.

2 Q Is it your assessment that PEPCO was  
3 capable of meeting this Commission's EQSS  
4 standards for SAIFI and SAIDI in the absence of a  
5 takeover by Exelon?

6 A As I said, it would be our intention. As  
7 I think I commented this morning, we have concerns  
8 around the duration standard towards the latter  
9 part of this decade. That would be a concern to  
10 us. And Mr. Gausman can go in much more detail  
11 that I can.

12 Q Okay.

13 MS. FRANCIS: Thank you, Your Honor. I  
14 have no more questions.

15 CHAIRMAN KANE: Thank you.  
16 D.C. government.

17 MR. COYLE: Thank you, Chair Kane.

18 CROSS-EXAMINATION

19 BY MR. COYLE:

20 Q Good afternoon, Mr. Rigby.

21 A Hello.

22 Q My name is John Coyle. I am here

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1 representing the government of the District of  
2 Columbia. I wanted to ask you to turn first to  
3 your rebuttal testimony, Joint Applicants' (3B),  
4 and look at page 3, lines 13 through 17.

5 A Sure. Sir, could you give me the page  
6 again?

7 Q Yeah, sure. It was page 3, lines 13  
8 through 17.

9 I'll apologize in advance, Mr. Rigby,  
10 because people from Long Island sometimes have a  
11 hard time communicating with people from New  
12 Jersey, but I'll do the best I can. Okay. Thank  
13 you.

14 A Forget about it.

15 Okay. I'm there.

16 Q All right. Now, you say there that the  
17 board requested that the bidders provide a package  
18 of commitments that would secure regulatory  
19 approvals as well as provide the best share price.  
20 Are you with me?

21 A Yes, sir.

22 Q Okay. By the way, I accept your premise

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1 stated earlier that you have a fiduciary  
2 obligation to get the best price you can for the  
3 company. You and I don't have a dispute on that.  
4 All right?

5 The issue was -- the focus my question is  
6 simply that, in seeking that package of regulatory  
7 commitments from bidders, the board -- the PHI  
8 board was not acting in an eleemosynary capacity,  
9 were they? They weren't looking for the ideal  
10 level of benefits for PHI's customers; they were  
11 looking for the package of regulatory commitments  
12 that would get the transaction approved.

13 A I don't understand what that term means,  
14 but --

15 Q Charitable. Eleemosynary. You know,  
16 high-minded. Public-spirited.

17 A Okay. Frank Zappa moment for me.

18 No, it's more the latter, the way you  
19 described it. Looking to make sure -- looking to  
20 provide the level of benefits to the customers and  
21 to the community, the key stakeholders, such that  
22 it would be able to satisfy the regulatory

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1 commitments to have the merger approved.

2 Q All right. Thank you.

3 Let me ask you next, still in your  
4 rebuttal testimony, to take a look at page 7,  
5 line 21 through page 8, line 4.

6 A Yes, sir.

7 Q Now, you state there, As discussed by  
8 Mr. Khouzami and Mr. McGowan, Exelon expects the  
9 merger will result in a net increase in jobs in  
10 the District of Columbia. Absent the merger,  
11 there is no such expectation that PEPCO or PHI, as  
12 a stand-alone company, will increase employment in  
13 the District.

14 Have you got that in mind?

15 A Yes, sir.

16 Q Okay. Since this was the rebuttal round  
17 of testimony, should I understand from your  
18 reference that you're referring to Mr. Khouzami  
19 and his rebuttal testimony that discusses the 102  
20 bargaining unit positions that Exelon says it has  
21 committed to make a good-faith effort to fill, in  
22 paragraph 17 of the merger commitments?

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1           A       I'd have to go back and look. It may  
2 also be making reference to the transfer of the  
3 PES positions into D.C., I think.

4           Q       I think that's maybe a separate  
5 reference.

6           A       Okay.

7           Q       I was going to get to that.

8           A       Okay. Sorry.

9           Q       Mr. McGowan talks about the --

10          A       Okay.

11          Q       -- transfer of the 50, right?

12          A       Okay. Okay. I'll accept your --

13          Q       All right. Good.

14                 Let me start with the observation. Let  
15 me ask you to go -- or just maybe Ms. Travers can  
16 help you -- if you could also get a copy of Joint  
17 Applicants' (4A)-2, the commitments.

18          A       I got it.

19          Q       Okay.

20          A       I think it's in here. I have a separate  
21 copy. Go ahead, sir. I'm sorry.

22          Q       That's all right. Paragraph 18 of the

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1 commitments refers to the transfer of the 50 PEPCO  
2 Energy Services jobs from Arlington into the  
3 District, right?

4 A Yes, sir.

5 Q And the way it's phrased is, At current  
6 count, that transfer would result in an additional  
7 50 District of Columbia jobs, right?

8 A That's what it says.

9 Q I wanted to emphasize the phrase "at  
10 current count." What is that supposed to mean?

11 A I think it's intended to reflect the  
12 number of people that are working at the  
13 Arlington, Virginia office area.

14 Q Okay. Do you know whether those 50  
15 current positions in Arlington that you're talking  
16 about transferring are bargaining unit positions?

17 A Not to my knowledge they are. I don't  
18 think there's any there that are bargaining unit.

19 Q Okay. So those are all at-will  
20 employees?

21 A I think we consider all of our employees  
22 at-will. I'm not a lawyer, but I think that's how

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1 we look at our workforce.

2 Q Fair enough. Fair distinction. You  
3 don't have any collective bargaining agreement  
4 that constrains your ability to eliminate those  
5 positions?

6 A That's my understanding -- well, no. I'm  
7 not being clear. Those employees are not covered  
8 by a bargaining agreement.

9 Q All right. Do you have any idea how many  
10 of those 50 jobs at PEPCO Energy Services are  
11 currently filled by District of Columbia  
12 residents?

13 A No, I do not.

14 Q Focusing, again, on the phrase "at  
15 current count" in the commitment paragraph 18,  
16 prior to the merger, what was PEPCO's plan for the  
17 future size of the PEPCO Energy Services operation  
18 in Arlington for, say, 2016?

19 A 2016?

20 Q Yep.

21 A It would be dependent upon the growth of  
22 the business itself. I mean, that -- the

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1 individuals that are located there are in the --  
2 basically the energy services business, looking at  
3 deploying energy efficiency.

4           So as that organization might grow, would  
5 then -- as the number of contracts might grow,  
6 would have an impact on the level of staffing  
7 there.

8       Q     As you sit here today, though, you don't  
9 have any idea what its prospects were, going  
10 forward, that particular aspect of the  
11 organization?

12       A     I don't have specifics around the size of  
13 the workforce in 2016.

14       Q     Okay. Fair enough.

15            I think you mentioned earlier that Exelon  
16 operates a functionally equivalent branch of its  
17 business under the flag of its Constellation  
18 affiliate, correct?

19       A     Yes, sir.

20       Q     Okay. Is it not reasonable to anticipate  
21 that Exelon will consolidate what is now PEPCO  
22 Energy Services, the PEPCO Energy Services

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1 operation, into its Constellation operations?

2 A It will become part of that. This  
3 commitment speaks to the location of where those  
4 employees would work.

5 Q Right. For as long as they may work, and  
6 we don't know how long that will be, right?

7 A We don't have -- it would just depend.

8 Q What was discussed, if anything, between  
9 you and anyone at Exelon concerning the future  
10 prospect for the retention of the current count of  
11 50 PEPCO Energy Services positions within Exelon  
12 or an Exelon affiliate post-merger?

13 A I've not participated in any of that kind  
14 of a discussion.

15 Q So you don't know what might happen, for  
16 example, two years after the merger to those  
17 employees?

18 A That has not been discussed.

19 Q Isn't it a fact, Mr. Rigby, that all 50  
20 of those positions could be eliminated a year or  
21 two years or two years and a day after the merger  
22 if the merger is authorized, and neither you nor

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1 anyone else in current PEPCO management could do  
2 anything about it?

3 A That could happen. I don't think that's  
4 the intention. I'm not -- I'm not sure, as far as  
5 the current work that's been going on on the  
6 integration front, that Mr. Khouzami is working on  
7 could perhaps provide some insight as to how that  
8 might play out over time.

9 Q Okay. Now let's talk about the 102  
10 bargaining unit positions that are discussed in  
11 commitment 17. All right?

12 You were in the hearing room yesterday, I  
13 think, when Mr. Crane told Commissioner Phillips  
14 that you -- meaning Joseph Rigby -- had committed  
15 the merged company to those 102 positions in  
16 negotiating extensions of the collective  
17 bargaining agreements with PEPCO's unions?

18 A Yes, I was here.

19 Q And was that an accurate statement?

20 A Generally. I mean, the agreement is  
21 between PEPCO and IBEW Local 1900. So, you know,  
22 it was my team that was on the front line. There

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1 was an awareness, some involvement from Exelon  
2 personnel to understand, you know, how this was  
3 progressing, but the agreement is between IBEW and  
4 PEPCO.

5 Q Okay. Now, I did want to understand that  
6 a little bit better. I had a sense, from  
7 listening to somebody else, that there were other  
8 bargaining units involved other than the IBEW  
9 Local 1900 bargaining unit. But you're suggesting  
10 that's not true?

11 A No, we have four IBEW locals --

12 Q Right.

13 A -- one of which is 1900. There's one up  
14 in southern New Jersey, Local 210. There's an  
15 IBEW Local 1238 that serves Delaware and the  
16 northern part of Maryland. And then there's IBEW  
17 Local 1307 which is on the bay and eastern shore  
18 area.

19 Q Okay. Just so we're clear, though, these  
20 102 positions fall under the Local 1900 --

21 A That's correct, sir, yes.

22 Q Okay. All right.

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1 Does Local 1900 also represent the PEPCO  
2 employees in Maryland?

3 A Yes.

4 Q Okay. So it's the same on both sides of  
5 the line?

6 A For PEPCO, yes. And the overall  
7 good-faith commitment for the entirety of 1900, I  
8 think it's 190 positions, of which 102 were  
9 identified for D.C.

10 Q All right. Now, Mr. Rigby, I know you  
11 spoke about this earlier, but I was a little bit  
12 unclear. Could you explain to the Commission  
13 where the hiring process that you negotiated with  
14 IBEW Local 1900 for these employees stands  
15 presently for these 102 employees?

16 A My understanding -- and we could --  
17 certainly Mr. McGowan -- we can get more  
18 information. I think there's just preliminary  
19 work being done around better understanding of the  
20 demographics, perhaps where you may have the most  
21 long-tenured employees who may be -- you know, you  
22 can maybe presume from that that they would retire

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1 first.

2 I'm not sure if there's anything underway  
3 in terms of just preparing for the training and --  
4 well, the testing then the training. But I was  
5 informed that there's been just some preliminary  
6 work done with an expectation -- this is -- you  
7 know, we've indicated that hopefully the merger  
8 will close sometime in the second or third  
9 quarter. So we want to be in a position where  
10 we're prepared to go.

11 Q Bear with me just a little bit longer,  
12 Mr. Rigby.

13 A Sure.

14 Q My understanding -- and I haven't been a  
15 labor lawyer for several years, but I still work  
16 in this industry -- is that there is a fairly  
17 lengthy training and apprenticeship process  
18 associated particularly with line workers, but  
19 generally with skilled utility technical  
20 positions --

21 A Yes, sir.

22 Q -- of this type?

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1 A Yes, sir.

2 Q And so could you sort of briefly describe  
3 for the Commission what that intake process is in  
4 the workforce for these 102 positions you're  
5 looking to fill?

6 A Sure. Sure. We would go through a  
7 posting process, would be making these positions  
8 aware into the public. Obviously, the posting  
9 would include the pertinent information of what  
10 the job entails, compensation, benefits, so forth  
11 and so on.

12 We typically are also looking to make  
13 sure that we have a diverse candidate pool as we  
14 look at -- as you can imagine, given the hiring  
15 situation in this country -- people are looking  
16 for jobs -- we want to make sure that the hiring  
17 pool is reflective of the communities that we  
18 serve.

19 There will be a certain amount of  
20 applications we'll look at such that we could, I  
21 think, efficiently go through what I would  
22 anticipate would be a series of apprentice

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1 programs -- probably not 102 all at once, but I  
2 think a manageable apprentice program.

3           People will go through testing. There's  
4 both physical testing -- have to be able to climb  
5 a pole. There's some level of basic electrical  
6 work, computer competency, basic math skills, and  
7 hopefully people get through that.

8           And then an apprentice program will  
9 begin, at which point they are employees. They  
10 have certain milestones that they have to be able  
11 to achieve to stay in the program. Some  
12 unfortunately will wash out. And then they begin  
13 their process, moving through the apprentice, the  
14 helper, up to a lineman.

15       Q     Okay. How long does that entire process  
16 take?

17       A     I think, to move past where they would be  
18 a helper on a crew, is probably a year and a half.

19       Q     So it's a year and a half from helper to  
20 an apprentice (sic) lineman?

21       A     Yeah, where they would probably be doing,  
22 I'll say, the initial phase work -- the initial

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1 work phase of what a lineman would typically do.

2 Q Somebody who is brought in as a helper is  
3 still, A, an employee and, B, in the collective  
4 bargaining unit, right?

5 A They're that way throughout the entirety  
6 of their career.

7 Q The day they're hired, right?

8 A Right.

9 Q Okay. Now, you have an attrition issue,  
10 as I understand it. You have older -- I'll use  
11 the expression line workers, but let's understand  
12 it encompasses all the skilled positions you're  
13 talking about.

14 A Right.

15 Q You have an attrition issue confronting  
16 the operating company now, right?

17 A Like most utilities, yes.

18 Q Right. The graying of the workforce.  
19 Okay.

20 So it is a process to get these people on  
21 board. Am I understanding you correctly?

22 A Sure. Yes.

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1 Q When do you feel like you have to -- have  
2 you started the process already, or when is it  
3 supposed to start? I'm trying to understand that.

4 A Well, as I indicated earlier this  
5 morning, we are already hiring.

6 Q Okay.

7 A Prior contracts, we had -- within the  
8 wording of that agreement, we had made commitments  
9 that we would be hiring, and relatedly, it would  
10 be impacting the number of contractors on the  
11 property, and -- as they should. The union  
12 leadership -- we have very astute union leaders.  
13 They will hold our feet to the fire. So that,  
14 within the existing pre-extension contracts,  
15 that's underway.

16 The -- what we have said in this  
17 situation is that while the extension would go  
18 forward notwithstanding the merger, that the  
19 actual commitment of the good-faith hiring of 102  
20 is actually contingent upon the closing of the  
21 merger.

22 Q Do you expect -- let me rephrase that.

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1           You do expect, do you not, to hire some  
2 level of skilled utility workers to replace those  
3 workers who you anticipate will be retiring,  
4 regardless of whether the merger is consummated or  
5 not?

6           A     I could assume over time that we will be  
7 hiring.

8           Q     Does the number of positions that you  
9 anticipate needing to fill as people retire change  
10 as a result of the merger or not?

11          A     I would respond this way: The -- the  
12 issue that we have -- we've been managing through,  
13 balancing, if you will, up to this point in time,  
14 has been a very high workload with regard to the  
15 focus on reliability, much higher capital plan,  
16 much higher O&M work. And we have been trying to  
17 address a number of business drivers, if you will.  
18 Obviously the commitment, need to improve  
19 reliability quickly, as fast as we can.

20                 We are trying to manage cost. And we're  
21 also trying to manage the bottom line in the sense  
22 that -- not in the sense -- in the reality that

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1 our utilities are currently under-earning fairly  
2 significantly their allowed return. So we've been  
3 trying to address all of these things.

