

Capital Reporting Company  
Formal Case No. 1119 04-20-2015

2473

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 IX  
-----: :

Washington, D.C.

Monday, April 20, 2015

The evidentiary hearing in the  
above-captioned matter began at 10:03 a.m., at the  
Public Service Commission of the District of  
Columbia, 1333 H Street, Northwest, Washington,  
D.C., 20005.

BEFORE: BETTY ANN KANE, Chairman

JOANNE DODDY FORT, Commissioner

WILLIE L. PHILLIPS, Commissioner

Reported by: Denise M. Brunet, RPR

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34 (Appearances continued on the next page.)

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22 (Appearances continued on the next page.)

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1	C O N T E N T S				
2	WITNESS:	DIRECT	CROSS	REDIRECT	RECROSS
3	ELLEN LAPSON				
4	BY MR. LORENZO	2481			
5	BY MS. FRANCIS		2491		
6	BY MR. COYLE		25644		
7	BY MR. LORENZO			2652	
8	DAVID DISMUKES				
9	BY MR. GRAY	2658			
10	BY MR. GADSDEN		2659		
11	BY MR. GRAY			2719	
12	DONNA RAMAS				
13	BY MR. SEARS	2731			
14	BY MR. LORENZO		2733		
15	J. RANDALL WOOLRIDGE				
16	BY MS. LOPEZ	2761			
17	BY MR. LORENZO		2762		
18	BRUCE BURCAT				
19	BY MS. ELEFANT	2774			
20	BY MR. KULAK		2776		
21					
22					

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1	EXHIBIT NO.	MARKED	RECEIVED
2	AOBA Cross 98	2494	2654
3	AOBA Cross 99	2536	2654
4	DCG Cross 108 through 116		2654
5	Joint Applicants (2K),		
6	(2K)-1 through (2K)-12,		
7	(3K), (3K)-1 through		
8	(3K)-2, (4K) and (4K)-1		2654
9	OPC (A), (A)-1 through		
10	(A)-45, (2A), and (2A)-1		
11	through (2A)-5	2658	2730
12	Joint Applicants Cross 9	2661	2730
13	Joint Applicants Cross 10	2679	2730
14	Joint Applicants Cross 11	2680	2730
15	Joint Applicants Cross 12	2682	2730
16	Joint Applicants Cross 13	2685	2730
17	Joint Applicants Cross 14	2693	2730
18	Joint Applicants Cross 15	2695	2730
19	Joint Applicants Cross 16	2701	2730
20	OPC (C) and (C)-1		
21	through (C)-17	2733	2759
22	(Exhibits continued on the next page.)		

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1	EXHIBIT NO.	MARKED	RECEIVED
2	OPC (2C), (2C)-1 and		
3	(2C)-2	2733	2759
4	Joint Applicants Cross 17	2764	2773
5	Joint Applicants Cross 18	2768	2773
6	OPC (D) and (D)-1		
7	through (D)-6	2772	2772
8	Joint Applicants Cross 19	2783	2825
9	Joint Applicants Cross 20	2785	2825
10	Joint Applicants Cross 21	2787	2825
11	Joint Applicants Cross 22		
12	and 23	2789	2825
13	Joint Applicants Cross 24	2796	2825
14	Joint Applicants Cross 25	2801	2825
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1 P R O C E E D I N G S

2 CHAIRMAN KANE: Good morning. After a  
3 break, we are resuming evidentiary hearings in  
4 formal case 1119, the proposed acquisition of  
5 PEPCO -- of PHI Holdings by Exelon, et al.

6 Today, for the record, is Monday,  
7 April 20th. We are starting at 10:03 a.m. And  
8 let me ask, first of all, the parties if you have  
9 any preliminary matters.

10 MR. LORENZO: None, Your Honor.

11 CHAIRMAN KANE: None. You've resolved  
12 everything during the break.

13 Mr. Coyle?

14 MR. COYLE: I had one, Your Honor.

15 CHAIRMAN KANE: One. Yes, Mr. Coyle.

16 MR. COYLE: The joint applicants have  
17 indicated privately that they're proposing to  
18 waive cross-examination on D.C. government witness  
19 Dr. Wilson. Dr. Wilson is local and can be made  
20 available for questions for the Commission. I  
21 don't expect an answer, you know, off the top of  
22 your head, but if you could think about it and let

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1 us know. It's no inconvenience for us to produce  
2 him.

3 CHAIRMAN KANE: Thank you. We will  
4 consider that.

5 All right. You may present your witness.

6 MR. LORENZO: Thank you, Your Honor. The  
7 joint applicants call Ms. Ellen Lapson to the  
8 stand.

9 WHEREUPON,

10 ELLEN LAPSON,

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

14 MR. LORENZO: May I proceed, Your Honor?

15 CHAIRMAN KANE: Yes, please.

16 DIRECT EXAMINATION

17 BY MR. LORENZO:

18 Q Ms. Lapson, can you please state your  
19 name for the record.

20 A Ellen Lapson.

21 Q And by whom are you employed?

22 A Lapson Advisory.

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1 MR. LORENZO: Your Honor, pursuant to the  
2 order 17790, Ms. Lapson's supplemental direct,  
3 rebuttal and February 17th, 2015 supplemental  
4 direct testimony will be stipulated into the  
5 record. Ms. Lapson's supplemental direct  
6 testimony is labeled (2K) with Exhibits (2K)-1  
7 through (2K)-12. Ms. Lapson's rebuttal testimony  
8 is preliminarily labeled (3K) with Exhibits (3K)-1  
9 and (3K)-2. And Ms. Lapson's February 17th, 2015  
10 supplemental direct is preliminarily marked as  
11 Exhibit (4K) and (4K)-1.

12 And, Your Honor, we do have some limited  
13 rejoinder testimony that we'd like -- oral  
14 rejoinder that Ms. Lapson will give. So I'll  
15 proceed with that.

16 CHAIRMAN KANE: Yes, please.

17 BY MR. LORENZO:

18 Q Good morning.

19 A Good morning.

20 Q In the supplemental direct testimony,  
21 AOBA witness Mr. Oliver claims that because joint  
22 applicants' commitment number 35 does not

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1 explicitly require Exelon to contribute additional  
2 equity capital to PHI and PEPCO, Exelon will  
3 inadequately fund PEPCO's equity needs. Do you  
4 agree?

5 A No, I completely disagree. I do not  
6 think that PEPCO is in any danger of losing access  
7 to adequate equity funding as a result of the  
8 merger.

9 The fact that there is not a formal legal  
10 requirement in that particular commitment,  
11 number 35, is really not relevant to whether  
12 Exelon will fund capital into PEPCO -- into PHI.  
13 The absence of a formal legal requirement there is  
14 really because this is a ring-fencing commitment  
15 that is similar to other types of structured  
16 finance transactions. It's patterned after  
17 structured finance forms.

18 But what is really relevant for the  
19 funding of the capital needs of PEPCO by Exelon is  
20 that Exelon will be committed or bound only to the  
21 same extent that PHI is. At the present time, PHI  
22 does not have any formal commitment to fund

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1 capital into PEPCO, and yet it does for the same  
2 motivation that Exelon will have, and that  
3 motivation is the expectation that this Commission  
4 will allow a just and reasonable return on  
5 capital.

6           And that same motivation will be in  
7 effect for Exelon. It would be illogical for  
8 Exelon to make this purchase if it did not  
9 continue to make the investments into the equity  
10 that will enable the company to grow and to  
11 fulfill the expectations that investors have.

12           So I would say that it is not rational to  
13 think that Exelon would acquire PHI at this great  
14 price and then not make additional funding  
15 available.

16           Q     Thank you. But what if Exelon were  
17 unable or unwilling to supply equity funding to  
18 PHI and/or PEPCO? Would PEPCO have other sources  
19 of such funding?

20           A     Yes, it would. I think that most of the  
21 witnesses here have acknowledged that the first  
22 and primary source of funding for the equity needs

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1 of PEPCO is PEPCO's retained earnings, but in the  
2 event that those retained earnings are not enough  
3 due to the large capital budget that PEPCO has,  
4 PEPCO of course has access to receive equity  
5 commitments from Exelon, and if Exelon were not  
6 able to do so, then PHI and PEPCO both have the  
7 ability to issue preferred stock, and there is no  
8 preferred stock at either PHI or PEPCO at the  
9 present time.

10           So that would be another source of  
11 funding that would be available to provide an  
12 equity level for the capital expenditures and  
13 construction needs of PEPCO.

14           Q     Ms. Lapson, are you available (sic) as to  
15 whether Exelon has supplied its other utility  
16 subsidiaries with equity funding?

17           A     Well, to my knowledge, Exelon has infused  
18 equity into its utility subsidiaries over and  
19 above the earnings retention of those  
20 subsidiaries, and I base this on a review of the  
21 published financial statements of the utility  
22 subsidiaries of Exelon.

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1           Exelon, to my knowledge, has not withheld  
2 any growth capital investment from the utility  
3 subsidiaries, Baltimore Gas and Electric, PECO and  
4 Commonwealth Edison, and all three of them have  
5 received equity contributions from Exelon.

6           Q       Thank you. AOBA witness Mr. Oliver also  
7 claims that Exelon's ring-fencing commitment that  
8 PHI will not issue additional long-term debt  
9 securities will impose a financial burden on PEPCO  
10 as it relates to PEPCO's potential servicing of  
11 that debt. Do you agree?

12          A       No, I do not agree. In fact, I think  
13 that this one commitment is a particularly  
14 valuable commitment to PEPCO and to PEPCO's  
15 customers. And I think that it is far and away  
16 above any obligation that PHI has. PHI has no  
17 obligation to reduce its debt and it carries  
18 currently a significant long-term debt burden that  
19 is considered by credit rating agencies and by  
20 debt investors to be problematic for PHI and has  
21 an effect on the ratings of PEPCO and the other  
22 PHI subsidiaries.

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1           So the commitment by the joint applicants  
2 that PHI will eliminate that debt over time as the  
3 debt matures is a very materially favorable  
4 commitment.

5           As to where the funding will come from to  
6 do so, I think it is quite likely or possible that  
7 that will come from equity contributions by  
8 Exelon, but I've also already mentioned the fact  
9 that also preferred stock is a possibility; PHI  
10 could issue preferred stock if that were not  
11 forthcoming.

12           But I would recommend that it will not be  
13 a financial burden and it will lead in time to a  
14 great reduction of financial leverage at PHI that  
15 is currently affecting PEPCO.

16           Q     District of Columbia government witness  
17 Dr. Wilson raises a concern with respect to the  
18 fact that PEPCO will not be structurally separated  
19 from PHI by the placement of a special purpose  
20 entity between PEPCO and PHI. Please comment.

21           A     Well, based on my very long experience in  
22 the capital markets and as a financial analyst and

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1 debt analyst, I do not see any reason for  
2 ring-fencing separating PEPCO from the other PHI  
3 utility affiliates. The companies Atlantic City  
4 Electric and Delmarva are -- present very  
5 minimal -- minimal risk of default that could  
6 possibly affect PEPCO.

7           And because of the merger commitments and  
8 the reduction as a result of the merger  
9 commitments in PHI's debt going forward and PHI's  
10 commitment not to engage in other non-utility  
11 businesses in the future, I don't see any reason  
12 for ring-fencing between PHI and PEPCO. So I see  
13 no gain to be gotten, no justification, no  
14 reduction in risk as a result of ring-fencing  
15 specifically at the PEPCO level.

16           Q       Thank you. Dr. Wilson also raises  
17 concerns regarding duration and a potential  
18 removal of joint applicants' ring-fencing measures  
19 post-merger. Please respond.

20           A       If I remember correctly, Dr. Wilson  
21 advocates for a ban on removing the ring-fencing  
22 measures for ten years, and then only in a formal

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1 proceeding with a stringent positive benefits  
2 test.

3 I saw in his testimony no evidence or  
4 rationale whatsoever for a ten-year ban. I don't  
5 see that that is justified and I can only imagine  
6 that it represents a lack of confidence that he  
7 has in the D.C. commissioners to look out for the  
8 best interests of the public and for the utility.

9 The utility industry is rapidly changing.  
10 There are a lot of commitments here. Some of  
11 these commitments could turn out to be very  
12 onerous or inconvenient or awkward. And it would  
13 seem to me that it would be best for the  
14 commitment to be as it stands right now, that the  
15 company can approach the Commission, make an  
16 application, ask the application (sic) to consider  
17 some amendment and consider what is in the best  
18 interest and what produces the least -- you know,  
19 any commitment that needs to be addressed could be  
20 addressed in that way on a standard of no harm.

21 Q One final question, Ms. Lapson.  
22 Dr. Wilson reasserts his double leverage argument

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1 in his supplemental direct testimony. Is there  
2 anything you would like to tell the Commission on  
3 that point?

4 A The theory behind Dr. Wilson's argument,  
5 the underlying implication of the double leverage  
6 theory or the theory that specific financings are  
7 about -- done by Exelon are specifically tied to  
8 this transaction and give rise to gains on doing  
9 this transaction runs completely contrary to  
10 corporate finance theory and the understanding of  
11 corporate finance, and it runs contrary to the  
12 principles that the D.C. Public Service Commission  
13 has used in the past in rate cases involving  
14 PEPCO.

15 From my point of view as a financial  
16 analyst, Exelon entered into this commitment to  
17 purchase PHI based upon committing its entire  
18 capital structure to make the payments. It is  
19 using its financial resources at the Exelon level.  
20 There is no specific financing that is being  
21 entered into for the -- tied in any way to the  
22 purpose of this acquisition and solely for this

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1 acquisition.

2 Furthermore, Exelon's capital structure  
3 has more equity in it than PHI's capital  
4 structure. So it seems to me that the imputation  
5 of specific debt financings that Exelon is  
6 entering into and trying to tie those to this  
7 transaction are just baseless and illogical and  
8 contrary to corporate finance theory.

9 Q Thank you, Ms. Lapson.

10 MR. LORENZO: Your Honor, Ms. Lapson is  
11 available for cross-examination.

12 CHAIRMAN KANE: Thank you. People's  
13 Counsel.

14 MR. DANIELS: We have no questions for  
15 Ms. Lapson.

16 CHAIRMAN KANE: Ms. Francis?

17 MS. FRANCIS: Good morning,  
18 commissioners.

19 CROSS-EXAMINATION

20 BY MS. FRANCIS:

21 Q Good morning, Ms. Lapson.

22 A Good morning.

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1 Q I'm going to start off this morning by  
2 asking you to look at a couple of data responses  
3 that you previously provided. And first I would  
4 like you to take a look at what was preliminarily  
5 identified as AOBA 90 --

6 MS. FRANCIS: -- which, Your Honor, has  
7 already been admitted into the record as AOBA 73.

8 BY MS. FRANCIS:

9 Q And if you'd take a look at the sponsor  
10 of that data request, Ms. Lapson, you'll see that  
11 it --

12 A I'm sorry. I'm not understanding. I  
13 need a little help.

14 I see. Thank you. All right. I'm  
15 there.

16 Q Now, if you take a look at that data  
17 response, you will see that the sponsors are both  
18 you and Mr. Khouzami.

19 A Yes.

20 Q Can you verify that that response is true  
21 and correct?

22 A Yes.

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1 Q Now, please also take a look at what was  
2 preliminarily identified as AOBA Exhibit 91 --

3 MS. FRANCIS: -- which, Your Honor, has  
4 been received into evidence as AOBA 62.

5 BY MS. FRANCIS:

6 Q And you can see that you are also, along  
7 with Mr. Khouzami, one of the sponsors of AOBA  
8 Exhibit 91.

9 A Yes.

10 Q And is that response true and correct?

11 A Yes, to the extent that I am the sponsor  
12 of that one.

13 Q Yes, of course.

14 A There's a follow-up response in March  
15 that I did not sponsor. No, I did. I'm sorry.  
16 Both of them. I sponsored both of them. Thank  
17 you.

18 I do acknowledge them.

19 Q Okay. Thank you. Now, let's --

20 MS. FRANCIS: Your Honor, what's been  
21 marked for identification as AOBA Exhibit 89 is  
22 the joint applicants' response to AOBA data

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1 request 2-10, which I would like to have marked  
2 for the record as AOBA 98.

3 CHAIRMAN KANE: It will be so marked.

4 (AOBA Cross Exhibit Number 98 was marked  
5 for identification.)

6 BY MS. FRANCIS:

7 Q And you can see, Ms. Lapson, that you are  
8 the sponsor of that exhibit?

9 A Yes.

10 Q And when you filed that exhibit, was that  
11 true and correct?

12 A Yes, it was.

13 Q Is the information in that packet still  
14 true and correct?

15 A Number 89?

16 Q Yes.

17 A Is that what you're asking about?

18 Q Yes. Correct.

19 A It is correct, but I now hold further  
20 views on this topic that are not reflected here.

21 Q Okay. And when did you come to determine  
22 those extra views?

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1           A       In the course of these proceedings and  
2 proceedings in Maryland and New Jersey, I thought  
3 about things that could give rise to a need to  
4 change a ring-fencing commitment and realized it  
5 could be very granular.

6           Q       So the response is not incorrect; it's  
7 that you now want to supplement --

8           A       To amplify it, yes.

9           Q       To amplify it. Now, did you provide a  
10 written amplification or a written supplemental  
11 response?

12          A       No, I haven't.

13          Q       All right. Thank you.

14                   Now, Ms. Lapson, am I correct that you  
15 testified during my cross-examination of you in  
16 Maryland in case 9361 -- that seems ages ago --

17          A       It certainly does seem ages ago.

18          Q       -- that, since founding Lapson Advisory,  
19 you try to keep abreast of utility ratings reports  
20 from each of the major ratings agencies: Fitch,  
21 Moody's and S&P?

22          A       Yes.

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1 Q But you do not have subscriptions to  
2 Moody's or S&P, so, therefore, you do not have  
3 full access to their reports, only to their  
4 criteria and to their ratings levels which are  
5 available publicly; is that correct?

6 A Correct.

7 Q Okay. Now, Ms. Lapson, am I correct that  
8 you did not file direct testimony in this case on  
9 June 18th, 2014?

10 A I'm sorry. Could you --

11 Q Am I correct that you did not file direct  
12 testimony on June 18th, 2014 when the application  
13 was filed?

14 A Oh. That's correct.

15 Q Now -- however, you filed rebuttal  
16 testimony on December 17th and you filed two  
17 pieces of supplemental direct testimony, one on  
18 September 19th, and the second on February 17th;  
19 is that correct?

20 A Subject to check. I don't remember those  
21 dates, but I will accept those, subject to  
22 verification.

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1 Q Okay. Now, just so our communication is  
2 clear during this cross-examination, when I  
3 reference your September 19th supplemental direct  
4 testimony, I will refer to that as your conformed  
5 supplemental direct testimony. And when I discuss  
6 your February 17th, 2015 supplemental testimony, I  
7 will refer to that testimony as your February 2015  
8 supplemental direct testimony.

9 Do you understand that?

10 A Yes.

11 Q Okay. Now, please turn to your  
12 Exhibit (2K)-7 which accompanies your conformed  
13 supplemental direct testimony, the September 19th.

14 A (2K)-7. Let me just move this book out  
15 of the way. Yes.

16 Q Now, your listing of factors promoting  
17 corporate separation in Exhibit (2K)-7 has three  
18 major sections, A, B and C. And section A of that  
19 listing has three numbered subsections with  
20 multiple items listed under each subsection; is  
21 that correct?

22 A Correct.

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1           Q       Now, subsection A -- excuse me.  
2       Section A, subsection 2 presents factors that  
3       promote corporate separation through access to  
4       independent financing. And part B under that  
5       subsection states, Liquidity of the protected  
6       subsidiary is not contingent on the financial  
7       viability of the parent company.

8                   In the context of that statement, could  
9       you please explain what constitutes the liquidity  
10      of the protected subsidiary?

11          A       The meaning of that is that the protected  
12      company has got access to sources of credit that  
13      it can draw upon that will not be cut off or  
14      become unavailable because of the default or  
15      bankruptcy of its parent or affiliate.

16                  So as a credit rating analyst, we would  
17      examine the credit facilities and commitments of  
18      the protected company and say, does it -- can it  
19      draw under any circumstance, even if it has an  
20      affiliate that's in default, or is that an event  
21      of default or cross-acceleration or cross-default  
22      in this credit facility.

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1 Q Simply put, would you agree that  
2 liquidity is a measure of the ability of a debtor  
3 to pay its debts when due?

4 A Well, I would say that liquidity is a  
5 measure of the ability to get access to funds when  
6 needed.

7 Q Okay.

8 A The ability to pay its debts when due  
9 is -- is solvency, perhaps.

10 Q What financial metrics would you use to  
11 monitor the liquidity of the protected subsidiary?

12 A As a credit analyst, we measured  
13 liquidity by looking at undrawn credit facilities  
14 and the ability to issue bonds in the -- in the  
15 public market or private market. So it was not  
16 exactly a metric. The metric might be the amount  
17 of the undrawn credit facilities, the size of  
18 financial offerings that the company has offered  
19 to the market, the credit ratings and receptivity  
20 of the market to that company's credit, its  
21 ability to issue other forms of equity, such as  
22 preferred stock. Those are all liquidity

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1 measures.

2 Q Now, please turn to your Exhibit (2K)-8  
3 which accompanies your conformed supplemental  
4 direct testimony.

5 A Yes. Are you talking about the  
6 post-merger organization chart?

7 Q Correct. Now, one of the changes in the  
8 joint applicants' ring-fencing-related commitments  
9 in this proceeding addresses where in the  
10 organization's structure the PHI Service Company  
11 will be located. Am I correct that your  
12 Exhibit (2K)-8 does not explicitly reflect the  
13 location of the PHI Service Company within the  
14 Exelon post-merger organizational chart?

15 A That's correct. It does not appear on  
16 this chart.

17 Q Now, please turn to page 3 of your  
18 February 17th, 2015, supplemental direct testimony  
19 in this proceeding.

20 A I'm there.

21 Q Now, at page 3, lines 4 through 6 of your  
22 February 17th supplemental direct testimony, you

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1 testify that Joint Applicants' Exhibit (4K)-1  
2 lists all the commitments relating to ring-fencing  
3 and affiliate transactions and identifies the  
4 effects resulting from each of these commitments.

5 Is that correct?

6 A Yes, that is what it says here.

7 Q Now, at page 3, lines 6 through 8 --  
8 again, your February 17th supplemental direct  
9 testimony -- you suggest that the package of  
10 ring-fencing provisions that the joint applicants  
11 propose in this proceeding will become the  
12 industry standard for providing the highest degree  
13 of protection going forward.

14 Is there a current industry standard that  
15 this package will replace?

16 A I think that the acquisition of  
17 Constellation by Exelon was previously the high  
18 watermark or the highest standard, and I think  
19 that this is very closely related to that.

20 Q Okay. Is the designation of the  
21 Exelon/Constellation merger as the current  
22 industry standard a designation that you've

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1 attributed to the package of ring-fencing  
2 provisions or is there some independent and  
3 authoritative person, organization, that has  
4 announced that designation?

5       A       Well, I don't believe that there is ever  
6 a designation of a particular transaction. I  
7 wouldn't expect to see that. The credit rating  
8 agencies publish on topics such as ring-fencing.  
9 They publish their criteria. Their criteria are  
10 more similar to the listing that -- the list that  
11 you led me to, I think it was (2K)-1, if I'm not  
12 mistaken -- they're sort of generic and open  
13 standards. They do not refer to a particular  
14 transaction.

15       Q       Actually, in fact, your September 19th  
16 testimony at page 9, line 11 recognizes that there  
17 is no single definitive list of ring-fencing  
18 commitments. Isn't that correct?

19       A       Correct. Just let me find (2K)-1 again.  
20 I'm sorry, but it takes a little time to get  
21 there.

22               MR. LORENZO: Your Honor, I believe the

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1 list was -- that Ms. Lapson is referring to is  
2 (2K)-7.

3 THE WITNESS: (2K)-7? I'm sorry, so I  
4 should not have said (2K)-1. (2K)-7 was the one  
5 that you originally showed to me. I created this  
6 list in (2K)-7 by synthesizing the lists of the  
7 various credit rating agencies. And so this is my  
8 own synthesis out of the slightly varying lists of  
9 the various rating agencies, three rating  
10 agencies.

11 BY MS. FRANCIS:

12 Q Was the -- when you referred to the  
13 Constellation/Exelon merger, you were referring to  
14 the Maryland Public Service Commission order  
15 number 84698 when it offered its conditional  
16 approval of the merger of those entities in  
17 case 9271; is that correct?

18 A Well, all of those digits that you just  
19 listed do not mean a lot to me, but subject to  
20 checking, I will accept that you have done that  
21 research.

22 Q Is it your assessment that the package of

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1 ring-fencing provisions that you address in  
2 (4K)-1 -- that's your supplemental direct  
3 February 17th exhibit -- is superior to the  
4 package of ring-fencing provisions required by the  
5 Maryland commission in order number 84698 in all  
6 aspects of ring-fencing provisions offered by the  
7 joint applicants in this proceeding?

8       A       They're very close. They really are  
9 extremely close. And to the extent that there are  
10 differences, it's hard for me to say. Some of the  
11 little -- very small differences are driven by the  
12 differences of the individual circumstances of the  
13 companies at the time of the merger, what their  
14 corporate structures were. So there are some very  
15 small nuances, but I would say that they are quite  
16 similar.

17               I do think that the commitment that I  
18 mentioned before on the part of the joint  
19 applicants to reduce the debt of PHI by paying  
20 down -- paying off and not replacing the long-term  
21 debt of PHI is a very specific commitment,  
22 addressing a specific situation at PHI. You

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1 wouldn't expect that to occur in other cases if  
2 there wasn't leverage that needed to be addressed.

3           So there are specific differences among  
4 the -- but otherwise, I think that they're quite  
5 close.

6           Q     Now, at page 3, line 9 of your  
7 February 17th supplemental direct testimony, you  
8 testify that the commitments listed in (4K)-1 are  
9 extremely detailed and specific. I take it from  
10 your perspective that they're comprehensive and  
11 don't miss a trick?

12          A     In addition to being -- pardon me. In  
13 addition to being detailed and specific -- well,  
14 when they're detailed and specific, there's a lot  
15 of transparency. People can understand them. And  
16 so there isn't much room for being less  
17 comprehensive or being -- what was the other thing  
18 that you mentioned, Frann? Tricky?

19          Q     Extremely detailed and specific --

20          A     Specific.

21          Q     -- and then I said, from your  
22 perspective, is it that they don't miss a trick?

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1           A       They don't miss a trick. I see.

2                   Well, I think they are very

3 comprehensive, but I think that the fact that

4 they're so detailed and specific makes it

5 transparent that the Commission and all of the

6 other parties to this case can understand what

7 they say.

8           Q       So you didn't miss anything?

9           A       I don't believe so.

10          Q       Now, am I correct that a number of the

11 ring-fencing provisions that you list in

12 Exhibit (4K)-1 have their origins in the New

13 Jersey stipulation?

14          A       The current version of them was

15 influenced by the New Jersey stipulation. That is

16 to the best of my knowledge.

17          Q       The current version being (4K)-1?

18          A       If that is (4K)-1, yes.

19          Q       Now, do I understand correctly that when

20 the joint applicants negotiated with the parties

21 in New Jersey, substantial detail was added to the

22 joint applicants' initially proposed ring-fencing

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1 provisions as presented in Exhibit 5 to the  
2 application in this proceeding?

3 A I recall that they became substantially  
4 more detailed with the passage -- in fact, they  
5 have become more detailed over time.

6 Q So the answer to my question is yes?

7 A Yes.

8 Q All right. Doesn't that suggest,  
9 Ms. Lapson, that when a greater number of parties  
10 are given the opportunity to review the proposed  
11 ring-fencing provisions, there could be further  
12 revisions and refinements to the joint applicants'  
13 ring-fencing proposals? Or is it your position  
14 that the parties who negotiated the New Jersey  
15 stipulation had all the answers?

16 A I think that by now there have been a lot  
17 of eyes on this, I think a lot of people have  
18 weighed in on it, a lot of thought has been given  
19 to it, and they've become very detailed. Is it  
20 possible that somebody could add some other  
21 wrinkle? It's possible. But I think that we're  
22 at the point right now of diminishing returns.

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1 The longer this goes on, the less new and original  
2 material that comes to the table.

3 Q Now, please turn to your Exhibit (4K)-1.  
4 That's in your February 17th testimony. And in  
5 the right-hand column of the two-column  
6 presentation offered in (4K)-1, you offer your  
7 assessment of the effect of each ring-fencing  
8 provision listed?

9 A That is correct. And I did so by  
10 coordinating it with (2K)-7, the list in (2K)-7.

11 Q Now, a number of the entries in the  
12 right-hand column on the first several pages of  
13 (4K)-1 include the phrase "avoids substantive  
14 consolidation." Just so the record is clear,  
15 could you please explain what constitutes  
16 substantive consolidation?

17 A Substantive consolidation is a doctrine  
18 in bankruptcy in which the bankruptcy court would  
19 treat two different parties as being a single  
20 party in the bankruptcy if the -- so one entity  
21 was the original bankrupt party and another  
22 affiliate of that company could be substantively

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1 consolidated or drawn into the bankruptcy along  
2 with its parent company or its affiliate if it had  
3 not maintained clear separation, if it had given  
4 creditors reason to believe that its resources  
5 were available to pay the debts and liabilities of  
6 the other party, if it had been entered into as a  
7 fraudulent transaction, its only purpose being to  
8 avoid bankruptcy law.

9           So there are a number of reasons when --  
10 if there has not been a reasonable separation and  
11 if the two entities are not quite distinct, the  
12 bankruptcy court might say there is no way to  
13 unscramble the egg; there's no way that they we  
14 can separate their liabilities, and so we treat  
15 them as one.

16           So a number of the provisions here are  
17 designed to avoid substantive consolidation of  
18 PEPCO into a bankruptcy of any other entity within  
19 the group.

20           Q     Could you please tell me, why is it  
21 important that substantive consolidation be  
22 avoided?

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1           A       In order to maintain the financial  
2 viability of PEPCO to serve its customers' needs,  
3 you would want it to maintain that financial  
4 viability despite any distress that incurred  
5 (sic) -- or the bankruptcy of a parent or an  
6 affiliate. So it would protect the financial  
7 viability of the company going forward.

8           Q       Now, I'm going to ask you to please turn  
9 to what was preliminarily identified as AOBA  
10 Exhibit 90, but what has been received into  
11 evidence as AOBA Exhibit 73, which provides a copy  
12 of the joint applicants' response to AOBA data  
13 request 4-8, including the attachment A to that  
14 response.

15                   Tell me when you have that, Ms. Lapson.

16           A       Yes, I have that.

17           Q       Now, is attachment A to the joint  
18 applicants' response to AOBA data request 4-8 a  
19 red-line document which shows the New Jersey  
20 ring-fencing commitment language as compared to  
21 the ring-fencing language in Exhibit (4A)-2 in  
22 this proceeding?

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1 A Yes. That's correct.

2 Q Now, as noted in your response to part A  
3 of AOBA data request 4-8, your February 17th  
4 supplemental direct testimony at page 3, lines 18  
5 through 20, states, In my opinion, these  
6 commitments, modeled after those adopted in the  
7 New Jersey settlement, are not materially  
8 different from those included in my supplemental  
9 direct testimony.

10 Is that correct?

11 A Correct.

12 Q Now, in that statement, does the  
13 reference to commitments included in your  
14 supplemental direct testimony refer to the  
15 ring-fencing commitments listed in Exhibit (4K)-1?

16 A I have to look at these to see if these  
17 are -- yes.

18 Q Now, please turn to the first page of  
19 attachment A to AOBA data request 4-8. And that  
20 would be page 3 of 10 of the exhibit.

21 A I'm there.

22 Q In commitment 29 on the first page of

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1 attachment A, we find language that has been  
2 stricken from the New Jersey settlement which  
3 indicated, ACE is authorized to maintain its books  
4 and records at the corporate headquarters of PHI  
5 in Washington, D.C.

6 Is that correct?

7 A The stricken language?

8 Q Yes.

9 A Correct.

10 Q Now, could you please tell me, why was it  
11 necessary or appropriate to strike that language?

12 A I was not a party to the New Jersey  
13 discussions, nor was I -- nor do I have any  
14 particular opinion upon where the books and  
15 records would be kept. It just doesn't seem to me  
16 to be material with regard to the ring-fencing.  
17 As long as they are in a place that is accessible,  
18 I don't -- I didn't consider that to be a material  
19 change. I don't know why the change was made.

20 Q Couldn't that language have been modified  
21 to commit that PEPCO will maintain its books and  
22 records in the District of Columbia?

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1           A       It could also have been modified in any  
2 number of ways. It could have been modified to  
3 say that they will maintain them in Kazakhstan,  
4 but it wasn't. I don't think -- as long as this  
5 is in a place that is accessible in the  
6 continental United States, and reasonably close to  
7 the point of wanting to look at them, I don't -- I  
8 don't know what the -- this does not seem to me to  
9 be a material change one way or the other.

10          Q       Would you agree that as commitment 29 is  
11 presented in your Exhibit (4K)-1 and also in  
12 Mr. Crane's Exhibit (4A)-2, it does not require  
13 that PEPCO's books and records be maintained in  
14 the District of Columbia?

15          A       That's correct.

16          Q       Why, in this proceeding, is just access  
17 to the books and records for the District of  
18 Columbia Commission only provided for with 20  
19 days' notice when that phrase does not -- in New  
20 Jersey, the commitment is written differently?

21          A       I have no idea.

22          Q       Could you please explain to me, why do we

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1 need a 20-day lag in order for the joint  
2 applicants to produce the books and records to the  
3 District of Columbia Public Service Commission?

4 A I'm not familiar with the procedures to  
5 make books and records available or what the  
6 standard is in the District of Columbia currently.

7 Q Well, I guess what I'm asking you is, why  
8 do we need 20 days? Do you know?

9 A No, I do not know.

10 Q Do you think it should be up to the  
11 District of Columbia Public Service Commission to  
12 decide where the books and records are kept?

13 A I presume they already have that  
14 authority with regard to PEPCO.

15 Q Now, would you please turn to page 7 of  
16 10 in AOBA Exhibit 90 or 73 -- AOBA 73, and please  
17 focus your attention on commitment 57. Tell me  
18 when you're there.

19 Are you at commitment 57?

20 A I'm there. I'm just trying to read over  
21 it. Yes.

22 Q Now, at the end of commitment 57, we find

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1 more than nine full lines of stricken text. Do  
2 you see that?

3 A Yes.

4 Q Now, does the first sentence of the  
5 stricken text for commitment 57 state,  
6 Post-merger, PHI will not initiate or invest in  
7 new non-utility operations without first obtaining  
8 board approval in a written order?

9 A Yes, I see that line.

10 Q Now, am I correct that the reference to  
11 board approval in that sentence refers to approval  
12 by the New Jersey Board of Public Utilities?

13 A That is my understanding.

14 Q Can you explain why the language was  
15 stricken rather than modified to replace the  
16 requirement for board approval with a requirement  
17 for approval by the District of Columbia Public  
18 Service Commission?

19 A I do not know why it was done in that  
20 manner.

21 Q You did not do that?

22 A I'm not a party to the negotiations. I'm

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1 a witness; I'm not a party.

2 Q But you are a witness in this proceeding,  
3 correct?

4 A Correct.

5 Q All right. And these commitments are  
6 under your testimony -- you're the sponsoring  
7 witness, correct, in this proceeding?

8 A Yes. And I felt that, substantively,  
9 these commitments were materially the same and  
10 equally strong.

11 Q You felt by striking that language, this  
12 commitment in this proceeding was materially the  
13 same as that -- as in the New Jersey settlement?  
14 Is that your testimony, Ms. Lapson?

15 A No. My testimony is that the aggregate  
16 of all the commitments, not any one specific  
17 commitment numerically -- there are about  
18 70-some -- there are 72 commitments listed here.  
19 And I was saying that in the aggregate, the sum of  
20 all the commitments is quite strong. Very robust.

21 Q Could you please tell me, why should the  
22 New Jersey Board of Public Utilities be provided

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1 approval authority that exceeds that granted to  
2 the District of Columbia Public Service  
3 Commission?

4 A I cannot answer that question.

5 Q Is there a reason to believe that ACE  
6 customers in New Jersey would necessarily be more  
7 affected by a PHI decision to initiate or invest  
8 in new non-utility activities than PEPCO customers  
9 in the District of Columbia?

10 MR. LORENZO: Your Honor, I think this is  
11 asked and answered. It's -- she's already said  
12 she doesn't know why the language was changed.

13 CHAIRMAN KANE: Yeah.

14 MS. FRANCIS: Your Honor, it's a  
15 different question.

16 CHAIRMAN KANE: The particular question  
17 that Ms. Francis has asked has not been answered.

18 MR. LORENZO: Thank you, Your Honor.

19 MS. FRANCIS: Your Honor, I'm sorry. I  
20 didn't hear what you said.

21 CHAIRMAN KANE: I said that while the  
22 witness has answered other questions indicating

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1 she doesn't know the reason why a particular  
2 change was made, she has not yet answered the most  
3 recent question that you asked.

4 MS. FRANCIS: Thank you, Your Honor.

5 BY MS. FRANCIS:

6 Q Shall I ask it again, Ms. Lapson?

7 A Yes, please do.

8 Q Okay. Is there a reason to believe that  
9 ACE customers in New Jersey would necessarily be  
10 more affected by a PHI decision to initiate or  
11 invest in new non-utility activities than PEPCO  
12 customers in the District of Columbia?

13 A I don't have any reason to believe so or  
14 to believe the contrary. I really don't know.

15 Q Is it your position that the District of  
16 Columbia Public Service Commission should not be  
17 provided review and approval authority comparable  
18 to that granted the New Jersey Board of Public  
19 Utilities with respect to PHI's entry into new  
20 non-utility operations?

21 A I do not know, but I also -- I would have  
22 to review all of these commitments to make sure

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1 that there is not some other commitment that has  
2 other bearing on this, because there are 72  
3 commitments here. So it is possible that there is  
4 some other commitment that has bearing on this  
5 that I've just not -- don't have access to at this  
6 instant.

7 Q Hold it. Ms. Lapson, the ring-fencing  
8 provisions submitted in this case, you sponsored  
9 all of those; is that correct?

10 A Correct. What I'm saying is we've just  
11 focused on a single commitment out of 72. So I  
12 would have to take some time to review all the  
13 commitments to see if that commitment has moved to  
14 somewhere else or if other assurances have been  
15 provided about what businesses PHI would or would  
16 not engage in.

17 Q So you don't know if that commitment is  
18 someplace else among the 72?

19 A Among the 72, I do not know.

20 Q Let's assume, for the purposes of my next  
21 question -- let's call it a hypothetical -- that  
22 it's not somewhere else in the 72. So assuming

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1 that it's not somewhere else, I'm going to ask you  
2 the question again.

3 Is it your position that the District  
4 Public Service Commission should not be provided  
5 review and approval authority comparable to that  
6 granted to the New Jersey Board of Public  
7 Utilities with respect to PHI's entry into new  
8 non-utility operations?

9 A And my answer is that I don't know of any  
10 such reason.

11 Q Do you believe that the District of  
12 Columbia Public Service Commission's prior review  
13 and approval of PHI plans to invest in new  
14 non-utility operations is in the best interest of  
15 the District of Columbia and in the best interest  
16 of PEPCO ratepayers in the District of Columbia?

17 A I'm sorry. Could you please repeat that?

18 Q Certainly. Do you believe that the  
19 District of Columbia Public Service Commission's  
20 prior review and approval of PHI plans to invest  
21 in new non-utility operations is in the best  
22 interest of the District of Columbia and the best

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1 interest of PEPCO ratepayers in the District of  
2 Columbia?

3 A Well, I'm aware of the fact that,  
4 currently, the Commission does not have such a  
5 review over PHI and that, in the recent past and  
6 even at the present time, PHI has some non-utility  
7 businesses. And so, you know, it seems to me that  
8 this commitment is a -- an increase in commitment  
9 relative to anything that -- as a result of the  
10 merger relative to anything that exists at the  
11 present time.

12 Q Yes, I understand. You've summed up past  
13 practice. But my question was --

14 A And current practice.

15 Q Yes, and I'm asking you about future  
16 practice. That's what my question went to.

17 So I'm asking whether you believe now  
18 going forward that the D.C. Commission's prior  
19 review and approval of PHI's plans to invest in  
20 non-utility operations is in the best interest of  
21 the District of Columbia and the District's PEPCO  
22 ratepayers?

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1           A       I think that there would be a benefit.  
2   It would be a gain that the Commission would have  
3   if that were to occur relative to the current  
4   status.

5           Q       Are you able to explain to me that when  
6   the joint applicants have already agreed to review  
7   and approval of such PHI actions by the New Jersey  
8   Board of Public Utilities, why is it necessary for  
9   the District Public Service Commission to have to  
10  ask for such authority?

11          A       I don't have an answer to that.  It's one  
12  of the many things that I'm not aware of the  
13  answer.

14          Q       Now, could you please turn to AOBA  
15  Exhibit 89 --

16          A       Yes.

17                   MS. FRANCIS:  -- which has been marked  
18  for the record, Your Honor, as AOBA 98.

19  BY MS. FRANCIS:

20          Q       Now, in the last sentence of the response  
21  to part A of AOBA data request 2-10, you state, An  
22  indicator for the need for ring-fencing or the

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1 ability to remove or relax ring-fencing  
2 restriction is, quote, the credit ratings of  
3 Exelon Corp. are equivalent to or higher than the  
4 current credit ratings, unquote, for PHI and  
5 PEPCO.

6 Is that correct?

7 A That's what it says here.

8 Q Would you agree that the relative risks  
9 of Exelon and PHI can change over time?

10 A Yes. The relative risks could change  
11 over time.

12 Q So am I correct that the fact that Exelon  
13 and PHI may have similar credit ratings at a point  
14 in time is not necessarily a sound basis for a  
15 conclusion that their credit ratings will remain  
16 similar over time?

17 A That's correct.

18 Q Now, I'm going to ask you to please  
19 reference your conformed rebuttal testimony,  
20 page 22, lines 2 through 12.

21 A Does this refer to D.C. Water witness  
22 Gorman?

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1 Q Yes.

2 A Thank you.

3 Q Okay. Now, in this discussion, you  
4 reference the possibility of removal of  
5 ring-fencing after five years on lines 6 through  
6 7; is that correct?

7 A Yes.

8 Q Now, in order for the Commission to find  
9 that removal or relaxation of ring-fencing  
10 provisions is justified, would you agree that  
11 there will need to be substantial evidence that  
12 the credit ratings of PHI, PEPCO and Exelon can be  
13 expected to remain similar on a going-forward  
14 basis?

15 A No. I completely disagree. This relates  
16 to my greater understanding or changed  
17 understanding of what the -- what it means to  
18 change a ring-fencing commitment. There are 72  
19 ring-fencing commitments here. They're very  
20 detailed. And I have come to the conclusion over  
21 time, as we've been thinking and talking about  
22 this, that specific individual commitments may

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1 become onerous or awkward or have unintended  
2 consequences, and that those specific commitments  
3 may need to be modified with the consent and --  
4 after the consideration by the Commission and with  
5 the consent of the commissions, that there may be  
6 proposals to modify a commitment having nothing to  
7 do with the relative financial strength of either  
8 of the parties, and that it may simply have to do  
9 with the administrative burden or the fact that  
10 there might be unintended consequences of a  
11 particular commitment.

12           So we're talking here about the  
13 granularity and the detail that has come about in  
14 these commitments which may cause specific  
15 individual commitments to be something that the  
16 company, PEPCO, might wish to change and that the  
17 Commission might be in agreement with based upon  
18 evidence.

19           Q     Now I'm going to ask you to please focus  
20 on what was preliminarily --

21           MS. FRANCIS: -- what was identified for  
22 the record, Your Honor, as Joint Parties'

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1 Exhibit 2.

2 BY MS. FRANCIS:

3 Q Do you have that book, Ms. Lapson?

4 A Yes.

5 Q Now, I'm going to ask you to please turn  
6 to pages 99 and 100 of 113.

7 Now, Ms. Lapson, this exhibit is the  
8 ring-fencing provisions that were detailed in  
9 Exhibit (2K)-11 as initially filed in your  
10 September 19th, 2014, supplemental testimony; is  
11 that correct?

12 A Correct.

13 Q Now, please focus on item 17 in the  
14 original version of (2K)-11. That's page 100 --  
15 that's the exhibit you're looking at.

16 A Does this relate to the payment of  
17 dividends?

18 Q I'm just going to ask the question. Look  
19 at commitment 17, provision 17.

20 Now, is it -- in item 17, in the original  
21 version, does that provide that a dividend will  
22 not be paid if it would cause the common equity

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1 ratio to fall below the common equity ratio  
2 accepted in recent rate cases by the applicable  
3 commission?

4 Am I correct that this was intended to  
5 provide conformance with this Commission's prior  
6 decisions?

7 A I'm sorry. I can't follow the end of  
8 your question.

9 Q Okay. I'm looking at --

10 A I can follow the -- number 17 --

11 Q Okay.

12 A -- and it says that will demonstrate that  
13 the equity ratio after the dividend payment will  
14 not fall below the common equity ratio accepted in  
15 recent rate cases by the applicable commission.

16 I see that.

17 Q All right. Now, am I correct that what  
18 was intended by that provision was to provide  
19 conformance with this Commission's prior  
20 decisions?

21 A Yes, or any other commission that was  
22 applicable, yes.

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1 Q Now, please turn to (2K)-9 of your  
2 conformed direct testimony.

3 A Yes.

4 Q And again, I would like to direct your  
5 attention to commitment 61, which is on page 7 of  
6 10. Are you there?

7 A Yes.

8 Q Am I correct that in this conformed  
9 version of your Exhibit (2K)-9, the language of  
10 commitment 61, the commitment with respect to the  
11 common equity requirement has been changed?

12 A Yes. It now says that the common --  
13 if -- the dividend payment could not be made if  
14 the common equity level would fall below  
15 48 percent as equity levels are calculated upon  
16 the rate-making precedence of the commission.

17 Q Okay. Now, other than the fact that the  
18 joint applicants, or you, agreed to 48 percent in  
19 New Jersey, am I correct that you have not  
20 provided any justification for the 48 percent  
21 threshold?

22 A First of all, I would like to make it

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1 clear once again, Ms. Francis, that I didn't agree  
2 to any conditions in New Jersey or in any other  
3 state. I am not a party to the transaction.

4 Q Okay.

5 A The -- in my review, when I reviewed  
6 these, I did have some questions about why below  
7 48 percent.

8 There are pluses and minuses to having an  
9 explicit number versus whatever ratio is  
10 determined by the Commission. But it seems to me  
11 that 48 percent equity is a very standard level of  
12 equity capitalization among utilities, and that if  
13 the -- if there were a safeguard against dividends  
14 paying out below that percentage, it would satisfy  
15 credit rating agencies, the debt capital markets;  
16 fixed income investors would all feel very  
17 comfortable with that.

18 And so I thought that that ratio was as  
19 good a ratio as another ratio saying whatever the  
20 Commission prefers.

21 Q Yes, I understand that. I'm going to try  
22 to ask my -- I think my question was inartfully

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1 stated, so I'm going to state it again, and I'd  
2 like to focus on a different part of the question  
3 because I don't believe you answered it.

4 Other than the fact that the joint  
5 applicants agreed to 48 percent in New Jersey, am  
6 I correct that you have not provided any  
7 justification for the 48 percent threshold in your  
8 testimony in this proceeding?

9 A I did not justify the 48 percent  
10 threshold, but my reasoning upon that is that  
11 48 percent is very similar to the average common  
12 equity ratio of all U.S. utilities, and it is a  
13 very -- it was -- it would also be quite  
14 consistent with the ratios that are used by credit  
15 rating agencies for standard credit metrics and,  
16 therefore, it seemed like a reasonable number.

17 Q When you initially suggested the use of  
18 an equity percentage that was tied to the  
19 Commission's determination in PEPCO's most recent  
20 rate case, you are now proposing -- scratch  
21 that -- the joint applicants are now proposing a  
22 commitment that sets the applicable equity

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1 threshold at 48 percent; is that correct?

2 A I believe that the original commitment  
3 that I commented on in my supplemental testimony  
4 was the joint applicants' commitment which I made  
5 a comment upon, and I thought that that was a  
6 reasonable standard.

7 And the commitment that was made more  
8 recently, which -- in (2K)-9, commented upon in  
9 (2K)-9, which says below 48 percent, was also  
10 negotiated by the joint applicants, and it's their  
11 commitment, not my commitment.

12 And I believe both of them are reasonable  
13 standards. I don't think that there is any  
14 reason, you know, to prefer -- there may be  
15 reasons that the Commission would prefer one over  
16 the other, but it would be subject to a lengthy  
17 discussion. I don't think it's an open and shut  
18 case.

19 Q Let me just make sure I understand. The  
20 first commitment that had the common equity ratio  
21 tied to the Commission's last base rate case, was  
22 that your commitment? Did you recommend that?

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1           A       No. I never made any commitments. The  
2 commitments were made by the joint applicants, and  
3 I submitted my comments upon them. And so I've  
4 never -- I cannot make a commitment on behalf of  
5 the joint applicants.

6           Q       Did you recommend that commitment?

7           A       They already had made those commitments.  
8 I wasn't a party to the original application, and  
9 I did not recommend the commitments. I reviewed  
10 the commitments that they had proposed.

11          Q       I see. Do you know who set that original  
12 commitment?

13          A       I don't know. A number of the  
14 commitments that I saw originally were drawn from  
15 the Constellation transaction. I don't know if  
16 that related to that or not.

17          Q       So basically you don't know where it came  
18 from? Or you --

19          A       I was presented with a list of  
20 commitments, and I reviewed them. And I thought  
21 that they were very robust ring-fencing  
22 commitments, extremely robust.

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1 Q And do you know who specifically for the  
2 joint applicants made the commitment to change the  
3 commitment that we're discussing in regard to the  
4 equity?

5 A Well, I would suggest that since Kevin  
6 McGowan is coming up after me, you might ask  
7 Mr. McGowan, since he represents one of the joint  
8 applicants.

9 Q Well, I'm asking you. Do you know?

10 A I told you I don't know.

11 Q Okay. Ms. Lapson, do you know what the  
12 common equity ratio from PEPCO's D.C. last rate  
13 case is?

14 A Not at this moment. I could look it up,  
15 but I do not have it right now in my hands.

16 Q Would you accept, subject to check, that  
17 it's 49.19 percent from formal case 1103, order  
18 number 17424, paragraph 309?

19 A Yes, I would accept that, subject to  
20 check.

21 Q Now, do you believe that a common equity  
22 ratio of 48 percent is more appropriate than the

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1 Commission determination of 49.19 percent?

2       A       Ms. Francis, when commitments are entered  
3 into -- for example, in the covenants to a loan  
4 agreement or in the covenants to a bond agreement,  
5 when a commitment is made that it will be an event  
6 of default if the equity capital falls below a  
7 particular ratio, you do not necessarily pick the  
8 ratio for that commitment that is exactly on the  
9 button where the ratio was set in a particular  
10 point in time.

11               In fact, as this Commission is well  
12 aware, from time to time over the course of the  
13 year, different quarters, different financial  
14 statements, dates, financial ratios can change,  
15 and the percentage of equity capital that is  
16 actually present may vary slightly from those that  
17 were found in a particular rate order.

18               So most typically, if a utility had  
19 48 percent or 49 percent equity as a matter of  
20 standard doing business practice, the covenant to  
21 maintain the ratio at a certain level would be set  
22 way below that. It might say that the ratio will

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1 not fall below 42 percent or 44 percent or  
2 38 percent. So it would be a significantly lower  
3 level.

4 The fact that this is 1 percent below the  
5 last allowed level is not a material or  
6 substantive difference in my view as a financial  
7 analyst.

8 Q So you don't believe that one is more  
9 appropriate than the other because, to you,  
10 they're substantively the same? Is that your  
11 testimony?

12 A Yes, they are. To me, there is not a  
13 very substantial difference and it is not  
14 meaningful in the context of such an important  
15 commitment.

16 Q Could you please tell me, how does this  
17 change in the ring-fencing provisions proposed by  
18 the joint applicants benefit the District of  
19 Columbia's PEPCO ratepayers?

20 A I think that the substantive point here  
21 is that the company is committing that it will not  
22 pay dividends; it will provide notice to the

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1 Commission saying that it is not going to pay a  
2 dividend that will cause its equity ratio to fall  
3 below a ratio that is quite -- quite strong by  
4 utility standards, quite consistent with what --  
5 with financial viability standards for a utility  
6 in the United States, quite consistent with credit  
7 rating agency standards and with the current  
8 credit ratings of PEPCO.

9 Q Now, I'd like to show you a copy of a  
10 document that PEPCO provided to AOBA through  
11 discovery in a PEPCO Maryland proceeding, case  
12 9311.

13 Ms. Lapson, the document is a copy of an  
14 S&P industry report card for utilities industry  
15 that was published in the fall of 2012.

16 MS. FRANCIS: Your Honor, it is AOBA  
17 Exhibit 26, which I'd like to have marked for the  
18 record as AOBA 99.

19 CHAIRMAN KANE: Yes. That will be marked  
20 as 99. Thank you.

21 (AOBA Cross Exhibit Number 99 was marked  
22 for identification.)

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1 BY MS. FRANCIS:

2 Q Now, Ms. Lapson, I'd like to start off by  
3 please having you look at page 13 of 42, and just  
4 to note for the record that the pages numbered on  
5 the top of the page are the same as the pages at  
6 the bottom of the page.

7 A Yes. Page numbers are the same.

8 Q Okay. Now, please look at Commonwealth  
9 Edison. And would you agree with me that this  
10 paragraph states towards the bottom half of the  
11 paragraph, quote, the company's stand-alone  
12 financial measures continue to be more than  
13 adequate for the rating. ComEd's credit rating is  
14 limited to the lower of its stand-alone credit  
15 quality or parent, Exelon. Exelon's credit  
16 quality is affected by its non-rated (sic)  
17 regulated generation and retail businesses that  
18 are directly affected by low power prices.

19 Do you see that?

20 A Yes.

21 Q Now, please turn to page 27. And I'm  
22 going to ask you to please take a look at PECO

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1 Energy sort of around the middle of the page. And  
2 would you agree with me that the S&P report  
3 states, PECO's credit rating is limited to the  
4 lower of its stand-alone credit quality or that of  
5 its parent, Exelon Corp.; Exelon's credit quality  
6 is affected by its large, non-rate regulated  
7 generation and retail businesses that are directly  
8 affected by the low price of electricity?

9 Do you see that, Ms. Lapson?

10 A Yes, I do.

11 Q Now I'm going to ask you to please turn  
12 to page 11 of the S&P report, and I'd like to  
13 focus for a moment on Baltimore Gas and Electric.  
14 And would you agree with me that this paragraph  
15 states in the middle, We base the company's rating  
16 on its stand-alone credit quality and we rate the  
17 company one notch higher than its parent, Exelon  
18 Corp., due the insulation measures the company has  
19 implemented and maintained?

20 Do you see that?

21 A Yes, I see that.

22 Q Now, please look at page 29 of the S&P

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1 report, and I'd like to focus on Potomac Edison.  
2 Would you agree before me that in the middle of  
3 the paragraph the S&P report states, Despite  
4 Potomac's excellent business risk profile  
5 reflecting its low risk, rate-regulated  
6 distribution electric utility credit quality is  
7 pressured by FirstEnergy's merchant businesses  
8 that continue to be pressured by low electricity  
9 prices?

10 Do you see that, Ms. Lapson?

11 A Yes, I see that.

12 Q Okay. Now, please let's turn to page 22  
13 of the S&P report, and I'd like to focus on  
14 Massachusetts Electric Company. And would you  
15 agree with me that the S&P report states, We base  
16 the ratings of Massachusetts Electric on the  
17 consolidated credit profile of its ultimate  
18 parent, UK-based National Grid PLC; the company  
19 has an excellent business risk profile, reflecting  
20 relatively low operating risk of electric  
21 distribution operations?

22 Do you see that, Ms. Lapson?

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1           A       Yes, I do.

2           Q       Now, please look a little bit further  
3 down on page 22, and I just want to look at  
4 Michigan Consolidated Gas Company, the last  
5 sentence, where it says, MichCon's credit rating  
6 continues to be affected by its parent's mix of  
7 non-utility businesses -- business, specifically  
8 energy trading.

9                   Do you see that?

10          A       Yes, I do.

11          Q       Now, please let's turn back to page 21  
12 and look for a moment at Keyspan East Corp. And  
13 would you agree with me that the S&P report states  
14 in the first sentence, We base the ratings on  
15 (sic) Keyspan Gas East on the credit profile of  
16 ultimate parent, UK-based National Grid, PLC --  
17 and continues on the last sentence, We rate Gas  
18 East (sic) one notch higher than National Grid,  
19 reflecting regulatory insulation and stronger  
20 financial measures.

21                   Do you see that, Ms. Lapson?

22          A       Yes, I see that.

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1 Q Now, let's go to page 31. And I'd like  
2 to look at Rochester Gas and Electric Corp.,  
3 around the middle of the page. And would you  
4 agree with me that the S&P report states, We base  
5 Rochester Gas and Electric's ratings on  
6 stand-alone credit characteristics due to the  
7 remoteness of ultimate parent, Iberdrola SA;  
8 RG&E's ratings are currently capped at Iberdrola's  
9 ratings?