4           And in this situation, as it relates to  
5 our field workers, we've been able to accomplish,  
6 I think, all of that by a higher level use of  
7 contractors. What I think is interesting here,  
8 and is one of the reasons why the commitment is  
9 dependent upon completion of the merger, is that  
10 if the merger was not to take place, we're still  
11 going to be in that same place. We're still going  
12 to be managing this.

13           So we were not inclined to make a  
14 commitment to do this hiring. We would probably  
15 remain in the same mode we are today.

16           What I think Exelon has very uniquely  
17 come to the -- stepped up to the plate to do is  
18 that they're going to support the hiring of those  
19 employees and recognize that the vast majority of  
20 their expenditures, cost of the employees, would  
21 be within that reliability budget, the capital O&M  
22 that they have committed that they're going to

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1 maintain.

2           And therein is where -- I found that be a  
3 very unique and positive thing for us to be able  
4 to move forward on a couple of important fronts.

5       Q     Bear with me, Mr. Rigby. I'm not trying  
6 to be obtuse here, but I'm not following your  
7 answer. So let me break --

8       A     I'm sorry.

9       Q     That's all right. Let me break it down.  
10 It was an interesting answer, but it didn't, I  
11 think, exactly respond to what I asked you. So --

12       A     Sure.

13       Q     -- let me try again.

14            I think what you told me is, in the  
15 abstract, what difference you think the merger  
16 makes. And I guess what I'm asking you is, you  
17 would need to hire -- you would need to fill  
18 positions, skilled utility worker positions, as  
19 your existing workforce grays and retires,  
20 correct?

21       A     Unless we determine that we would deal  
22 with the workload through higher-level use of

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1 contractors.

2 Q Fair enough. Either way, that cost gets  
3 passed through rates, correct?

4 A Yes.

5 Q Okay. So either you're using contractors  
6 or you're using your own workforce. What makes  
7 you decide one way or another?

8 A It's trying to manage -- certainly in the  
9 first two, two-and-a-half years, very little of  
10 the cost of those new employees would be  
11 capitalized and go through rates. It would be  
12 strictly an impact to the bottom line.

13 And I apologize, I was trying to just  
14 provide --

15 Q That's all right.

16 A -- a broad context of what it is -- what  
17 we're just trying to manage our way through, which  
18 is we want to be able to hire employees. We  
19 absolutely need to get this work done. We're  
20 going to be held accountable if we're not  
21 achieving our improvement in reliability. But  
22 we're also just dealing with the reality of, I

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1 think, fairly significant under-earning.

2 Q Right.

3 A We're able to mitigate that under-earning  
4 by the use of contractors versus what we would see  
5 as incremental O&M in the hiring of these  
6 employees.

7 Q Now I think you helped me understand a  
8 little bit better. The difference is whether  
9 the -- let me see if I have this -- whether the  
10 labor cost represents incremental O&M, which would  
11 be contractors --

12 A Right.

13 Q -- right? -- versus wages and salaries  
14 dedicated to construction which you would end up  
15 capitalizing. Am I understanding that right?

16 A The use of the contractors -- if they're  
17 doing construction work, that gets capitalized.

18 Q So there isn't any difference in terms of  
19 your bottom line if you're using contractors or if  
20 you use an employee?

21 A No. What I was trying to point out is  
22 that, in the initial phase of hiring these

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1 employees, as they're going through their first  
2 year and a half, two years, very little of that  
3 gets capitalized.

4 Q Okay.

5 A It's expense.

6 Q It's expense. It goes into wages and  
7 salaries, and it's recovered as O&M, right?

8 A Dependent upon what we get back as a  
9 result of the rate case.

10 Q I see. Okay. But in principle, you're  
11 entitled to recover those costs as O&M --

12 A That's correct.

13 Q -- if you put your rates together and  
14 your rates have been approved?

15 A That's correct.

16 Q Okay. All right.

17 Now, would these new employees be used  
18 for projects or construction related to the  
19 District of Columbia power lines underground  
20 program?

21 A Probably not in the beginning. I would  
22 anticipate that they would basically be trained

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1 probably more so for overhead, but certainly some  
2 of them could be underground. But I'm not -- I  
3 mean, Mr. Gausman would -- you know, he's the  
4 PLUG -- power line underground initiative is under  
5 his watch. He might be able to give you a better  
6 perspective. But I don't anticipate it would.

7 Q Okay. One of the questions that came up  
8 yesterday -- and I don't want to mischaracterize  
9 anybody's testimony, but this is the way I  
10 remember it, anyway -- I thought I heard Mr. Crane  
11 say that on a stand-alone basis, PEPCO would not  
12 have the resources to fill those 102 bargaining  
13 unit positions.

14 A I remember him saying that.

15 Q Okay. All right. Is that accurate as  
16 far as you're concerned?

17 A I gave you the way I view it. He may  
18 have presented it using those words. I'm trying  
19 to explain to you what the issues are that we're  
20 balancing.

21 Q And if I could -- I don't mean to -- I  
22 just want to make sure I understood you correctly.

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1           A       Sure.

2           Q       In your construct it's not a question of  
3 do I have the resources. It's a question of  
4 whether I use contractors or whether I train  
5 employees to do that work. Am I understanding you  
6 right?

7           A       It certainly would be our desire to  
8 replenish -- to refresh the workforce. But as I  
9 said, we're trying to balance and meet a number of  
10 important things.

11          Q       All right. Mr. Rigby, approximately how  
12 many of the current positions at PEPCO Holdings at  
13 Edison Place are filled by District residents?

14          A       I don't know.

15          Q       And the same question for the PEPCO  
16 employees at Edison Place next door, do you know  
17 how many of those are District residents?

18          A       I'm sorry. You said -- maybe I didn't  
19 hear the question right. When you said next  
20 door --

21          Q       And maybe I'm misunderstanding. You have  
22 PHI employees at Edison Place, correct?

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1 A Yes.

2 Q Okay.

3 A And PEPCO.

4 Q And PEPCO employees.

5 A Right.

6 Q So my first question was about the PHI  
7 employees. How many of those are District  
8 residents?

9 A I don't know.

10 Q Okay. And the PEPCO employees?

11 A I don't know.

12 Q Thank you.

13 Let me switch topics. Still with your  
14 rebuttal testimony -- you'll be pleased to know I  
15 won't go back to your direct -- page 6, line 19 to  
16 page 7 going over to line 6. Let me give you a  
17 minute to catch up.

18 A Yes, sir.

19 Q Okay. You say there that, The customer  
20 investment fund is a merger benefit that would not  
21 be available absent the merger. Right?

22 A That's correct.

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1 Q Okay. And the commitment -- do you still  
2 have your commitments handy?

3 A Yes, sir.

4 Q Okay. The commitment is stated in Joint  
5 Applicants' Exhibit (4A)-2 at page 3,  
6 paragraph 15 -- and I'm going to read it. I want  
7 you to let me know whether I have this right: In  
8 the two years following consummation of the  
9 merger, Exelon commits -- well, excuse me. Let me  
10 rephrase the question. That's not a CIF  
11 commitment. I want you to look at a different  
12 commitment.

13 In the two years -- and this is the  
14 commitment in paragraph 15 on page 3 of  
15 Exhibit (4A)-2: In the two years following  
16 consummation of the merger, Exelon commits to  
17 ensure no net reduction in the employment levels  
18 at PEPCO due to involuntary attrition resulting  
19 from the merger integration process, and to  
20 provide current and former PEPCO employees with  
21 compensation and benefits at least as favorable in  
22 the aggregate as the compensation those employees

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1 received immediately prior -- immediately before  
2 the date of the merger.

3 Are you with me?

4 A Yes, sir.

5 Q Okay. Now, would you agree with me,  
6 comparing the customer investment fund and levels  
7 of employment within the District of Columbia --  
8 would you agree with me that there's a  
9 possibility, at least a theoretical possibility  
10 depending on the circumstances, that reductions in  
11 force associated with the achievement of merger  
12 synergies could more than offset those synergies  
13 with a net loss to the area's economy?

14 I'm asking you as a theoretical matter.  
15 I know you don't agree that's what's going to  
16 happen.

17 A So then you probably already know my  
18 answer. Theoretically, I guess, anything could  
19 happen. But -- I'd like to think you could create  
20 a scenario perhaps where that could happen, but...

21 Q Okay. Do you recall -- I'm going to ask  
22 you in the abstract and hope we can do this

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1 without reference to an exhibit, but if we need an  
2 exhibit, I can get to one. Do you recall that an  
3 earlier version of the labor synergies construct  
4 involved the elimination of 397 positions?

5 A Yes, sir.

6 Q And those positions, generally speaking,  
7 appear to have been associated with PEPCO  
8 Holdings, correct?

9 A They would have to be, because there are  
10 not going to be involuntarily reductions at the  
11 operating level.

12 Q And in general terms, the labor  
13 synergies, whatever labor synergies result from  
14 this merger, are going to result from a  
15 consolidation of function at the corporate level,  
16 at the PEPCO Holdings level, correct?

17 A That's correct.

18 Q Okay. Or the Exelon business services  
19 company level --

20 A Sure.

21 Q -- the equivalent of PEPCO Holdings?

22 A Right.

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1 Q All right. Okay.

2 Currently, based on the current plan, do  
3 you know how many PEPCO Holdings positions are  
4 contemplated to be eliminated in order to achieve  
5 merger synergies?

6 A I'm aware that that analysis has been  
7 updated. Mr. Khouzami can confirm this when he  
8 gets up here. I think it's about 240 positions,  
9 of which 40 are open at this point. So it  
10 wouldn't involve, you know, any unfortunate --  
11 back to an individual.

12 So there would be about 200 current  
13 employees that would be impacted through the  
14 reduction that's anticipated.

15 Q Okay. And is the construct still -- I'm  
16 remembering an earlier version of this. Is the  
17 construct still that some of those employees would  
18 be offered a choice between relocation and  
19 separation? Do you recall this?

20 A It would depend -- as I -- and  
21 Mr. Khouzami can get more into the -- there's  
22 actually -- there's been work done around how the

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1 organization would be staffed with positions and  
2 how it would be determined who would go. I'll  
3 share with you what I recollect.

4 Q Sure.

5 A Should a position be -- let's say -- you  
6 know, we're working in -- I'm working at Benning  
7 Road right now, for whatever reason, and my job is  
8 going to be eliminated, but if I wanted a job, I'd  
9 have to go to New Jersey. You know, the employee  
10 would have the opportunity to be able to take  
11 their severance and not have to go through a  
12 relocation.

13 Q Fair enough. Except it wouldn't be an  
14 employee at Benning Road, would it?

15 A That was a bad choice. As soon as it  
16 came out of my mouth, I was -- I was thinking  
17 about relocating to Benning Road myself. Sorry.

18 Q And the point was -- not to belabor the  
19 obvious -- somebody works at Benning Road is in  
20 the bargaining unit, not in corporate services?

21 A Or they're working at the utility, even  
22 if they're non-bargaining unit.

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1 Q Got you.

2 A But you got me on that.

3 Q Okay. All right.

4 So -- bear with me just a second,  
5 Mr. Rigby. I need to check my notes here.

6 A Sure.

7 Q The other question I wanted to ask about  
8 this is that the -- the commitment on retention,  
9 this paragraph 15 of Exhibit (4A)-2 --

10 A Yes, sir.

11 Q Okay. That runs for two years.

12 A Right.

13 Q But the calculation -- the currently  
14 operative calculation of merger synergies runs for  
15 ten years. Are you aware of that?

16 A I always get confused about -- it's the  
17 impact of the synergies over ten years in terms, I  
18 think, how it's being framed as the benefit.

19 Q Okay.

20 A Mr. McGowan does a much better job of  
21 framing that. I always get tripped up on this.

22 Q Okay. So I guess -- sorry. All right.

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1 I'm trying to think how to phrase the question.

2           The ten-year calculation of synergies on  
3 which the customer investment fund is premised,  
4 the current \$33.75 million customer investment  
5 fund, contemplates some kind of a steady state  
6 being achieved in corporate consolidation, in the  
7 attainment of these labor synergies. That's a bad  
8 question. Let me rephrase it.

9           The current customer investment fund of  
10 33.75 million, the current proposal, is premised  
11 on ten years of synergies. Can we agree with  
12 that?

13         A     Yes, sir. Thank you.

14         Q     All right. It goes easier if I don't try  
15 to say it all at once. Problem being from Long  
16 Island.

17           Now, the -- the level of consolidation of  
18 corporate functions that drives those labor  
19 synergies, is that going to be over in fewer than  
20 ten years?

21         A     Oh. Yeah, I think it's anticipated to be  
22 done within 18 to 24 months.

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1 Q Got you. Okay.

2 We discussed this a little bit, but I  
3 want to make sure I understood your answer. Where  
4 are the majority of PHI employees located today  
5 physically?

6 A You mean in one location?

7 Q Where do they work? Yeah.

8 A Well, I think Edison Place probably has,  
9 in terms of a single location, has close to 800  
10 employees. I think that's probably the largest  
11 number of employees we have.

12 Q Okay. And --

13 A And, sir, when you say PHI employees, I  
14 was commingling anything underneath the umbrella  
15 of PHI. So there could be utility employees right  
16 there too.

17 Q Okay. Fair enough.

18 A In fact, I know there are.

19 Q Everybody who works --

20 A Right.

21 Q Not everybody who works at Edison Place  
22 is a PHI employee. I get that.

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1           A     Right.

2           Q     Okay.  Of the 240 PHI positions that are  
3 going to be eliminated in connection with the  
4 attainment of the labor synergies and the merger,  
5 are some of those positions going to be relocated  
6 to other parts of Exelon, business services  
7 company or --

8           A     I don't have that detail.

9           Q     Okay.  All right.  Thanks.  Excuse me a  
10 second.

11                   Mr. Rigby, one last question before I  
12 leave.  Of the corporate services positions that  
13 are looking to be consolidated to attain the labor  
14 synergies that are contemplated in the company's  
15 proposals here, are those, generally speaking,  
16 higher paying positions, white collar positions?

17           A     I would think within our pay construct,  
18 it would probably be tilted towards, you know,  
19 employees -- certainly they're all going to be,  
20 quote/unquote, white collar positions; you know,  
21 they're management office personnel for the most  
22 part.  So I would think that there would be a

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1 heavier tilting that way.

2 But Mr. Khouzami could probably provide  
3 more insight on that.

4 Q Off the top of your head, you wouldn't  
5 have, like, an average salary figure for the  
6 targeted position?

7 A I don't know. I don't know that, sir.

8 Q Okay. Changing topics again, still with  
9 your rebuttal testimony, page 9, lines 1 through  
10 13, please --

11 A Yes, sir.

12 Q -- you state there that it would be an  
13 unhappy future without the merger because PEPCO  
14 and the other PHI utilities have delayed the  
15 filings of base rate proceedings, et cetera,  
16 et cetera.

17 Right? Do you see where I am?

18 A Yes.

19 Q Okay. Now, do you have access to a copy  
20 of Exhibit DCG 1, which is an excerpt of the  
21 definitive PEPCO or PHI proxy statement from  
22 August of 2014?

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1           A     Yes, sir. I have it here, sir, yes.

2           Q     I'd like you to take a look at the page  
3 that has number 34 at the bottom of the page. And  
4 it's the discussion in the proxy statement that  
5 identifies risk factors going forward with the  
6 merger. Do you see where I am?

7           A     Yes, sir.

8           Q     I'd ask you to take a look at those risk  
9 factors. And are the ones that relate to deferral  
10 of rate cases and similar considerations -- those  
11 risks are all outlined in the proxy statement,  
12 correct? The risks that you referred to in your  
13 testimony are also outlined in the proxy  
14 statement?