10 Do you see that, Ms. Lapson?

11 A I see it, but I don't understand it. I  
12 think S&P perhaps has scrambled this up in some  
13 way.

14 Q Are you familiar with Iberdrola,  
15 Ms. Lapson?

16 A Iberdrola.

17 Q Iberdrola.

18 A Iberdrola, yes.

19 Q How did you pronounce it?

20 A Iberdrola.

21 Q Okay. Iberdrola. Are you familiar with  
22 it?

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1 A Yes.

2 Q Do you acknowledge that Iberdrola is the  
3 parent company of Rochester Gas, and it is a  
4 foreign entity located in Spain?

5 A That is correct.

6 Q Now, please let's turn to page 30. I'd  
7 like to look for a moment at Public Service  
8 Electric and Gas. Would you agree with me that  
9 the S&P's report states, The utility's rating  
10 continues to be affected by its parent's large,  
11 non-rate regulated generation business that is  
12 directly affected by the low prices of  
13 electricity?

14 Do you see that?

15 A Yes, I see that.

16 Q And the last one, please focus on page 28  
17 of the S&P report. I'd like to look at  
18 Pennsylvania Power Company. Would you agree with  
19 me that this paragraph states, The utility's  
20 ratings continue to be affected by FirstEnergy's  
21 non-rate-regulated generation and retail business  
22 that are materially pressured by the low price of

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1 power?

2 Do you see that?

3 A Which company did you state that related  
4 to?

5 Q Pennsylvania Power.

6 A No, I think it's Pennsylvania Electric  
7 Company.

8 Q I'm sorry. Please look at Pennsylvania  
9 Power. I'll do that one again.

10 Would you agree with me that, in regard  
11 to Pennsylvania Power Company on page 28, the  
12 Standard & Poor's report says, The company's lower  
13 risk rate-regulated distribution electric  
14 utility's credit quality is pressured by  
15 FirstEnergy's merchant businesses that continue to  
16 be pressured by the low market price for  
17 electricity?

18 Do you see that, Ms. Lapson?

19 A Yes, I do.

20 MS. FRANCIS: Your Honor, thank you.

21 That's all the questions that I have.

22 CHAIRMAN KANE: Thank you, Ms. Francis.

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1 D.C. government?

2 CROSS-EXAMINATION

3 BY MR. COYLE:

4 Q Good morning, Ms. Lapson.

5 A Mr. Coyle.

6 Q My name is John Coyle. I'll be asking  
7 you a couple of questions this morning on behalf  
8 of the District of Columbia government.

9 A Excuse me while I get some of these books  
10 moved away.

11 Q Just let me know when you're ready.

12 A Nicole is very small, but she's whipping  
13 around books that weigh more than she weighs.

14 Q Ready?

15 A Yes.

16 Q Okay. Great. Could I ask you to look  
17 first at your supplemental direct testimony, Joint  
18 Applicants' Exhibit (2K) at page 26, lines 10  
19 through 17.

20 A What was the page number, sir?

21 Q Page 26.

22 A Yes.

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1 Q You state there that no rating agency  
2 placed a negative watch on PHI or any PHI  
3 operating company in connection with the proposed  
4 merger, correct?

5 A Correct.

6 Q Why would they?

7 A If they had thought that there was a  
8 danger associated with the ownership of the  
9 utilities as a result of the merger with Exelon,  
10 they would have placed them on a ratings watch  
11 negative. If they thought that Exelon was more  
12 risky than PHI as an owner or that the ownership  
13 would cause a downgrade, they would have placed  
14 them on a rating watch negative.

15 Q A 20 to 25 percent premium over the  
16 market price of the shares of a company about to  
17 be acquired is hardly cause for concern about that  
18 company, is it?

19 A I'm sorry, it's sort of a non-sequitur.

20 Q Well, let me back up and ask a  
21 preliminary question. You do you understand that  
22 Exelon offered a substantial premium for the

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1 purchase of PHI, correct?

2 A Correct.

3 Q And that premium, depending on how you  
4 calculate it, is somewhere in the range of 20 to  
5 25 percent, right?

6 A If you say so. I do not have those  
7 numbers in front of me.

8 Q Okay. But a premium of that size would  
9 not be --

10 A Are you speaking -- pardon me, sir. Are  
11 you speaking of a premium to the market price of a  
12 stock before the announcement of the merger or --

13 Q Yes, ma'am.

14 A Okay.

15 Q Yes, ma'am. A premium of that size would  
16 not be cause to put a -- the acquired company or  
17 the company to be acquired on any sort of a  
18 negative watch, would it?

19 A It would not be relevant to the  
20 determination. I don't see what the relevance  
21 would be, Mr. Coyle.

22 Q Okay. Great. Now, one of the rating

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1 agencies, your former employer as a matter of  
2 fact, Fitch Ratings, did play place a negative  
3 watch on Exelon as a result of the merger  
4 announcement; isn't that right?

5 A Correct.

6 Q Let me ask you to go first to what is in  
7 evidence as Exhibit DCG 4. Ask Ms. Travers to  
8 give you a hand with that one.

9 A I've got DCG 40.

10 Q No, 4.

11 A Is it another volume?

12 I have it. Thank you.

13 Q Okay. Just take a look through that data  
14 request response. That's the response to DCG data  
15 request 9-1. And if you'd just read that to  
16 yourself. Let me know when you're finished.

17 A That's relating -- is this one relating  
18 to whether or not various rebuttal witnesses were  
19 aware of certain documents?

20 Q That's correct.

21 A Okay. I have it in front of me.

22 Q And it says there, doesn't it, that you

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1 were aware of and had read all of the attachments  
2 to the response to data request DCG 1-9, correct?

3 A That's correct.

4 Q And would you recall whether those  
5 attachments consisted of analysts' commentary on  
6 the merger?

7 A I do not right now recall what they  
8 consisted of. If you say that there was analyst  
9 commentary, I would accept that, subject to check.

10 Q Okay. Let's -- let me ask you to go now  
11 to what's been marked for identification as  
12 Exhibit DCG 108. And that should be the Fitch  
13 Ratings commentary on the merger.

14 A I'm sorry. I'm going to have to get  
15 there in stages.

16 Q It's all right. Take your time.

17 A You can kill people over here with  
18 falling books. Yes.

19 Q All right.

20 MR. COYLE: And before I examine on that,  
21 I would note it's a confidential -- been marked  
22 confidential. The attachment -- and I'd ask

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1 Mr. Lorenzo whether the usual understandings about  
2 confidential attachments prevail here.

3 MR. LORENZO: Yes, Your Honor, the  
4 attachment will remain confidential, but Mr. Coyle  
5 may question on it in the public session.

6 CHAIRMAN KANE: You may proceed.

7 BY MR. COYLE:

8 Q Now, Ms. Lapson, would you take a look at  
9 DCG 108 and tell me whether that is the Fitch  
10 Ratings commentary on Exelon's announcement of the  
11 merger?

12 A That's correct.

13 Q Okay. Would you go to the paragraph that  
14 begins "financing plan" and read that to yourself.  
15 Let me know when you're finished.

16 A I'm sorry. I see rating drivers --  
17 financing plan?

18 Q Yes.

19 A Financing plan. I see that.

20 Q Read that paragraph to yourself and let  
21 me know when you're finished.

22 A Yes, I've read it.

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1           Q       Now, Fitch says that the proposed  
2 acquisition results in a meaningful increase in  
3 consolidated leverage compared to Exelon's current  
4 and projected stand-alone financial condition.  
5 Correct?

6           A       Yes.

7           Q       And that the rise in leverage is driven  
8 by the combination of the acquisition debt to be  
9 issued by Exelon and the assumption of existing  
10 PHI consolidated debt.

11                   Do you see that?

12          A       I see that.

13          Q       Now, what is that commentary referring  
14 to, if you know, Ms. Lapson?

15          A       I believe the commentary is referring to  
16 the consolidated debt ratio of Exelon after giving  
17 effect to the acquisition.

18          Q       Okay. Let me ask you -- a little further  
19 down in the same paragraph, Fitch Ratings refers  
20 to mandatory convertible debt. Do you see where I  
21 am?

22          A       Yes.

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1 Q And there's a sentence following that  
2 says, The mandatory convertible securities  
3 typically used in the utility sector (equity  
4 units) do not receive any equity credit from  
5 Fitch.

6 A That's correct.

7 Q Could you explain that sentence?

8 A Yes. So when Fitch provides a measure of  
9 the equity as a percentage of capital, which they  
10 print on the back of their reports, which they  
11 quote in many places in the reports, if there's a  
12 mandatorily convertible equity unit, they do not  
13 reflect that as equity when they quote the equity  
14 percentage.

15 So, for example, if equity units were  
16 used in a -- were issued right now, they would not  
17 reflect that as equity today in the equity as a  
18 percentage of capital of the company. However,  
19 the way that the ratings are performed is from a  
20 projection model so that the -- the analysts at  
21 Fitch do a projection of future cash flow ratios.  
22 The driving factor in the credit ratings is

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1 typically cash flow measures and cash flow  
2 measures on a projected forward basis.

3           So if the equity units convert to equity  
4 in three years, then that will be -- that  
5 conversion will be reflected a hundred percent  
6 three years from now in the projection. So the  
7 credit ratings that -- of the company will show --  
8 in this case, Exelon -- will show equity coming in  
9 and debt going away three years from now when  
10 those mandatory convertibles are exercised.

11       Q     Okay. Thank you.

12           Is it true in your experience,  
13 Ms. Lapson, that utilities use mandatory  
14 convertible securities when a traditional equity  
15 issuance would otherwise place too much market  
16 pressure on the underlying stock?

17       A     It is a way -- I would say it's a way of  
18 making a forward placement of equity at a price  
19 that is at a premium to the current price of  
20 equity.

21       Q     I'm not sure I understood your answer.  
22 Premium to the current price of equity? What do

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1 you mean by that?

2 A The conversion price, the exercised price  
3 on the mandatory convertibles is a higher price,  
4 typically, than the current market price. And the  
5 date is, in this case, let's say, three years  
6 further out.

7 Q Okay.

8 A So it is a way of issuing the shares  
9 today at a price that is higher than the current  
10 market price and assuring that they will be --  
11 that that issue will occur. It is a very  
12 economical way of doing a forward issuance of  
13 equity three years in the future.

14 Q And that defers price pressure on the  
15 stock currently, does it not?

16 A Yes. Placing a large amount of equity  
17 all at one time -- the context here was that at  
18 the same time that Exelon issued more than a  
19 billion dollars of mandatory convertibles, it also  
20 issued \$2 billion of common shares. That is a  
21 very large equity issuance. And had they issued  
22 \$3 billion of common shares at the same time, it

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1 might have pressured the stock price more.

2 Q Okay. Pardon me for being a little slow  
3 here, but the pressure that we're talking about on  
4 the prices of the stock is a downward pressure,  
5 given the operation of the laws of supply and  
6 demand, correct?

7 A Correct.

8 Q Thank you. Now, why does Fitch not give  
9 mandatory convertible securities equity credit  
10 until they convert?

11 A Because they are represented -- the  
12 equity unit is a unit in which they're represented  
13 by a debenture, which is a senior debt instrument,  
14 for the first N number of years; that is to say,  
15 in this case, I believe it was -- subject to  
16 check -- and I don't know if it was a three year  
17 or four-year period but, you know, for the number  
18 of years -- for a number of years there is a debt  
19 instrument. At the conclusion of that time, the  
20 debt instrument is surrendered in exchange for  
21 common shares.

22 Q Okay. All right. So would it be

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1 accurate to say that Fitch does not treat  
2 mandatory convertible securities as equity until  
3 they are actually converted to equity?

4 A That is correct.

5 Q Okay. Thank you.

6 A But it does do so -- I must qualify that,  
7 that in the projection models that are used in the  
8 rating case, that in the year of the conversion,  
9 that conversion is reflected at a hundred percent.  
10 So equity appears in the rating model a hundred  
11 percent for the mandatory convertible in the year  
12 that it is scheduled to be exercised.

13 Q Thank you. Would you now read the  
14 paragraph headed "business risk" which is the next  
15 paragraph under ratings drivers.

16 A Yes.

17 Q Just read that to yourself and let me  
18 know when you're finished.

19 A Yes. I did.

20 Q All right. Fitch says there it did not  
21 consider the acquisition of PHI to meaningfully  
22 lessen Exelon's business risk, correct?

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1 A Correct.

2 Q And that is the business risk that is  
3 associated with Exelon's non-regulated generation  
4 business, correct?

5 A Correct.

6 Q And Fitch still considers that risk with  
7 the non-regulated generation business to be  
8 significant, correct? I'm looking at the last  
9 sentence in that section.

10 A Yes. Well, they say that non-regulated  
11 generation business remains significant.

12 Q Okay. Thank you. Now, under the next  
13 paragraph, financial measures, Fitch says it  
14 expects consolidated cash flow leverage in fixed  
15 charge coverage measures of the combined entities  
16 to remain solidly within the triple-B category,  
17 but meaningfully weaker than Exelon's stand-alone  
18 credit profile without a significant reduction in  
19 the risk profile.

20 Do you see that?

21 A Yes. I see it.

22 Q What does that mean, meaningfully weaker

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1 than Exelon's stand-alone credit profile without a  
2 significant reduction in the risk profile?

3 A Apparently, Fitch considers PHI, PEPCO,  
4 ACE and Delmarva to be very risky. Apparently,  
5 Fitch considers them to be so risky that acquiring  
6 these businesses does not lower the risk profile  
7 of the consolidated entity. That differs  
8 considerably from what Standard & Poor's said  
9 about this merger. Standard & Poor's, said that  
10 it considered them to lower the risk -- it would  
11 consider this acquisition to lower the risk  
12 profile.

13 So perhaps Fitch is trying to distinguish  
14 itself from another rating agency, or perhaps it  
15 thinks that these utilities are very risky  
16 utilities. Each rating agency has an independent  
17 opinion, but this is quite at variance with the  
18 opinions of Standard & Poor's.

19 Q Okay. And then in the next sentence,  
20 focusing particularly in the end, Fitch  
21 forecasts -- skipping the debt to EBITDAR, and  
22 going to, Fitch forecasts FFO fixed charge

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1 coverage in the range of 5.5 times to 6.0 times --  
2 do you see that?

3 A Yes.

4 Q FFO is shorthand for funds from  
5 operations, correct?

6 A Correct.

7 Q And is fixed charge coverage the same as  
8 debt service or does that mean something different  
9 in Fitch parlance?

10 A Well, for each rating agency, it means a  
11 different thing. And you would have to consult  
12 the criteria of each agency to find out what is  
13 included and what is excluded. I don't have -- I  
14 don't have something in front of me that would  
15 tell me just exactly what they meant by how they  
16 calculate that.

17 Q Fair enough. You were talking about  
18 Standard & Poor's earlier. Standard & Poor's uses  
19 an FFO-to-debt ratio. I guess the same answer,  
20 right? You don't know whether FFO --

21 A Well -- no, no. Those are two different  
22 things.

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1 Q Okay.

2 A FFO-to-debt --

3 Q Yeah.

4 A Fitch also uses FFO-to-debt ratios as a  
5 measure of leverage. So FFO, meaning funds from  
6 operations, relative to debt is a measure of  
7 leverage.

8 Funds from operations relative to fixed  
9 charges would be a coverage ratio, so fixed  
10 charges might include debt interest, and it might  
11 also include lease rental payments or a portion of  
12 lease rental payments. It might even include some  
13 payment -- capacity payments under purchase power  
14 agreements. I really -- that is a matter of  
15 detail that I don't know right now.

16 Q Okay. All right. Thank you.

17 Would you take a look next at what Fitch  
18 had to say about ratings triggers, and  
19 particularly read the paragraph that begins,  
20 "Negative:" to yourself. Let me know when you're  
21 ready.

22 A Yes. Yes.

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1 Q Okay. What is a negative rating trigger  
2 in Fitch parlance, Ms. Lapson?

3 A The rating agencies typically are giving  
4 now for -- as a matter of transparency, they are  
5 giving an indication of what would make the rating  
6 go up or what (sic) the rating would go down.

7 So a negative rating trigger would cause  
8 a company either to be placed on a negative watch  
9 or to be downgraded. But most likely, a  
10 negative -- if the company is on negative watch,  
11 then a negative rating trigger would trigger a  
12 downgrade. If it is stable, it might trigger a  
13 negative watch.

14 Q Okay. And this document we just been  
15 looking at, the Fitch Ratings commentary, is  
16 already putting Exelon on negative watch, correct?

17 A I would call attention to the fact that  
18 Fitch's rating at this time that it wrote this was  
19 a notch higher than the ratings of Moody's and  
20 Standard & Poor's. So what it is warning about is  
21 that it is warning about a downgrading --  
22 downgrade in ratings from triple-B plus to merely

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1 triple-B, and triple-B is equivalent to the  
2 Standard & Poor's rating and the Moody's rating.

3           So I believe that Fitch wrote this report  
4 because they were looking for a reason to make  
5 their rating similar to the ratings of Moody's and  
6 Standard & Poor's. It's a little bit of inside  
7 baseball.

8           Q     Well, thanks for that.

9           My question, if we could get back to  
10 that, was that the document we're looking at,  
11 DCG 108, puts Exelon on negative watch; is that  
12 correct?

13          A     That is correct.

14          Q     So the rating trigger that's referenced,  
15 again, by virtue of your explanation, would be a  
16 rating trigger for a downgrade?

17          A     Yes, a downgrade to the same rating as  
18 the rating that is now maintained by Moody's and  
19 Standard & Poor's for Exelon.

20          Q     Okay. What does the expression  
21 "regulatory concession" mean in Fitch parlance,  
22 Ms. Lapson?

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1           A       I don't know. They didn't define it  
2 here.

3           Q       Okay. And similarly, do you know what  
4 the phrase, quote, regulatory concessions were  
5 assumed or -- sorry. Withdrawn. I garbled that  
6 question.

7                   Do you know what, if any, regulatory  
8 concessions were assumed in the financial  
9 forecasts, referring again to Fitch's comment,  
10 regulatory concessions in excess of those assumed  
11 in the financial forecast could have an adverse  
12 affect on ratings?

13          A       No, I don't know. I would have no way of  
14 knowing. That is one of the areas of rating  
15 agency transparency that has not become very  
16 transparent.

17          Q       Okay. Let me ask you next to take a look  
18 at what's in evidence as Exhibit DCG 3.

19                   COMMISSIONER FORT: While she's looking  
20 for that, I would like to ask counsel for the  
21 joint applicants a question about this exhibit we  
22 were just looking at, particularly since the

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1 counsel, Mr. Coyle, read a good bit of it into the  
2 record while we were looking at it. It's the  
3 Fitch Ratings report, and it's marked as  
4 confidential. Can you tell me why it's  
5 confidential?

6 MR. LORENZO: It's confidential because  
7 it's the business product of -- we signed a  
8 proprietary agreement with Fitch to keep it  
9 confidential. It's how they make their money.  
10 They sell it to companies such as PHI or Exelon,  
11 and we decide not to give it out.

12 We usually have a -- contact their  
13 general counsel office and ask for permission to  
14 produce it in rate proceedings, which we get. But  
15 the confidentiality comes by because of the  
16 agreement we have with the rating agencies.

17 COMMISSIONER FORT: So my question was,  
18 do we need to mark the testimony that -- the Q&A  
19 that just occurred that read specific portions of  
20 this into our record confidential as well under  
21 whatever agreement you have that marks this  
22 confidential?

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1 MR. LORENZO: Let me consult with --  
2 we're coming up on a break. Let me consult with  
3 my client and after the break we'll come back with  
4 a response.

5 COMMISSIONER FORT: Okay. Thank you.

6 MR. LORENZO: Sure.

7 BY MR. COYLE:

8 Q Do you have Exhibit DCG 3?

9 A I do, but -- yes.

10 Q Okay. Could you take a look through that  
11 document and tell me whether you've seen it  
12 before, Ms. Lapson?

13 A I've seen it before, but a year ago.

14 Q Okay.

15 A It's been a year since I've looked at  
16 this document.

17 Q Let me ask you to go to page 16 of the  
18 document, please. And by the way, if you want to  
19 take some time and familiarize --

20 CHAIRMAN KANE: Mr. Coyle -- I'm sorry.  
21 We were conferring.

22 COMMISSIONER FORT: What document are we

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1 on?

2 CHAIRMAN KANE: What document are we on?

3 MR. COYLE: I'm sorry. This is Exhibit  
4 DCG 3. It's in evidence. It's the April 30th,  
5 2014 Exelon earnings conference call transcript.

6 CHAIRMAN KANE: Is this a confidential  
7 document?

8 MR. COYLE: No.

9 BY MR. COYLE:

10 Q Are you ready?

11 A Yes.

12 Q Let me ask you to take a look at page 16  
13 of Exhibit DCG 3.

14 A Yes.

15 Q And in the sort of fourth box up from the  
16 bottom of the page you'll see comments by Mr. Jack  
17 Thayer.

18 A Yes.

19 Q Okay. Could you identify who Mr. Thayer  
20 is, please, for the record?

21 A Well, it is written here that he is an  
22 Exelon Corp. executive vice president and CFO.

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1 Q Okay. And Mr. Thayer responds to an  
2 analyst's question by saying, in part, As you do  
3 the math, you will see synergies is a very small  
4 element of the accretion in this transaction.

5 Do you see that?

6 A Yes.

7 Q Okay. And then Mr. Thayer goes on to  
8 say, It's really the opportunity for incremental  
9 leverage at the holding company that this  
10 transaction affords. It's the monetization of  
11 certain assets at a higher value than what would  
12 be implied in our PE multiple, and the synergies  
13 are an important but very modest contributor to  
14 that 15 to 20 cents.

15 Do you know what Mr. Thayer is referring  
16 to there with the expression "the opportunity for  
17 incremental leverage at the holding company that  
18 this transaction affords"?

19 A My understanding of that is that  
20 Standard & Poor's utilizes different ratings  
21 benchmarks for the amount of leverage and the  
22 financial ratios of companies depending upon

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1 whether they are of standard volatility or reduced  
2 volatility. Those are not exactly the categories,  
3 the names of the Standard & Poor's categories.  
4 I've just forgotten what their name is.

5           But at any rate, they have -- they have a  
6 different set of benchmarks for companies that are  
7 of standard or lesser volatility of cash flows.  
8 And they had reason to believe that they would be  
9 moved by Standard & Poor's -- or Standard & Poor's  
10 had announced, perhaps publicly. That it was  
11 going to move them from the standard volatility to  
12 the lesser volatility category.

13           And I believe that that is the basis for  
14 this -- another little inside baseball thing, but  
15 it's the reason for thinking that adding more  
16 utilities to their business mix was going to allow  
17 them to have a consolidated financial ratio --  
18 consolidated debt ratio that would be slightly  
19 higher and that they would then still be able to  
20 maintain the same triple-B rating at Standard &  
21 Poor's with different consolidated debt ratios in  
22 the whole company.

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1 Q Does incremental leverage at the holding  
2 company refer to the \$3.5 billion in debt  
3 financing for this acquisition?

4 A No. I do not believe so. I believe it  
5 has to do with the consolidated financial ratios  
6 of the entire entity and the use of a different  
7 table or a different set of financial ratios and  
8 metrics for a company that had a slightly higher  
9 percentage or a greater percentage of utility cash  
10 flows that was going to come about in the future  
11 on a consolidated basis.

12 So it has to do with the entire  
13 capitalization of the entire entity. And it also  
14 refers to Standard & Poor's consolidated rating  
15 methodology. So it is definitely not referring  
16 here to a particular financing.

17 Q Leverage generally refers to debt, does  
18 it not?

19 A Financial leverage --

20 Q Yes.

21 A -- typically refers to debt or leases or  
22 similar obligations.

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1 Q All right. Thank you.

2 Now, the reference to 15 or 20 cents in  
3 Mr. Thayer's comment, do you recall that at the  
4 time that this earnings call took place, which was  
5 also Exelon announcement of the merger, part of  
6 the discussion about the announcement of the  
7 merger was that Exelon expected the acquisition of  
8 PEPCO Holdings to be accretive in earnings per  
9 share on the order of 15 to 20 cents per share?

10 A Is this a question or is this a  
11 statement?

12 Q It was a question.

13 A What was the question?

14 MR. COYLE: Do you want to read it back.

15 THE WITNESS: I'm sorry. What was the  
16 question?

17 MR. COYLE: I was asking the reporter if  
18 she'd read it back.

19 CHAIRMAN KANE: If the court reporter  
20 would read the question back, please. Thank you.

21 (The reporter read the record as  
22 requested.)

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1 THE WITNESS: I actually don't recall 15  
2 or 20 cents, but I -- if that is what it says here  
3 and if that is your belief, I will accept that. I  
4 do recall that they said it would be accretive.

5 BY MR. COYLE:

6 Q Okay. Now, let me ask you --

7 MR. COYLE: Actually, let me ask the  
8 bench before we move on to this, is this a good  
9 time to take the break or -- my next line of  
10 questioning is going to go on for probably another  
11 10 or 15 minutes.

12 CHAIRMAN KANE: We can go on for another  
13 10 or 15 minutes.

14 MR. COYLE: Okay.

15 CHAIRMAN KANE: We started a little after  
16 10:00.

17 MR. COYLE: Yep. Okay.

18 BY MR. COYLE:

19 Q Let me ask you next, Ms. Lapson, to take  
20 a look at what has been marked for identification  
21 as DCG 109.

22 A DCG -- it's another book. Okay.

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1 Q And before I ask you any questions about  
2 that --

3 MR. COYLE: -- I'll ask Mr. Lorenzo once  
4 again, since the attachment to this data request  
5 response is marked confidential, whether I may  
6 examine in accordance with the usual  
7 understandings.

8 MR. LORENZO: Yes, the attachment will  
9 remain confidential, but you may question on the  
10 public record.

11 MR. COYLE: Thank you.

12 BY MR. COYLE:

13 Q Let me ask you, Ms. Lapson, to read the  
14 first -- let me identify this for the record.  
15 Mr. Caldwell reminds me. This is Bank of America  
16 Merrill Lynch analyst commentary entitled, Updated  
17 thoughts on PEPCO.

18 Is that right, Ms. Lapson?

19 A Yes.

20 Q Okay. Would you read the first bullet  
21 beginning -- and read it to yourself, the first  
22 bullet, The high premium paid, et cetera.

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1 A Yes.

2 Q Just read that section to yourself and  
3 then I have a couple of questions for you.

4 A Yes, I've read it.

5 Q Okay. You see that that paragraph talks  
6 about Exelon's EPS accretion guidance, right?

7 A Yes.

8 Q And EPS is an abbreviation for earnings  
9 per share; is that right?

10 A Correct.

11 Q What does the expression "optically  
12 possible" mean?

13 A I don't know. I've never seen it before.

14 Q Okay. Do you recall the elements of  
15 Exelon's proposed financing of its acquisition of  
16 PHI? Let me go down a list and see if you agree  
17 they're elements of the financing. All right?

18 First there was \$3.5 billion in debt; is  
19 that right?

20 A I think I -- starting the other  
21 direction, I recall that they had -- that there  
22 was equity, there was mandatory convertibles,

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1 there was the sale of generating assets.

2 Q Yep.

3 A There was cash on hand. And then a  
4 residual would be funded with debt.

5 Q And do you recall that at the time the  
6 merger was announced the thinking was that the  
7 amount of debt involved would be approximately  
8 3.5 billion?

9 A Not necessarily. That's a residual --  
10 the amount of debt would be a residual amount  
11 depending upon those other items. That was my  
12 recollection. So I don't recall that it was  
13 specifically -- that that amount was specifically  
14 the debt amount.

15 Q Did you know what assets Exelon is  
16 selling?

17 A There was a list of generating assets.

18 Q Right. Do you recall whether the Four  
19 River plant in Boston was on that list?

20 A I do not recall.

21 Q How about the Conemaugh and Keystone coal  
22 plants in western Pennsylvania?

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1 A I really don't know. I don't recall.

2 Q How about the Hillabee Energy Center in  
3 Alabama?

4 A I couldn't say.

5 Q Do you know whether Exelon has completed  
6 the asset sales that it contemplated using to fund  
7 part of the financing of this acquisition?

8 A I'm not sure if they have or not.

9 Q All right. And then how much mandatory  
10 convertibles were we talking about, do you recall?

11 A Well, I know that the amount that was  
12 issued was 1.1 billion.

13 Q Okay.

14 A I think that was a little higher than the  
15 initial target amount.

16 Q Now, let me ask you to take a look at the  
17 second page of that commentary. Before we do  
18 that, actually, go back to the paragraph we were  
19 just looking at where it talks about accretion  
20 guidance being optically possible. And it refers,  
21 among other things, to low cost HoldCo debt,  
22 correct?