15          A     I'm reading through this. I'll take your  
16 word that it is.

17          Q     Go ahead and read. Tell me if I'm wrong.

18          A     Sure.

19                 Yes, sir, I read through it.

20          Q     Is it true, generally speaking,  
21 Mr. Rigby, that the same risks that you describe  
22 in your rebuttal testimony at page 9, lines 1

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1 through 13 are also identified in that section of  
2 the definitive proxy statement I asked you to look  
3 at, Exhibit DCG 1?

4 A We do comment about the delay in the  
5 filing of the rate cases, yes.

6 Q Okay. So those risks were known to PHI  
7 management when you entered into the merger  
8 agreement?

9 A Yes, sir.

10 Q Okay. All right. Now, is it your  
11 understanding that the merger agreement requires  
12 that the merger -- the current version of the  
13 merger agreement requires that the merger be  
14 consummated by July 29, 2015?

15 A Unless it's extended by either of the  
16 parties I think till the end of October.

17 Q Okay. I was going to say, and it can be  
18 extended to October 29?

19 A Yes, sir.

20 Q Okay. All right. Now, you went through  
21 this earlier, and I don't mean to belabor the  
22 point, but there is a \$180 million breakup payment

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1 that is due to be -- well, you actually already  
2 have it, right?

3 A Yes.

4 Q It's a \$180 million breakup payment if  
5 the merger is conditioned in such a way that  
6 Exelon determines the conditions are too onerous  
7 to go forward with the merger, correct?

8 A Or if it's just not approved by any one  
9 of our jurisdictions.

10 Q Okay. In either of those conditions,  
11 PEPCO Holdings keeps \$180 million, correct?

12 A That's the intent.

13 Q All right. Which you are already have in  
14 the bank?

15 A That's correct.

16 Q Okay. Now, if that \$180 million were  
17 allocated on the same basis, the same per customer  
18 meter basis that you're proposing to allocate the  
19 customer investment fund, what would PEPCO  
20 Holdings -- what would PEPCO operating company's  
21 share of that money be?

22 A Well, if -- I'm actually usually pretty

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1 good at numbers.

2 Q I thought so.

3 A Probably somewhere -- I would think  
4 somewhere between 25 and 35 million. Subject to  
5 check.

6 Q All right. I was going to say I get  
7 closer to 36 when I do the math.

8 A Okay.

9 Q I'll tell you my assumptions are that  
10 PEPCO, the operating company, is about 20 percent  
11 of the meters in the total holding company. Now,  
12 I could be off on that.

13 If you allocated, instead, on the basis  
14 of rate base, the way Ms. Francis was arguing  
15 perhaps ought to be done, what would the  
16 allocation of that \$180 million be to PEPCO  
17 Holdings?

18 A To PEPCO or to PEPCO Holdings?

19 Q I'm sorry. To PEPCO, the operating  
20 company.

21 A I don't know that answer.

22 Q Okay. To the District of Columbia, as a

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1 matter of rate base, do you know --

2 A Mr. McGowan could probably provide that,  
3 but I don't know the answer to that question.

4 Q Excuse me a second.

5 If you assume that the District of  
6 Columbia represents 25 percent of PHI's rate base,  
7 what would the allocation be?

8 A One-fourth and one-eighth.

9 Q Right. 45 million?

10 A I think that's the right number. I think  
11 that's what the math would be.

12 Q Okay. And the increase in your last --  
13 the increase in revenue requirement in your last  
14 rate case, formal case 1103, was what?

15 A I'm not recalling right off the top of my  
16 head.

17 Q Would you accept -- I bet the Chair knows  
18 it by heart, but I'm going to ask you to accept  
19 24 million, more or less, subject to check.

20 A Sure.

21 Q Great. Thank you.

22 Still on the subject of the merger not

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1 going forward, Mr. Rigby, is it true that PEPCO  
2 Holdings' board continues to prepare for the  
3 possibility of a stand-alone going forward?

4 A Does the board prepare? Help me  
5 understand what you mean by that.

6 Q Let me ask you to take a look at an  
7 exhibit.

8 A Uh-huh.

9 Q It's exhibit -- it's confidential Exhibit  
10 DCG 30. And on the basis of same understanding  
11 I've had with counsel previously -- and I'm going  
12 to look at Mr. Meier to make sure it's still  
13 okay -- I believe I'm allowed to ask you questions  
14 about the exhibit without quoting from it into the  
15 public record.

16 A Sure.

17 Q All right?

18 A Yep, I'm there.

19 MR. MEIER: That's acceptable.

20 BY MR. COYLE:

21 Q For the record, Mr. Rigby, the document  
22 is the CEO perspective on the PHI board's

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1 strategic planning retreat, September 18, 2014,  
2 correct?

3 A Yep.

4 Q Okay. And that CEO perspective includes  
5 a slide in it, does it not, that talks about what  
6 happens if the merger does not proceed. Am I  
7 correct?

8 A Yes, sir.

9 Q And which slide is that, for the record?

10 A I believe you're referring to slide 7 of  
11 the PowerPoint. Page numbered 7.

12 Q Thank you, sir. Now, does that  
13 reflect -- and perhaps I misstated my question.  
14 Does that reflect at least that PEPCO's executive  
15 management continues to plan, as a prudent matter,  
16 for what might happen with PEPCO if the merger  
17 does not go forward?

18 A We have had dialogue with the board that  
19 we need to be prepared for multiple outcomes.

20 Q Okay. And as you sit here today, do you  
21 feel you are?

22 A Prepared?

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1 Q For multiple outcomes, yeah.

2 A We're not anticipating, but we are  
3 continuing to think through and not be caught  
4 flat-footed should that outcome not play out the  
5 way we want it to.

6 Q And for the record, I wanted to identify  
7 the reference page at the top as being  
8 confidential D.C. 1119, DC SUN DR 5-7,  
9 attachment A, page 122 of 178. Is that right,  
10 Mr. Rigby?

11 A Yes, sir.

12 Q Thank you.

13 Now, Mr. Rigby, let me ask you to take a  
14 look at Exhibit DCG 31.

15 A I'm there.

16 Q And this, I'll represent to you, is a  
17 screen shot of PEPCO Energy Services' website.  
18 Are you familiar with PEPCO Energy Services'  
19 Internet advertising?

20 A More so in the last two days when I saw  
21 this yesterday, yes.

22 Q All right. Let me just ask you in

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1 general terms, in the interest of expediting your  
2 cross-examination, whether, as far as you know,  
3 Exhibit DCG 31 is an accurate representation of  
4 what services PEPCO Energy Services provides in  
5 terms of energy management and similar matters?

6 A No, it is not.

7 Q It is not?

8 A It is not.

9 Q Why not?

10 A Because it makes reference to electricity  
11 and natural gas supply, and we have exited that  
12 business. And that website is being reconstructed  
13 as we speak.

14 Q Okay. Thank you.

15 A No, thank you.

16 Q Let me ask you, then, to take a look at  
17 Exhibit DCG 32 -- it's good to clarify these  
18 things, Mr. Rigby -- the PEPCO Energy Services  
19 website on power and thermal services. Is that  
20 still an accurate representation of services  
21 provided by PEPCO Energy Services?

22 A I've not looked at this as closely as I

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1 did at the other. I could imagine that there may  
2 be a problem. But I'm not aware of what it is.

3 Q Okay. You don't know one way or the  
4 other?

5 A I haven't studied this and -- in the  
6 detail so -- where I could say to you  
7 affirmatively yes or no.

8 Q Okay. Would there be another witness who  
9 would be more familiar with this subject than you?

10 A Mr. McGowan will be fully up to speed by  
11 the time he gets up here.

12 Q Very good. Thank you.

13 Finally, Mr. Rigby, Exhibit DCG 33. Is  
14 that an accurate representation of available  
15 employment positions at PEPCO Energy Services?

16 A I'm not aware of the detail behind this.

17 Q Is PEPCO Energy Services still hiring  
18 these days, as far as you know?

19 A Could be. I'm just not aware of that  
20 detail.

21 Q All right. Thank you.

22 Is there another witness who would know

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1 about PEPCO Energy Services' current hiring?

2 A Mr. McGowan would be happy to answer  
3 that.

4 Q Now, Mr. Rigby, let me change topics  
5 here, and I respect the fact that Ms. Francis took  
6 through a lot of detail about your personal stock  
7 acquisitions related to the proposed merger. I  
8 just wanted to ask you whether you've had the  
9 opportunity to take a look at what has been marked  
10 for identification as Exhibits DCG 24 through  
11 DCG 27, and if so, whether you can tell me whether  
12 those are the individual SEC forms 4 that were  
13 filed in connection with the various stock awards  
14 that had been made to you since -- excuse me --  
15 between April 30, 2014 and February 26, 2015?

16 A Mr. Coyle, could you please give me the  
17 starting point again?

18 Q Yeah. It's DCG 24 through DCG 27.

19 A Okay. I'm with you. Thank you.

20 Q I'll just warn you upfront, while you're  
21 looking, I'm trying to avoid asking questions  
22 about each one of them.

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1           A       I believe that's the case, Mr. Coyle.

2           Q       Thank you. I'd like to ask you next to  
3 go back to Exhibit DCG 1. And beginning on the  
4 page number 49 at the bottom of the page on  
5 Exhibit DCG 1, there is a discussion of your  
6 extension agreement.

7           A       Page 49?

8           Q       Labeled 49 at the bottom. It's page 49  
9 of the proxy statement.

10          A       I got you.

11          Q       The discussion of your extension  
12 agreement. And it carries over to the next page a  
13 little bit.

14          A       Right. I'm there.

15          Q       Okay. One of the things I was unclear  
16 about in your discussion with Ms. Francis was  
17 whether there are stock awards or other  
18 compensation made to you under the extension  
19 agreement that are not reflected in the  
20 presentation of the golden parachute. It struck  
21 me they were probably separate items, but --

22          A       Yes.

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1 Q -- I know of no way to figure that out  
2 other than to ask you.

3 A The -- the stock awards related to the  
4 extension are not in that golden parachute.

5 Q And do you know approximately how many  
6 shares of stock -- you can do this net of taxes if  
7 you tell me --

8 A It was on the -- it was on the  
9 Exhibit 24. I think it was -- well, it was on  
10 Exhibit -- let me draw your attention to DCG  
11 Exhibit 24, which is the May 2nd, SEC form 4  
12 report.

13 Q Okay. Those are the share awards  
14 associated with the extension agreement?

15 A That's my recollection. Yes.

16 Q Okay. And then if I do the -- if I'm  
17 doing the math correctly -- I just wanted to make  
18 sure I understood what you were explaining to  
19 Ms. Francis -- you get a total award of 73,394  
20 shares, plus 110,092 shares, for a total of  
21 183,486 shares. And then you surrender back  
22 37,284 shares, plus 55,927 shares, for a total of

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1 93,211 shares in order to cover your state and  
2 federal income tax liability.

3 A That's correct.

4 Q Okay. So the net -- your net walk-away  
5 with that is about 93,000 shares, right?

6 A Sure. Accept the math.

7 Q Okay. And if the merger is consummated,  
8 each of those shares will be worth \$27.25?

9 A That's correct.

10 Q Okay. Just in the interest of rounding  
11 out -- I'm sorry. In the interest of rounding out  
12 my exhibit list, Mr. Rigby, Exhibit DCG 28 is the  
13 SEC's filing instructions for form 4, which tells  
14 you what the codes are. Are you familiar with  
15 those instructions?

16 A More recently, just when I was looking at  
17 these exhibits.

18 Q Okay.

19 A I don't have a huge depth in the  
20 instructions.

21 Q Okay. You recognize the document as an  
22 SEC publication?

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1 A Yes, sir.

2 Q Thank you. All right.

3 One last set of questions, Mr. Rigby.

4 Your rebuttal testimony at page 2, lines 8 through

5 11 --

6 A Shall I put this aside?

7 Q Yeah, you can put that aside.

8 A Thank you.

9 Q I told you, if you confirm the accuracy  
10 of the representation, I wasn't going to ask you  
11 questions.

12 A Yes, sir.

13 Q Okay. Your rebuttal at page 2, lines 8  
14 through 11. You state, The District of Columbia  
15 government is seeking conditions that would far  
16 exceed the benefits to Exelon of entering into  
17 this transaction and, if adopted by the  
18 Commission, would likely terminate the  
19 transaction.

20 Do you see that? Your rebuttal  
21 testimony.

22 A Yes, sir.

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1           Q     Okay. All right. Now, you do not in  
2 your rebuttal testimony otherwise address or try  
3 to substantiate that comment as far as I can tell,  
4 do you?

5           A     I don't think so. I think I make  
6 reference to other considerations that other  
7 parties are looking for, though.

8           Q     I just wanted to give you this  
9 opportunity to refer me to Mr. McGowan for  
10 discussion of the substance of what joint  
11 applicants have to say about the District's  
12 proposed conditions and to shorten what might  
13 otherwise be a rather lengthy cross-examination on  
14 that subject.

15                    Would you -- rather than have me take you  
16 through the accuracy of that statement, Mr. Rigby,  
17 would you prefer to refer me to Mr. McGowan for  
18 the details?

19           A     Well, I don't want to elongate this, but  
20 I want to make sure I'm being responsive to your  
21 question. So...

22           Q     It's up to you.

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1           A       You could refer to him, but I don't want  
2 it to be appearing like I'm trying to duck the  
3 question either.

4           MR. MEIER: Perhaps Mr. Coyle could be a  
5 little more specific about what that line of  
6 questioning is, if I may --

7           MR. COYLE: Sure. That's fine.

8           MR. MEIER: -- and then Mr. Rigby can  
9 make an informed --

10          MR. COYLE: That's fine.

11 BY MR. COYLE:

12          Q       Let me try it this way, Mr. Rigby. You  
13 are aware, are you not, that Mr. McGowan presents  
14 a rather detailed critique --

15          A       Oh, yes.

16          Q       -- of how costly the District's  
17 conditions --

18          A       Yes.

19          Q       -- would be?

20          A       Yes. Whether read that, yes.

21          Q       And that's based on an understanding,  
22 which I assume is his understanding of what the

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1 cost of those conditions might be.

2 A I support his -- I support what he's  
3 saying, but it is his testimony.

4 Q And you have not independently analyzed  
5 that issue?

6 A No, I have not independently analyzed  
7 that, no.

8 Q So if I wanted to cross-examine on that,  
9 I should cross-examine Mr. McGowan and not you?

10 A I would probably be punting to  
11 Mr. McGowan.

12 MR. COYLE: Thank you very much,  
13 Mr. Rigby. I have no further questions for you.

14 THE WITNESS: Thank you, Mr. Coyle.

15 CHAIRMAN KANE: Mr. Speck?

16 MR. SPECK: Thank you, Your Honor.

17 CHAIRMAN KANE: Hold up one second.

18 Before we start with you, we're going to,  
19 again, take a -- we've been going about two hours.  
20 We're going to take about a five to ten-minute  
21 break.

22 (Whereupon, a short recess was taken.)

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1 COMMISSIONER FORT: You may be seated.

2 We're back on the record in the hearings  
3 in formal case 1119. The chair will be joining  
4 us, but she wants us to go ahead and keep going in  
5 her absence.

6 MR. SPECK: Thank you,  
7 Commissioner.

8 CROSS-EXAMINATION

9 BY MR. SPECK:

10 Q Mr. Rigby, I'm Randy Speck, and I am  
11 representing DC SUN today. I've got only a few  
12 questions, I hope. Could you first look at your  
13 rebuttal testimony at page 6.

14 A Yes, sir.

15 Q I'm interested in the heading that's at  
16 line 13 that the public benefits offered by Exelon  
17 are not available absent the merger. I'd like to  
18 look at the opposite of that. What are the public  
19 benefits that would be available to the public if  
20 the merger is not completed? Have you thought  
21 about that?

22 A Relative to the stand-alone plan?

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1 Q Yes.