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1           A       The use of converts, merchant asset  
2 sales --

3           Q       Yeah.

4           A       It refers to merchant asset sales, use of  
5 converts and use of low-cost HoldCo debt.

6           Q       Okay. And then the commentary refers to  
7 page 2, right? That paragraph refers over to  
8 page 2?

9           A       Yes.

10          Q       And table 1 on page 2 is a calculation of  
11 the earnings per share accretion, correct?

12          A       Yes.

13          Q       And is that a type of calculation with  
14 which you are familiar based on your experience  
15 with Fitch Ratings or elsewhere?

16          A       No. This is an equity -- sort of an  
17 equity concept in which earnings per share are  
18 more important. And when you said with my  
19 experience with Fitch Ratings, that was as a debt  
20 analyst where we're more likely to use cash  
21 flow -- projected cash flow metrics in the future.

22          Q       Okay.

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1           A       So this was not -- this was not something  
2 that I would have paid attention to as a fixed  
3 income analyst.

4           Q       Is it -- let me ask my question a little  
5 bit more broadly, then, Ms. Lapson. Is that  
6 accretion analysis that appears on table 1 of  
7 Exhibit DCG 109 a type of calculation with which  
8 you are familiar?

9           A       Yes, I am familiar with this.

10          Q       Okay. Can we step briefly through it? I  
11 have a couple of questions for you about what some  
12 of the underlying mathematics are. All right?

13                   If we look at the segment entitled,  
14 Benefits, and immediately under that you see a  
15 line that says, PEPCO EPS contribution, right?

16          A       Yes.

17          Q       And the PEPCO EPS contribution for 2015  
18 is given as 19 cents?

19          A       Yes.

20          Q       EPS we've established is an abbreviation  
21 for earnings per share, correct?

22          A       Correct.

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1 Q Okay. And do you know what Exelon's  
2 number of shares outstanding is in 2015?

3 A No.

4 Q Would you accept 860 million, subject to  
5 check?

6 A Subject to check.

7 Q Okay. So if we wanted to know what kind  
8 of money Exelon was expecting that the acquisition  
9 of PHI would generate in 2015, we would multiply  
10 19 cents by 860 million shares, right?

11 A Yes.

12 Q Okay. And you do the same calculation  
13 for 2016 based on 42 cents a share?

14 A I guess my immediate thought here is that  
15 this was a very optimistic analyst if he thought  
16 that the acquisition would get done so early in  
17 the year that there would be an opportunity to  
18 earn this amount of money on it. It must be an  
19 analyst who thought that things were going to go  
20 lightning fast in D.C. and Maryland.

21 Q As Robert Burns says, the best-laid plans  
22 of mice and men aft gang apley.

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1           But, anyway, that the forecast, or that's  
2 what the analyst is saying, correct?

3           A     That was what he was saying here.

4           Q     Okay.  Where does that PEPCO EPS  
5 contribution come from, Ms. Lapson, to your  
6 understanding?

7           A     Well, when companies -- when one company  
8 acquires another, it then accounts for the  
9 consolidated income of the entire operation.  So  
10 based upon my accounting background, I would say  
11 that he's talking about the contribution in the  
12 form of the consolidated net income that is  
13 brought in in an accounting consolidation.

14          Q     And that would be the PHI contribution to  
15 the consolidated net income, correct?

16          A     That's what I think he should be showing  
17 on that line --

18          Q     Okay.

19          A     -- of the statement.  But I -- of course,  
20 I didn't have an opportunity to ask this analyst  
21 any questions about his analysis.

22          Q     I understand.

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1           That PEPCO earning per share contribution  
2 to consolidated net income comes from the PEPCO  
3 operating companies, correct?

4           A     Yes.

5           Q     And --

6           A     It comes -- yeah, when it says PEPCO  
7 here, it does not mean the single utility PEPCO;  
8 it means PHI.

9           Q     Thank you. I'll accept that. I  
10 certainly agree.

11           But the money that we're talking about,  
12 the 19 cents a share times 860 million shares, or  
13 42 cents a share times 860 million shares, comes  
14 from the PEPCO Holdings operating companies,  
15 right? It's their net income.

16           A     Less the costs of PHI. So the debt and  
17 so forth and the salaries at the PHI level are  
18 deducted.

19           Q     Okay. Thank you.

20           And then underneath that line, you see  
21 deal synergies, right? Underneath the PEPCO EPS  
22 contribution, you see a line that says, deal

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1 synergies?

2 A Yes.

3 Q And the synergies contribute zero  
4 dollars, or are projected to contribute zero  
5 dollars in 2015?

6 A Correct.

7 Q And then a penny per share in 2016 and  
8 2017?

9 A Correct.

10 Q Okay. And then, as we look down a little  
11 further under costs, you see a line that's  
12 entitled, Debt cost, correct?

13 A Yes.

14 Q Okay. And again, this is -- the analyst  
15 is looking at the issuance of \$3.4 billion in  
16 debt, correct?

17 A That's what I see here.

18 Q Okay. And after-tax -- what does that  
19 mean, after-tax yield of 2.7 percent in the  
20 context of debt?

21 A The debt interest expense is  
22 tax-deductible.

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1 Q Okay. So that's another way of saying  
2 the net cost of the debt after your tax  
3 deductions?

4 A Yes.

5 Q Okay.

6 A But I see that he understated the amount  
7 of mandatory convertibles; in fact, 1.1 billion of  
8 mandatory convertibles were issued, and he  
9 forecasted only 792 billion. So there's just a  
10 different allocation of those two --

11 Q Sure.

12 A -- categories.

13 Q Sure. He also predicted some values for  
14 asset sales, correct?

15 A Yes.

16 Q Or -- well --

17 A Losses of earnings per share.

18 Q Okay. I'm sorry?

19 A He predicted losses of earnings per  
20 share --

21 Q Yep.

22 A -- through the sales of assets.

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1 Q All right. And as you sit here today,  
2 you don't know whether any of those facilities  
3 that are identified -- Keystone, Conemaugh,  
4 Hillabee -- excuse me, H-I-L-L-A-B-E-E, for the  
5 reporter's benefit -- whether any of those sales  
6 have been consummated?

7 A No, I'm sorry, I don't.

8 Q Or since you don't know whether they've  
9 been consummated, you don't know what the sale  
10 price was.

11 A Well, this doesn't relate to the sales  
12 price. It --

13 Q Right.

14 A -- relates to the loss of earnings per  
15 share.

16 Q True enough. But you still don't know  
17 what the sale price was?

18 A No.

19 Q Okay. Thank you.

20 And then equity issuance dilution is the  
21 next heading after asset sales lost earnings per  
22 share. What does equity issuance dilution mean,

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1 Ms. Lapson?

2 A As I understand it, it would mean that if  
3 there are more shares outstanding, then the net  
4 income of a company is divided by a greater number  
5 of shares.

6 Q Okay. And this analyst was contemplating  
7 an equity issuance of \$1.6 billion?

8 A In 2015.

9 Q Right. And then the same comment about  
10 the convertibles; the analyst was looking at  
11 800 million in mandatory convertibles and your  
12 recollection is, in actuality, that number was  
13 more like 1.1 billion, correct?

14 A Right. So there was \$2 billion of equity  
15 that was actually issued in 2014 and a billion-1  
16 of mandatory convertibles.

17 Q Okay. So all of that leads the analyst  
18 to conclude there will be a net earnings per share  
19 accretion in the bottom line of table 1 of 4 cents  
20 per share in 2015, 12 cents per share in 2016, and  
21 16 cents per share in 2017, right?

22 A Correct. I see that written here.

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1 Q Would you --

2 MR. COYLE: That's all I have on this  
3 exhibit. It's probably a good time to take the  
4 break.

5 CHAIRMAN KANE: Yes. And you have other  
6 questions when we come back?

7 MR. COYLE: I do. Yes.

8 CHAIRMAN KANE: Okay. Let me just check.  
9 The other --

10 MS. ELEFANT: No questions.

11 CHAIRMAN KANE: We'll just take -- the  
12 Commission has some questions. So in order to --  
13 we'll take a ten-minute break. We'll come back,  
14 finish with this witness, and then we'll take a  
15 lunch break.

16 (Whereupon, a short recess was taken.)

17 CHAIRMAN KANE: We're back on the record  
18 at 12:32.

19 Mr. Coyle.

20 MR. COYLE: Thank you, Your Honor.

21 BY MR. COYLE:

22 Q Ms. Lapson, before we leave Exhibit

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1 DCG 109, I had one more question for you about it.  
2 On the second page of the exhibit under the  
3 heading Investment Thesis, there's a paragraph  
4 entitled, Exelon, and I wonder if you could read  
5 that to yourself and let me know when you're  
6 finished.

7 A Yes.

8 Q Do you have an understanding, Ms. Lapson,  
9 whether it remains the case that Exelon faces  
10 challenging fundamentals?

11 A I'm sorry. Are you asking me about this  
12 individual's investment -- this individual's views  
13 or about my views?

14 Q I was asking you about your views.

15 A Okay. And you're -- would you like to  
16 define what you mean by challenging fundamentals  
17 in your question?

18 Q In the same sense that the expression is  
19 used in the paragraph that you just read on  
20 Exhibit DCG 109.

21 A It is used here to say that there are --  
22 that the generation business is facing lower

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1 natural gas prices and an overabundance of power  
2 supply in the PJM territory, and I think that both  
3 of those continue to be true.

4 Q Thank you. Let me change topics and ask  
5 you to go next to your supplemental direct  
6 testimony, Joint Applicants' Exhibit (2K), at  
7 page 25, lines 10 through 20. And as long as  
8 Ms. Travers is helping you out, you might also  
9 want to get out your rebuttal testimony,  
10 Exhibit (3K), at page 16 over to page 17. They  
11 both relate to the same topic.

12 A Let's take those page numbers again.

13 Q On Exhibit (2K), I'd like you to look at  
14 page 25, lines 10 through 20. And on  
15 Exhibit (3K), page 16, line 14, through page 17,  
16 line 16.

17 A And on page -- (3K), pages?

18 Q 16, line 14, through page 17, line 16.  
19 Just -- again, just read those to yourself. They  
20 both relate to the same topic.

21 A Yes.

22 Q Okay. Now, it is correct, is it not,

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1 that one of the aspects of ring-fencing on which  
2 you and District government witness Dr. Wilson  
3 disagree is whether the special purpose entity  
4 ought to be placed immediately above the PHI  
5 operating company level as Dr. Wilson proposes or  
6 immediately above the PHI Holding Company level as  
7 the joint applicants have proposed; is that right?

8 A In other words, above the -- above PEPCO  
9 versus above PHI?

10 Q That's correct. Yep.

11 A Yes, we disagree on that point.

12 Q Okay. And to put this discussion in some  
13 context for the Commission, could I ask you to  
14 turn to your Exhibit (2K)-8, please.

15 A I don't know if I can hold all these  
16 places. Do I still need to hold these other  
17 places?

18 Q No, I just wanted you to know what we  
19 were talking about. You can lose those and go to  
20 (2K)-8.

21 A Yes.

22 Q Okay. (2K)-8 is a graphic representation

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1 of the proposed post-merger corporate structure  
2 under the joint applicants' proposed ring-fencing  
3 conditions, right?

4 A Correct.

5 Q And can you describe for the Commission  
6 where the proposed special purpose entity relative  
7 to this acquisition is located on the graphic?

8 A Okay. On the graphic, there is a special  
9 purpose entity that is above PHI. It is the owner  
10 of PHI, and it in turn is owned by an organization  
11 called EEDC.

12 Q And EEDC stands for Exelon Electric  
13 Distribution Company; is that right?

14 A No. Exelon Energy Delivery Company.

15 Q Okay. Thank you.

16 And if you look a little further to the  
17 right on the graphic, you see a reference to  
18 RF HoldCo, correct?

19 A Correct.

20 Q RF HoldCo sits directly above Baltimore  
21 Gas and Electric, or BGE, which is a utility  
22 operating company, correct?

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1 A I'm sorry. RF HoldCo --

2 Q Yes.

3 A -- sits between EEDC and Baltimore Gas  
4 and Electric.

5 Q Okay. And Baltimore Gas and Electric is  
6 an operating utility company, correct?

7 A Correct.

8 Q Okay. Am I correct that the placement of  
9 RF HoldCo in the corporate structure depicted in  
10 Exhibit (2K)-8 was required by the Maryland Public  
11 Service Commission in approving Exelon's merger  
12 with Constellation Energy?

13 A It was a part of the conditions of the  
14 merger. I don't know who required it. I really  
15 don't know. But it was a condition of the merger.

16 Q Okay. And the Maryland commission had to  
17 approve those conditions in order for the merger  
18 to take place, right?

19 A Correct.

20 Q Okay. Now, if I could ask you to go back  
21 to take a look at your supplemental direct again,  
22 Exhibit (2K), page 25, lines 16 to 17.

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1           A       Was that the one that you told me that I  
2 could close up and that I didn't have to come  
3 back.

4           Q       I tricked you, didn't I?

5           A       Yes, you did. Yes.

6           Q       Okay. At page 25, lines 16 to 17, you  
7 say, Additional SPEs interposed between the PHI  
8 utilities and PHI would be inconvenient and  
9 unnecessary, in my opinion.

10                   Do you see where I am?

11          A       Yes.

12          Q       Okay. And over on page 28, you use the  
13 same expression when you say, The Commission may  
14 deem it is no longer desirable to prolong the  
15 inconvenience of the bankruptcy-remote entity in  
16 its golden share, et cetera, right?

17          A       Yes, I use that expression.

18          Q       Okay. What do you mean by inconvenient  
19 or inconvenience in those portions of your  
20 testimony?

21          A       There's a unnecessary entity -- there  
22 could be an unnecessary entity in the organization

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1 structure, there could be fees, there could be  
2 legal formalities associated with maintaining  
3 those organizations in effect.

4 Q For whom is that inconvenient,  
5 Ms. Lapson?

6 A It may just gum up the organization  
7 structure.

8 Q It's inconvenient for the holding company  
9 owner, I suppose, isn't it?

10 A That could be.

11 Q Do you think utility customers find it  
12 inconvenient when a utility on which they depend  
13 for service gets dragged into a bankruptcy  
14 proceeding?

15 A I think that there is a very, very low  
16 probability of a utility, a PHI utility, being  
17 pulled into a bankruptcy proceeding, and I think  
18 that adding additional SPEs in the structure would  
19 not materially change those probabilities.

20 The probability is so infinitesimally low  
21 that I see no reason for introducing more  
22 entities, more SPEs to make that separation.

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1 Q Now, if you'll indulge me in a  
2 hypothetical, suppose that the SPE is interposed  
3 between the operating companies of PHI. Right?

4 A Yes.

5 Q The way that RF HoldCo in Maryland is  
6 interposed between Baltimore Gas and Electric and  
7 EEDC. Are you with me?

8 A Yes.

9 Q Okay. And in that case, it isn't really  
10 additional special purpose entities, because it  
11 wouldn't be necessary to have one between PHI and  
12 EEDC, would it?

13 A There would then be a single special  
14 purpose entity as opposed to three special purpose  
15 entities.

16 Q I don't know. Let's assume there is.  
17 Let's assume there's a special --

18 A I'm sorry, but I'm just not -- I'm not  
19 familiar with that structure. I can't think about  
20 a special purpose entity being the parent company  
21 of something. Special purpose entities don't do  
22 anything. They can't do anything. They're not

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1 permitted to do anything.

2 Q Right.

3 A They don't have real managements. They  
4 don't do anything. They don't do any functions.  
5 They can't share functions. Having a special  
6 purpose entity as the parent of these three  
7 operating companies seems to me would be a very  
8 strange recommendation.

9 If that is Dr. Wilson's recommendation,  
10 then I am -- I'm amazed. It means that the man  
11 does not understand that special purpose entities  
12 are not real companies. They are simply buffer  
13 zones.

14 Q I wasn't advancing it as Dr. Wilson's. I  
15 was asking you.

16 A Oh, it was a hypothetical.

17 Q Yes, ma'am.

18 A I see.

19 Q Yes. It was a hypothetical. And the  
20 hypothetical was, if you put the SPE in between  
21 the operating companies and the holding company  
22 rather than above the holding company, you don't

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1 have that redundancy that you were talking about  
2 in your testimony, do you?

3 A In a hypothetical sense, no.

4 Q Do you know -- you were just mentioning  
5 that special purpose entities don't do anything.  
6 What do you consider to be adequate capitalization  
7 for a special purpose entity?

8 A Adequate capitalization for a special  
9 purpose entity could be as little as almost  
10 nothing. It could be very -- it could be a token  
11 amount. It could be 1 percent of -- it could  
12 be -- I've certainly seen -- in the case of some  
13 structured transactions, I've seen 1 percent or  
14 less, half of a percent, fraction of a percent.

15 Q And the reason we care about adequate  
16 capitalization of the special purpose entity is to  
17 prevent substantive consolidation, correct?

18 A The special purpose entity is just a  
19 separator. It's just being interposed as a  
20 separator. It should -- it's really not going to  
21 do anything. It's not going to fund the  
22 transaction. It's not going to make any

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1 management decisions. It's not going to conduct  
2 any businesses.

3 Q Can we agree, Ms. Lapson, that the  
4 expression "substantive consolidation" as it's  
5 used in bankruptcy is approximately equivalent to  
6 the doctrine of piercing the corporate veil,  
7 generally speaking?

8 A I'm not an attorney, so I don't think  
9 that I could make that judgment.

10 Q All right. Do you have any idea why  
11 people are concerned about whether or not a  
12 special purpose entity is adequately capitalized?

13 A I am going to make a statement -- make an  
14 answer in a different way, which is to say that  
15 the special purpose entity that is being proposed  
16 here is -- provides a barrier, a level of  
17 separation over and above the extraordinary amount  
18 of separation that exists in the case of any  
19 utility even without a special purpose entity.

20 In fact, substantive consolidation of  
21 utilities is not really a very significant risk.  
22 It is so minor that I'm not aware of any case of

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1 substantive consolidation of a utility that was  
2 not ring-fenced that did not have an SPE.  
3 Substantive consolidation is just not happening as  
4 a regular basis.

5           So adding a special purpose entity here  
6 adds an added measure of separation to a situation  
7 where there is already an exceedingly low  
8 probability of substantive consolidation. And I  
9 could take you through all the reasons that  
10 substantive consolidation is a minor possibility  
11 in the case of any well-run and well-operated  
12 utility subsidiary.

13       Q     That won't be necessary, but I wonder if  
14 we could get back to my question, which was, do  
15 you know why people are concerned, in drafting  
16 ring-fencing conditions, about whether or not the  
17 special purpose entity is adequately capitalized?

18       A     Presumably so that the special purpose  
19 entity itself does not become bankrupt.

20       Q     And would that have something to do with  
21 the special purpose entity itself not becoming  
22 subject to substantive consolidation?

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1           A       Or becoming bankrupt itself and causing  
2 some obligation. I really can't say.

3           Q       Okay.

4           A       I'm not qualified to give you that  
5 answer.

6           Q       Okay. Great. Thank you.

7                    Second question: To what extent does the  
8 District of Columbia Public Service Commission  
9 regulate PEPCO Holdings, Inc., as opposed to  
10 PEPCO, if you know?

11          A       My understanding is that PEPCO Holdings,  
12 Inc., is not regulated by the Commission, but I am  
13 not thoroughly versed in that.

14          Q       Okay. Now I'd like to ask you to -- this  
15 is going to be another two exhibits at once, so  
16 brace yourself. I'm going to warn Ms. Travers.

17                    I'd like you to get out Exhibit (2K)-1,  
18 which is your CV, and Exhibit DCG 113, which is  
19 joint applicants' response to data request  
20 DCG 7-17.

21          A       Yes.

22          Q       Now, in your CV, you talk about your

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1 previous testimonial experience, correct?

2 A It's listed there, yes.

3 Q Okay. And then what's been marked for  
4 identification as Exhibit DCG 113 asks you  
5 specifically about your involvement in bankruptcy  
6 cases, correct?

7 A Correct.

8 Q Okay. I want to focus your attention on  
9 page numbered 32 of 53 on the bottom.

10 A Yes.

11 Q And I'd like you to read the first  
12 paragraph of that page to yourself. Let me know  
13 when you're finished.

14 A Is this concerning NorthWestern  
15 Corporation?

16 Q That's correct.

17 A Yes.

18 Q Are you ready?

19 A Yes.

20 Q Okay. What exactly did you do in  
21 connection with the NorthWestern bankruptcy?

22 A I was a credit analyst and was managing

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1 other credit analysts at Fitch Ratings. And I  
2 was -- my involvement was simply as an analyst who  
3 had rated this.

4 As I indicated, in many cases my  
5 involvement had to do with doing a -- with  
6 directing analysts who did recovery valuations and  
7 estimated the degree of recovery after the  
8 bankruptcy occurred. Also, I was involved to a  
9 limited extent in the rating of NorthWestern prior  
10 to its bankruptcy. And I probably participated in  
11 rating the company's emergence from bankruptcy as  
12 a restructured company.

13 Q Is it fair to say, then, that you were  
14 observing the bankruptcy rather than working on  
15 behalf of any of the parties that were involved?

16 A That's absolutely true.

17 Q Great. Thank you.

18 Do you recall that the proximate cause of  
19 NorthWestern's bankruptcy was an impairment of  
20 NorthWestern's goodwill with respect to its  
21 acquisition of the Expanets subsidiary from Avaya?

22 A That certainly is not my -- the way that

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1 I would interpret the reason for their bankruptcy.

2 Q Was Exelon required to -- I'm sorry.

3 Exelon. I beg your pardon.

4 Was NorthWestern required to recognize an

5 impairment to goodwill in the neighborhood of

6 \$800 million with respect to its Expanets

7 subsidiary?

8 A I do not remember the exact number, but

9 I -- I certainly recall that there was an

10 impairment.

11 Q Do you recall what the total size of

12 NorthWestern's balance sheet was at the time that

13 the impairment was recognized?

14 A No, I do not.

15 Q Okay. Could you explain for the

16 Commission what impairment means?

17 A Well, this is -- impairment is an

18 accounting concept, and it means that something

19 that is valued on the balance sheet has to be

20 reviewed under certain circumstances to see

21 whether it could continue to be carried on the

22 balance sheet -- if it's an asset, can it be

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1 carried on the balance sheet at that value?

2           If it cannot be carried on that value, if  
3 there's not a reasonable basis for assuming that  
4 its value is as such, then the valuation has to be  
5 written down under certain -- at certain time  
6 periods. And the impairment results in a -- not  
7 only a write-down of the asset but a charge to  
8 earnings.

9           Q     Thank you.

10          A     But my recollection of the NorthWestern  
11 bankruptcy was that it was triggered by the fact  
12 that the company was structured in such a way that  
13 the utility was directly the owner and had  
14 provided all the financing for subsidiaries that  
15 were of very little value, and that they were part  
16 of the dot-com and fiber -- there had been a  
17 bubble in the dot-com and fiber sector, that those  
18 businesses were not worth very much, and so the  
19 accounting impairment was an after-the-fact  
20 accounting recognition of a loss of value that had  
21 taken place.

22          Q     Do you know why NorthWestern was the

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1 direct owner of the utility transmission and  
2 distribution system it had purchased from Montana  
3 Power Company in 2002?

4 A No.

5 Q Do you know that the -- do you recall  
6 that section 10 of the Public Utility Holding  
7 Company Act of 1935 required utility holding  
8 companies to operate an integrated utility with a  
9 utility property that they acquired? Is that part  
10 of your working knowledge?

11 A Yes, I was familiar with the Public  
12 Utility Holding Company Act.

13 Q All right. Are you aware that  
14 NorthWestern had utility operating assets in South  
15 Dakota?

16 A No.

17 Q And that when it acquired utility assets  
18 in Montana, it had utility assets in asynchronous  
19 interconnections?

20 A I have no such recollection, not being an  
21 engineer.

22 Q Okay. Do you know what the significance

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1 of operating an -- asynchronous interconnections

2 is, Ms. Lapson?

3 A No.

4 Q Okay.

5 A But I presume it meant that they were not  
6 integrated.

7 Q Good guess.

8 Do you know how much advance notice the  
9 Montana commission got concerning NorthWestern's  
10 recognition of the impairment associated with  
11 Expanets?

12 A No, I don't.

13 Q Do you know how much advance notice the  
14 Montana commission got about NorthWestern's  
15 bankruptcy filing?

16 A No, I do not.

17 Q Do you know whether the Montana Public  
18 Service Commission imposed ring-fencing conditions  
19 as a condition of its non-objection to  
20 NorthWestern's plan of reorganization?

21 A I presume that they may have come upon  
22 ring-fencing at that point in time.

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1 Q But you don't know one way or another?

2 A No.

3 Q Okay. Would it be fair to say, in your  
4 view, Ms. Lapson, the absence of ring-fencing in  
5 connection with the NorthWestern -- with the  
6 NorthWestern bankruptcy and the events leading up  
7 to it was pretty inconvenient for the utility's  
8 customers and its regulators?

9 A I'm sure it was inconvenient, having an  
10 absence of ring-fencing. But I did not say that  
11 that relates to an absence of a special purpose  
12 entity.

13 We have 72 ring-fencing commitments in  
14 this transaction. Some of them relate to a  
15 special purpose entity, but quite a few of them  
16 relate to things other than a special purpose  
17 entity which create a significant separation, and  
18 that -- that separateness would prevent  
19 substantive consolidation without the existence of  
20 a special purpose entity. So special purpose  
21 entities are not the only way to create  
22 separateness within a utility holding company.

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1           The situation of NorthWestern  
2 Corporation, or NorthWestern Energy was an  
3 egregious case of a lack of separation, an  
4 egregiously poor structure that was presumably an  
5 effort to avoid regulation as a holding company  
6 under the Public Utility Holding Company Act.

7           But such a structure is not a common  
8 structure in the utility sector and would have --  
9 could have been prevented by very common  
10 structural means other than special purpose  
11 entities.

12         Q     Fair enough. Could have been prevented  
13 by other ring-fencing measures, I suppose.

14         A     Right. For example, maintaining separate  
15 debt -- putting the non-utility businesses into  
16 separate subsidiaries, having a holding company  
17 that owned the non-utility businesses and owned  
18 separate subsidiaries of utility businesses,  
19 having separate bank accounts, having separate  
20 debt ratings, having separate bondholders,  
21 maintaining -- there are a large number of  
22 ring-fencing mechanisms that would have created

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1 sufficient separation here.

2 Q And you'd certainly want to make sure, if  
3 you were a regulator considering a merger in this  
4 day and age with that cautionary tale behind you,  
5 that you had taken adequate steps to ensure the  
6 maximum possible corporate separation in order to  
7 avoid something like NorthWestern happening again,  
8 wouldn't you?

9 A I would say that you would want to take  
10 reasonable actions to make sure that the natural  
11 separation that would exist between a utility  
12 subsidiary and a parent holding company are  
13 present. And all of those things should be  
14 addressed.

15 And in my testimony, I listed a list  
16 which Ms. Francis led me through -- I believe it  
17 was (2K)-7 -- a list of some of the things that  
18 can provide that type of separation.

19 Q Let's go back to --

20 A But I object to the word "maximum." You  
21 can do unreasonable things to provide more and  
22 more separation. There is no reason to have to go

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1 that far when you have limited and minimized the  
2 possibility of substantive consolidation to a  
3 non-threat, a complete non-threat.

4 Q Well, let me ask you about that, 20/20  
5 foresight. Back in days when you were doing your  
6 analyst stuff for Fitch -- and NorthWestern was  
7 part of your beat, as it were --

8 A Yes.

9 Q -- is that right?

10 Did you sound the alarms when  
11 NorthWestern acquired Montana Power and say, oh,  
12 my God, this is a holding company with mixed  
13 ownership of regulated and unregulated businesses?

14 A We -- when I was at Fitch, we always  
15 thought that -- and wrote that the structure was a  
16 less protective structure, and we criticized the  
17 structure of companies that had that -- what was  
18 called the Public Utility Holding Company Act  
19 pretzel structure; it was a structure to avoid  
20 Public Utility Holding Company Act regulation.

21 Q Okay. So you did sound the alarm?

22 A We said that it was a less protective

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1 structure for bondholders.

2 Q All right.

3 A I have to admit that I did not foresee  
4 the entire dot-com crash. I presume that there  
5 were many others who didn't foresee that was  
6 coming at the time that those businesses were  
7 entered into.

8 Q Is it fair to say that you did not  
9 foresees NorthWestern's bankruptcy, either?

10 A I don't recall.

11 Q Okay. Thank you.

12 Now, let me ask you to go back to your  
13 supplemental direct testimony, Exhibit (2K), at  
14 27, line 6, through 28 -- I think it's 28, line 6.  
15 We're talking there about the duration of the  
16 stay-out period. I wanted to ask you about that  
17 in particular.