2 A I think that -- well, I guess in some  
3 ways I look at the stand-alone plan as having been  
4 something that existed at a point in time versus  
5 where we are today or where we would be if, for  
6 some reason, the merger was not, you know,  
7 approved.

8 It would be across a range of issues that  
9 I think the company would be facing; therefore, I  
10 think it would be difficult for us to do some  
11 things for quite some time to get back on to what  
12 that stand-alone -- even back to what the  
13 stand-alone plan would be.

14 Q Well, I'm interested just -- is it your  
15 testimony, then, that there are no benefits to a  
16 continuation of a stand-alone plan?

17 A I guess the way I look at it, Mr. Speck,  
18 is it's the opportunity that this transaction  
19 provides relative to that stand-alone plan, and  
20 there are, in my mind, clear benefits to that.

21 Q Well, let me explore with you one  
22 possible benefit of a continuation of the

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1 stand-alone plan. Isn't it true that before the  
2 merger with Exelon was even contemplated, PEPCO  
3 was planning its path forward in what it called  
4 Utility 2.0?

5 A We were on the front end of looking at  
6 the concept.

7 Q And does what you were considering to be  
8 Utility 2.0 include what some have called a grid  
9 of the future?

10 A There are various terms that people have  
11 provided to this, yes.

12 Q And it's also included in some of the  
13 provisions that are being considered in New York  
14 in the REV proceeding?

15 A Yes.

16 Q Could you look at what was preliminarily  
17 identified as our Exhibit 4 for your examination.

18 A This is the 2.0 retreat findings?

19 Q Yes.

20 A Yes, sir. I'm there.

21 Q This is a document that's entitled on the  
22 first page, Utility 2.0 retreat, findings and path

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1 forward. And there's a date of February 26th,  
2 2014. And I believe this was provided to DC SUN  
3 in response to our data request 1-3.

4 A Yes, sir.

5 Q Are you familiar with this document?

6 A Yes, I am.

7 MR. SPECK: Commissioner, I'd like to  
8 have this identified as DC SUN Cross Exhibit 2.

9 COMMISSIONER FORT: It will be so  
10 identified.

11 (DC SUN Cross Exhibit Number 2 was marked  
12 for identification.)

13 MR. SPECK: Thank you.

14 BY MR. SPECK:

15 Q This is a presentation that was made to  
16 the board of directors at PHI in September --  
17 excuse me -- February of 2014, correct?

18 A Yes, sir.

19 Q And this was shortly after your first  
20 contacts with Exelon about the possibility of a  
21 merger; is that right?

22 A That's correct, sir.

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1           Q       And it reports to the board the results  
2 of a retreat that was held on February 6th, 2014;  
3 is that correct?

4           A       Yes. That, and I think it's reflective  
5 of some thinking that the corporation had started  
6 to do in preparation of our planning retreat in  
7 September of 2013 with the board.

8                   MR. SPECK: And Commissioner Fort, I'll  
9 note that this is a confidential document, but I  
10 believe my questions will not require answers in a  
11 separate session. I think they'll be public. And  
12 I'm sure counsel will remind me if there's  
13 something that I stray into that's confidential.

14                   COMMISSIONER FORT: Okay. Can we make  
15 sure that the document is marked a confidential  
16 document, though, for our record?

17                   MR. SPECK: Certainly.

18                   COMMISSIONER FORT: And Mr. Meier, I will  
19 assume that you will tell us if there's an issue,  
20 right?

21                   MR. MEIER: Yes, ma'am.

22                   COMMISSIONER FORT: Okay.

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1 BY MR. SPECK:

2 Q In this retreat on February 6th, which by  
3 the way, was slightly before your first contacts  
4 with Exelon, is that right, about a merger?

5 A The meeting that took place on the 6th?

6 Q Yes.

7 A It was just a few days after Mr. Crane  
8 had made an initial phone call to me.

9 Q Okay. And this was attended by about 50  
10 of the PHI executives; is that right?

11 A It wasn't exclusively the executive team.  
12 There were some other key managers, people that we  
13 thought would be important to help us shape the  
14 discussion.

15 Q And it was an all-day retreat, is that  
16 right, on February 6th?

17 A That's my recollection.

18 Q And you attended as well, didn't you?

19 A Yes, I did.

20 Q This retreat focused on a single area of  
21 PHI's strategic planning; is that correct?

22 A I wouldn't frame it that way.

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1 Q How would you frame it?

2 A It was -- as I looked at this, in the  
3 journey we were on, you know, we had embarked on a  
4 very significant construction program to basically  
5 improve reliability. I would put it much more  
6 into basic blocking and tackling.

7 In parallel with that, we were embarking  
8 on the deployment of smart meters. So I've always  
9 kind of thought of this as, in some ways, building  
10 a platform. We had a shaky platform of -- I'll  
11 say, for lack of a better term. Utility 1.0  
12 wasn't a very good platform, and it needed to be  
13 improved, and we did that.

14 We began to put -- we were fortunate,  
15 slash, albeit with some unfortunate circumstances,  
16 that the government provided stimulus funds that  
17 allowed us to go forward and basically offset some  
18 of the cost of the smart meters because we were  
19 the recipients of that grant.

20 So we embarked on that. And I looked at  
21 it as we were improving the current platform; we  
22 were beginning to put evolving technology in place

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1 that would help us even with the current platform.  
2 But it was -- ultimately, as we thought about the  
3 evolution, we saw a change coming at us.

4           And as we got into the latter part of --  
5 middle of 2013 -- and I remember very clearly  
6 this -- there's no sense of mission accomplished  
7 with the basic platform, but we felt that it was  
8 time to perhaps broaden our perspective to look at  
9 where the industry was going, because we were just  
10 so hunkered down on the basic reliability.

11           So long-winded way to say that that's the  
12 way I look at this, that this was kind of an  
13 accumulative product, if you will, that even  
14 predated the planning retreat.

15           Sorry for the long-winded comment.

16           Q     That's okay. In your testimony earlier  
17 today, your attention was called to page 3 of your  
18 direct testimony and your vision statement there.

19           A     Yes.

20           Q     Was this planning that was being done in  
21 February of 2016 -- 2014, excuse me, consistent  
22 with your vision?

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1           A       I think it was, yes. I think it was a  
2 logical step in that progression.

3           Q       And the retreat identified several  
4 reasons for PHI initiating this planning effort;  
5 is that right?

6           A       That's correct.

7           Q       And if you look at the page that's  
8 numbered 3 --

9           A       Yes, sir.

10          Q       -- in the lower right-hand corner, are  
11 those the reasons for undertaking this planning  
12 effort?

13          A       I don't think it was intended to be  
14 all-inclusive, but it's -- it's a pretty good  
15 working summary.

16          Q       Well, looking at the third bullet down  
17 about customer desire for resilient local and  
18 energy-efficient solutions that drive great  
19 architecture --

20          A       Right.

21          Q       -- did that, at least in part, refer to  
22 distributed generation?

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1 A It would be inclusive of that, yes.

2 Q And when you refer to central utility  
3 there, rather than the central utility, you're  
4 talking about the individual utility, like PEPCO  
5 in D.C., correct?

6 A Correct.

7 Q And the fourth bullet down, the  
8 technological advances that may reduce the value  
9 of or, in some cases, conflict with traditional  
10 integrated grid, especially generation and  
11 transmission, there you were talking about  
12 technological advances that also included  
13 distributed generation; is that correct?

14 A That's correct.

15 Q If you look over at page 8 in this  
16 presentation -- and you list there the assumptions  
17 driving the industry. Was one of those  
18 assumptions the bullet number 4, the further  
19 penetration of distributed energy resources and  
20 net metering activities?

21 A That's what it says.

22 Q So that was one of the things that was

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1 also driving your planning for Utility 2.0; is  
2 that correct?

3 A Yes.

4 Q And looking over at page 5 in Exhibit --  
5 DC SUN Cross Exhibit 2 -- and there's a line at  
6 the bottom of that page, The time is right for PHI  
7 to focus on evolution to Utility 2.0.

8 Was that a conclusion that was reached by  
9 the 50 or so managers at this retreat?

10 A That was our consensus.

11 Q So you thought the timing was good for  
12 this retreat?

13 A As I explained in the evolution of -- at  
14 least from my point of view, that we -- I also  
15 felt we had, I'll say, the ability to focus beyond  
16 just the basic reliability of the system.

17 Q And on the next page, page 6, you  
18 describe -- or the presentation describes the next  
19 steps. And was one of those steps to begin a  
20 dialogue with regulators and legislators and other  
21 stakeholders by June of 2014 on the topic of  
22 Utility 2.0?

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1 A That was our plan at that point.

2 Q And that was before you contemplated a  
3 possible merger; is that right?

4 A We were only beginning that process.

5 Q And another one of the next steps that  
6 you anticipated was a presentation of a  
7 comprehensive Utility 2.0 strategy at the  
8 September 2014 board retreat; is that right?

9 A That's correct.

10 Q So you expected to do a good bit of work  
11 between February and September to make that  
12 comprehensive strategy; is that right?

13 A Right.

14 Q And in fact, what happened was that you  
15 pushed the pause button on this effort in the  
16 summer of 2014; is that right?

17 A That's the way it was -- I described it  
18 in my deposition, yes.

19 Q And was that pause button pushed because  
20 of the merger?

21 A Certainly in part, yes.

22 Q Did Exelon ask you to push the pause

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1 button?

2 A No, they did not.

3 Q Now, I believe you testified just a few  
4 minutes earlier in response to Mr. Coyle's  
5 question that one of the things that you were  
6 concerned about with the board at that point was  
7 that if the merger didn't go through, you didn't  
8 want to be caught flat-footed, right?

9 A That's part of what I think -- just being  
10 prudent, yes.

11 Q But nevertheless, you put the pause  
12 button on with regard to Utility 2.0, right?

13 A That is what we did.

14 Q So did that leave you flat-footed in some  
15 respects?

16 A I don't believe so.

17 Q But you hadn't done the planning that you  
18 considered to be the next steps in this process?

19 A We made a choice to put a halt to that  
20 effort.

21 Q And the decision to push the pause button  
22 was cleared with the PHI board; is that right?

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1           A       When you say cleared?

2           Q       Was it reviewed by the board?

3           A       I discussed with them that that was what  
4 we would be planning to do, and they were  
5 supportive of that approach.

6           Q       And since you've pushed the pause button  
7 last summer, there hasn't been any further work on  
8 Utility 2.0, right?

9           A       The only thing that I would say that  
10 we've done is that there is still -- I have to go  
11 back and check with Mr. McGowan exactly where it  
12 is, but there was discussion going on about  
13 continuing on with the community solar project in  
14 the State of Maryland. But I don't think there's  
15 much going on with that at this point at all.

16          Q       That's the community solar project  
17 that -- community solar program that was defeated  
18 in the legislature; is that right?

19          A       I don't recall it that way. Maybe -- my  
20 memory is a little fuzzy there, though.

21          Q       Okay.

22          A       This was something that we had discussion

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1 with Maryland MEA, and we were continuing that  
2 discussion, but not much had happened on that  
3 front over the last several months.

4 Q Okay. And specifically with regard to  
5 the next steps that we highlighted a moment ago on  
6 page 6 of DC SUN Cross Exhibit 2, there was not an  
7 initiation of dialogue on the topic of Utility 2.0  
8 with regulators, legislators and other  
9 stakeholders, was there?

10 A There was some, but as we were getting  
11 prepared to file the merger applications, we  
12 understood that having a dialogue on that kind of  
13 a topic, particularly with our regulators, would  
14 be potentially very problematic.

15 Q And there was no comprehensive  
16 presentation made on Utility 2.0 strategy at the  
17 September 2014 board retreat; is that right?

18 A That's correct.

19 Q And isn't it true that if you had not hit  
20 the pause button on planning for Utility 2.0,  
21 there could have been a strategy in place for the  
22 implementation by the board by now?

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1           A       I think the board would have reviewed a  
2 strategy. I'm not exactly sure what they would  
3 have done.

4           Q       If the merger is not completed, PHI could  
5 reverse the pause button and -- that you  
6 instituted in the summer of 2014 and resume work  
7 on Utility 2.0, couldn't it?

8           A       We could.

9           Q       And do you consider the strategy for  
10 Utility 2.0 to be a benefit for the customers in  
11 D.C.?

12          A       Well, I think -- I would agree with the  
13 way Mr. Crane framed, that this is coming. This  
14 is not a matter of if; it's a matter of when.  
15 Pace.

16                   I think that there are probably -- and  
17 I'm just giving you my opinion -- there are  
18 probably multiple views across our customer base  
19 around what Utility 2.0 is or if people even care  
20 about it. I think that what the evolution of  
21 technology has at least taught me is that you will  
22 get, over time, an adoption of that technology and

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1 people will find the benefits in it.

2           So long-winded way to say yes, I think it  
3 would eventually get there. To me it's -- at  
4 least in my opinion, it's a matter of pace.

5       Q     And the pace would have been faster if  
6 you had started this process and continued it in  
7 February 2014 without a pause button.

8       A     I'm not sure about that.

9       Q     Well, you certainly would have continued  
10 to do the work and --

11      A     Right.

12      Q     -- the next steps that you had outlined,  
13 correct?

14      A     But I think we would have had to cross a  
15 very important threshold in terms of how we would  
16 have potentially moved forward. I think the  
17 board -- I'm referring to conversations the board  
18 had around how capital would be deployed and the  
19 challenge we had with recovery of our current  
20 capital spend. There were no dollars in our  
21 construction budget, our capital program, over the  
22 planning horizon, that -- beyond, I'll say, the

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1 completion of any residual smart grid, smart meter  
2 deployment, there were no monies in that. And I  
3 think one of the things that we were struggling  
4 with was, how would we do this and when would we  
5 do it?

6           So I think there would have been a very  
7 serious conversation with the board as to whether  
8 or not they would be willing to fund efforts along  
9 these lines in the absence of real clarity of  
10 recovery.

11       Q     And wasn't that need for clarity of  
12 recovery a reason for beginning the ongoing  
13 dialogue on the topic of Utility 2.0 with  
14 regulators and legislators?

15       A     It would have informed it.

16       Q     Would you look at your direct testimony,  
17 please, page at 4 --

18       A     Sure.

19       Q     -- at line 16 and 17. And there you  
20 indicate that, Each company expresses concepts in  
21 its own words, but the substance of the visions  
22 and core values of PHI and Exelon are closely

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1 aligned.

2           Let me explore one area where they may  
3 not have been closely aligned. You would agree,  
4 wouldn't you, that one important substantive area  
5 of a 21st century utility is how it will approach  
6 development of and integration of renewable  
7 generation?

8           A     I think that that issue is coming at us,  
9 yes.

10          Q     Are you aware of a Exelon presentation  
11 that was dated February 19th, 2014, about the same  
12 time as your Utility 2.0 retreat, that listed  
13 Exelon's guiding principles for net metering  
14 policy?

15          A     I don't have tremendous familiarity with  
16 it. I know it's -- I've -- I think I've paged  
17 through it, but I don't have an in-depth knowledge  
18 of it.

19          Q     I wonder if your assistant there could  
20 help you find DC SUN Cross Exhibit 1. This was  
21 introduced in connection with Mr. Crane's  
22 examination yesterday.

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1 A Yes, sir.

2 Q And again, this is a confidential  
3 exhibit, but I will try to avoid getting into  
4 anything that might be considered confidential.

5 A Okay. Is this dated -- this is dated  
6 February 19th, sir?

7 Q February 19th, 2014 --

8 A Okay.

9 Q -- that's correct.

10 A I'm there.

11 Q Okay. If you'll look at the second page,  
12 it's got a number 1 in the lower left-hand corner,  
13 but it's the second page of the document. The  
14 first page is just a cover. It's entitled, Exelon  
15 guiding principles for net metering policy.