18 A Yes.

19 Q All right. Fair summary -- is it a fair  
20 summary that you say five years is a reasonable  
21 stay-out period, and that's what the joint  
22 applicants have proposed, and Dr. Wilson says ten

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1 years, and you disagree?

2 A I think the ten years is very long. I  
3 think that five years is -- it wasn't my choice of  
4 numbers. That was a commitment that the -- was  
5 proposed by the joint applicants, but there's  
6 nothing wrong with that number. You know, I might  
7 have proposed they would -- I might have proposed  
8 at any time with the consent of the Commission.  
9 That would have been my advice.

10 Q All right.

11 A I would not have recommended any  
12 stay-out. I would have said, let the Commission  
13 decide.

14 Q Okay. You do not -- as a matter of  
15 counterpoint, though, you do not favor an  
16 automatic sunset provision on ring-fencing; is  
17 that correct?

18 A No, I do not recommend an automatic  
19 sunset.

20 Q Okay. And what you do say, looking at  
21 page 27, line 17, to page 28, line 6, is that the  
22 Commission may deem that it is no longer desirable

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1 to prolong the inconvenience of the  
2 bankruptcy-remote entity and its golden share  
3 while many of the more customary provisions of  
4 separateness are likely to be maintained as a  
5 matter of prudence and good corporate governance.

6 Right?

7 A Yes, I wrote that.

8 Q Okay. What happens if utility holding  
9 companies don't change their business mix over  
10 time? The same risks prevail.

11 A I'm sorry. What happens to what?

12 Q Well, does that -- does the absence of a  
13 change in the business mix, referring to your  
14 testimony -- the absence of a change in the  
15 business mix militate in favor of keeping  
16 ring-fencing in place?

17 A As I explained when I was being  
18 cross-examined by Ms. Francis, I have had a change  
19 from the time that I entered this testimony until  
20 now in my views of how -- what types of changes  
21 might -- the joint applicants might wish to make  
22 over time or the Commission might wish to make

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1 over time in the ring-fencing provisions.

2           So there could be a time in the future,  
3 and it could be at any time, when is determined  
4 that some provision here -- remember, we've now  
5 gotten up to 72 ring-fencing commitments -- and  
6 not only that; the ring-fencing commitments have  
7 become very detailed. And the more detailed they  
8 have been made, the more risk that there is that  
9 at some time in the future we're going to find out  
10 that some specific detail in one of those  
11 mechanisms is costing more money than it is worth,  
12 that it is raising the costs of doing some type of  
13 engineering function or supply function or causing  
14 more employee expense than necessary or whatever.

15           And at that point, I think it would be  
16 useful to have a review of that provision if the  
17 companies feel that there is a way to reduce that  
18 inconvenience, that exposure, that cost, and  
19 substitute something which is equally protective  
20 but is more economical or simple or whatever.

21           So I think that there -- I now foresee --  
22 I now understand this differently than I did when

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1 we started out. It's really not yes ring-fencing  
2 or no ring-fencing. Of course there is going to  
3 be ring-fencing, as I wrote in my testimony. Of  
4 course we want -- and I think that everyone in  
5 this case wants to have good corporate governance  
6 with separation of the utility from its parent  
7 holding company and the separate viability of the  
8 utilities. That is very good operating practice.  
9 It's good management practice. It's good utility  
10 practice. And it is something that I think will  
11 be deemed to be desirable at any time.

12           But the specific provisions here should  
13 be subject to review if the joint applicants bring  
14 them to the Commission and if the Commission deems  
15 that there would be no harm as a result of making  
16 a change.

17       Q     For a second there, I thought I heard  
18 somewhere in that speech a bit of agreement with  
19 Dr. Wilson. I must have been hallucinating.

20       A     I think that the disagreement comes at  
21 the special purpose entity. I don't think anyone  
22 is -- the joint applicants are not proposing that

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1 they should convert the structure of this into one  
2 in which there's no protections in the form of  
3 separateness and viability for the utility.

4 Q Did I not hear you say this morning, in  
5 response to Mr. Lorenzo's question, that you  
6 disagreed with Dr. Wilson's suggestion in his  
7 supplemental answering (sic) testimony that there  
8 ought to be a showing of affirmative benefit to  
9 consumers required in order to relax the  
10 ring-fencing measures?

11 A I did say that, and that is my view. I  
12 think that the idea of ring-fencing, the concept  
13 of ring-fencing is to prevent harm. Ring fencing  
14 is in place in order to avoid harm. It does not  
15 produce a benefit unless, of course, you agree  
16 that -- if you would agree that ring-fencing  
17 produces a benefit, just as having insurance  
18 produces a benefit.

19 But aside from that, there is no -- the  
20 whole purpose of ring-fencing is to avoid harm.  
21 So you cannot say that the standard -- it would be  
22 totally illogical to say that the standard for

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1 changing a ring-fencing provision is to gain a  
2 benefit because it was never there to create a  
3 benefit; it was there to avoid harm.

4 So a change in the ring-fencing should be  
5 permitted if changing it does not increase any  
6 harm or doesn't produce any harm. It should be  
7 changed with the same standard as when it was  
8 first put in place to -- that there is no harm,  
9 that it has avoided harm.

10 Q In the hypothetical that you were  
11 spinning a few minutes ago, Ms. Lapson, you  
12 envisioned a situation in which the regulated  
13 entity, Exelon in this case, was able to come  
14 forward with some kind of a showing that one or  
15 more of the ring-fencing conditions was impeding  
16 something that would benefit consumers. Do you  
17 recall talking about that?

18 A Yes.

19 Q Okay. And so -- but what you're saying  
20 is you wouldn't make that a prescriptive element  
21 of modification, right?

22 A If the ring-fencing provisions, as you

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1 must always use your left hand to shake hands  
2 with, and you wish to substitute shaking hands  
3 with your right hand, there would be -- there  
4 would be no harm or benefit one way or another.  
5 You would simply show that there was no harm by  
6 shaking hands with your right hand rather than  
7 your left hand.

8 Q Okay. Let's go back to the duration of  
9 stay-out provision for a second, Ms. Lapson. You  
10 would agree with me, would you not, there's no  
11 playbook on this? There's no playbook. There's  
12 no set of rules on the duration of a stay-out  
13 provision for ring-fencing?

14 A I don't know why there would be any  
15 duration. If the standard is that the  
16 commission -- that the utility commission must  
17 approve it, then why would the ability of the  
18 utility commission to consider it, review it and  
19 either approve it or reject it or whatever -- why  
20 would that be subject to a stay-out? It's  
21 actually -- I don't understand it.

22 So I don't understand ten years. It

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1 seems like a remarkably long time to require no  
2 change in something.

3 Q But you --

4 A The idea of five years, I could  
5 perhaps -- I can perhaps understand the idea of  
6 five years because it might take time to find out  
7 where the shoe rubs. It might find out -- we  
8 might not find out that one provision is onerous  
9 and provides no benefit until three or four or  
10 five years have passed. But ten years just seems  
11 to me to be a strange and arbitrary number.

12 Q Okay. So five years isn't arbitrary, but  
13 ten years is. That's your testimony?

14 A My personal view is that -- you know, I  
15 don't know why five years was originally proposed  
16 by the joint applicants. And I could understand  
17 if a year went by and there was some provision  
18 that was inconvenient and causing greater expense  
19 or difficulty for the operations of the utility,  
20 that the joint applicants might at that time bring  
21 it to the Commission. And I think it would be  
22 quite fitting for the Commission to consider it

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1 because there are so many and such detailed  
2 commitments here.

3 Q Let's change topics, Ms. Lapson. Let me  
4 ask you to go to your rebuttal testimony, Joint  
5 Applicants' Exhibit (3K), and read to yourself  
6 from page 25, line 8, through page 27, line 16,  
7 and let me know when you're ready.

8 A How far did you wish me to read?

9 Q Page 27, line 16.

10 A It actually goes on much farther than  
11 that.

12 Q I know it does, but I only asked you to  
13 read through page 27, line 16. So let me know  
14 when you're finished. All right?

15 A Okay. I finished that.

16 Q Great. Now, you acknowledge, do you not,  
17 Ms. Lapson, that Dr. Wilson does not use the  
18 expression "double leverage" anywhere in his  
19 testimony; is that right?

20 A That's correct.

21 Q So that's your characterization rather  
22 than Dr. Wilson's?

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1 A Yes.

2 Q Let me ask you to look now at what's been  
3 marked for identification as Exhibit DCG 114 which  
4 is --

5 A I have it.

6 Q -- joint applicants' response to data  
7 request DCG 8-101.

8 A Yes.

9 Q You are the sponsor of that data request  
10 response, are you not?

11 A Yes.

12 Q On the basis of that response, you  
13 acknowledge, would you not, that whatever your  
14 views on the subject of double leverage, some  
15 United States jurisdictions believe it's  
16 appropriate to adjust the capital structure used  
17 to determine the allowed return on an operating  
18 subsidiary of a holding company to reflect the  
19 holding company's cost of financing; is that  
20 right?

21 A Yes. As I indicated here, I'm aware that  
22 Iowa and Tennessee have that practice.

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1 Q Are you aware whether this Commission has  
2 ever done so in cases involving utility holding  
3 companies?

4 A I am not aware if they have ever done so  
5 back in history, but I am aware that in recent  
6 PEPCO rate cases, the Commission has not done so  
7 and has rejected arguments to do so.

8 Q Okay. How about the Maryland Public  
9 Service Commission? Are you aware of what the  
10 Maryland Public Service Commission does?

11 A Well, I know that since only Iowa and  
12 Tennessee do have such practices, the Maryland  
13 Public Service Commission does not.

14 Q You're sure that only Iowa and Tennessee  
15 apply --

16 A No, actually, I'm not sure.

17 Q Okay. All right. Thank you.

18 Now, are you -- have you become familiar  
19 with an individual who works for Exelon by the  
20 name of William von Hoene, senior executive vice  
21 president and chief strategy officer?

22 A I'm sorry. Name is?

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1 Q von Hoene.

2 A No, I don't know him.

3 Q We discussed a little earlier in your  
4 cross-examination how the acquisition of PHI is  
5 supposed to be accretive to Exelon's earnings per  
6 share. Do you recall that?

7 A You mean you took me through an analyst's  
8 report --

9 Q Yep.

10 A -- written by a Bank of America analyst?

11 Q Yep.

12 A I recall that we discussed that report.

13 Q Okay. Good.

14 Let me ask you now to take a look at what  
15 is in evidence as Exhibit DCG 92.

16 MR. COYLE: Before I examine, I'll note  
17 for the record that DCG 92 is labeled  
18 confidential, and ask Mr. Lorenzo whether I may  
19 examine in open session on it.

20 MR. LORENZO: As with the other  
21 documents, you may. We'll keep the designation of  
22 the document as confidential, but you may examine.

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1           However, I will note that this is a  
2 document I'm not -- I do not believe the witness  
3 relied on, has ever seen before. While it's in  
4 evidence, it's not something that's relevant to  
5 her -- related to the basis of her testimony. And  
6 I will not object in advance, but I will note that  
7 if we get too deep into this, I think it's unfair  
8 to question the witness on such a document in that  
9 way.

10           CHAIRMAN KANE: I'm sure the witness is  
11 perfectly capable of indicating whether or not she  
12 can comment on any particular question or is  
13 familiar with the material as the questions occur.

14 BY MR. COYLE:

15           Q     Ms. Lapson, in formulating your testimony  
16 responding to Dr. Wilson on this issue that we've  
17 been discussing, both in your rebuttal testimony  
18 beginning at page 25, line 8, and this morning in  
19 your live sur-rebuttal, did you undertake to  
20 review any of Exelon's internal documentation  
21 concerning how it was going to finance the  
22 acquisition of PHI?

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1           A       I do not have access to internal  
2 documentation.

3           Q       Then I take it that you have not seen --  
4 let me just -- let me withdraw that and ask the  
5 question straight up.

6                    Have you seen Exhibit DCG 92 before?

7           A       No, I have not.

8           Q       Okay. Let me ask you to take a look at  
9 page 17 of Exhibit DCG 92. I'm looking at 17 of  
10 37 in the upper right-hand corner.

11          A       Yes.

12          Q       The page is headed, Sources and uses of  
13 funds?

14          A       Yes.

15          Q       Would you please read the one, two,  
16 three, four, five, six, seventh bullet under the  
17 heading -- under the column headed, Model  
18 assumptions.

19          A       Assumes cash savings from elimination of  
20 PHI dividend used to offset acquisition debt.

21          Q       Great. Thank you.

22                    Do you know what PHI's dividend is today,

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1 Ms. Lapson?

2 A I don't have those numbers at hand.

3 Q Okay. Would you accept, subject to  
4 check, the dividend is \$1.08 per share?

5 A Per PHI share?

6 Q Yes.

7 A Okay. If you say so, subject to check.

8 Q And that PHI has approximately  
9 251 million shares outstanding?

10 A Subject to check.

11 Q Great. Now, let me ask you to take a  
12 look at what's been marked for identification as  
13 Exhibit DCG 115. And that is the joint  
14 applicants' response to District government data  
15 request 9-14. And you are the author of that  
16 response, correct, Ms. Lapson?

17 A Correct.

18 Q You state in that response that the  
19 Exelon/Constellation merger is the only merger  
20 case of which you are aware that involves a  
21 restriction on payment of dividends as a condition  
22 of the merger, correct?

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1 A Yes. That's what it says here.

2 Q Do you know whether the ring-fencing  
3 conditions established with respect to  
4 NorthWestern by the Montana Public Service  
5 Commission contain a dividend payment restriction?

6 A No, I do not.

7 Q Let me ask you this: When you tie a  
8 dividend limitation to the maintenance of a  
9 debt-equity ratio in a ring-fenced company's  
10 capital structure, how do you deal with goodwill  
11 in the capital structure? Do you include goodwill  
12 as equity in the calculation of the debt-equity  
13 ratio?

14 MR. LORENZO: Your Honor, I'm going to  
15 object. This calls for a legal conclusion based  
16 upon what the Commission's precedent is for  
17 setting the equity ratio in the District which is  
18 what the Commission (sic) is based on and it's  
19 something I don't believe Ms. Lapson is qualified  
20 to opine on.

21 CHAIRMAN KANE: The witness can indicate  
22 whether she can answer this.

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1 THE WITNESS: Well, actually, I'm really  
2 baffled, though, by the question because I'm not  
3 sure whose goodwill you're referring to here. Are  
4 you referring to PEPCO's goodwill or are you  
5 referring to Exelon's goodwill?

6 BY MR. COYLE:

7 Q I wasn't referring to anyone's goodwill  
8 specifically. I was referring to how you  
9 administer a ring-fencing condition that involves  
10 a dividend limitation tied to a debt-equity ratio.  
11 How would you calculate the debt-equity ratio?  
12 Would you include goodwill? It's an abstract  
13 question.

14 A The Commission would use whatever formula  
15 it uses for including or excluding goodwill of  
16 PEPCO from -- at the PEPCO level from the  
17 calculation of PEPCO's equity. But I believe that  
18 you are trying to tie this together in some way  
19 with Exelon's goodwill and Exelon's books, which  
20 is -- I'm afraid I'm becoming baffled by the  
21 directions that you're leading.

22 Q Does goodwill provide any useful service

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1 to utility customers, Ms. Lapson?

2 A That is a theoretical question that I  
3 don't think I want to approach here. Very often  
4 goodwill appears in a transaction because  
5 something is purchased at a price that exceeds the  
6 historical cost valuation of that item. And so it  
7 could be a very useful purpose and it could  
8 produce benefits for customers.

9 The concept of goodwill doesn't  
10 necessarily address whether or not it is good or  
11 bad. The valuation of patents, the valuation of  
12 copyrights, all of that could be a part of  
13 goodwill. So I'm not sure that I can make a value  
14 judgment about whether or not it's useful for  
15 utility customers, nor is it my place in this  
16 proceeding to do so.

17 Q Okay.

18 A But I'm not sure that this transaction is  
19 going to create any goodwill on PEPCO's books. Is  
20 that your presumption, that there will be some  
21 goodwill on PEPCO's books as a result of this  
22 transaction?

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1 Q If I have a presumption, Ms. Lapson, you  
2 have my assurance I'll state it in the question.

3 Let me ask you to look now at what's been  
4 marked for identification as Exhibit DCG 116 which  
5 is your response to data request DCG 9-22. I'd  
6 ask you to look specifically at subpart E of the  
7 response. You are the sponsor of that response,  
8 correct?

9 A Well, I'm just reading the question. I  
10 have to read the answer.

11 Q Let me know when you get there.

12 A Yes.

13 Q All right. You acknowledge, do you not,  
14 that you are not aware whether or not this  
15 Commission has imputed the cost of capital of the  
16 holding company to one of its operating  
17 subsidiaries in setting rates, right?

18 A I have not done a detailed study into the  
19 distant past. I am, however, familiar with this  
20 Commission's order 1103 in the -- issued in the  
21 first quarter of 2014 in a PEPCO rate case in  
22 which this Commission rejected the proposal by OPC

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1 and AOBA to impute debt or to reduce the equity  
2 percentage of PEPCO. And the Commission said in  
3 that order, we decline to do either -- that was to  
4 do either of reducing the amount of equity, as  
5 suggested by OPC, or to add short-term debt as OPC  
6 and AOBA have urged to do.

7 We decline to do either, the Commission  
8 said. We believe that a capital structure that  
9 reflects all known and measurable changes is  
10 generally more appropriate. We will use the  
11 capital structure as proposed by PEPCO. We find  
12 merit in PEPCO's argument that it would be  
13 inappropriate to base PEPCO's capital structure on  
14 the capital structure of PHI.

15 So that principle was stated in the  
16 Commission's order number 1103 as recently as  
17 March or April of 2014.

18 Q Now could we get back to my question? My  
19 question was, you are not aware, are you, whether  
20 this Commission -- whether or not this Commission  
21 has imputed the cost of capital of a holding  
22 company to one of its operating subsidiaries in

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1 setting rates?

2 A I have not done a review of prior  
3 practices of the Commission in history.

4 Q Thank you. You would agree with me,  
5 Ms. Lapson, that this is not a rate case that  
6 we're involved in.

7 A Yes, I would agree with that.

8 Q Great.

9 MR. COYLE: Now, I had asked Mr. Lorenzo  
10 prior to my examination whether we could stipulate  
11 to the admission of what has been marked for  
12 identification as Exhibit DCG 110, which is joint  
13 applicants' response to data request from the  
14 D.C. -- from the Commission staff 1-20, DCG 111,  
15 which is joint applicants' response to commission  
16 staff data request 1-21, and DCG 112, which is  
17 joint applicants' response to District government  
18 data request DCG 2-3. And unfortunately, I wasn't  
19 able to hear back from Mr. Lorenzo before I  
20 started. But if we can stipulate to those, I'm  
21 finished.

22 MR. LORENZO: I have no problem with

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1 DCG 111 and 112, which are sponsored in part, at  
2 least, by Ms. Lapson. I do have an issue in that  
3 DCG 112 -- excuse me, 110 and 111 -- DCG 112 is  
4 sponsored by Mr. Khouzami. And while it's  
5 referenced in -- it gets complicated. It's  
6 referenced in DCG 110. Is that it? 110?

7 MR. COYLE: I think it's 111.

8 MR. LORENZO: It's referenced in 111, but  
9 that exhibit is sponsored jointly by Mr. Khouzami  
10 and Ms. Lapson. And the reason for the joint  
11 sponsorship is so that we could attach -- so that  
12 they could reference DCG Exhibit marked for  
13 identification 112.

14 What I'd like to do is -- and it's a  
15 substantial exhibit. And because Mr. Khouzami is  
16 no longer here, he's already taken the stand, and  
17 his sponsor -- the joint sponsorship of the  
18 earlier exhibit that referenced this was --  
19 Mr. Khouzami was put on it so that we could attach  
20 this, it's sort of unfair to bring this in through  
21 Ms. Lapson at this time.

22 CHAIRMAN KANE: So you're indicating that

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1 Ms. Lapson is not familiar and cannot be a witness  
2 on this document?

3 MR. LORENZO: Yes. Should have asked  
4 Mr. Khouzami about it when he was on the stand a  
5 week ago.

6 CHAIRMAN KANE: Accept that.

7 MR. COYLE: Well, in that case, I guess  
8 I'm not done.

9 BY MR. COYLE:

10 Q Ms. Lapson, would you take a look at  
11 what's been marked for identification as Exhibit  
12 DCG 112, please. Actually, start with DCG 111.

13 CHAIRMAN KANE: Mr. Lorenzo stipulated to  
14 110 and 111?

15 MR. COYLE: That's correct.

16 MR. LORENZO: Yes, Your Honor.

17 THE WITNESS: 111 and 112?

18 BY MR. COYLE:

19 Q Sure. Let's start with 111. You are the  
20 co-sponsor of 111, correct? It's the response to  
21 staff data request 1-21.

22 A Yes.

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1 Q And that answer cross-references  
2 Exhibit (sic) DCG 2-3, which has been marked for  
3 identification as Exhibit 112, correct?

4 A Which is Mr. Khouzami's exhibit.

5 Q That's correct, which you  
6 cross-referenced in the answer that you  
7 co-sponsored --

8 A Yes.

9 Q -- to staff 1-21.

10 So my question is, when you co-sponsored  
11 the response to 1-21 that cross-referenced the  
12 response to DCG 2-3, marked for identification as  
13 DCG 112, were you familiar with Exhibit DCG 112?

14 A Yes. I had been furnished with that  
15 exhibit in order to -- it was not prepared by me.  
16 It was furnished to me so that I would understand  
17 the similarities and differences between the  
18 proposed ring-fencing of the PHI entities versus  
19 the Baltimore Gas and Electric situation.

20 Q So you are familiar with the documents  
21 attached to the response?

22 A I have seen it before.

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1 Q Thank you very much. On that basis --

2 MR. COYLE: Well, I'll reserve the  
3 argument to this point. But I have nothing  
4 further for this witness.

5 CHAIRMAN KANE: Thank you.

6 DC SUN?

7 MS. SPENCER: Thanks, Your Honor. We  
8 have no questions for this witness.

9 CHAIRMAN KANE: D.C. WASA?

10 MS. WHITE: No, we have no questions.

11 CHAIRMAN KANE: MAREC?

12 MS. ELEFANT: No questions, Your Honor.

13 CHAIRMAN KANE: The intervenors HAVE  
14 asked to be screwed today because their witnesses  
15 are not participating today.

16 Commissioner Fort?

17 COMMISSIONER FORT: I just have a couple  
18 of questions. If you look at your (2K) on  
19 page 19.

20 THE WITNESS: Excuse me for a moment.

21 (2K)?

22 COMMISSIONER FORT: (2K), 19 --

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1 THE WITNESS: Page 19.

2 COMMISSIONER FORT: It's on lines 3  
3 through 6. You're talking about the SPE, which  
4 you discussed a bit earlier today. And it talks  
5 about the fact that there are four directors. And  
6 I just wanted to get some more information about  
7 how the directors, particularly the independent  
8 director, is selected.

9 So it says there will be four directors  
10 appointed by EEDC, one of whom will be an  
11 independent director.

12 THE WITNESS: Who will be an employee,  
13 yes, of an administration company. Is that where  
14 you're going with this?

15 COMMISSIONER FORT: Yes, that language.  
16 So what's an example of an administration company  
17 that does the work you reference in that part of  
18 your answer?

19 THE WITNESS: There are companies that  
20 are usually formed specifically for the purpose of  
21 providing such officers, usually legally  
22 experienced people, to be directors of special

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1 purpose entities that are used in structured  
2 transactions.

3           The structured finance transactions often  
4 use this type of vehicle. And so, such -- they  
5 can also provide employees who can be trustees or  
6 form -- perform other such functions and carry  
7 them out.

8           So they are -- you know, I can't tell you  
9 anything more about them. I haven't specifically  
10 dealt with such companies except to know that  
11 there are transactions in which they have played a  
12 role.

13           COMMISSIONER FORT: So you have not  
14 yourself dealt with the type of administration  
15 companies that you mention here?

16           THE WITNESS: No. I've never set up a  
17 special purpose entity or administered it. When I  
18 was at the credit rating agency, we would -- we  
19 would have our legal department review the  
20 provisions of the formation of a special purpose  
21 entity to determine that it had been appropriately  
22 set up, that the special purpose entity had

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1 appropriate officers or directors who had -- you  
2 know, who had the appropriate instructions to act  
3 under.

4 COMMISSIONER FORT: But I'm curious about  
5 the person who comes from the administration  
6 company. So do I understand you've told me  
7 everything you know about that type of -- about  
8 the administration company that you mention in  
9 that sentence?

10 THE WITNESS: I think that that's  
11 everything that I know.

12 COMMISSIONER FORT: So who would select  
13 the administration company, in your understanding?

14 THE WITNESS: Usually -- I'm sorry, I  
15 don't know who selects the company. You might  
16 want to ask another witness, perhaps Mr. McGowan.

17 COMMISSIONER FORT: Well, I'm asking you  
18 because it's part of your testimony.

19 THE WITNESS: Right. I understand.

20 COMMISSIONER FORT: Are there independent  
21 criteria --

22 THE WITNESS: There are well -- I think

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1 there are well-known companies.

2 COMMISSIONER FORT: I'm sorry. We do  
3 this one at a time.

4 THE WITNESS: Thank you. Sorry.

5 COMMISSIONER FORT: So you said they're  
6 well-known companies. So I ask you an example of  
7 the company, if they're well-known.

8 THE WITNESS: I think they're well-known  
9 in the legal profession. They're not well-known  
10 to me.

11 COMMISSIONER FORT: I thought I read in  
12 your resume that one of your specialties in  
13 banking was structured finance that used  
14 bankruptcy-remote special purpose funding  
15 entities. Don't I see that on page 3 of your  
16 resume?

17 THE WITNESS: Yes. Yes.

18 COMMISSIONER FORT: Do you have a sense  
19 of what type of independence criteria is used to  
20 select SPE directors?

21 THE WITNESS: I do not. I'm sorry. I  
22 can't list those criteria for you.

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1           COMMISSIONER FORT: If I were going to  
2 look for the criteria, where would I find them?

3           THE WITNESS: Well, if I were looking for  
4 the criteria, I would look in the -- in a credit  
5 rating agency criteria set having to do with  
6 structured finance because when I was at Fitch  
7 Ratings, when there was a question about that, we  
8 had a special legal team that dealt with  
9 structured finance transactions, and they had  
10 special structured finance criteria concerning  
11 special purpose entities and  
12 bankruptcy-remoteness. So I would refer such  
13 questions to them.

14           COMMISSIONER FORT: Have you seen any of  
15 the governing documents for the SPE that is  
16 anticipated for this merger?

17           THE WITNESS: No, I have not. I'm not  
18 even sure if they've been drafted yet.

19           COMMISSIONER FORT: Have you seen other  
20 SPE governing documents?

21           THE WITNESS: Yes, I have.

22           COMMISSIONER FORT: Do they set out the

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1 criteria for the directors?

2 THE WITNESS: There are instructions for  
3 the directors as to how -- how the independent  
4 director is to perform his or her duties.

5 COMMISSIONER FORT: And what would be a  
6 typical instruction for how the independent  
7 director would perform their duties?

8 THE WITNESS: Well, the duty has do, in  
9 this case, with the duty of when to file a  
10 bankruptcy, whether or not to file a bankruptcy  
11 application. So it's a very limited duty.

12 And the instruction might be that the  
13 director would only file an application to file  
14 bankruptcy if -- only because the entity, the  
15 special purpose entity itself, was bankrupt or  
16 because of some particular instruction there, and  
17 not for the convenience of the sponsor or for some  
18 other reason. So it's a very limited set of  
19 instructions.

20 As I said before, the SPE is not managing  
21 the utility. It's not going to have transactions  
22 or to conduct business. So the directors of that

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1 entity are only in place to take action in very  
2 limited circumstances. That's all that you want  
3 them to do.

4 COMMISSIONER FORT: And that's what we're  
5 talking about, and I'm trying to get an idea of  
6 how they do that when we want them to do it.

7 So on lines 10 through 13 of your  
8 testimony, it says, In addition, the SPE will  
9 issue a non-economic interest in the SPE called  
10 the golden share to an administration company  
11 that's in the business of protecting SPEs and  
12 separate from the administration company retained  
13 to provide the person to serve as the independent  
14 director for the SPE.

15 Is that a different set of administration  
16 companies that --

17 THE WITNESS: Yes. I think it is  
18 describing here two different administration  
19 companies.

20 COMMISSIONER FORT: And what does the  
21 second administration company do and what's an  
22 example of that company?

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1 THE WITNESS: These two are to be two  
2 unrelated companies, each of whom would supply a  
3 director, and each of them would have no business  
4 other than providing such ministerial services,  
5 and they would do so subject to a set of  
6 instructions or directions or legal obligations of  
7 a director.