16 A Yes, sir.

17 Q The next to the last bullet there, if you  
18 could just look at that one. And could you tell  
19 me whether PHI has established as a guiding  
20 principle that states should not permit virtual  
21 net metering or community generation?

22 A I'm not aware that we have. I'm not -- I

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1 have to admit I'm not exactly sure what those  
2 words mean in this context. But we haven't taken  
3 a position like that that I'm aware of.

4 Q Has PHI established a guiding principle  
5 that state laws should strictly limit the size of  
6 customer generation facilities to on generation --  
7 on-site generation need?

8 A I'm not aware that we've taken a position  
9 like that.

10 Q Have you taken a position opposite of  
11 that?

12 A I don't think so. We've been -- we're so  
13 much in the formative stage.

14 Q Looking at the first bullet on page 1 --

15 MR. MEIER: Your Honor, insofar as this  
16 is a confidential exhibit and you're reading the  
17 literal lines of the text, I'd ask that -- keeping  
18 in mind, you can ask about it; perhaps --

19 MR. SPECK: I'll avoid that now.

20 MR. MEIER: Thank you.

21 MR. SPECK: If I can.

22 CHAIRMAN KANE: Thank you.

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1 BY MR. SPECK:

2 Q Looking at the first bullet on page 1  
3 that begins, Federal and state policies --

4 A Yes.

5 Q -- has PHI adopted as a guiding principle  
6 that bullet point?

7 A We don't have a published guiding  
8 principle, but we do believe in competitive  
9 markets.

10 Q Well, because PHI owns no generation,  
11 and -- then the subsidies for supply resources  
12 really don't make a difference to you, do they?

13 A Well, we did. We did own generation.

14 Q You don't now, though, correct?

15 A We don't now, but we did. And I don't  
16 think our view is different, then.

17 Q But now you're -- in terms of --

18 A We are what we are right now.

19 Q Right.

20 A I'll grant you that.

21 Q So having no generation, you're  
22 essentially agnostic with respect to the

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1 integration of third-party supply offerings; is  
2 that correct?

3 A I think as long as it's done in a  
4 competitive level playing field.

5 Q Well, if it produces lower costs for your  
6 customers -- that's the bottom line too, isn't it?

7 A Well, it would also, then, I think,  
8 depend on the application of subsidies. If those  
9 subsidies make it lower versus what the  
10 competitive market -- that is not something that  
11 we find to be a proper construct.

12 Q Well, does a subsidy like the investment  
13 tax credit for wind or solar have any impact  
14 whatsoever on PEPCO?

15 A I don't think it has an impact on PEPCO.

16 Q If you look at page 4 of Cross Exhibit --  
17 DC SUN Cross Exhibit 1.

18 A Page 4 up in the lower right or the upper  
19 right?

20 Q In the lower left.

21 A Okay. I'm there. Thanks. Sorry.

22 Q And look at the heading Community energy

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1 generation facilities, and the second bullet  
2 there. And there's a contrast between what BGE  
3 was able to do in Maryland -- this is all  
4 accomplishing the guiding principles in Maryland.  
5 And the second sentence in that bullet indicates  
6 that PEPCO took a very different position; is that  
7 correct?

8 A That's what it says.

9 Q And isn't that true?

10 A I'm sure it is.

11 Q So at least with respect to some aspects  
12 of distributed solar generation, PHI's vision is  
13 not consistent with Exelon's vision, is it?

14 A I understand what you're saying. As it  
15 relates to this -- and if you're asking me to  
16 respond based on what I'm reading, I would prefer  
17 to have the opportunity to go back and really  
18 become much more familiar with what's in here.  
19 But obviously we're not going to have the time to  
20 do that.

21 Q And certainly Exelon believed that PHI's  
22 position was different, didn't they?

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1 A That's what this says.

2 Q Now, I'd like to turn to energy  
3 efficiency and demand response programs and some  
4 questions that were asked yesterday actually by  
5 the Chair and see --

6 A Mr. Speck, should I put this aside?

7 Q Yes, you may put that aside. Thank you.

8 You were in the hearing room yesterday  
9 during the cross-examination of Mr. Crane about  
10 commitment 23 in Exhibit --

11 A Yes, sir.

12 Q -- (4A)-2, right?

13 That commitment was that PHI and PEPCO  
14 will maintain and promote existing energy  
15 efficiency and demand response programs.

16 The Chair asked yesterday, and I will  
17 quote it exactly, asked Mr. Crane what  
18 PEPCO-sponsored energy efficiency programs are  
19 you --

20 CHAIRMAN KANE: Mr. Speck, could you  
21 identify what you're quoting from?

22 MR. SPECK: It's from yesterday's

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1 transcript, page 521. It's lines 5 through 7.

2 Thank you, Madam Chair.

3 BY MR. SPECK:

4 Q And the question was -- you can go back  
5 to line 3 -- On energy efficiency, the second  
6 thing you mentioned, what would you maintain the  
7 existing one, what PEPCO-sponsored energy  
8 efficiency programs are you referring to and  
9 committing to maintain?

10 And Mr. Crane indicated that there was a  
11 program with a name, but he was not remembering  
12 it.

13 I'm wondering if you can help us today as  
14 to what PEPCO-sponsored energy efficiency programs  
15 are referenced in commitment 23 when Exelon says  
16 they will maintain and promote those energy  
17 efficiency -- those current energy efficiency and  
18 demand response programs?

19 A He could have been referring to the  
20 direct load control program that's in place.

21 Q And what is that program?

22 A I think we have maybe 25,000 customers

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1 that have devices on their air-conditioning units  
2 that allow us to manage the load in peak periods.

3 Q Is that a demand response program or an  
4 energy efficiency program?

5 A It would be a demand response, I'm sorry.

6 Q What about energy efficiency? That's  
7 really -- I think that was the Chair's question  
8 yesterday with regard -- in this spot.

9 A I think the energy efficiency programs  
10 are managed through the SEU.

11 Q Right. And so they're really aren't  
12 any --

13 A That's right.

14 Q -- PEPCO-sponsored energy efficiency  
15 programs?

16 A I think the Chair did an excellent job  
17 in --

18 Q Right.

19 A -- pointing that out.

20 Q So maintaining those programs is really  
21 not providing any benefit because currently there  
22 aren't any, right?

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1 A I understand that, sir.

2 Q Okay. And then the Chair, on page 522,  
3 at line 11 -- or beginning at line 10 -- said, And  
4 on demand response, what specific -- is there a  
5 specific PEPCO demand response program that you're  
6 committing to maintain?

7 And Mr. Crane said he didn't have the  
8 details on that and that you would be the person  
9 to talk to.

10 A Right.

11 Q Can you fill us in on that?

12 A I think that's the direct load control  
13 that he's referring to.

14 Q Is there any other program other than  
15 that?

16 A Not that's coming to my mind.

17 Q And is that program -- was it initiated  
18 through a Commission order?

19 A I'm not recalling the basis of it, sir.

20 Q Do you know anyone who would know the  
21 basis for --

22 A Mr. McGowan.

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1 Q Mr. McGowan?

2 A Yes, sir.

3 Q Okay. Thank you very much. Thank you  
4 very much, Mr. Rigby. I have no further  
5 questions.

6 A Thank you, sir.

7 CHAIRMAN KANE: Thank you.

8 D.C. Water?

9 MS. WHITE: Thank you, Madam Chair.

10 CROSS-EXAMINATION

11 BY MS. WHITE:

12 Q Good afternoon, Mr. Rigby.

13 A Good afternoon.

14 Q My name is Nancy White. I represent the  
15 District of Columbia Water and Sewer Authority. I  
16 have just, I think, two questions for you this  
17 afternoon.

18 Earlier today, when you were speaking  
19 with Ms. Francis, I believe I heard you say that  
20 the board was informed that the \$100 million  
21 customer investment fund should be adequate to  
22 support regulatory approval of the merger; is that

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1 correct?

2 A We were advised that the package of  
3 commitments should suffice in terms of meeting the  
4 standards in the jurisdictions.

5 Q And who advised you to that effect?

6 A Our attorneys.

7 Q And was the board also advised at that  
8 time that Exelon was required to fund a customer  
9 investment fund of 113 million, plus direct bill  
10 credits to customers of over 100 million, in order  
11 to gain approval of its acquisition of  
12 Constellation?

13 A I think they were aware that that amount  
14 that you just referenced was higher in that  
15 transaction. But they were fundamentally  
16 different transactions in terms of the potential  
17 for synergies.

18 MS. WHITE: I think that's all I have,  
19 Madam Chair. Thank you.

20 Thank you, Mr. Rigby.

21 THE WITNESS: Sure. Thank you.

22 CHAIRMAN KANE: Ms. Wein?

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1 MS. WEIN: No questions.

2 CHAIRMAN KANE: Commissioners' questions.  
3 Commissioner Fort? Commissioner Phillips, do you  
4 have questions?

5 COMMISSIONER PHILLIPS: I just have one  
6 or two questions.

7 Good afternoon, Mr. Rigby.

8 THE WITNESS: How are you, sir?

9 COMMISSIONER PHILLIPS: Good. In  
10 response to questions from Mr. Coyle from  
11 D.C. government, I believe I heard you state, and  
12 tell me if this is right, that there's a benefit  
13 to having the employees of PEPCO reflect the  
14 community that it serves; is that right?

15 THE WITNESS: That's correct.

16 COMMISSIONER PHILLIPS: And you're aware  
17 that we -- at the Commission's public hearings,  
18 community hearings that we had, there were many  
19 people who testified about the impacts of  
20 potential job losses if the merger was approved.  
21 You are aware of that, right?

22 THE WITNESS: Yes, sir.

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1           COMMISSIONER PHILLIPS:  Would you agree  
2   that, as a corporate citizen, that PEPCO -- it  
3   would be a good thing that, whenever possible, to  
4   hire District residents for jobs in this local  
5   community?

6           THE WITNESS:  It would -- I'm not sure if  
7   we're allowed to limit our hiring to a D.C.  
8   resident.  We certainly want to have employment  
9   and we -- I never look at it as jobs.  I look at  
10  it as careers that we offer people.

11           I think one of the unique things that  
12  came out of the D.C. undergrounding was kind of  
13  building a pipeline, and I've been impressed with  
14  what Exelon has done in the City of Chicago with  
15  its workforce development programs.  So I don't  
16  think there's any difference of opinion  
17  philosophically that we would love to have more  
18  D.C. residents as employees.

19           COMMISSIONER PHILLIPS:  That's all I  
20  have.  Thank you.

21           CHAIRMAN KANE:  Commissioner Fort?

22           COMMISSIONER FORT:  Good afternoon,

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1 Mr. Rigby.

2 THE WITNESS: How are you?

3 COMMISSIONER FORT: I'm good. Thanks.

4 And you?

5 THE WITNESS: Better.

6 COMMISSIONER FORT: Just a little bit  
7 longer. So I want the record to reflect how  
8 certain key decisions are made currently under  
9 PEPCO's current structure and under PHI. So I  
10 want to ask you a series of questions about four  
11 different things --

12 THE WITNESS: Sure.

13 COMMISSIONER FORT: -- to get you to  
14 identify how those decisions are made. So I'm  
15 going to ask the first on how rate case filings  
16 are done, then how preparation of budgets are  
17 done, and then on the building of a new  
18 substation, and then on a response to a major  
19 event like a storm.

20 So first on rate cases. Under the  
21 current structure by which a PEPCO rate case is --  
22 a decision is made to file a PEPCO rate case, with

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1 respect to when a base rate case is filed, who  
2 makes that decision?

3 THE WITNESS: Ultimately, that would be a  
4 decision that would probably come to what we refer  
5 to as the executive leadership team, which is  
6 essentially my direct reports.

7 The formation of that analysis is done  
8 through what we refer to as our regulatory policy  
9 committee, which is a series of senior officers,  
10 legal, government affairs, finance. That  
11 committee is co-chaired by Mr. Fitzgerald, the  
12 general counsel, and Mr. Boyle, who is the chief  
13 financial officer. That would include -- also  
14 Mr. Velazquez would sit on that committee, as  
15 would Ms. Cooper, Mr. Parker.

16 We would be looking at, I'd say, syncing  
17 up our financial plan, our construction budget,  
18 and monitoring points in time where we would -- as  
19 you have seen, our practice has been -- it's every  
20 9 to 12 months. That would make -- that would  
21 give us, then, a timeline that would ultimately  
22 come up to the executive leadership team, and we

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1 would affirm that recommendation.

2 COMMISSIONER FORT: And who makes the  
3 final decision when to file?

4 THE WITNESS: It's usually something  
5 that -- my experience has been it becomes a  
6 product of the discussion and a product of the  
7 analysis that points that that is the best course  
8 of action.

9 It is looked in -- the analysis considers  
10 the timing and the capacity that we might have to  
11 manage multiple cases. So that's just more of a  
12 practicality. We have been in situations where  
13 we've had multiple cases going on at one time.

14 COMMISSIONER FORT: So in the case --  
15 when you say multiple cases, you mean cases in  
16 multiple jurisdictions --

17 THE WITNESS: Yes. Yes, ma'am.

18 COMMISSIONER FORT: -- at the same time.

19 So when there are multiple cases in  
20 multiple jurisdictions, how is that decision made?

21 THE WITNESS: Well, it would be made in  
22 the context of the whole.

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1           COMMISSIONER FORT: The same group is  
2 making the decision?

3           THE WITNESS: Right. Right. And they  
4 would be looking at the regulatory timeline for  
5 all of our jurisdictions. They have oversight of  
6 that entire process.

7           COMMISSIONER FORT: So you anticipated  
8 one of my questions, which was, what's the role of  
9 the regional president?

10          THE WITNESS: Right.

11          COMMISSIONER FORT: I heard you say that  
12 Ms. Cooper was part of the group that was making  
13 the decision.

14          THE WITNESS: Yeah. She is part of the  
15 policy committee.

16          COMMISSIONER FORT: And does the PHI  
17 board have any role in the decision of when to  
18 file?

19          THE WITNESS: Not really. That is  
20 something that they really defer to management.  
21 We would typically talk about the environment, you  
22 know, what the lay of the land looks like.

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1           We're -- up through last year, we were  
2 blessed with having two former Public Service  
3 Commission -- two chairs on our board until  
4 Mr. Heintz retired. So this would be something  
5 that they -- that the board, and they in  
6 particular, would have a particular interest in.

7           COMMISSIONER FORT: So if I asked the  
8 same questions about the amount of rate relief  
9 that was being sought in a particular base rate  
10 case filing, would it be -- would the answers be  
11 the same as to who participates in that --

12           THE WITNESS: Oh, yeah.

13           COMMISSIONER FORT: -- decision?

14           THE WITNESS: Yeah. The overall -- I'd  
15 say all of the attributes of the case would be  
16 presented.

17           COMMISSIONER FORT: So that would be the  
18 same for whether or not to include a new element  
19 in the case, like a new rate design or --

20           THE WITNESS: Yes.

21           COMMISSIONER FORT: -- something like  
22 that?

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1 THE WITNESS: Yes.

2 COMMISSIONER FORT: And then who appears  
3 before the Commission as witnesses in the base  
4 rate cases?

5 THE WITNESS: It would typically be the  
6 CFO. On occasion, I have. It would typically be  
7 Mr. McGowan, who is the vice president of our  
8 regulatory group. Typically, it would be either  
9 Mr. Gausman, looking at more specifics on the  
10 engineering, or Mr. Dickerson or Mr. Maxwell.

11 COMMISSIONER FORT: So the people you  
12 named are employees of PHI in some cases?

13 THE WITNESS: Of the service company.

14 COMMISSIONER FORT: Of the service  
15 company.

16 THE WITNESS: Yeah.

17 COMMISSIONER FORT: Now, we turned and  
18 looked at the preparation of PEPCO's budgets, and  
19 starting with the annual -- well, maybe we'll  
20 start with the capital budget, because that's a  
21 five-year --

22 THE WITNESS: Sure.

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1           COMMISSIONER FORT:  -- budget.  Who  
2 participates in those decisions?

3           THE WITNESS:  Many, many, many people.  
4 It's -- I wouldn't characterize it each year as a  
5 complete bottoms-up, but it's a pretty strong  
6 bottoms-up of looking at -- starting with any  
7 projects that would carry over from one year to  
8 the next, looking at load growth, analyzing the  
9 health of the system, where we may need to do work  
10 sooner rather than later.  It would be looking at  
11 incorporating commercial or residential expansion  
12 in different parts of the city here.

13           That would all be under the --  
14 Mr. Maxwell actually is the -- I'll say he's the  
15 shepherd of that process.

16           COMMISSIONER FORT:  I was going to ask  
17 you, who was the lead?  But I'll take shepherd.

18           THE WITNESS:  Right.  Yeah.  He's a good  
19 shepherd, too.  He's a -- and he reports up  
20 through Mr. Sullivan, who is the senior vice  
21 president of operations, who reports to  
22 Mr. Velazquez, who is the head of the business.

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1           COMMISSIONER FORT: And who makes the  
2 final decision on the budget?

3           THE WITNESS: Well, again, it's -- it's a  
4 collaborative, because there's also an  
5 intersection with corporate finance group, because  
6 you have to make sure that -- you know, that the  
7 plan can, in fact, be funded.

8           It's also interacting with the rate case  
9 in terms of understanding what the flow of funds  
10 would be. So it's -- it's a very comprehensive  
11 and it's a very collaborative, inclusive process.

12           The -- that -- that decision as it  
13 relates to any of our jurisdictions is then  
14 compiled into an overall power delivery budget,  
15 with the components all very specifically  
16 identified, that gets brought up to my team for  
17 review and approval, and then it's presented to  
18 PHI board.

19           COMMISSIONER FORT: So you anticipated a  
20 couple of my questions, which were who decides how  
21 to allocate the capital between -- well,  
22 actually -- you didn't actually answer that one.

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1 Let's ask that one. Who decides how to allocate  
2 the available capital between multiple utilities?

3 THE WITNESS: It's really down there  
4 Mr. Velazquez's team, who runs the power delivery  
5 business.

6 COMMISSIONER FORT: And does that happen  
7 before it comes to your team?

8 THE WITNESS: Yes.

9 COMMISSIONER FORT: And when you say it  
10 comes to your team, is that the executive  
11 committee that --

12 THE WITNESS: It's the executive  
13 leadership.

14 COMMISSIONER FORT: Executive leadership  
15 committee of the seven to eight people --

16 THE WITNESS: That's correct.

17 COMMISSIONER FORT: -- that you mentioned  
18 earlier?

19 THE WITNESS: Right.

20 COMMISSIONER FORT: What's the role of  
21 the regional president in that process?

22 THE WITNESS: They're aware. I mean, I

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1 would say that they are informing the process of,  
2 I'll say, for the most part problem areas, making  
3 sure that we understand where development is  
4 taking place.

5           It's -- I would say it's more on the  
6 technical side, so it may not necessarily interact  
7 with the government affairs folks quite as much.  
8 In that particular situation, it's -- I'd say it's  
9 much more of an engineering study that's informed  
10 by all those factors I mentioned earlier.

11           COMMISSIONER FORT: And what's the role  
12 of the PHI board?

13           THE WITNESS: They approve the overall  
14 power delivery budget. There are subset -- there  
15 are subsidiary boards. There's a board for PEPCO,  
16 a board for Atlantic Electric, there's a board for  
17 Delmarva. I'm not recollecting that -- it could  
18 be. I have to go back and just check.

19           The -- I'm not being clear. Those  
20 internal boards are all -- the directors are all  
21 internal management folks. So I chair the utility  
22 boards. Mr. Velazquez is actually the CEO of

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1 PEPCO. So it would go through that process. But  
2 our process, given our business focus, would be to  
3 take the entirety of the power delivery budget to  
4 the PHI board for approval.

5 COMMISSIONER FORT: So you remind me that  
6 I didn't ask you a question, which is, what's the  
7 role of the PEPCO board?

8 THE WITNESS: It would usually -- I  
9 think -- I don't want to diminish it. It's --  
10 it's a checkpoint along the way, but we really  
11 consider the overall approval to occur at the PHI  
12 board.

13 The size of that expenditure in terms of  
14 our -- you saw it, I think, in Mr. Crane's -- some  
15 of the -- I think in the application there is a  
16 schedule that talked about delegation of authority  
17 and certain spending levels. The aggregate level  
18 for our budget requires PHI board approval.

19 COMMISSIONER FORT: Okay. I was going to  
20 ask you about that delegation of authority, but  
21 I'm going to go back to that.

22 THE WITNESS: Sure.

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1           COMMISSIONER FORT: I didn't ask you when  
2 we were talking about rate case filings, what's  
3 the role of the PEPCO board in a rate case filing?

4           THE WITNESS: It doesn't -- it's actually  
5 just kind of subsumed within the process of my  
6 executive leadership team, because the board of  
7 PEPCO is covered within my executive leadership  
8 team. So, for example, it would be myself, I  
9 believe it's Mr. Velazquez, Mr. Boyle, and  
10 Mr. Fitzgerald.

11           COMMISSIONER FORT: So when your  
12 executive committee team is meeting, it could be a  
13 board meeting as well?

14           THE WITNESS: It is not -- it's not  
15 conducted as such, but it's the same characters  
16 there.

17           COMMISSIONER FORT: So let's run through  
18 the decision to build a new substation, a major  
19 substation, something like the northeast  
20 substation. Who leads -- who is the shepherd for  
21 that --

22           THE WITNESS: Maxwell.

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1 COMMISSIONER FORT: -- process?

2 THE WITNESS: Mike Maxwell.

3 COMMISSIONER FORT: Who participates in  
4 the decision-making --

5 THE WITNESS: Makes the job sound a lot  
6 better than what it really is. I'm sorry.

7 COMMISSIONER FORT: Who participates in  
8 the decision-making process?

9 THE WITNESS: It would be certainly down  
10 to the engineers that would be involved in the  
11 design and construction. So it gets very specific  
12 in terms of those people involved.

13 It would -- as there's more clarity  
14 around the design and the cost and the location  
15 and so forth, it's going to have to interconnect  
16 with government affairs, Ms. Cooper, because we're  
17 not going to be able to build anything unless we  
18 manage through that process as well.

19 That would be considered as a discrete  
20 project within the capital budget. So as it moves  
21 along the path, it would be more -- often than  
22 not, it's going to be approved as part of the

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1 greater project.

2 We have had situations where, for  
3 whatever facts and circumstances, cause us to do  
4 something very specific around a project which we  
5 can easily accommodate that within our approval  
6 process.

7 COMMISSIONER FORT: And when you say you  
8 can easily accommodate that within the approval  
9 process, depending on the budget amount, I assume.

10 THE WITNESS: Right. Right. If it was  
11 under a certain level, you know, Mr. Velazquez can  
12 approve it, I can approve it. If it goes above a  
13 certain level, I have to bring it to the board.

14 COMMISSIONER FORT: So that -- who would  
15 approve the final decision on a substation would  
16 be the person who has the budget authority to do  
17 that?

18 THE WITNESS: It would likely be -- more  
19 often than not, it's going to be part -- it's  
20 going to be identified within our typical annual  
21 process, and it would be enveloped within the  
22 overall capital budget that the PHI board

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1 approves.

2 COMMISSIONER FORT: So then maybe --  
3 we'll take that back now to talking about the  
4 annual budget, your operating budget. Who leads  
5 that budget --

6 THE WITNESS: It would be Mr. Velaquez.

7 COMMISSIONER FORT: -- preparation?

8 THE WITNESS: For the utilities?

9 COMMISSIONER FORT: For the utilities.

10 THE WITNESS: It would be Mr. Velazquez.

11 COMMISSIONER FORT: And specifically for  
12 PEPCO, D.C.

13 THE WITNESS: He would be responsible --  
14 he has the profit/loss responsibility for the  
15 utilities.

16 COMMISSIONER FORT: And the  
17 participants -- the major participants in that  
18 process? I know information -- all the  
19 information is coming --

20 THE WITNESS: Right.

21 COMMISSIONER FORT: -- you know, up to  
22 the top.

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1 THE WITNESS: It's a very expansive  
2 process. I mean, you're looking to make sure  
3 you've identified every possible budget line item  
4 so that you don't have a budget bust.

5 COMMISSIONER FORT: What's the role of  
6 the regional president in that process?

7 THE WITNESS: Their budget, because it's  
8 going to be recovered through our cost of service  
9 at PEPCO, their budget is going to intersect with  
10 Mr. Velazquez's process as it relates to what they  
11 do, covering their costs.

12 But they're also going to have the  
13 opportunity to inform the process of particular  
14 projects that are underway, key budget  
15 considerations, things of that nature.

16 So we actively are looking to have the  
17 best information we can and tapping into the  
18 people that are directly on the ground so that we  
19 have a good quality budget.

20 COMMISSIONER FORT: Who approves the  
21 final budget?

22 THE WITNESS: That is actually approved

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1 at the PHI board level as we bring the total  
2 earnings picture of PHI to the board. So they  
3 can -- tremendous reams of detail, but it's  
4 actually approved within the board's annual  
5 approval of our operating budget for the next  
6 year.

7 COMMISSIONER FORT: And who decides how  
8 to allocate the available capital among the  
9 various three -- among the various operating  
10 companies?

11 THE WITNESS: It's really a process --  
12 it's a result of the process. In other words, as  
13 the budget is being put together, it's being  
14 identified as to where the money will be spent.

15 Like in anything, you will have some --  
16 you have to make some choices. And Mr. Velazquez'  
17 process, along with Mr. Boyle, because he's  
18 intimately involved in that -- we have the  
19 opportunity for people to make their case and for  
20 us to have to then make decisions as to what we  
21 can afford and fund.

22 For the utility business, that is, for

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1 the most part, determined by Mr. Velazquez. I  
2 mean, I'm certainly aware of it, but they do a  
3 pretty good job.

4 COMMISSIONER FORT: And that decision --  
5 or the recommendations are made before it goes to  
6 the board, to the PHI board?

7 THE WITNESS: Oh, yes. Yes.

8 COMMISSIONER FORT: So one more. Let's  
9 walk through a major event, like a major storm.  
10 Could be some other type of major outage but  
11 let's, you know, talk about a storm. Who is in  
12 charge of the response from -- if a hurricane  
13 is -- let's not do derecho, because it caught  
14 everybody by surprise. So let's, you know, talk  
15 about Sandy; you know, make it a little easier.

16 THE WITNESS: We use a -- for lack of a  
17 better term, actually harkening back to a very bad  
18 experience -- going back to Hurricane Isabel.

19 COMMISSIONER FORT: Okay. Let's use  
20 Isabel.

21 THE WITNESS: Well, but I want to kind of  
22 spring off that in terms of how that changed our

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1 process.

2           One of the things that -- you may recall  
3 the Witt study that suggested to us that we needed  
4 to follow a -- much more of a FEMA, or maybe in  
5 some ways, almost a military kind of command  
6 center. We -- I don't mean to get too detailed,  
7 but there are -- there's a team on the ground,  
8 there's an incident command structure, and then  
9 there's a crisis management team. Where the work  
10 gets done is in the middle. And that's headed by  
11 a senior operating person.

12           In the case of, let's say, Hurricane  
13 Sandy, in advance of that, we actually convened  
14 the crisis management team. And I chaired that  
15 team. That team exists to not make operational  
16 decisions, but to make sure that the resources are  
17 in sync and being coordinated and that, I'll say,  
18 major communication themes, outreach to the  
19 press -- we don't want the operating people  
20 distracted. We want them to be focused on the  
21 restoration itself.

22           Mr. Velazquez has senior operational

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1 leaders. Mr. Gausman is one of them, because  
2 we'll need to have multiple people who can man the  
3 incident command structure over the course of 24  
4 hours or multiple days. So his senior operating  
5 folks are responsible for, I'll say, the  
6 restoration effort.

7 But on a storm like Sandy coming, we  
8 would convene the crisis management team, and I'm  
9 directly involved in that.

10 COMMISSIONER FORT: What are the guiding  
11 documents that are used -- you mentioned one of  
12 them -- the guiding documents that are used for  
13 the teams during that storm?

14 THE WITNESS: It's in our storm recovery  
15 handbook. And it's crisis management -- it's a  
16 series of well-documented, how-to processes that  
17 we follow religiously, very rigorously. Includes  
18 routine conference calls. There's a script that  
19 we follow. Personnel. All of the supporting  
20 technical steps that we need to take in advance to  
21 make sure that we're able to communicate with  
22 ourselves and effectively respond to issues as

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1 they're evolving. And that's all documented.

2 COMMISSIONER FORT: What's the role of  
3 the regional president in that process?

4 THE WITNESS: They have a very, very,  
5 very, very tough role. They become the face of  
6 the company, and they are out in the public,  
7 making themselves available, whether it's to the  
8 press, whether it's to regulators.

9 I think you may know that one of the  
10 things we did -- I guess it actually predated  
11 Hurricane -- I think it was, actually, after the  
12 summer storms in 2010. We knew we needed to be  
13 much more proactive in making ourselves available  
14 to elected leaders. So we -- as we go through an  
15 event like this, we're going to hold conference  
16 calls each day, and Ms. Cooper in this situation  
17 at PEPCO is the one who is leading that call.

18 COMMISSIONER FORT: And you know, in the  
19 District of Columbia, if there's a major service  
20 outage, there is a hearing process in the  
21 District. Who appears before the Commission under  
22 those circumstances?

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1 THE WITNESS: It would probably be a  
2 team. It would certainly be Ms. Cooper. It would  
3 be the people that were directly involved in the  
4 response, the storm response. Then they could  
5 be -- they're the ones that are best positioned to  
6 respond to the questions.

7 COMMISSIONER FORT: With respect to how  
8 Exelon and its group handles major events, are the  
9 processes similar?

10 THE WITNESS: I think they are, but I  
11 don't have detailed information on that.

12 COMMISSIONER FORT: I'm going to ask  
13 Mr. O'Brien --

14 THE WITNESS: Yeah, I think  
15 Mr. O'Brien --

16 COMMISSIONER FORT: -- the same series,  
17 you know, of questions.

18 THE WITNESS: Yeah.

19 COMMISSIONER FORT: Now, I want to know,  
20 from your discussions with the Exelon  
21 management -- have you had discussions about  
22 whether or not -- how filing rate cases would

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1 change?

2 THE WITNESS: No, I haven't.

3 COMMISSIONER FORT: Have you had any  
4 discussions of how the budget process would  
5 change?

6 THE WITNESS: I'm doing this somewhat  
7 from memory. I don't think it's that different  
8 from the way it's been explained to me. But  
9 obviously, you know, Mr. O'Brien or --  
10 Mr. Khouzami can really maybe draw whatever  
11 distinctions there may be.

12 COMMISSIONER FORT: You mentioned the  
13 delegation of authority chart that's included in  
14 (4A)-2.

15 THE WITNESS: Yes.

16 COMMISSIONER FORT: How is that different  
17 in terms of the level of delegations --

18 THE WITNESS: Well --

19 COMMISSIONER FORT: -- from how PHI  
20 operates?

21 THE WITNESS: I think it's very similar.  
22 I -- I'm not recalling exactly. I think the

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1 amounts are different. I remember think there may  
2 actually be -- there may actually be higher amount  
3 for comparable positions at Exelon, that they have  
4 the authority. But it looked -- that whole  
5 approach looked very familiar to me.