8 COMMISSIONER FORT: Can that company have  
9 a relationship with Exelon?

10 THE WITNESS: I don't believe so.

11 COMMISSIONER FORT: You don't believe so?

12 THE WITNESS: No, I don't believe so.

13 COMMISSIONER FORT: So that in order to  
14 be independent, it would have to be someone who is  
15 not working in any way at all for Exelon?

16 THE WITNESS: Yes. That's my  
17 understanding.

18 COMMISSIONER FORT: Did the bankruptcies  
19 that you have dealt with previously -- I think  
20 they were listed on one of the exhibits that you  
21 discussed with Mr. Coyle from the  
22 D.C. government -- did they use SPEs?

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1           THE WITNESS: I would have to look  
2 through the list again, but I don't believe there  
3 were any SPEs involved in those cases.

4           COMMISSIONER FORT: When you developed  
5 your criteria or you evaluated the commitments in  
6 this proceeding, did you look at the structure of  
7 the Portland Electric Company, the one that was  
8 involved in Enron?

9           THE WITNESS: I did.

10          COMMISSIONER FORT: And are all the  
11 provisions that that company had included in the?  
12 Commitments here.

13          THE WITNESS: Actually, the commitments  
14 here are far in excess, and the ring-fencing  
15 measures here are far in excess of the measures  
16 that existed at Portland General Electric.

17          So I did make that comparison and came to  
18 the conclusion that although Portland General  
19 Electric was not consolidated -- there was never a  
20 substantive consolidation, it was not drawn into  
21 the bankruptcy of its parent, the ultimate parent  
22 being Enron Corporation -- there was far less

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1 ring-fencing than is present in this transaction.

2           COMMISSIONER FORT: Well, you know, you  
3 could have ten very good provisions and you could  
4 have 71 provisions that are not so good. So in  
5 the case of Portland General Electric, we know  
6 that their provisions worked, right?

7           THE WITNESS: Yes. There was no  
8 provision at Portland General Electric that was  
9 stronger than the provisions that are proposed  
10 here. And there -- there was no -- there was no  
11 special purpose entity in that case.

12           There was -- I'm trying to remember now  
13 where the differences occurred, but there was no  
14 provision that said that the officers of Portland  
15 General Corporation and Portland General Electric  
16 would not also hold offices at their parent  
17 company, Enron. And we know that there were, in  
18 fact, cases in which the -- they did act --  
19 officers of Portland General did act part-time to  
20 perform roles in the management of Enron. We know  
21 that Enron shared offices -- Enron's trading  
22 personnel shared offices in the Portland General

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1 office.

2           And -- so there were numerous forms of  
3 separation that did not exist there that are  
4 precluded in these ring-fencing commitments.

5           COMMISSIONER FORT: I understand that  
6 there are elements in the commitments that we are  
7 looking at that are different and maybe better --

8           THE WITNESS: Stronger.

9           COMMISSIONER FORT: -- and you say are  
10 stronger. I just wanted to know if all of the  
11 elements that were present in Portland General are  
12 also present in these commitments, if you  
13 looked at that?

14           THE WITNESS: Yes, I did look at that,  
15 and yes, there are all -- there are parallels for  
16 all those that were present in the Portland  
17 General transaction, but in addition, there are  
18 many more and stronger commitments here.

19           COMMISSIONER FORT: What fees are  
20 associated with an SPE?

21           THE WITNESS: I do not know. I think  
22 someone else might be better able to provide that

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1 information.

2 COMMISSIONER FORT: Do you know whether  
3 or not those are fees that are passed on to  
4 ratepayers?

5 THE WITNESS: That's a matter of  
6 determination by the Commission as to whether that  
7 expense is allowed or not allowed.

8 COMMISSIONER FORT: In your testimony,  
9 your rejoinder this morning with Mr. Lorenzo, did  
10 I hear you say that PHI does not have any  
11 preferred stock?

12 THE WITNESS: It does not currently have  
13 any preferred stock. Nor does PEPCO.

14 COMMISSIONER FORT: Are you familiar with  
15 how -- are you familiar with the \$180 million that  
16 Exelon is paying to PHI as part of this merger  
17 that is being acquired, I think we were told --  
18 that was being paid, I think we were told, through  
19 the purchase of preferred stock?

20 THE WITNESS: No.

21 COMMISSIONER FORT: Those are all my  
22 questions.

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1 CHAIRMAN KANE: Thank you. Two quick  
2 follow-up questions before we break for lunch.

3 You were being questioned by Mr. Coyle  
4 about the length of time for reviewing the  
5 ring-fencing provisions. And you spoke of when  
6 that might be appropriate to trigger or when  
7 parties might want to trigger a review if, as I  
8 recall your words, it became onerous.

9 What -- or would a review to increase the  
10 protections also be appropriate? And if -- under  
11 the five-year stay-out provision, if a commission  
12 determined that they were not strong enough, there  
13 was a need to increase the protections, would that  
14 be prohibited under this proposal for five years?

15 THE WITNESS: I believe the way that this  
16 proposal is structured, the joint applicants can  
17 bring an application to make a change. The way  
18 that the proposal is structured, I don't think  
19 that it has any provision for the Commission to  
20 bring an application for a change.

21 CHAIRMAN KANE: So your interpretation --  
22 or would your interpretation be that the

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1 Commission would then be prohibited from  
2 bringing -- initiating an investigation of the  
3 need for a change?

4 THE WITNESS: Well, I guess I would have  
5 to ask -- I would have to answer that by saying  
6 that I think -- under your authorities, I don't  
7 think that -- I don't know that you have the  
8 authority to implement a change unless -- to  
9 require a change or to implement a change in the  
10 parent holding company, in the relationship  
11 between the parent holding company or at the SPE  
12 level, but there are many things at PEPCO itself  
13 that you do have authority over.

14 So when we're talking about ring-fencing  
15 provisions here, there are some ring-fencing  
16 provisions that have to do with PEPCO and that  
17 would be well within the Commission's authority.  
18 But things that have to do with the EEDC and the  
19 SPE and PHI -- I'm sorry to use those  
20 terminologies --

21 CHAIRMAN KANE: We understand what those  
22 are. We've been familiar with them over the last

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1 ten days.

2 THE WITNESS: EEDC is the Exelon Energy  
3 Distribution Corp., I think.

4 CHAIRMAN KANE: Yes, Company. Yes.

5 THE WITNESS: Company. And then the  
6 special purpose entity. And PHI might not be  
7 within your authority, whereas other things might  
8 be, and that's not my area of expertise.

9 CHAIRMAN KANE: But the ring-fencing  
10 proposal that is in the joint applicants'  
11 application does affect other than PEPCO? In  
12 other words, it -- it's more comprehensive than  
13 that, correct?

14 THE WITNESS: Yes, it is. Much more  
15 comprehensive.

16 CHAIRMAN KANE: So your statement -- is  
17 your statement, then, that were that accepted, the  
18 Commission would be prohibited unless -- except at  
19 the initiative of the joint applicants, for  
20 reviewing or initiating any proposed changes in  
21 those aspects of ring-fencing that are not  
22 directly PEPCO?

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1 THE WITNESS: That's the way I read the  
2 commitment.

3 CHAIRMAN KANE: Are you familiar with the  
4 affiliate transaction provisions of the D.C. law  
5 that we operate under?

6 THE WITNESS: I believe that I was shown  
7 the affiliate transaction regulations. I do not  
8 remember them now. I remember I have reviewed the  
9 ring-fencing provisions, and I think I was shown  
10 the affiliate transaction provisions.

11 CHAIRMAN KANE: And so my question is,  
12 have you compared the proposed ring-fencing  
13 proposals in the joint applicants' proposal and  
14 either -- and I realize you're not a lawyer --  
15 either the provisions of D.C. code, including the  
16 broad definition of affiliate in D.C. code, and  
17 the regulations that have been promulgated by this  
18 Commission?

19 THE WITNESS: Well, I did look  
20 specifically at the ring-fencing provisions, not  
21 the -- I didn't look with as much detail at the  
22 affiliate transaction provisions. But there

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1 are -- if I recall correctly, there were two  
2 ring-fencing provisions that were significant and  
3 that were both encompassed among the 72  
4 ring-fencing commitments that are being taken on  
5 here. So those I did specifically deem were  
6 consistent.

7 But if -- on the affiliate transaction  
8 side, I didn't really -- I wasn't taking  
9 responsibility for the affiliate transaction  
10 aspects of this transaction, so I didn't do that  
11 detailed a review. But my understanding is that  
12 anything that you have in the D.C. code would, of  
13 course, apply no matter what it says in the -- in  
14 this -- in these commitments. I don't think these  
15 commitments can be less than your D.C. code.

16 CHAIRMAN KANE: But I'm trying to put  
17 that together with your earlier statement that we  
18 would not be able to change anything at our own  
19 initiative, the Commission would -- anything that  
20 had to do with PHI or the relationship with PHI --

21 THE WITNESS: Well, with regard --

22 CHAIRMAN KANE: -- which are all

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1 affiliates, correct?

2           THE WITNESS: So with regard to your  
3 affiliate transaction code, I'm sure that you  
4 have -- that all exists and you have that power.  
5 And you have the authority to do those things. So  
6 if it's within your existing authorities, then of  
7 course you would have the ability to do it.

8           I simply meant that if you wish EEDC to  
9 have five directors instead of four or something  
10 like that, I don't think that that is within your  
11 affiliate transaction code. But I don't know.  
12 I'm not an attorney, and I don't know the  
13 specifics of your affiliate transaction code.

14           CHAIRMAN KANE: Let me ask a follow-up  
15 question to a question Commissioner Fort was  
16 asking about, this SPE administration company.  
17 And as I understood what you were talking about,  
18 there are two different ones. I'm trying to get a  
19 picture of -- is this like a business that sort of  
20 rents directors to SPEs? I mean, they're not  
21 employees. They're like a temp firm for SPE  
22 directors? I'm trying to identify what the

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1 business model is. And sort of, then, who gets  
2 held accountable for selecting them and for their  
3 actions?

4 THE WITNESS: Well, it's something like a  
5 trust administrator. I mean, you must have some  
6 concept that there are people who administer  
7 trusts, who are trustees, who are -- and I think  
8 it is someone who undertakes that, perhaps --  
9 perhaps there's some bonding of such individuals.  
10 I'm not familiar with it, but I don't think -- you  
11 know, I don't think that they're -- I have not  
12 known of transactions where a problem occurred  
13 because of the lack of independence of the SPE  
14 directors. I -- I would surely have become aware  
15 of it if that happened.

16 CHAIRMAN KANE: Thank you. No further  
17 questions.

18 Redirect? I'm sorry. Commissioner  
19 Phillips?

20 COMMISSIONER PHILLIPS: No questions.

21 CHAIRMAN KANE: Okay.

22 REDIRECT EXAMINATION

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1 BY MR. LORENZO:

2 Q Just one short follow-up on Commissioner  
3 Fort's question regarding who pays for the SPE.  
4 Could you open your testimony to your  
5 Exhibit (4K)-1. And then I'm going to direct you  
6 to paragraph 68 on page 9 of 15. And could you  
7 read that into the record?

8 A Oh, yes. Thank you.

9 None of the cost of establishing,  
10 operating or modifying the SPE will be borne by  
11 PEPCO or its distribution customers. The cost of  
12 obtaining the opinion of legal counsel referred to  
13 in paragraphs 60 and 67 or any future opinion will  
14 not be borne by PEPCO or its distribution  
15 customers.

16 MR. LORENZO: Thank you. That's all I  
17 had, Your Honor.

18 CHAIRMAN KANE: Thank you.

19 MR. LORENZO: And I'd like to move the  
20 admission of Exhibits -- Joint Applicants'  
21 Exhibits (2K), (2K)-1 through (2K)-12, (3K),  
22 (3K)-1 through (3K)-2, and (4K) and (4K)-1.

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1 CHAIRMAN KANE: They are moved into  
2 evidence.

3 (Joint Applicants Exhibit Numbers (2K),  
4 (2K)-1 through (2K)-12, (3K), (3K)-1 through  
5 (3K)-2, (4K) and (4K)-1 were received into  
6 evidence.)

7 MS. FRANCIS: Your Honor, AOBA would like  
8 to move its Exhibits 98 and 99.

9 CHAIRMAN KANE: They are moved into  
10 evidence.

11 (AOBA Cross Exhibit Numbers 98 and 99  
12 were received into evidence.)

13 CHAIRMAN KANE: Mr. Coyle?

14 MR. COYLE: Your Honor, District  
15 government moves the admission of Exhibits DCG 108  
16 through 116, inclusive, including specifically  
17 Exhibit DCG 112.

18 MR. LORENZO: Your Honor, we have  
19 reviewed the exhibit and will stipulate to its  
20 truthfulness and authenticity.

21 CHAIRMAN KANE: Thank you. Very good.

22 (DCG Cross Exhibit Numbers 108 through

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1 116 were received into evidence.)

2 CHAIRMAN KANE: It is 2:00 p.m. We have  
3 just spent three-and-a-half hours on our  
4 one-and-a-half-hour witness. But we will then --  
5 you are excused.

6 THE WITNESS: Thank you.

7 (Witness excused.)

8 CHAIRMAN KANE: And everyone is excused  
9 for lunch, and we will reconvene at 3:00 with  
10 Mr. Dismukes.

11 (Whereupon, at 2:01 p.m., a lunch recess  
12 was taken.)

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1 MR. LORENZO: Okay. Very good, Your  
2 Honor.

3 CHAIRMAN KANE: Now, you said the Fitch  
4 report is out of date. Are you indicating that  
5 it's not relevant?

6 MR. LORENZO: No. It's -- the Fitch  
7 report that Mr. Coyle was using to question is  
8 about a year old. It was from April of 2014. So  
9 the confidential nature of -- the sensitivity of  
10 the information is no longer --

11 CHAIRMAN KANE: Thank you for clarifying  
12 that.

13 MR. LORENZO: Okay. Very good.

14 CHAIRMAN KANE: All right. OPC, you may  
15 call your witness.

16 MR. GRAY: Thank you, Your Honor. Jason  
17 Gray for the Office of People's Counsel. At this  
18 time, the People's Counsel would like to call  
19 Dr. David Dismukes.

20 WHEREUPON,

21 DAVID DISMUKES,  
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 DIRECT EXAMINATION

4 BY MR. GRAY:

5 Q Good afternoon, Dr. Dismukes.

6 A Good afternoon.

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

9 A David E. Dismukes.

10 MR. GRAY: And, Your Honor, pursuant to  
11 order 17790, I'd like to mark Dr. Dismukes'  
12 prefiled testimony at this time. It is his direct  
13 testimony, which is Exhibit OPC (A), and the  
14 supporting exhibits, OPC (A)-1 to OPC (A)-45, as  
15 well as Dr. Dismukes' supplemental direct  
16 testimony, OPC (2A) and supporting exhibits  
17 OPC (2A)-1 to OPC (2A)-5.

18 CHAIRMAN KANE: They are so marked.

19 (OPC Exhibit Numbers (A), (A)-1 through  
20 (A)-45, (2A), and (2A)-1 through (2A)-5 were  
21 marked for identification.)

22 MR. GRAY: And conformed versions of the

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1 prefilled testimony were filed on March 25th.  
2 However, this morning we noted one correction that  
3 needs to be made to Dr. Dismukes' direct  
4 testimony, and I would like to clear that issue up  
5 now, if that's okay.

6 CHAIRMAN KANE: Yes.

7 BY MR. GRAY:

8 Q Dr. Dismukes, do you have that  
9 correction?

10 A I do not. I think it's on page 99,  
11 line 7.

12 Q Very good guess.

13 A Thank you.

14 Q Page 99, line 7, there's a reference to  
15 PHI's. I believe that reference should be to  
16 PEPCO; is that correct?

17 A Yes, sir.

18 MR. GRAY: And with that one change, Your  
19 Honor, I would tender the witness for cross.

20 CHAIRMAN KANE: Company?

21 MR. GADSDEN: Thank you, Your Honor.

22 CROSS-EXAMINATION

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1 BY MR. GADSDEN:

2 Q Dr. Dismukes, my name is Tom Gadsden.  
3 I'm one of the attorneys representing the joint  
4 applicants in this proceeding.

5 Your attachment A to your direct  
6 testimony, which is your curriculum vitae, lists a  
7 number of regulatory and legislative proceedings  
8 in which you've presented testimony; is that  
9 correct?

10 A Yes, sir.

11 Q And am I correct that several of those  
12 appearances involved PEPCO or one of its  
13 affiliates, Delmarva or ACE, Atlantic City  
14 Electric?

15 A Yes, sir.

16 Q And specifically at page 2 of your direct  
17 testimony, you note that you previously testified  
18 before this Commission in formal case numbers 1087  
19 and 1103. Do you see that?

20 A Yes, sir.

21 Q Are those the only proceedings in which  
22 you've appeared before this Commission or have

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1 there been others?

2 A Those are the only two.

3 Q And were they both rate cases?

4 A Yes, sir.

5 Q Dr. Dismukes, am I correct that you've  
6 never submitted formal testimony in proceedings  
7 involving a utility merger or change of control?

8 A Yes, sir. That's correct.

9 Q Could you turn to -- and there should be  
10 a binder up there somewhere. Could you turn to  
11 what has been preliminarily marked for  
12 identification in your binder as Joint Applicants'  
13 Cross-Examination Exhibit 21 --

14 MR. GADSDEN: -- which I would ask, Your  
15 Honors, be marked for the record as Joint  
16 Applicants' Exhibit 9.

17 CHAIRMAN KANE: So marked.

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

20 BY MR. GADSDEN:

21 Q Do you have that, Dr. Dismukes?

22 A Yes, sir.

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1 Q Am I correct that Exhibit 9 comprises the  
2 OPC's response to PEPCO data request number 1-3,  
3 which you co-sponsored with some other OPC  
4 witnesses?

5 A Yes, sir.

6 Q And in your response, you indicated that  
7 even though you had not presented any testimony,  
8 any formal testimony in a merger proceeding, you  
9 had published an article, quote, associated with  
10 merger-related regulatory issues.

11 Do you see that?

12 A That's correct.

13 Q Is attachment 1-3 to your response  
14 entitled, Electric M&A, a regulator's guide, the  
15 article that you refer to?

16 A Yes, sir.

17 Q I've got just a few questions with  
18 respect to that article, Dr. Dismukes. On the  
19 first page of the article, which has been  
20 identified as page 2 of 5 of Cross-Examination  
21 Exhibit 21, in the right-hand column you note,  
22 Many regulators believe the broader public

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1 interest standard encompasses a host of  
2 quantifiable (objective) and non-quantifiable  
3 (normative) criteria.

4 Do you see that?

5 A Yes, sir.

6 Q Is that still your understanding?

7 A Yes, sir.

8 Q If we could go to the second page of the  
9 article which is page 3 of Exhibit 21 -- and this  
10 would be the second full paragraph.

11 A In the left column?

12 Q The right-hand column, I'm sorry.

13 A Okay.

14 Q You state, Regulators should consider --  
15 I'm sorry. Left-hand column. Regulators -- it's  
16 right above that, I'm sorry. I've given you --  
17 first full paragraph under rate impacts --

18 A Okay.

19 Q -- left-hand column. And you state that,  
20 Regulators should consider restricting their  
21 investigation of a proposed merger to the merits  
22 of the merger alone, deferring rate design changes

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1 to a future rate investigation or a later annual  
2 merger savings review.

3 Do you see that?

4 A Yes.

5 Q Does that continue to be your opinion?

6 A I don't know in this particular  
7 proceeding that it would be. I think that,  
8 looking at the potential benefits associated with  
9 this merger should also include the impacts  
10 associated with what the merger will have on rates  
11 for ratepayers. And in this particular instance,  
12 I think it's an important component of that.

13 I think if you look at the time and the  
14 context within which this article was written, I  
15 think you'll notice on page 1 -- this was back in  
16 1996, you know, which is quite some time ago  
17 now -- when we saw the first big explosion of  
18 electric M&A activity -- in fact, if you look back  
19 at this time period, a lot of that M&A activity  
20 was different in nature than what you've seen  
21 today.

22 And I think the historic standards and

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1 the progressing standards in policy for these have  
2 changed some. Some things have continued to be  
3 the same, but others I think have progressed as  
4 well.

5 And one of the things that you've seen in  
6 many of these mergers has been the fact that rate  
7 freezes or some kind of holding constant of rates  
8 has been a constant component of those proposals.

9 Q In the right-hand column, the second full  
10 paragraph, you state, Merged companies that meet  
11 or exceed projected savings could be allowed to  
12 keep a gradually larger share of such savings.

13 Do you continue to subscribe to that view  
14 or is this also something which you've  
15 reconsidered over the years?

16 A Well, I think it depends on the nature of  
17 the offer that's on the table. I think -- one  
18 thing to keep in mind about this article is it's  
19 kind of a scoping article that surveys the  
20 literature and surveys kind of the current status  
21 of what was going on as of 1996 when a lot of  
22 these mergers were occurring.

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1           One of the things that I was pointing out  
2 here is that you could have, as part of a merger  
3 proposal, some kind of performance-based plan  
4 where you have a minimum guarantee of merger  
5 savings that are going back to ratepayers, and to  
6 the extent that the utility beats that ex-post  
7 merger, you may have a performance benefit or  
8 reward as a consequence of that.

9           So it depends on the nature -- that kind  
10 of proposal has not been offered here in this  
11 particular merger. It's been a one-time CIF to  
12 kind of get away from these issues of debating and  
13 trying to figure out what those merger savings  
14 would be. But as you can imagine, in other  
15 proceedings it's different.

16       Q     Okay. Finally, at the bottom of page 2,  
17 the sentence that carries over, you wrote, Most  
18 PUCs, however, have struck a middle ground and  
19 allowed utilities to recover the cost of the  
20 acquisition premium from the savings that result.  
21 Any excess savings are then passed on to  
22 customers. Do you see that?

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1           A     Yes, sir.

2           Q     Dr. Dismukes, I have a few questions  
3 regarding your discussion of the merger standard  
4 to be applied in this case, and would ask you to  
5 turn to page 6 of your direct testimony. Tell me  
6 when you're there.

7           A     I'm there.

8           Q     Okay. At lines 15 and 16, you quote from  
9 the Commission's order number 11075 to the effect  
10 that a merger, quote, must produce a direct and  
11 traceable financial benefit to ratepayers.

12                   And I believe, as you note in footnote 5,  
13 that quote comes from the Commission's decision in  
14 the 2002 PEPCO/Conectiv merger proceeding?

15          A     Yes, sir.

16          Q     What is your understanding of what it  
17 means for a benefit to be direct and traceable?

18          A     My interpretation of that is comparable  
19 to what's used in rate-making in terms of a known  
20 and measurable benefit that can be quantified.

21          Q     Now, if you look at page 7 of your direct  
22 testimony this time, and specifically line 19 --

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1 and here you're referring to the Commission's  
2 order number 17530, and you refer to mergers  
3 producing, quote, a direct and tangible benefit to  
4 ratepayers.

5 Preliminarily -- that order was one that  
6 was issued earlier in this proceeding; is that  
7 correct?

8 A Yes, sir.

9 Q Is there a difference in your mind  
10 between a traceable benefit and a tangible  
11 benefit?

12 A No, sir.

13 Q Does the absence of the word "financial"  
14 mean that the Commission will consider  
15 non-financial benefits?

16 A I presume the Commission can consider  
17 non-financial benefits as well, yes.

18 Q If you now look at page 8 of your  
19 testimony, specifically lines 11 and 12, here you  
20 refer to direct and quantifiable ratepayer  
21 benefits. Do you see that?

22 A Yes, sir.

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1 Q What does quantifiable mean in this  
2 context?

3 A Those that are measurable.

4 Q And the -- did the quantifiable standard  
5 come from a prior commission order or is that your  
6 interpretation of a prior commission order or  
7 what?

8 A Well, in this particular Q&A what I'm  
9 focusing on is the criteria by which both myself  
10 as well as some of the other witnesses have  
11 evaluated -- and the office of public (sic)  
12 counsel has evaluated this merger with a  
13 particular emphasis on those things that are known  
14 and measurable and direct and quantifiable that  
15 are tangible benefits that the Commission can  
16 recognize and see as positive outcomes of the  
17 proposed merger.

18 Q On page 9 of your direct testimony, now  
19 at lines 3 and 4, here you referred to clear net  
20 benefits. What did you have in mind there?

21 A In this instance, clear benefits that  
22 show that ratepayers will be better off as a

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1 consequence of this merger occurring.

2 Q How do we determine whether they're net?

3 A Net of those costs, net of the costs  
4 associated with the proposed transaction.

5 Q Okay. And you believe that the  
6 Commission should balance overall benefits and  
7 harms and determine whether there's a net benefit?

8 A Yes, sir.

9 Q Beginning on page 10 -- and maybe this is  
10 what you alluded to before -- but page 10 of your  
11 direct testimony, you use the "phrase direct,  
12 quantifiable, traceable and tangible benefits."  
13 And that's on line 3.

14 Is that the standard that you ended up  
15 using in evaluating potential merger benefits?

16 A Yes, sir.

17 Q Would it be fair to say that you did not  
18 apply the direct, quantifiable, traceable and  
19 tangible standard when it came to evaluating  
20 potential merger harms and costs?

21 A I think many of those were difficult to  
22 actually quantify and I don't believe that the

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1 company had quantified those in its application.  
2 But just because they were non-quantifiable  
3 doesn't mean that they should be ignored or not be  
4 considered as a consequences of the merger.

5 Q Well, let's take a look at the bottom of  
6 page 26 of your direct testimony, if we could.  
7 The answer that begins on line 18, if you could  
8 just review that and tell me when you've had a  
9 chance to do so.

10 A Okay.

11 Q Here in the sentence that begins on  
12 line 19, you state, Ratepayers have no assurances  
13 to any of the longer-term merger-related  
14 efficiency benefits asserted by the joint  
15 applicants, and you discuss certain efficiency  
16 benefits that may or may not arise.

17 Then on line 23, you state, Compare this  
18 with the wide range of potential direct and  
19 indirect merger-related costs discussed earlier  
20 which, while also uncertain, will likely be larger  
21 than the limited number of potential merger  
22 benefits.

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1 Do you see that?

2 A Yes, sir.

3 Q So for purposes of your analysis, merger  
4 costs need not be direct. They can be indirect.  
5 And they need not be quantifiable and traceable,  
6 but instead can be potential and uncertain. Is  
7 that a fair summary?

8 A Well, I think in this instance, they --  
9 because they had not been quantified, they  
10 certainly should be considered here.

11 Q Very well.

12 A I can -- if you look at, at least, the  
13 direct and traceable benefits that were provided,  
14 they were relatively low, I think primarily  
15 associated with those that had been offered in the  
16 CIF as a direct, quantifiable benefit, and at that  
17 time, for the direct testimony, was somewhere  
18 around \$52 a customer.

19 I think if you compare those, at least  
20 subjectively, with the wide range of costs and  
21 risks that have been outlined not only by myself  
22 but by a number of other witnesses for public

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1 counsel that include some of the financial risk,  
2 some of the accounting and regulatory risk, some  
3 of the reliability-oriented risk, you need not  
4 come up with a specific number to show that,  
5 relative to \$52 a customer, those are likely to be  
6 probably greater even if you could try to take a  
7 stab at quantifying them.

8 Q I understand that's your position.

9 Dr. Dismukes, on page 2 of your direct  
10 testimony on line 13, you note that you were  
11 retained by the OPC to serve as its main policy  
12 witness. Do you see that?

13 A Yes, sir.

14 Q And as I understand it, one of your  
15 duties -- and I believe you state as much -- was  
16 to introduce the OPC's other witnesses and to  
17 summarize their testimony and recommendations,  
18 correct?

19 A Yes, sir.

20 Q Presumably, in preparing your testimony,  
21 you first reviewed the testimony to be submitted  
22 by the OPC's other witnesses?

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1 A Yes, sir.

2 Q Is there anything in that testimony of  
3 the other witnesses with which you disagree?

4 A No, sir.

5 Q If you could turn to page 11 of your  
6 testimony. Beginning at the answer that begins on  
7 line 9, you're somewhat critical of the joint  
8 applicants for not recommending a specific use of  
9 the CIF, but instead, in your words, punting that  
10 issue to the Commission. Do you see that?

11 A Yes, sir.

12 Q Is it your belief that the Commission is  
13 not equipped to make that decision on its own?

14 A No, sir.

15 Q And if we move over to page 30 of your  
16 direct testimony, here at lines 8 through 10 --  
17 and this is a portion of your testimony in which  
18 you're summarizing certain recommendations; is  
19 that correct?

20 A Yes, sir.

21 Q At lines 8 through 10, you state, The  
22 District's CIF payment should be increased to a

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1 one-time payment/distribution that should be  
2 allocated to all customers over the 12 months  
3 following merger approval as a bill credit.