6 COMMISSIONER FORT: I think -- and,  
7 finally, I know that you personally have been a  
8 leader in the area of dealing with cyber security,  
9 and that what you've done at PHI has made it a  
10 priority, and it's obviously very important to us  
11 here in District of Columbia.

12 Have you had discussions with the Exelon  
13 management and looked at what they do in that area  
14 of cyber security as well?

15 THE WITNESS: That's actually how I got  
16 to know Mr. Crane. He -- I knew him from a  
17 distance when he became CEO, but he personally --  
18 he and I were given the opportunity to attend some  
19 very important meetings, confidential meetings, on  
20 the topic. And it was very clear to me that he  
21 had every bit of the fire in his belly as I do to  
22 make sure that our companies are as prepared as

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1 you can possibly be for cyber.

2           And it was really just from a -- that's  
3 where I spent more of my time with him, was --  
4 were at those events, and which gave me a good  
5 feeling, when things eventually played out, that  
6 he shared the same view I do, that we can never be  
7 comfortable about cyber.

8           COMMISSIONER FORT: Thank you. That's  
9 all I have.

10           CHAIRMAN KANE: Thank you, Commissioner  
11 Fort.

12           I do have a couple of questions,  
13 Mr. Rigby. I realize I'm the one between  
14 everybody and dinner. I'll try to be short, but I  
15 do want to do some clarifications. And a couple  
16 of new areas, and you may not be the right person  
17 on those areas. So I just want to get on the  
18 record who would be.

19           First of all, just very briefly,  
20 Mr. Speck was asking you a question about  
21 positions on legislation and on renewable energy  
22 issues. And without referring at all to any

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1 confidential document, I'm just going to ask a  
2 question of stuff that is public information.  
3 Because he was asking about a situation where the  
4 company -- that is, in this case, Exelon, would be  
5 the parent -- had a particular view on a  
6 particular policy matter. And one of its  
7 affiliates it took a position on that that was  
8 similar.

9           And -- just ask you for the record. The  
10 city council recently considered about a year ago  
11 legislation on community renewable energy  
12 facilities. Would you agree to that?

13           THE WITNESS: Yes. I'm sorry, Chairman.  
14 I'm not as familiar with that as I would really  
15 like to be.

16           CHAIRMAN KANE: Well, would you agree,  
17 subject to check, that PEPCO did not oppose that  
18 legislation and that, as a matter of fact, PEPCO,  
19 in the person of Donna Cooper and other people,  
20 participated in a working group to shape the  
21 final --

22           THE WITNESS: Yes.

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1 CHAIRMAN KANE: -- outcome of that  
2 legislation?

3 THE WITNESS: I'm aware of that.

4 CHAIRMAN KANE: Thank you.

5 And I guess I want to ask, then, how  
6 would you currently -- following up on the series  
7 or types of questions Commissioner Fort was  
8 asking -- a decision to take a position or not  
9 take a position or work to shape the outcome of a  
10 piece of legislation, how is that decision made at  
11 what level currently in PHI?

12 THE WITNESS: The -- given -- and I think  
13 is more born out of being multi-jurisdictional,  
14 that we have an overarching desire to have  
15 consistency in our policies. You know, I don't  
16 think it does us well if we're diametrically  
17 opposed on the same issue in different  
18 jurisdictions.

19 There is a construct -- and so our -- in  
20 fact, it was kind of interesting -- more than you  
21 want to know, but when we did the D.C. management  
22 audit recently, there was -- I think I was able to

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1 convert the gentleman who led that, that -- he  
2 kind of chastised me that we have too many  
3 committees. But I explained to him what we're  
4 trying to do is manage multiple jurisdictions, and  
5 you need to have all the different voices in the  
6 room so that, to the extent you can, you get  
7 consistency and it makes sense.

8           Similar to the regulatory policy  
9 committee, there's a government and legislative  
10 committee that Mr. Parker, who is the head of  
11 government affairs and Ms. Cooper's direct boss,  
12 in concert with our regulatory group, because more  
13 often than not legislative matters are going to  
14 cross over into --

15           CHAIRMAN KANE: They end up with us.

16           THE WITNESS: And so those issues are  
17 really worked at that level.

18           Now, if -- we don't have a hard and fast  
19 rule of what has to come to the ELT. But people  
20 will recognize that if an issue is looking like  
21 it's going to have either a significant customer  
22 impact, a significant financial impact, a

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1 significant technology impact, given what our  
2 focus is, that is more than likely going to be --  
3 the executive leadership team is going to be made  
4 aware of it.

5 More often than not, the issues have been  
6 so well vetted that when a policy position is  
7 presented to us, I'm hard-pressed to recall where  
8 we may have countermanded that, because it's  
9 worked so rigorously at -- close down to the  
10 operating company level.

11 CHAIRMAN KANE: And have you had any  
12 conversations with Mr. Crane or anyone else at  
13 Exelon about how that process would work when --  
14 if the merger were to go through, specifically if  
15 there were a situation, say, the company, PHI, in  
16 the past had taken a position X on a particular  
17 issue and then there was company policy at the  
18 Exelon level that was different?

19 THE WITNESS: Could I offer two comments  
20 in response to that? We've had that situation  
21 internally. And just -- if I go back to when we  
22 did own generation, there were times where there

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1 would be potentially some differences of opinion.  
2 And more often than not, it could be worked out  
3 because, you know, a logical argument could be  
4 constructed and people would kind of get to a  
5 common ground.

6           There were times when that did get --  
7 this was probably more so in the time when  
8 Mr. Wraase was the CEO. But there times when it  
9 came to executive leadership team for  
10 determination. So I think any organization is  
11 going to typically run into conflicts, and they  
12 have to be resolved.

13           I have not had what I -- the  
14 conversations that I've been party to have not  
15 necessarily been based on providing a specific  
16 example and walking me through how it happens.  
17 It's mostly been pointed to the fact that the  
18 utilities operate with a great deal of autonomy.  
19 So in the case of Mr. Velazquez running PHI  
20 Utilities, I think that Mr. O'Brien would look to  
21 him to make most of the decisions. But there are  
22 some decisions that obviously, I think,

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1 Mr. O'Brien and ultimately Mr. Crane are going to  
2 be interested in.

3 I would imagine it would be very much the  
4 same way, that the positions can be explained and  
5 if there's a disagreement, then there's an  
6 authority in place to reach a conclusion of that  
7 question.

8 CHAIRMAN KANE: And you would expect --  
9 or are you saying that you would expect,  
10 post-merger, that that authority would be at the  
11 Exelon CEO level?

12 THE WITNESS: Oh, I think for -- no. I  
13 think that the way I view it is that most of the  
14 decisions are going to be made at Mr. Velazquez'  
15 level. That's how I view it. Mr. O'Brien can  
16 give you many more examples.

17 CHAIRMAN KANE: I'll follow up with him,  
18 then. Thank you.

19 I wanted to turn next, very briefly, to  
20 the \$180 million that -- what I call the cash  
21 advance that I think has been referred to, or the  
22 reverse rate cut fee I think is the more proper

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1 fee on that. And I just want to get some  
2 clarification because I'm not sure I quite  
3 followed some of the answers that were given  
4 previously to questions.

5 This money is a -- has been given to PHI  
6 already; is that correct?

7 THE WITNESS: There may be one remaining,  
8 but for the most part.

9 CHAIRMAN KANE: This is not post-merger  
10 money; this --

11 THE WITNESS: Right.

12 CHAIRMAN KANE: -- has been in advance.

13 THE WITNESS: That's correct.

14 CHAIRMAN KANE: And a portion -- a  
15 proportional amount of that was allocated or for  
16 use by PEPCO and PEPCO D.C.; is that correct?

17 THE WITNESS: I don't believe it's been  
18 allocated. It's -- I don't -- if that was said  
19 earlier, I apologize. I think there was an  
20 attempt to maybe quantify what could be, but  
21 that's -- it's -- at the money becomes fungible  
22 within our general funds.

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1 CHAIRMAN KANE: Thank you. I did want to  
2 clarify that with --

3 THE WITNESS: Yes. Thank you for  
4 bringing that up.

5 CHAIRMAN KANE: I believe Mr. Coyle was  
6 asking about --

7 THE WITNESS: Right.

8 CHAIRMAN KANE: -- an allocation formula.  
9 But you're clarifying that the total amount is  
10 provided, has been provided, will be provided to  
11 PHI, and the decision then on how to use that  
12 money will be up to PHI --

13 THE WITNESS: Right.

14 CHAIRMAN KANE: -- among the various  
15 operating companies.

16 THE WITNESS: Right.

17 CHAIRMAN KANE: Is the use of that money  
18 contingent on the merger being approved or, if the  
19 merger is not approved for whatever reason, merger  
20 does not occur, let's say -- not approved, but  
21 does not occur -- will PHI have any obligation to  
22 return that \$180 million to Exelon?

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1 THE WITNESS: If the merger is not  
2 approved, and I --

3 CHAIRMAN KANE: It doesn't occur. It may  
4 be approved, but it may not be acceptable, for  
5 example.

6 THE WITNESS: And assuming that there's  
7 no --

8 CHAIRMAN KANE: Hypothetically.

9 THE WITNESS: -- kind of lingering issues  
10 and --

11 CHAIRMAN KANE: Yeah.

12 THE WITNESS: -- the merger is over, the  
13 180 stays with PHI.

14 CHAIRMAN KANE: Stays with PHI.

15 THE WITNESS: Right.

16 CHAIRMAN KANE: And if the merger does go  
17 through, will you have any indication Exelon would  
18 then seek to recover that through a rate case --  
19 any of that money through a rate case from any of  
20 the jurisdictions?

21 THE WITNESS: I'm not aware of that at  
22 all.

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1           CHAIRMAN KANE: And so, then, in either  
2 case, either keep the money, the merger for some  
3 reason does not occur, you receive the money and  
4 the merger does occur, there is no cost to the  
5 customers of the PHI customer -- excuse me --  
6 companies for that \$180 million?

7           THE WITNESS: I'm not aware of that.

8           CHAIRMAN KANE: Then I wanted -- I have a  
9 series of questions about property and title to  
10 property. And I was looking back at the previous  
11 merger, the most -- the merger that created PHI  
12 when PEPCO and Conectiv, ACE were merged. And it  
13 was approved by this Commission, among others, in  
14 a settlement.

15           One of the representations there was that  
16 there would be no -- there was no transfer of  
17 property; that is, what plant -- this was  
18 post-divestiture -- so poles, conduit,  
19 substations, land, real estate remained titled to  
20 the various companies, to PEPCO, to PHI. Is that  
21 correct?

22           THE WITNESS: I think so. I'm not the

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1 expert on that.

2 CHAIRMAN KANE: Okay. And who would be?

3 THE WITNESS: I think I'll ask

4 Mr. McGowan to respond to that.

5 CHAIRMAN KANE: Thank you. Can you tell  
6 me, in this proposed merger, the one currently  
7 before us, the real estate that PHI owns, and I  
8 realize some of it is -- I'm specifically focused  
9 and care about what's in the District.

10 THE WITNESS: Right.

11 CHAIRMAN KANE: You have substations,  
12 operating facilities. You have a building down on  
13 Ninth Street, Edison Place. You have land  
14 underneath something, say, like the Benning Power  
15 Plant, the Buzzard's (sic) Point Power Plant where  
16 there's no operating facilities that you own, but  
17 you own the real estate. I believe PHI still owns  
18 the land that is under Potomac River at  
19 Alexandria.

20 But in any case, what -- who will have  
21 title -- will there be any change in title to any  
22 of that property under the proposed terms of the

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1 merger?

2 THE WITNESS: Are you asking me if  
3 property, plant and property --

4 CHAIRMAN KANE: Yes.

5 THE WITNESS: -- land that is currently  
6 titled --

7 CHAIRMAN KANE: Currently owned --

8 THE WITNESS: -- by PEPCO?

9 CHAIRMAN KANE: -- titled by PEPCO.

10 THE WITNESS: I believe it would just  
11 remain at PEPCO. But the lawyers would just have  
12 to confirm that for me.

13 CHAIRMAN KANE: And there are currently  
14 liabilities for environmental -- potential  
15 environmental cleanup at some of those properties.  
16 I believe that PEPCO -- I'm not actually sure  
17 whether it's PEPCO or PHI -- but PEPCO has entered  
18 into a settlement, for example, with the District  
19 government on environmental cleanup --

20 THE WITNESS: Right.

21 CHAIRMAN KANE: -- at Benning, and  
22 eventually may need to do something at Buzzard's

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1 Point or other places, or with the City of  
2 Alexandria for development at Potomac River.

3 What does the merger proposal include in  
4 regard to who will retain or will -- will there be  
5 a change in who will be liable for the costs of  
6 any of that environmental cleanup or any of the  
7 agreements or settlements that PEPCO has entered  
8 into, say, with the District government, DDOE?

9 THE WITNESS: I'm not aware that there's  
10 any change that's contemplated between who today  
11 has the liability and who would. But again, I  
12 think that Mr. McGowan could confirm that for me.

13 CHAIRMAN KANE: Or whether particularly  
14 there is anything in the merger agreement --

15 THE WITNESS: Right.

16 CHAIRMAN KANE: -- where Exelon would  
17 assume some of that liability.

18 THE WITNESS: I'm not aware. I'd have to  
19 check on that.

20 CHAIRMAN KANE: Because while the profit,  
21 shall we say, from divestiture or the potential  
22 sale of some of that land could be shared under

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1 the settlement agreement -- divestiture with the  
2 ratepayers -- the liabilities are also to be  
3 shared by --

4 THE WITNESS: Right.

5 CHAIRMAN KANE: -- the ratepayers.

6 Okay. Thank you. We appreciate if you  
7 have any more detail on that.

8 I guess the last thing I want to -- I'm  
9 getting a very different picture, a very  
10 conflicting picture of PEPCO, frankly, the company  
11 that we've been regulating for all this -- at  
12 least for the eight years that I've been here and  
13 for the hundred years. And I want to go back to  
14 this -- this was OPC original 18 exhibit, and it's  
15 now OPC 9. It's OPC Cross Exhibit 9. And it is  
16 the excerpt from the 2013 annual report to the  
17 stockholders.

18 THE WITNESS: Yes.

19 CHAIRMAN KANE: It's page 2 of 2.

20 THE WITNESS: Right.

21 CHAIRMAN KANE: You're familiar with  
22 that.

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1 THE WITNESS: Right.

2 CHAIRMAN KANE: You were asked about  
3 that.

4 And the strategic -- I'm going to look at  
5 the paragraph right next to your picture there  
6 with the strategic view. It says, After a decade  
7 of evolution, PHI has become what it set out to  
8 be: A regulated -- let me see. PHI, decade of  
9 evolution. You're assuming -- referring, I  
10 assume, to the ten or so years since the creation  
11 of PHI was approved by --

12 THE WITNESS: Yes, ma'am.

13 CHAIRMAN KANE: -- various jurisdictions,  
14 which I believe was in 2002.

15 THE WITNESS: Yes, ma'am.

16 CHAIRMAN KANE: PHI has become what it  
17 set out to be: A regulated utility company with a  
18 robust rate base growth plan, focused on  
19 strengthening the reliability of our transmission  
20 and distribution infrastructure.

21 And then it talks about strategic focus,  
22 et cetera. Energized, better positioned -- we

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1 have emerged better positioned to continue  
2 enhancing stockholder and customer value. We have  
3 a stronger balance sheet, a manageable financing  
4 plan, and a solid business platform. In addition,  
5 as a recognized leader in smart grid deployment,  
6 we're well-prepared to further evolve PHI by  
7 leveraging exciting opportunities provided by new  
8 energy-related technologies and the  
9 decentralization of generation sources.