4 A Yes, sir.

5 Q Okay. When you wrote this last October,  
6 what did you mean when you said the CIF should be  
7 increased? Increased to what?

8 A I didn't have a specific number, just  
9 that \$52 seemed like a low number in my opinion.

10 Q And when you said it should be allocated  
11 to all customers, what did you have in mind?

12 A As a credit on their bill.

13 Q Well, would every customer get the same  
14 amount or did you have something else in mind?

15 A I didn't have a specific allocation in  
16 mind. One that is equitably distributed across  
17 customer classes was my intent in making this  
18 recommendation.

19 Q So that's an issue that you prefer to  
20 punt to the Commission; is that correct?

21 A No, I think it would be one that would be  
22 consistent with the Commission's rate design

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1 policies in the past, rate-making practices in the  
2 past.

3 Q At page 11 of your supplemental direct  
4 testimony -- if you could turn to that.

5 MR. GRAY: There should be two binders.

6 THE WITNESS: Is it in the back of the  
7 second binder?

8 MR. GRAY: It's a yellow cover binder.  
9 There's volume 1 and volume 2. I believe you are  
10 in volume 1.

11 THE WITNESS: I didn't see the  
12 supplemental. I don't see it in here. It says  
13 direct only.

14 MR. GRAY: Could we go off the record for  
15 just one second?

16 CHAIRMAN KANE: Yes.

17 (Discussion held off the record.)

18 THE WITNESS: Okay. I have it,  
19 Mr. Gadsden. What page were you saying again?  
20 I'm sorry.

21 BY MR. GADSDEN:

22 Q I'm sorry. Page 11. Are with you me?

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1           A       Yes, sir.

2           Q       Okay. Down at the bottom of the page,  
3 starting on line 20, you state, rate affordability  
4 is an important factor when determining if the  
5 level of the CIF is reasonable. A key  
6 consideration must be whether the proposal  
7 negatively impacts the ability for seniors, those  
8 on fixed income and other economically challenged  
9 customers to be able to afford this essential  
10 service.

11                   Do you see that one?

12           A       Yes, sir.

13           Q       Do you believe that rate affordability  
14 should be taken into account in determining how  
15 the District's share of the CIF should be  
16 allocated to customers?

17           A       I have not proposed that in my  
18 recommendation.

19           Q       What is your recommendation as to the  
20 allocation of the CIF?

21           A       It should be allocated on a basis that's  
22 comparable to the cost of service rate-making

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1 purposes. If the company or the Commission would  
2 like to address any other issues related to  
3 low-income households, that would be something  
4 that is supplemental to the primary CIF.

5 Q Would you oppose the allocation of some  
6 portion of the CIF to low-income customers?

7 A No, sir.

8 Q If I could ask you to go back to your  
9 direct testimony at page 31 -- this is still in  
10 the section of your direct where you're discussing  
11 various recommended conditions to merger approval.  
12 And I would draw your attention to the section  
13 which begins in the middle of -- subsection which  
14 begins in the middle of page 31 dealing with  
15 corporate governance.

16 A Yes, sir.

17 Q Your first recommendation reads, At least  
18 one-third and no fewer than two members of PEPCO's  
19 board of directors should be independent; is that  
20 correct?

21 A Yes, sir.

22 Q If you could find your cross-examination

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1 exhibit binder, I would ask you to turn to what we  
2 have preliminarily identified as Joint Applicants'  
3 Cross-Examination Exhibit 22, which consists of  
4 your response to our data request 3-11.

5 MR. GADSDEN: And, Your Honors, I would  
6 ask that that document be identified as Joint  
7 Applicants' Exhibit 10.

8 CHAIRMAN KANE: So identified.

9 (Joint Applicants Cross Exhibit Number 10  
10 was marked for identification.)

11 MR. GADSDEN: Thank you, Your Honor.

12 BY MR. GADSDEN:

13 Q Do you have that one, Dr. Dismukes?

14 A Yes, sir.

15 Q In this data request we asked you whether  
16 the majority of PEPCO's board was independent  
17 today, and you responded that you did not know  
18 because that information was not readily  
19 available; is that correct?

20 A Yes, sir.

21 Q If you would now turn to what we've  
22 marked as Joint Applicants' Cross-Examination

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1 Exhibit 23 --

2 MR. GADSDEN: -- which, Your Honors, I  
3 would ask be identified as Joint Applicants'  
4 Exhibit 11.

5 CHAIRMAN KANE: So marked.

6 (Joint Applicants Cross Exhibit Number 11  
7 was marked for identification.)

8 BY MR. GADSDEN:

9 Q Dr. Dismukes, would you accept, subject  
10 to check, that this document is an excerpt from  
11 PEPCO's 2013 form 1 report filed with the Federal  
12 Energy Regulatory Commission?

13 A Yes, sir.

14 Q Okay. Have you had a chance to look at  
15 this?

16 A Yes, sir.

17 Q And if we turn to page 8 of that exhibit,  
18 which is the final page, I believe --

19 A Yes, sir.

20 Q -- can we agree that PEPCO's directors  
21 are listed there?

22 A Yes, sir.

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1 Q And if we go back to page 6 of that same  
2 exhibit, can we agree that PEPCO's officers are  
3 listed there?

4 A Yes, sir.

5 Q And from this exhibit, can we agree that  
6 all of the directors listed on page 8, with the  
7 exception of Mr. Charles Dickerson, are identified  
8 as officers of PEPCO on page 6?

9 A Yes, sir.

10 Q And would you accept, subject to check,  
11 that Mr. Dickerson is an officer of PHI?

12 A Yes, sir.

13 Q Another recommendation that you offer on  
14 page 31 of your direct testimony at line 14 is  
15 that the majority of PHI's board should remain  
16 independent. Do you see that one?

17 A Yes, sir.

18 Q And could you now turn to what we have  
19 marked for identification as Joint Applicants'  
20 Cross-Examination Exhibit 24 --

21 MR. GADSDEN: -- which, Your Honor, I  
22 would ask be marked for the record as Joint

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1 Applicants' Exhibit 12.

2 CHAIRMAN KANE: So marked.

3 (Joint Applicants Cross Exhibit Number 12  
4 was marked for identification.)

5 BY MR. GADSDEN:

6 Q Dr. Dismukes, am I correct that this is  
7 your response to our data request number 3-12?

8 A Yes, sir.

9 Q Here we asked you if you were aware of  
10 any subsidiary of a holding company, the majority  
11 of whose board was independent; is that correct?

12 A Yes, sir.

13 Q And you answered that you were not aware  
14 of any of that type because that type of  
15 information is not generally publicly available;  
16 is that correct?

17 A Yes, sir.

18 Q And from our prior discussion of PEPCO's  
19 FERC form 1, am I correct that you did not review  
20 FERC form 1s filed by other utility holding  
21 companies?

22 A I did, and I didn't realize this was

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1 limited to just utility holding companies. I  
2 thought it was just holding companies generally.

3 Q Okay. One last question in this area,  
4 Dr. Dismukes, and it's really in the nature of a  
5 request for clarification. At page 32 of your  
6 direct testimony, line 3, you state -- again,  
7 another corporate governance recommendation -- you  
8 state, PEPCO's and PHI's CEOs should reside in  
9 PEPCO's service territory, correct?

10 A Yes, sir.

11 Q And if we were to go to page 99 -- and  
12 I'm not asking you to do it except subject to  
13 check, or you can look if you'd like, but page 99  
14 of your direct testimony you repeat the same  
15 language.

16 A Okay.

17 Q But at page 19 of your supplemental  
18 direct testimony, at lines 5 and 6 -- I'll read  
19 the whole sentence beginning at line 3:  
20 Certainly, showing a strong commitment to the  
21 District and maintaining a strong local presence  
22 would be served by supporting my recommendation

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1 that the majority of PEPCO's board, as well as its  
2 CEO, reside in the District.

3 I guess the question is, since PEPCO's  
4 service territory spans both the District and  
5 Maryland, are you insisting that the CEO reside in  
6 the District or is Maryland an acceptable  
7 alternative?

8 A I was recommending that the CEO be in the  
9 district because that's where the headquarters is  
10 located.

11 Q Okay.

12 A Or supposed to be located.

13 Q Well, it is located, isn't it?

14 A Right. It is.

15 Q And company has not indicated any plans  
16 to change the location of its headquarters, has  
17 it?

18 A No, it has not.

19 Q Move on to a new area, Dr. Dismukes. If  
20 I could ask you to turn to page 1 of 3 of your  
21 direct testimony.

22 A Yes, sir.

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1 Q Here, and in the discussion that follows,  
2 you note that PEPCO's reliability performance has  
3 been an issue with the OPC in the past; is that  
4 correct?

5 A Yes, sir.

6 Q And if we page over to 106, at the bottom  
7 of the page, 106, line 17, you state, Moreover, in  
8 formal case 1103, the Commission reiterated its  
9 belief that PEPCO's reliability performance was  
10 continuing to improve.

11 Do you see that?

12 A Yes, sir.

13 Q I think you indicated previously that you  
14 testified in case 1103, did you not?

15 A Yes, sir.

16 Q Could you refer to what appears in your  
17 binder as Joint Applicants' Cross-Examination  
18 Exhibit Number 25 --

19 MR. GADSDEN: -- which I would ask be  
20 marked as Joint Applicants' Exhibit 13.

21 CHAIRMAN KANE: So marked.

22 (Joint Applicants Cross Exhibit Number 13

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1 was marked for identification.)

2 MR. GADSDEN: Thank you, Your Honor.

3 THE WITNESS: Okay.

4 BY MR. GADSDEN:

5 Q Do you recognize this as OPC's response  
6 to PEPCO data request 1-4?

7 A Yes, sir.

8 Q And in this data request, we asked you to  
9 identify proceedings in which you had presented  
10 testimony in cases involving either PEPCO or its  
11 affiliates; is that correct?

12 A Yes, sir.

13 Q If you could take just a minute and  
14 confirm that what we have attached to the cover  
15 sheet of that data request are excerpts from three  
16 of the proceedings that you identify in the  
17 narrative description on the first page.

18 A Okay.

19 Q And those, I believe, you had identified  
20 in your data response as attachments 1-4A, 4B and  
21 4F.

22 A Okay. I'll agree, subject to check, that

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1 those match up those --

2 Q Okay. Could you --

3 A -- to file names.

4 Q -- turn to attachment 1-4B.

5 A These aren't marked that way. So if you  
6 could help me -- just tell me what page number of  
7 the exhibit, we will probably...

8 Q I believe that excerpt -- and this is an  
9 excerpt from your testimony in case 1103 before  
10 the D.C. Public Service Commission -- begins on  
11 page 28.

12 A Okay.

13 Q If you could turn to page 32 of the  
14 exhibit, or page 3 of the testimony at the bottom.

15 A Yes, sir.

16 Q And we can confirm that at line 13,  
17 running down to line 15, you state -- you  
18 testified in that proceeding, While PEPCO's  
19 reliability-related performance over the past year  
20 has improved substantially from prior levels, the  
21 company continues to perform poorly relative to  
22 other utilities.

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1 Do you see that?

2 A Yes, sir.

3 Q If I could ask you to turn to  
4 attachment 1-4F of that response, which I believe  
5 begins on page 42.

6 A Okay.

7 Q And if we turn to page 61 of  
8 Cross-Examination Exhibit 25, which is the final  
9 page of the excerpt -- well, let me back up.

10 Do you recognize this as testimony that  
11 you presented before the Maryland Public Service  
12 Commission in case number 9286?

13 A Yes, sir.

14 Q Okay. If we move to page 18, the final  
15 page.

16 A Yes, sir.

17 Q You testified in that case, did you not,  
18 that PEPCO's past reliability measures -- and here  
19 I'm reading from line 20 -- raise serious  
20 questions about its ability to perform in the  
21 future. And then again at line 23, you stated,  
22 The company's past capital budgeting performance

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1 suggests that it has a consistently difficult time  
2 accurately forecasting its overall and  
3 reliability-related investment needs.

4 Do you see that?

5 A Yes, sir.

6 Q Dr. Dismukes, if you could turn to  
7 page 58 of your direct testimony and tell me when  
8 you're there.

9 A I'm there.

10 Q Okay. Here, in an answer that starts on  
11 line 5 of page 58 --

12 A Yes, sir.

13 Q -- you discuss what you characterize as a  
14 meta-study, M-E-T-A, study --

15 A Yes, sir.

16 Q -- performed by Lawrence Berkeley labs?

17 A Yes, sir.

18 Q And it was, in part, on the results of  
19 this study that Dr. Tierney relied in her  
20 calculations; is that correct?

21 A That's correct. The calculator that she  
22 used to estimate the reliability benefits based

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1 off the results included in that Lawrence Berkeley  
2 lab study in part.

3 Q I don't know whether you still have our  
4 Cross-Examination Exhibit 25, which was the one  
5 that had excerpts from your prior testimony  
6 attached to it.

7 A Yes, sir.

8 Q I think that was marked for the record as  
9 Joint Applicants' Exhibit 13. Would you refer to  
10 attachment 1-4A, which begins at page 3 of that  
11 exhibit, and confirm that that is an excerpt from  
12 testimony that you presented before the Delaware  
13 Public Service Commission in docket number 13-115?

14 A Yes, sir.

15 Q I forgot to make a note here,  
16 Dr. Dismukes, so it may take me a minute.

17 MR. GADSDEN: If I could have a minute,  
18 Your Honor.

19 My apologies, Your Honor.

20 BY MR. GADSDEN:

21 Q Okay. I found it.

22 A Okay.

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1 Q Sorry about that.

2 Let me direct you to page 16 of your  
3 Delaware testimony. Here in the answer that  
4 begins on line 3, you discuss the company's  
5 position regarding measurement of reliability  
6 investment cost-effectiveness; is that correct?

7 A Are we on page 16?

8 Q Page 12.

9 A Page 12. Oh. No wonder I can't find  
10 that. Okay.

11 Q That's my trick question.

12 A There you go. All right. I'm there,  
13 yes.

14 Q Page 12?

15 A Uh-huh.

16 Q Now, you refer in the answer that begins  
17 on line 3 to a 2008 Department of Energy  
18 meta-study. Is this the same meta-study that you  
19 talk about in your direct testimony in this case?

20 A Yes, sir.

21 Q And can we agree that you conclude that  
22 answer at lines 14 and 15 by stating, It is not

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1 clear why a similar methodology could not be  
2 applied to the company's proposed reliability  
3 programs in Delaware?

4 Is that correct?

5 A Yes, sir.

6 Q Dr. Dismukes, on page 20 of your direct  
7 testimony in this case, you list in bullet form a  
8 number of costs that you claim will outweigh the  
9 benefits of the merger.

10 A Yes, sir.

11 Q The last item that you list reads as  
12 follows: Corporate positions on renewable energy  
13 that are philosophically different from those  
14 established by the Commission.

15 Do you see that?

16 A Yes, sir.

17 Q By "the Commission," am I correct that  
18 you're referring to this Commission, the District  
19 of Columbia Public Service Commission?

20 A Yes, sir.

21 Q Could you open your binder to what we  
22 have preliminarily marked for identification as

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1 Cross-Examination Exhibit Number 26 --

2 MR. GADSDEN: -- which I would ask be  
3 marked for the record as Joint Applicants'  
4 Exhibit 14.

5 CHAIRMAN KANE: So marked.

6 (Joint Applicants Cross Exhibit Number 14  
7 was marked for identification.)

8 BY MR. GADSDEN:

9 Q If you're there, Dr. Dismukes, can you  
10 confirm -- or do you recognize this document as  
11 your response to PEPCO data request 1-8?

12 A Yes, sir.

13 Q And in this data request we asked you to  
14 describe in detail the Commission's philosophy on  
15 renewables, and you responded by directing us to  
16 the testimony and exhibits sponsored by OPC  
17 witness Morgan; is that correct?

18 A Yes, sir.

19 Q Did you review Mr. Morgan's testimony  
20 before you prepared your own?

21 A Yes, sir.

22 Q And did you look at it before drafting

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1 this response?

2 A Yes, I did.

3 Q Can we agree -- or would you accept,  
4 subject to check, that nowhere in his direct  
5 testimony does Mr. Morgan discuss the Commission's  
6 philosophy on renewables or specific positions  
7 that it may have established with respect to  
8 renewables?

9 A That's not my understanding.

10 Q What is your understanding?

11 A It was my understanding that he was  
12 critical about those positions with regards to  
13 positions that Exelon had taken in other  
14 jurisdictions.

15 Q We're not talking about Exelon's  
16 positions at this point. We're talking about the  
17 Commission's philosophy with regard to renewables  
18 and positions that it has established with respect  
19 to renewables.

20 A Oh. And you're asking me, did he outline  
21 each of those philosophies?

22 Q Did he outline any of them?

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1           A       I don't recall that he did.

2           Q       Now, on page 24 at lines 17 and 18, you  
3 ask yourself to explain some of the problems OPC  
4 has with Exelon's corporate philosophy regarding  
5 renewables. Do you see that?

6           A       Yes, sir.

7           Q       If you could refer to what has been  
8 preliminarily marked in your binder as Joint  
9 Applicants' Cross-Examination Exhibit 27 --

10                   MR. GADSDEN:  -- which, Your Honors, I  
11 would ask be identified as Joint Applicants'  
12 Exhibit 15.

13                   CHAIRMAN KANE:  So marked.

14                   (Joint Applicants Cross Exhibit Number 15  
15 was marked for identification.)

16                   MR. GADSDEN:  Thank you, Your Honor.

17 BY MR. GADSDEN:

18           Q       Dr. Dismukes, do you recognize this  
19 document as your response to PEPCO data  
20 request 1-9?

21           A       Yes, sir.

22           Q       In this data request, we asked you to

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1 describe the Exelon corporate philosophy on  
2 renewables that you referred to in this portion of  
3 your testimony, and again, you responded by  
4 directing us -- well, in this case, you responded  
5 by directing us to your response to data  
6 request 1-8 which, as we just established, you  
7 referred us to Mr. Morgan's testimony; is that  
8 correct?

9 A Yes, sir.

10 Q Now, what aspects of Mr. Morgan's  
11 testimony did you have in mind here?

12 A "Here" being where?

13 Q "Here" being in your direct testimony  
14 when you're talking about problems that OPC has  
15 with Exelon's corporate philosophy.

16 A Can you reask that question? I got lost  
17 on that. I'm sorry.

18 Q All right. Let's start again. Page 24  
19 of your direct testimony, the question at lines 17  
20 and 18 reads, Can you explain some of the problems  
21 OPC has with Exelon's corporate philosophy  
22 regarding renewables?

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1 Are you with me so far?

2 A Yes, sir.

3 Q Okay. We asked you to flesh that out in  
4 the answer that followed. And you referred us to  
5 your previous response to data request 1-8 which,  
6 in turn, referred us to Mr. Morgan's testimony.

7 A Correct.

8 Q And my question is what aspects of --  
9 what specific problems did you have in mind that  
10 presumably we can find if we go to Dr. --  
11 Mr. Morgan's testimony?

12 A I think, as a general matter, Mr. Morgan  
13 expressed concerns about the relatively aggressive  
14 opposition that the company had had -- that Exelon  
15 had had with regards to the renewals of the  
16 production tax credits.

17 Q Oh. Is it your understanding that  
18 Mr. Morgan supported an extension of the  
19 production tax credit for wind?

20 A I don't recall.

21 Q Did you have occasion to review  
22 Mr. Morgan's cross-examination on this issue?

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1           A       I saw some of it, yes.

2           Q       Would you accept, subject to check, that  
3 Mr. Morgan indicated when he was questioned on  
4 this issue that he did not have a specific  
5 position on the extension of the PTC and that, in  
6 fact, he found merit in arguments for ending the  
7 PTC?

8           A       Yes, sir.

9           Q       And in fact, Dr. Dismukes, in the past,  
10 you too have opposed extension of the wind  
11 production tax credit, have you not?

12          A       Yes, sir.

13          Q       And if we look at the attachments to  
14 Joint Applicants' Exhibit 15, we will find two  
15 articles that you authored on that subject; is  
16 that correct?

17          A       Yes, sir.

18          Q       And do those two attachments appear to be  
19 complete and accurate copies of the articles that  
20 you authored on the subject of the wind production  
21 tax credit?

22          A       Yes, sir.

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1           MR. GADSDEN: Your Honor, if we could  
2 just take one moment here. We had a little mishap  
3 with respect to our last cross-examination  
4 exhibit. This will be the last one that we move.  
5 It is in the binder as Cross-Examination  
6 Exhibit 28. It is a very large, multi-page Excel  
7 spreadsheet. I apologize for its size, but we'll  
8 represent to you that it was provided to us by  
9 Dr. Dismukes electronically, that when we went to  
10 print it out, it was 12 pages of largely  
11 indecipherable stuff. So we have chosen to give  
12 you a larger version.

13           CHAIRMAN KANE: Something we can read.

14           MR. GADSDEN: Something you can read.

15           The mishap is that the versions that were  
16 placed in your binder do not have the question  
17 that was asked and the narrative response that was  
18 provided that introduced this as an attachment.  
19 And Ms. Travers now has those. And I don't know  
20 what the procedure is for amending it, but I'm  
21 sure you'll tell me.

22           CHAIRMAN KANE: Thank you. The procedure

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1 is to give them to the Commission secretary who  
2 will see that they're properly marked and added  
3 and distributed, as well as to the witness.

4 MR. GADSDEN: And my apologies to you,  
5 Dr. Dismukes, for not including that earlier.

6 CHAIRMAN KANE: Again, for the record,  
7 this is the two-page -- two pages that precede the  
8 attachment, the spreadsheet attachment.

9 MR. GADSDEN: Correct.

10 CHAIRMAN KANE: That should be included  
11 with that as one exhibit.

12 MR. GADSDEN: Correct.

13 BY MR. GADSDEN:

14 Q Tell me when you've had a chance to  
15 review that, Dr. Dismukes.

16 A I have.

17 Q So let's go back to page 10 of your  
18 direct testimony, if we could. I believe you  
19 alluded to this earlier in discussing why you  
20 believe that the original proposed CIF was  
21 inadequate.

22 And you stated in the sentence beginning

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1 at line 15, In addition, it is important to  
2 recognize that this 100 million seed money  
3 represents a very small contribution relative to  
4 other merger-related statistics, general to the  
5 industry and even specific to the merging  
6 companies.

7 Do you see that?

8 A Yes, sir.

9 MR. GADSDEN: Your Honor, if I could have  
10 marked for identification as Joint Applicants'  
11 Cross-Examination Exhibit 28 and -- marked for the  
12 record as Joint Applicants' Exhibit 16 the  
13 late-arriving two-page narrative answer that  
14 Dr. Dismukes provided as well as a five-page Excel  
15 spreadsheet attachment.

16 CHAIRMAN KANE: Yes, that will be marked.

17 (Joint Applicants Cross Exhibit Number 16  
18 was marked for identification.)

19 BY MR. GADSDEN:

20 Q And in this data request, Dr. Dismukes,  
21 we referenced your testimony at page 10, lines 15  
22 through 18, the sentence that I just read and

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1 basically asked you to support it. And you  
2 provided us with a considerable amount of  
3 material, not all of which has been attached,  
4 because I believe the actual -- all of the  
5 attachments together would have totalled somewhere  
6 in excess of 300 pages. I believe there were a  
7 lot of EIA reports and things of that nature.

8           But I believe that the attachment which  
9 we did provide will be sufficient for purposes of  
10 my question, and if you feel otherwise, please  
11 feel free to say so.

12           A     Okay.

13           Q     In your response, you indicate that  
14 you've not conducted a comprehensive analysis of  
15 all mergers. And here I'm reading from subpart A  
16 of your response. But you go on to note that  
17 you're aware of what transpired in the  
18 Exelon/Constellation merger proceedings several  
19 years ago, and you point to four specific  
20 transactions, presumably for illustrative  
21 purposes. Is that a fair characterization?

22           A     Yes, sir.

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1 Q This could be a bit difficult, but if you  
2 could look at the Excel spreadsheet.

3 A Okay.

4 Q In your narrative response -- and again,  
5 we're not going to go through all four of these; I  
6 just want to get a sense of how this information  
7 was pulled together. The first transaction you  
8 refer to is Macquarie Consortium/Puget Energy, and  
9 you identify a figure of \$95. Can you tell me  
10 what the \$95 represents? Is that a per customer  
11 savings figure of some form?

12 A Yes, sir.

13 Q If we look at the spreadsheet and we go  
14 down about halfway, specifically to -- I think  
15 it's the 14th transaction, announcement date, far  
16 left-hand column of 10/26/07, year 2007, going  
17 across, we see Macquarie Consortium and Puget  
18 Energy; is that correct?

19 A Yes, sir.

20 Q And if we turn to the second page -- and  
21 here's where it gets even more difficult unless  
22 you count down 14, but if you go to the column E&G

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1 and go down about halfway down the page, we see  
2 the \$95 figure; is that correct?

3 A Yes, sir.

4 Q And am I correct that -- well, first of  
5 all, let me ask this: Did you perform all these  
6 calculations yourself?

7 A Yes. These were put together from  
8 various sources of information that we either  
9 compiled or had from prior work in examining the  
10 issue. And some of the sources vary from general  
11 public reports to, I think, some EIA information  
12 to other sources of information.

13 Q Okay.

14 A I think there was some S&L information  
15 that was included in here, et cetera.

16 Q If we go back to page 1, would I be  
17 correct -- or would you accept, subject to check,  
18 that the \$95 per customer figure was derived --  
19 and now we're on the far right-hand side of this  
20 matrix -- dividing the figure of \$100 million  
21 under the estimated savings column by the target  
22 electric customers in the far right-hand column of

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1 1,048,402? If we do that arithmetic, we get \$95  
2 per customer. Would you accept that, subject to  
3 check?

4 A Yes, sir.

5 Q As far as the estimated savings figure of  
6 \$100 million, do you know whether that figure  
7 included anticipated generation-related savings?

8 A I don't recall.

9 Q Do you know whether it's net of cost to  
10 achieve?

11 A I don't recall.

12 Q Do you know over what period of time  
13 those savings were estimated to materialize?

14 A I don't recall. They should have been in  
15 those voluminous documents that you referenced  
16 earlier.

17 Q Do you know what the Washington Utilities  
18 and Transportation Commission did with this  
19 information?

20 A No, sir.

21 Q Am I correct that -- now turn over to  
22 page 2 -- that in addition to having 1,048,000

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1 electric customers, Puget is also identified as  
2 having close to 722,000 gas customers?

3 A Yes, sir.

4 Q But I gather the gas customers were not  
5 taken into account and calculated in the \$95 per  
6 customer figure, were they?

7 A I don't recall.

8 Q If you could turn back to the first page,  
9 this would be the fourth column from the right,  
10 captioned, Premium offer. Do you see that?

11 A Yes, sir.

12 Q Could you tell us what those figures  
13 represent?

14 A I believe that is the percent increase  
15 relative to the average share price five days  
16 before the transaction.

17 Q Okay. So in the case of the Macquarie  
18 transaction we were just looking at, the  
19 acquisition premium was a little over 26 percent?

20 A Yes, sir.

21 Q And for the 2002 -- 2001 PEPCO/Conectiv  
22 transaction, which appears at the bottom of that

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1 page, indicated premium is about 33 percent?

2 A Yes, sir.

3 Q And we'll take one more, maybe about the  
4 tenth item down, the 2010 acquisition of Allegheny  
5 Energy by FirstEnergy, that would be a premium of  
6 about 35 percent?

7 A Yes, sir.

8 Q Okay.

9 MR. GADSDEN: Your Honor, I believe  
10 that's all I have.

11 CHAIRMAN KANE: Thank you.

12 Ms. Francis?

13 MS. FRANCIS: No questions, Your Honor.

14 CHAIRMAN KANE: Mr. Coyle?

15 MR. COYLE: No questions, Your Honor.

16 CHAIRMAN KANE: DC SUN?

17 MS. SPENCER: We have no questions, Your  
18 Honor.

19 CHAIRMAN KANE: D.C. WASA?

20 MS. WHITE: No questions.

21 MS. ELEFANT: No questions.

22 CHAIRMAN KANE: The Commission has some

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1 questions.

2           COMMISSIONER FORT: I just have a few,  
3 and it goes to your testimony on corporate  
4 governance.

5           THE WITNESS: Yes, ma'am.

6           COMMISSIONER FORT: Could you turn to  
7 page 95, lines 11 through 16. You're talking a  
8 bit about the fact that the PHI corporate  
9 governance guidelines are different, just kind of  
10 generally --

11          THE WITNESS: Yes, ma'am.

12          COMMISSIONER FORT: -- in that section.  
13 Can you give me an idea or describe with some more  
14 specificity what makes PHI's governance principles  
15 different from the Exelon utility companies as you  
16 understand it? I know you identify a difference  
17 in how they define how many independent members  
18 are on the board.