10           You're familiar with that. That's what  
11 you said.

12           Then I turn to -- I turn to your rebuttal  
13 testimony -- this is your testimony -- at page 9  
14 of your testimony. It's in the 15th question,  
15 question number 15. And you're talking about --  
16 going to the sentence that starts at line 8, PHI  
17 can reasonably adopt this approach because it  
18 believes there is significant value to the merger  
19 with Exelon in the form of, among other things,  
20 greater financial strength -- and then this  
21 sentence: Should the merger not go forward,  
22 however, PHI and PEPCO will be in a less robust

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1 financial condition and less able to deliver  
2 benefits comparable to those proposed in the  
3 merger.

4           And, yesterday, Mr. Crane was describing  
5 a company, PHI, that had a negative cash flow,  
6 that had a significant debt, that could not hire  
7 linemen, and that needed a \$180 million infusion  
8 of cash to get through the next few years.

9           So which is the real picture of PEPCO?  
10 And this was within a few months -- this annual  
11 report was put out about a month before the  
12 merger --

13           THE WITNESS: Right. Sure.

14           CHAIRMAN KANE: -- was filed. Is it a  
15 robust company that has come before us and gotten  
16 rate increases, not everything you want, but  
17 that's doing undergrounding, that's doing  
18 smart grid, that's --

19           THE WITNESS: Right.

20           CHAIRMAN KANE: -- was going to come in  
21 for another rate increase, or is it a company  
22 that's on the ropes that is not going to be robust

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1 unless it merges, that needed \$180 million, that  
2 can't even hire a couple of more linemen?

3 THE WITNESS: Okay. Okay. I got it.

4 Let me see if I can cover all of that. And  
5 obviously you'll follow up if I don't.

6 I'll start in 2002, because -- the  
7 reference to what we set out to be from what we  
8 were. My understanding, because I had just been  
9 acquired in 2002, was that PEPCO itself, once it  
10 divested of its generation assets, had a focus on  
11 being a regulated business. I was not a party to  
12 the negotiation, certainly was not an employee of  
13 PEPCO when they made the determination to buy  
14 Conectiv.

15 But I do recall, in various sayings, in  
16 various groups -- whether it's financial analysts,  
17 customers, regulators -- that it seemed a little  
18 bit odd that the first thing PEPCO did when they  
19 sold their generation was that they went out and  
20 bought a company that had generation, that  
21 actually had a very significant plan to continue  
22 to build generation, which the new PHI executed

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1 that plan over -- from '02 probably into '09 of  
2 building out, ultimately went from, I guess, over  
3 2,000 megawatts to over 4200 megawatts.

4 I -- and I'm just going to give my point  
5 of view. My view was that there always seemed to  
6 be a little bit of a -- of a tug and pull in terms  
7 of what was it that that initial group wanted the  
8 company to be.

9 We went through a series of challenges in  
10 '08 -- I think Mr. Coyle referred to it yesterday  
11 as the great recession -- and it really strained  
12 the capabilities of the company. We -- we think  
13 we somewhat rectified that with the sale of  
14 Conectiv Energy and improved the balance sheet and  
15 prepared ourselves to embark on a very significant  
16 T&D investment plan.

17 And then we ran into some very heavy  
18 shoals with storms and a lot of criticism that  
19 took us a couple more years to work our way  
20 through.

21 So we positioned the company by the  
22 latter part of 2013 -- I'm getting to your point.

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1 That -- the board had confidence in a stand-alone  
2 plan. The board was not satisfied with the value  
3 that we were delivering to our shareholders. They  
4 were very clear about that. Could we pay our  
5 bills? Could we continue to pay the dividend?  
6 Could we finance? Could we go to the capital  
7 market? Yes.

8 But we were -- and I'm just being very  
9 straight with you, that the view of the board was  
10 that we were not delivering competitive  
11 shareholder value. That was just their view.  
12 They believed in the plan, though. We got to a  
13 point where, when I announced my retirement, that  
14 I think raised the issue in their mind of the path  
15 forward. It was not -- we did no solicitation to  
16 have offers come in, but those offers came in.

17 And I remember -- I think I was asked  
18 earlier today, well, you know, what did you say to  
19 Mr. Crane when you had the first meeting? I  
20 didn't say anything other than to tell him that we  
21 weren't for sale and that the board had confidence  
22 in the plan.

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1 Over the course of several weeks -- it  
2 turned into two or three months -- and I've always  
3 felt this way; I think the board feels this way,  
4 that if there was a serious expression of interest  
5 in buying the company -- I think it's very healthy  
6 and I think it's proper to stand our stand-alone  
7 plan up to that what that offer could be because I  
8 think that causes a certain evaluation that I just  
9 think is healthy from a governance point of view.

10 As that process went forward -- just one  
11 other thing. I want to maybe check this one off.  
12 I think Mr. Crane was referring to, when he said  
13 cash -- we're not cash positive, given the heavy  
14 construction, if you look at it from cash from  
15 operations, we are not covering our construction  
16 from our cash from operations, so I think that's  
17 what he was making reference to.

18 Are we able to go the financial market  
19 and get -- and issue long-term debt? Yes, we can.

20 As the board looked at this and began to  
21 step back and look at, at least preliminarily,  
22 what benefits Exelon was willing to put on the

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1 table, and thinking about the value we could  
2 provide for all of our key stakeholders, they came  
3 to the conclusion that this path was the better  
4 path forward.

5 I think in terms of even, I'll say,  
6 Utility 1.0 -- and we also talk specifically about  
7 the evolution of the grid, where, in a company  
8 that would have more scale, would have different  
9 alternatives beyond just investing in the grid,  
10 just only under the regulated, that we would  
11 have -- our customers ultimately would have better  
12 and more varied options.

13 We haven't talked that much about this,  
14 but I will just share with you that our company  
15 has been severely criticized, and I think it has  
16 impact. I'll just give you my opinion, Chairman.  
17 I think in some regards the outcomes of our rate  
18 cases have been somewhat influenced by storm  
19 performance.

20 And I do -- the board had a dual concern  
21 on that front, that we're in front of you every  
22 year filing rate cases, and the concern about rate

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1 case fatigue and what would we potentially  
2 experience if we had a severe storm, and there was  
3 a sense that we had a big step backwards in terms  
4 of our storm response. My view is that in many  
5 ways we're as good as the last storm we had.  
6 That's our view.

7 To have the opportunity to avail  
8 ourselves to first access to a much larger set of  
9 resources, and understanding all the attendant  
10 outcomes of extended outages, the economic  
11 impact -- there's a study done in Montgomery  
12 County that I think put a price tag of  
13 \$240 million -- these are things that the board  
14 did not ignore.

15 So when we looked at all of that in its  
16 totality and the benefits that we think our  
17 customers will derive as part of this different  
18 enterprise, we looked at it as the best path  
19 forward.

20 Now, having said all of that, we were  
21 able to execute our stand-alone plan. But we were  
22 also not able to deliver the kind of value

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1 ultimately to our shareholders as well that others  
2 could.

3           So that is a long-winded way for me to  
4 say that that was the thought process that went  
5 through this decision.

6           CHAIRMAN KANE: Thank you. Last thing  
7 I'm going to do. I'm just going to read you  
8 something. It's not a quiz. According to the  
9 applicants, the proposed merger is in the public  
10 interest because, among other things, the  
11 increased size of the company, once combined, will  
12 allow operating efficiencies and cost savings to  
13 be achieved which, in turn, will provide the  
14 merged companies an enhanced competitive and  
15 strategic position. The applicants claim that the  
16 major benefits of the merger include, A, the  
17 companies' ability to maintain and enhance  
18 customer service and reliability; B, the  
19 efficiencies and cost savings produced through the  
20 merger will result in requests for smaller  
21 increases in PEPCO's base rate cases in the future  
22 -- base rates in future rate cases than otherwise

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1 would be the case absent the merger; C, the  
2 increased aggregate customer base of the companies  
3 following the merger will permit the cost of  
4 acquiring and implementing innovative new  
5 technologies to be spread across a greater asset  
6 base; and, D, the merger will facilitate the more  
7 efficient deployment of field crews and equipment,  
8 as well as customers' representatives in times of  
9 severe weather and other emergencies, thereby  
10 enhancing customer service and responsiveness.

11 Does that sound familiar?

12 THE WITNESS: Yes.

13 CHAIRMAN KANE: That is from the order  
14 that the Commission approved on May 1st, 2002  
15 approving the PHI merger.

16 And I guess we could have a long  
17 discussion about whether any of those things were  
18 achieved by that merger. That really isn't a  
19 question. I'll just put that in the record. That  
20 is from commission order number 12395, May 1st,  
21 2002, in formal case 1102.

22 And yet, you've just described a

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1 situation where those things didn't happen, and  
2 now you feel or your -- let me be clear what you  
3 did describe. I heard you say two things, that  
4 you got to a point you said you could do those  
5 things, you couldn't do those things, but that the  
6 board felt that you were not delivering  
7 competitive shareholder value.

8 THE WITNESS: I would also say that the  
9 company that could be acquiring us has a  
10 demonstrated track record of first quartile  
11 reliability and customer satisfaction, and that  
12 was not the company that acquired us in 2002.

13 CHAIRMAN KANE: Thank you. I have no  
14 further questions.

15 MR. MEIER: Your Honor, we're prepared to  
16 move in Exhibit --

17 CHAIRMAN KANE: Wait. I think  
18 Ms. Francis has a --

19 MS. FRANCIS: Could I do one follow-up  
20 question based on one of your questions?

21 MR. MEIER: Your Honor --

22 CHAIRMAN KANE: No.

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1 MR. MEIER: Thank you.

2 CHAIRMAN KANE: You'll have a lot of  
3 other --

4 MS. FRANCIS: It's a really good  
5 question.

6 CHAIRMAN KANE: You have other witnesses  
7 that questions can be asked, but we do want to --  
8 does the company have any redirect?

9 MR. MEIER: No, ma'am.

10 CHAIRMAN KANE: No. Okay. Thank you.  
11 Yes.

12 MR. MEIER: The joint applicants move  
13 into evidence Joint Applicants' Exhibits (B) and  
14 (3B), including (3B)-1.

15 CHAIRMAN KANE: They are so moved.  
16 (Joint Applicants' Exhibit Numbers (B),  
17 (3B), and (3B)-1 were received into evidence.)

18 MR. GRAY: Your Honor, I move for the  
19 admission of OPC Cross-Examination Exhibits 8, 9  
20 and 10.

21 CHAIRMAN KANE: They're moved in.  
22 (OPC Cross Exhibit Numbers 8 through 10

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1 were received into evidence.)

2 MS. FRANCIS: Your Honor, AOBA moves the  
3 admission of AOBA's Cross-Examination Exhibits 13  
4 through 23, complete.

5 CHAIRMAN KANE: They are moved in.

6 (AOBA Cross Exhibit Numbers 13 through 23  
7 were received into evidence.)

8 MR. MEIER: Your Honor, may I just  
9 comment?

10 CHAIRMAN KANE: Yes. Yes, Mr. Meier.

11 MR. MEIER: We don't object to that, but  
12 there were at least seven or eight exhibits on  
13 which no questions were asked, and we would be  
14 happy to stipulate those into the record in  
15 advance and save whatever little time we can, if  
16 the parties are just wishing to get them  
17 authenticated. That might be a way to save a tiny  
18 bit of time.

19 CHAIRMAN KANE: Ms. Francis?

20 MS. FRANCIS: Is Mr. Meier talking about  
21 the cross -- the responses to data requests?

22 MR. MEIER: I believe those were those.

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1 MS. FRANCIS: Your Honor, we intended to  
2 say, are they true and correct to the best of your  
3 information, knowledge and belief? And that was  
4 my intent to --

5 CHAIRMAN KANE: Well, that's been done by  
6 the stipulation. So that's acceptable.

7 MS. FRANCIS: Thank you. That's  
8 perfectly fine.

9 MR. MEIER: Thank you very much.

10 CHAIRMAN KANE: Mr. Coyle?

11 MR. COYLE: Thank you, Chair Kane.

12 Excuse me. At this time, District government  
13 would move the admission of DCG 23 through 28 and  
14 DCG 30 through 33.

15 CHAIRMAN KANE: They are moved in.

16 (DCG Cross Exhibit Numbers 23 through 28  
17 and 30 through 33 were received into evidence.)

18 MR. COYLE: Thank you.

19 MR. SPECK: Yes, Your Honor. DC SUN  
20 moves DC SUN confidential Cross Exhibit 2 into the  
21 record.

22 CHAIRMAN KANE: It's moved in.

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1 (DC SUN Cross Exhibit Number 2 was  
2 received into evidence.)

3 CHAIRMAN KANE: Ms. White, you didn't  
4 have? Ms. Wein?

5 Very good. Then we are -- I thank you  
6 all --

7 COMMISSIONER FORT: Excuse me. The  
8 comment that Mr. Meier just made, can the parties  
9 take that under, you know, real serious  
10 consideration, and if you have exhibits that you  
11 are just going to ask those questions, can you do  
12 that and let us know as preliminary matters?

13 Because if we don't have to go through  
14 the time of identifying all of them just to get to  
15 that question, that would be helpful.

16 MR. GRAY: Yes, Your Honor.

17 CHAIRMAN KANE: Any other matters?  
18 Mr. Lorenzo?

19 MR. LORENZO: I did want to mention that  
20 Denis O'Brien will be our first witness tomorrow  
21 morning, just so the parties know.

22 CHAIRMAN KANE: That's correct. I

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1 understood that change in schedule. We're going  
2 to have to take a look now -- we are a little  
3 behind. We know we got from each of you estimates  
4 of how long it was going to take for your  
5 questioning, and some of that has not turned out  
6 to be what's actually occurred.

7           So we're going to -- tomorrow is  
8 Thursday -- tomorrow take a look and see whether  
9 our current allocation of eight days is going to  
10 adequately -- is going to be enough, because we're  
11 very tight at the other end. We're trying to  
12 figure out, if there is a need for any additional  
13 time.

14           And so things such as still stipulating,  
15 not having to spend so much time marking and  
16 entering and verifying -- all has to be done  
17 properly for the record, but what we can do to  
18 avoid that sort of administrative time would be  
19 very helpful.

20           Thank you all for --

21           COMMISSIONER FORT: I'm sorry. Could we  
22 also ask the parties to look at those estimates

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1 that they gave, particularly for parties that are  
2 off -- way off on their estimates, you know? I  
3 know a number of issues have been referred to  
4 Mr. McGowan, Mr. Khouzami that were not -- was not  
5 done when you made those initial estimates. So if  
6 that's going to throw your numbers off, we need to  
7 know that, too, for planning purpose.

8 CHAIRMAN KANE: Very good. Thank you.  
9 We will see you all tomorrow morning at 10:00 a.m.

10 (Whereupon, at 5:58 p.m., the above  
11 proceedings were adjourned.)

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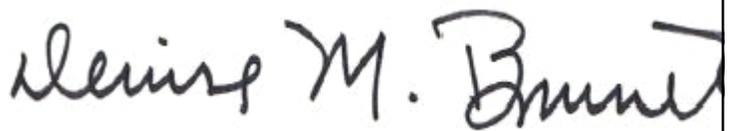
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CERTIFICATE OF COURT REPORTER

I, DENISE M. BRUNET, Certified Court Reporter, do hereby certify that the statements and testimony that appear in the foregoing transcript are the statements and testimony taken by me in shorthand and thereafter reduced to computerized transcription by me or under my direction; do hereby certify that the foregoing transcript is a true and correct record of the statements and testimony given; that I am neither counsel for, related to, nor am employed by any of the parties to the action; and further, that I am not a relative of employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



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<u>          </u> <u>          </u> \$	<b>\$50</b> 634:12,14	821:10	876:3,6
<b>\$1</b> 582:6	<b>\$729,000</b> 688:2	<b>1001</b> 561:17	<b>1-3</b> 795:3
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