19          THE WITNESS: Right.

20          COMMISSIONER FORT: What else is causing  
21 you some concerns.

22          THE WITNESS: I don't recall. I think

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1 the general point I was making there is that there  
2 were differences that had not been reconciled as  
3 part of the application that I felt needed to be  
4 reconciled as part of that, and unfortunately I  
5 don't remember them at this point right now.

6 COMMISSIONER FORT: When you say  
7 reconciled, how would that be reconciled? Is that  
8 not an issue that would occur during a transition  
9 period?

10 THE WITNESS: Yes, ma'am.

11 COMMISSIONER FORT: One of the items that  
12 you cite is that the PHI corporate governance  
13 guidelines -- in those guidelines there are  
14 requirements that the board members have  
15 significant credentials in a variety of areas. Do  
16 you have any reason to believe that the Exelon  
17 board members don't have similar experience or  
18 credentials?

19 THE WITNESS: No, ma'am.

20 COMMISSIONER FORT: And then on page 100,  
21 you make three recommendations on lines 7 through  
22 9, and one of the recommendations says that the

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1 joint applicants should not relocate PEPCO's  
2 employees from the District of Columbia to  
3 Exelon's headquarters without notifying the  
4 Commission.

5 Can you tell me why you made that  
6 recommendation?

7 THE WITNESS: Just so the Commission  
8 would be notified in terms of the changing  
9 composition and concentration of work being done  
10 here in the District relative to the headquarters  
11 of Exelon and how that was changing over time as  
12 the transition period evolved.

13 COMMISSIONER FORT: As you understand it,  
14 is there currently any requirement for PHI to  
15 notify us if they sent somebody from their PHI  
16 office up to New Jersey?

17 THE WITNESS: No, ma'am.

18 COMMISSIONER FORT: And just so I  
19 understand, you think this is something we should  
20 adopt just so we know where people are? Would  
21 this occur at some particular level within the  
22 company?

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1 THE WITNESS: I would at least argue  
2 maybe collectively for all the trades in other  
3 locations and then, as well, generally splitting  
4 it out by major areas for management employees  
5 that are shifting. And again, it's to give the  
6 Commission an idea of how -- a way of following up  
7 and holding accountable the company's claims about  
8 maintaining, you know, a viable presence here in  
9 the District with regards to its operations.

10 COMMISSIONER FORT: Okay. Thank you.

11 THE WITNESS: Yes, ma'am.

12 CHAIRMAN KANE: Thank you. I've got a  
13 couple of questions. Look at page 40 of your  
14 direct testimony, OPC (A), on line 8 and 9 so we  
15 set the context of the question. You note that  
16 one of the merger (sic) applicants' commitments  
17 is, quote -- it's item number 9 here --  
18 continuation of existing demand response and  
19 energy efficiency programs.

20 Do you see that?

21 THE WITNESS: Yes, ma'am.

22 CHAIRMAN KANE: And then on page 25 of

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1 your direct testimony, you make a reference to  
2 Commissioner Morgan's testimony starting at the  
3 top of that page on line -- former Commissioner  
4 Morgan's testimony, OPC witness Morgan's  
5 testimony, where you say, Mr. Morgan also notes  
6 there is little -- likely little to nothing Exelon  
7 can bring to the table on energy efficiency in the  
8 District and for PEPCO's ratepayers since the  
9 District's Clean and Affordable Energy Act, the  
10 CAEA, statute precludes direct utility involvement  
11 in energy efficiency program delivery.

12 Do you see that?

13 THE WITNESS: Yes, ma'am.

14 CHAIRMAN KANE: Okay. Are you familiar  
15 with the Clean and Affordable Energy Act?

16 THE WITNESS: No, ma'am.

17 CHAIRMAN KANE: So you're just  
18 referencing the fact that Mr. Morgan said this?

19 THE WITNESS: Yes, ma'am.

20 CHAIRMAN KANE: Okay. So you would not  
21 be able to tell me whether or not you know or  
22 could point to anything in that act that precludes

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1 the company from directly being involved in  
2 delivering energy efficiency programs?

3 THE WITNESS: No, ma'am.

4 CHAIRMAN KANE: So you are not -- are you  
5 familiar with the direct load control program that  
6 this Commission had ordered the company to carry  
7 out?

8 THE WITNESS: No, ma'am I'm not familiar  
9 with that.

10 CHAIRMAN KANE: So you're not aware that  
11 that is an energy efficiency program?

12 THE WITNESS: (Shaking head.)

13 CHAIRMAN KANE: All right. Then I won't  
14 ask any more questions about that since you're not  
15 familiar with it, because I was going to also ask  
16 if you knew about the sustainable energy utility.

17 THE WITNESS: No, ma'am, I'm not familiar  
18 with that.

19 CHAIRMAN KANE: Not at all, okay.

20 Let me then go on to another question  
21 which is about the use of the customer investment  
22 fund. I believe you said a few minutes ago, in

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1 response to company counsel's question, that you  
2 would recommend -- is it you or is it OPC -- would  
3 recommend the Commission, if it chose to do a bill  
4 credit -- if there were a merger, if there were a  
5 customer investment fund, and if the Commission  
6 chose to do a bill credit as a part of the use of  
7 that fund, that you would do it in the same way  
8 that cost of service allocation is done about  
9 customer classes?

10 THE WITNESS: Yes, ma'am, generally  
11 speaking.

12 CHAIRMAN KANE: Generally speaking. And  
13 I'm going to speak generally --

14 THE WITNESS: Okay.

15 CHAIRMAN KANE: -- because sometimes  
16 customer cost allocation is a litigious issue.

17 But are you aware that the residential  
18 customer class in the District in general is  
19 generally allocated in rate design the way the  
20 Commission does it anywhere from 15 to 25 percent  
21 at maximum of the cost of service or the revenue  
22 requirement in general?

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1 THE WITNESS: In general, yes, ma'am, I  
2 am familiar with --

3 CHAIRMAN KANE: You are aware of that.  
4 So by making a recommendation to the Commission  
5 that if there were a merger and if there were a  
6 fund and if a bill credit were one of the things  
7 the Commission were to consider as part of the use  
8 of that fund, you would be aware that, for a  
9 residential customer, we would not be talking  
10 about anywhere near 50 or 95 or \$128 per customer  
11 based on the way the Commission allocates cost and  
12 revenue among classes of customers.

13 THE WITNESS: Yes, ma'am.

14 CHAIRMAN KANE: Okay. Thank you. And  
15 then I want to ask you on page 19 of your direct  
16 testimony, starting at the bottom, if you'd turn  
17 to that page. Looking at -- starting on page --

18 THE WITNESS: Commissioner, let me back  
19 up just a second --

20 CHAIRMAN KANE: Sure.

21 THE WITNESS: I just want to make  
22 clear -- because I want to make sure that I'm

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1 speaking on the same terms that you are. When I  
2 make that general reference to cost of service, I  
3 would be suggesting that it be done on a revenue  
4 share responsibility based on the final revenue  
5 distribution that you've decided on in a rate  
6 case, not necessarily the true, you know, cost of  
7 service in terms of the earned rates of return  
8 from that cost of service. So I think that may be  
9 what you were getting at, as opposed to what the  
10 final decision was, say, for the company in the  
11 last rate case.

12 CHAIRMAN KANE: Well, I wasn't --

13 THE WITNESS: I was being less than  
14 general than you --

15 CHAIRMAN KANE: -- truly making -- I just  
16 wanted to have on the record an awareness that we  
17 do have a -- whether it's revenue or whether it's  
18 cost --

19 THE WITNESS: Yes, ma'am.

20 CHAIRMAN KANE: -- and they are not the  
21 same thing in any particular case, that the  
22 customer -- the residential customer class is a

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1 relatively small proportion of the overall.

2 THE WITNESS: Yes, ma'am.

3 CHAIRMAN KANE: Okay. Thank you.

4 Then turning to starting on line 18 on  
5 page 19, the question to you is, earlier you noted  
6 that the costs will outweigh the benefits  
7 associated with the proposed merger. And then  
8 you're asked, what are the costs? And you have,  
9 going over on to page 20, a list of costs:  
10 Sub-quality reliability performance, higher  
11 financial risk given the higher risk nature of  
12 Exelon's current business model, a reduction and,  
13 thereby, weakening of District-specific input into  
14 PEPCO's corporate governance, more difficult and  
15 costly commission regulation and oversight, local  
16 District employment losses and corporate positions  
17 on renewable energy that are philosophically  
18 different. You were asked about that.

19 These risks -- or these costs that you're  
20 citing here, would you characterize those as known  
21 and measurable?

22 THE WITNESS: No, ma'am. Not

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1 necessarily.

2 CHAIRMAN KANE: And would you  
3 characterize them as potential?

4 THE WITNESS: I would characterize them  
5 as potential, yes, ma'am.

6 CHAIRMAN KANE: And would you  
7 characterize them as things that could happen in  
8 the future and that might persist for some time?

9 THE WITNESS: Yes, ma'am.

10 CHAIRMAN KANE: And that may affect  
11 future customers?

12 THE WITNESS: Yes, ma'am.

13 CHAIRMAN KANE: So again, I want to be  
14 clear on what -- because you're the policy witness  
15 for OPC. Something like a bill credit, however  
16 structured, is a one-time -- would you agree is a  
17 one-time payment to a particular definitive group  
18 of customers who exist at a certain time?

19 THE WITNESS: Yes, ma'am.

20 CHAIRMAN KANE: And -- whereas the risks  
21 and costs that you're citing are potential -- are  
22 future, could affect future customers over a

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1 significant amount of time?

2 THE WITNESS: Yes, ma'am. And I had a  
3 discussion, I think, to that effect that was in my  
4 supplemental testimony.

5 CHAIRMAN KANE: Thank you.

6 THE WITNESS: Yes, ma'am.

7 CHAIRMAN KANE: I think that concludes  
8 questions.

9 MR. GRAY: Just very little redirect.

10 REDIRECT EXAMINATION

11 BY MR. GRAY:

12 Q Dr. Dismukes, do you have in front of you  
13 Joint Applicants' Cross-Examination Exhibit  
14 Number 27 which was marked as Joint Applicants'  
15 Number 15?

16 A Yes.

17 Q Do you see at the bottom of the first  
18 page of that response there's a reference to your  
19 two articles on elimination of the federal  
20 production tax credit. Do you recall questions  
21 about that?

22 A Yes, sir.

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1           Q       Can you please explain, what is the  
2 difference, if there is a difference, between your  
3 opposition to the production tax credit and your  
4 understanding of Exelon's opposition to the  
5 production tax credit?

6           A       Well, you know, my argument generally has  
7 been one of -- and it's been outlined in both of  
8 these papers -- that there are multiple policy  
9 issues related to these -- this particular tax  
10 incentive and how it impacts both taxpayers and  
11 ratepayers generally. It's my understanding that  
12 Exelon, however, on the other hand, has been  
13 pursuing these, looking at what they mean relative  
14 to their financial interest and their bottom line,  
15 particularly relative to their merchant fleet of  
16 nuclear generation.

17          Q       Okay. Thank you. Do you recall a  
18 question by counsel about page 58 of your direct  
19 testimony? It was a reference to the Lawrence  
20 Berkeley lab meta-study.

21          A       Yes, sir.

22          Q       Can you please explain your position --

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1 let me back up.

2 I believe the question was about your  
3 prior testimony in Delaware regarding the  
4 meta-study. Do you recall that?

5 A Yes, sir.

6 Q Can you please explain your position,  
7 with that prior testimony in mind, as to why the  
8 Commission should proceed with caution in using  
9 that type of study here?

10 A Right. So in these testimonies that  
11 counsel referenced in Maryland and in Delaware in  
12 particular, the issue at that time were some  
13 relatively aggressive proposals as well as some  
14 new rate-making mechanisms that had been requested  
15 by the company for reliability capital  
16 expenditures in both of those jurisdictions for a  
17 variety of programs that the Commission is  
18 familiar with that are similar to some of the ones  
19 that have been discussed here in the District.

20 As part of that process, I was somewhat  
21 critical of the company's applications in both  
22 jurisdictions, because no cost benefit studies had

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1 been provided during that time period and no  
2 attempts had been made at trying to even quantify  
3 benefits that may arise to get even an order of  
4 magnitude of what those benefits may be relative  
5 to the reliability investments that were being  
6 discussed at that time.

7           And I have -- also in both of those  
8 testimonies -- I think somewhere else in that  
9 Maryland testimony I noted, with the Commission,  
10 that there are potential estimates of benefits,  
11 which are through this ICE calculator that  
12 Dr. Tierney has used that the company has provided  
13 in these proceeding. But in those proceedings I  
14 also noted that while it gives you a good ballpark  
15 idea of benefits, there are certain challenges  
16 associated with those measurements, and they've  
17 been recognized here in the Mid-Atlantic region,  
18 in Maryland, I think in the District as well.

19           A meta-study is essentially a study of  
20 studies. It's a compilation or a survey of  
21 studies and study results that had been conducted  
22 by researchers about what the value of outages

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1 are. And so that calculator is derived from  
2 essentially an average or a compilation of these  
3 study results to compute what a dollar benefit  
4 would be for various different customer classes.  
5 And so it's as good as the underlying survey upon  
6 which it's based. And so that accuracy of it is  
7 based on essentially the underlying studies in the  
8 surveys.

9           It's not a specific study itself that  
10 quantifies these benefits, but one that goes out  
11 and pulls them from other places.

12           And so if you're looking at an  
13 analysis -- or that survey is highly proportioned  
14 to, say, studies that were done in California as  
15 opposed to the Mid-Atlantic region or those that  
16 were done in the south as opposed to, say, New  
17 England, or the geographic composition varied,  
18 it's going to have an implication associated with  
19 that calculator.

20           Another thing to keep in mind in that  
21 discussion that I had in those analyses versus  
22 what Dr. Tierney has done is that the mechanics of

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1 those two things differ a little bit. In those  
2 testimonies, which were in '11, '12 and in '13  
3 time frame, some of the numbers that we were  
4 looking at at that time came directly from the  
5 physical hard copy of the study itself. It had  
6 been compiled in spreadsheets. And I think PEPCO  
7 had actually used one at one time early on in its  
8 cost benefit study of the undergrounding program.

9           That ICE calculator that we have today  
10 that is in the DOE web page is something that has  
11 now become more of a black box. You enter a  
12 number, and it calculates those benefits  
13 from (sic) you. And it changes based on how they  
14 change that calculator.

15           And one of the things that I've noticed  
16 with that calculator is if you try to go in and  
17 replicate numbers today that were submitted in the  
18 record in this proceeding as recently as a couple  
19 of weeks ago, that calculator changes.

20           So there's as much as a 10 percent  
21 difference in running some of these numbers when  
22 you look at those statistics. So it's a bit of a

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1 black box.

2           What I was looking at here was relatively  
3 to the physical hard copy numbers that come from  
4 the tables in the study, which has its own set of  
5 challenges. And now we've got this, you know,  
6 additional program that's out there as well that  
7 is a moving target.

8           So when it comes to looking at a big  
9 issue for policy-making purposes, such as the  
10 merger, I would -- you know, I would recommend  
11 some caution in what those benefit numbers may be,  
12 and looking at them relative to cost and benefits  
13 for the overall merger.

14       Q     Thank you. Now, do you have in front of  
15 you Joint Applicants' Cross-Examination Exhibit 25  
16 which was marked for the record as Joint  
17 Applicants' 13? This is the excerpt of your  
18 testimonies from Delaware, the District and  
19 Maryland.

20       A     Yes, sir.

21       Q     Could you please turn to page 28 of that  
22 exhibit.

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1 A Okay.

2 Q I believe this is the excerpt from formal  
3 case 1103 here in the District; is that right?

4 A Yes, sir.

5 Q Could you please read the date at the  
6 bottom of that page?

7 A August 9th, 2013.

8 Q Thank you. Now, could you please turn to  
9 page 42 of that same exhibit.

10 A Okay.

11 Q This is your testimony from Maryland in  
12 case 9286. Could you read the date at the bottom  
13 of that page?

14 A Yes. It's March 23rd, 2012.

15 Q With regard to both of these sets of  
16 testimony, what was the last calendar year of  
17 actual reliability performance that you had  
18 available?

19 A I don't recall exactly, but it probably  
20 would have been a year prior to whenever that  
21 number -- the date of that testimony at least, and  
22 some of the spring numbers may have been earlier

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1 than that. I -- I believe at least it would have  
2 been at least the prior year. So for '12 it would  
3 have been through '11, and for '13 it would have  
4 been through '12.

5 Q Do you know when this Commission  
6 established the EQSS?

7 A I don't recall the specific date. I  
8 think in the 2010 time frame. I don't recall  
9 exactly.

10 Q Do you have an understanding in relative  
11 terms of how PEPCO's 2014 actual reliability  
12 performance fared as compared to the historical  
13 levels you discuss in this prior testimony?

14 A They've improved significantly. I don't  
15 recall the specific numbers breakout between SAIDI  
16 and SAIFI, but I think with SAIDI, I think the  
17 company has had, if I'm not mistaken, something  
18 like a 20 percent improvement every year for the  
19 last two years at least.

20 Q Thank you.

21 MR. GRAY: That's all the questions I  
22 have.

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1 MR. GADSDEN: Am I not allowed to  
2 cross-examine him on his redirect?

3 CHAIRMAN KANE: No.

4 MR. GADSDEN: No? Thank you.

5 CHAIRMAN KANE: That was part of the  
6 procedure we agreed to --

7 MR. GADSDEN: Very well.

8 CHAIRMAN KANE: -- hoping to kind of  
9 consolidate and streamline it a little bit.

10 I did -- having just said that, I do have  
11 one follow-up question. I just want to be sure.

12 You speak of outweighing -- risks outweighing  
13 benefits, costs outweighing benefits, or

14 vice versa, that benefits should outweigh the  
15 costs. And I just want to be clear. Are you

16 talking about dollar costs or is another

17 consideration that OPC is recommending to the

18 Commission the persistence of -- or the

19 sustainability of either a benefit or a risk?

20 THE WITNESS: That could be part of the  
21 overall issue as well because, as you -- our

22 discussion was earlier, some of these risks could

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1 last on some time period, whereas the CIF is a  
2 one-time payment.

3 CHAIRMAN KANE: Well, I wasn't speaking  
4 specifically about CIF, but just in general --

5 THE WITNESS: I think --

6 CHAIRMAN KANE: -- when does one  
7 outweighs -- when you do the balance, could  
8 time -- is a legitimate consideration, in OPC's  
9 view, the time persistence of either the benefit  
10 or the risk?

11 THE WITNESS: I would say with the risk  
12 and the cost, yes. With the benefits, the only  
13 real benefit I see is the one-time benefit with  
14 the CIF. You know, potentially, some of the  
15 efficiency benefits that you go through time, but  
16 I mean, that's supposed to have some relationship  
17 with the CIF as well. Right?

18 So -- the caveat I would have on that  
19 would be with the energy efficiency, if you  
20 decided to put it in something a little bit longer  
21 on the benefits side.

22 CHAIRMAN KANE: Thank you. All right.

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1 The witness may be excused, and we'll do our --  
2 you will do your exhibits.

3 MR. GRAY: Your Honor, at this time, I  
4 would move for admission of Exhibits OPC (A),  
5 OPC(A)-1 to OPC (A)-45, OPC (2A) and OPC (2A)-1 to  
6 OPC (2A)-5.

7 CHAIRMAN KANE: They are admitted.  
8 (OPC Exhibit Numbers (A), (A)-1 through  
9 (A)-45, (2A) and (2A)-1 through (2A)-5 were  
10 received into evidence.)

11 MR. GADSDEN: Your Honor, I would move  
12 Joint Applicants' Exhibits 9 through 16.

13 CHAIRMAN KANE: And they are admitted.  
14 (Joint Applicants Cross Exhibit Numbers 9  
15 through 16 were received into evidence.)

16 MR. GADSDEN: Thank you.

17 CHAIRMAN KANE: Very good. The witness  
18 is excused.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 CHAIRMAN KANE: And back to Witness  
22 Ramas.

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1 WHEREUPON,

2 DONNA RAMAS,

3 called as a witness, and after having been first  
4 sworn by the secretary, was examined and testified  
5 as follows:

6 MR. SEARS: Good afternoon,  
7 Commissioners. My name is Arick Sears on behalf  
8 of the Office of the People's Counsel.

9 DIRECT EXAMINATION

10 BY MR. SEARS:

11 Q Ms. Ramas, can you please state your name  
12 and business address for the record.

13 A Donna Marie Ramas. 4654 Driftwood Drive,  
14 Commerce Township, Michigan.

15 Q And do you have before you today your  
16 direct testimony, Exhibit OPC (C), consists of 36  
17 pages, and Exhibits OPC (C)-1 through OPC (C)-17  
18 which were prefiled on your behalf in this  
19 proceeding on November 3rd, 2014?

20 A Yes, I do.

21 Q Do you also have your supplemental direct  
22 testimony, Exhibit OPC (2C), consisting of 11

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1 pages, and two supporting exhibits which was  
2 prefiled on your behalf in this proceeding on  
3 March 20th, 2015?

4 A I believe so. Just a moment.

5 Yes, I do.

6 Q And was this testimony and were these  
7 exhibits prepared by you or under your direct  
8 supervision and control?

9 A Yes, they were.

10 Q And do you have any additions or  
11 corrections to make to your testimony at this  
12 time?

13 A No, I do not.

14 Q And is this testimony and are these  
15 Exhibit true and correct to the best of your  
16 knowledge?

17 A Yes.

18 MR. SEARS: At this time, I ask that  
19 Witness Ramas' direct testimony be marked for  
20 identification as Exhibit OPC (C) and the  
21 supporting exhibits as Exhibit OPC (C)-1 through  
22 (C)-17.

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1 CHAIRMAN KANE: They are so marked.  
2 (OPC Exhibit Numbers (C) and (C)-1  
3 through (C)-17 were marked for identification.)

4 MR. SEARS: In addition, I ask that  
5 Witness Ramas' supplemental direct testimony be  
6 marked for identification as Exhibit OPC (2C), and  
7 the supporting exhibits as Exhibits OPC (2C)-1 and  
8 (2C)-2.

9 CHAIRMAN KANE: They are so marked.  
10 (OPC Exhibit Numbers (2C), (2C)-1 and  
11 (2C)-2 were marked for identification.)

12 MR. SEARS: With that, Witness Ramas is  
13 available for cross-examination.

14 CHAIRMAN KANE: Mr. Lorenzo?

15 MR. LORENZO: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. LORENZO:

18 Q Good afternoon, Ms. Ramas.

19 A Good afternoon.

20 Q We've met here before, haven't we?

21 A Several times.

22 Q It's good to see you again.

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1           A       You too.

2           Q       I want to talk a little bit about cost to  
3 achieve, and I want you to turn to page 15 of your  
4 direct testimony, OPC Exhibit (C). And why don't  
5 you look at -- around line 19 through 20. And you  
6 make the statement that, The costs to achieve  
7 exceed the projected savings target during the  
8 pre-close period and for the first full year  
9 post-merger.

10                   Do you see that?

11          A       Yes, I do.

12          Q       And on the next page, on page 16,  
13 lines 13 through 18, you make the statement that  
14 if PEPCO were to file a rate case application  
15 post-merger that incorporated a test period that  
16 falls prior to the net cost savings becoming  
17 positive, the cost to achieve incorporated in such  
18 a filing could potentially exceed cost savings; is  
19 that correct?

20          A       Correct.

21          Q       And then on page 17, line 7 through 9,  
22 you say, The Commission should make it clear that

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1 PEPCO will not be permitted to include any costs  
2 to achieve in rates charged to the District of  
3 Columbia ratepayers that exceed the demonstrated  
4 cost savings in rates.

5 Do you see that?

6 A Yes, I do.

7 Q And I believe that you repeat this  
8 criticism in your supplemental direct testimony  
9 around page 3, 18 through -- lines 18 through 22?

10 A I do recall saying that. I can confirm  
11 the page number if you'd like. Yes, I did also  
12 iterate that, because it was a concern that was  
13 not addressed in the supplemental testimony filed  
14 by the joint applicants.

15 Q Okay. That's where we're going.

16 And you also claim that you have --  
17 that -- on page 11 in your supplemental direct --  
18 yes, at lines 1 through 13 -- I'll just summarize  
19 this at 9 and 10 -- you criticize the joint  
20 applicants again, not addressing your proposal,  
21 saying that the joint applicants were free to  
22 identify alternative solutions and they did not.

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1 Do you see that?

2 A I'm sorry. Which page were you on?

3 Q I am on page 11 of your supplemental  
4 direct. I'm looking at lines 9 and 10, but it's  
5 really the entire paragraph 1 through 13.

6 A Yes, that goes to that issue as well as  
7 other issues raised in my testimony.

8 Q That's right. Are you aware that  
9 D.C. Water Witness Gorman suggested, as an  
10 alternative solution to the problem of cost to  
11 achieve exceeding merger synergy savings, that  
12 those costs to achieve be amortized over a period  
13 of ten years?

14 A I recall him recommending amortization,  
15 but I haven't read his testimony recently, so I  
16 don't recall the period. But I could agree,  
17 subject to check.

18 Q Okay. Rather than pull his testimony  
19 out.

20 And Mr. Gorman describes a ten-year  
21 amortization of these costs as more equitable  
22 because of intergenerational equity concerns.

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1 Would you agree with that? Would you agree that  
2 an amortization of costs to achieve would result  
3 in a more equitable distribution of the cost to  
4 achieve because of intergenerational equity  
5 concerns?

6 MS. WHITE: Excuse me, Your Honor. I had  
7 a question. I am not sure that Mr. Lorenzo is --

8 MR. LORENZO: That's why I --

9 MS. WHITE: The intergenerational equity  
10 issue.

11 MR. LORENZO: I apologize for that.

12 MS. WHITE: I think it's shareholders,  
13 customers -- thank you, Your Honor.

14 MR. LORENZO: I'm sorry. I apologize for  
15 that.

16 BY MR. LORENZO:

17 Q Let me strike the previous question and  
18 ask, would you agree that amortizing the cost to  
19 achieve over ten years or over some period of time  
20 would be more equitable because of  
21 intergenerational equity concerns?

22 A It would depend on what is included in

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1 those costs to achieve.

2 MS. WHITE: I'm sorry, Madam Chairman.

3 CHAIRMAN KANE: Yes, Ms. White.

4 MS. WHITE: My objection on the  
5 characterization of Mr. Gorman is being --  
6 concerned with intergenerational equity. That --  
7 I think that's not an appropriate characterization  
8 of his testimony. I believe he was expressing  
9 concern about the allocation of benefits and risks  
10 between shareholders and customers.

11 MR. LORENZO: I apologize, Your Honor.

12 CHAIRMAN KANE: Again.

13 MR. LORENZO: Again. I was trying to get  
14 away from Mr. Gorman's testimony and just ask a  
15 question outright as a hypothetical to Ms. Ramas.

16 CHAIRMAN KANE: Without reference to  
17 Mr. Gorman's testimony.

18 MR. LORENZO: Without reference -- the  
19 only reference to Mr. Gorman's testimony was that  
20 he recommended a ten-year amortization period.

21 MS. WHITE: With that understanding, I  
22 have no problem with that question. Thank you.

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1 CHAIRMAN KANE: Start the question again  
2 and without any reference to Mr. Gorman, please.

3 BY MR. LORENZO:

4 Q Without any reference to Mr. Gorman's  
5 testimony, would you agree that amortizing the  
6 cost to achieve over a period of time, such as ten  
7 years, would be more equitable due to  
8 intergenerational equity concerns?

9 A It could be. But you need to look at the  
10 specific costs to achieve and what savings those  
11 costs to achieve are triggering. And -- for  
12 example, I wouldn't agree that all costs to  
13 achieve should somehow be deferred and amortized  
14 over ten years.

15 I pointed out several issues with some of  
16 the costs to achieve in this case, such as the  
17 supplemental executive retirement plan costs,  
18 things to those (sic) effect. And some of the  
19 costs to achieve -- you really need to look at the  
20 specific cost to achieve, because some involve  
21 implementing new computer programs which would  
22 presumably then be depreciated over the life of

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1 those new programs. So I couldn't just outright  
2 say, yeah, ten years is appropriate.

3 But I would agree, if you have a rate  
4 case filing and the costs to achieve are, in fact,  
5 exceeding the cost savings, then that would be  
6 something at the Commission's disposal to consider  
7 is amortizing those to a future period if they  
8 are, in fact, appropriate costs to be passed down  
9 to customers.

10 Q Very good. And did you review  
11 Mr. Khouzami's rebuttal testimony on that issue?

12 A Yes.

13 Q And would you agree, subject to check,  
14 that Mr. Khouzami said that the joint applicants  
15 are not conceptually opposed to an amortization  
16 period for the cost to achieve?

17 A Yes. He said he wasn't opposed to it,  
18 but again, the disappointment expressed in my  
19 testimony was that the joint applicants haven't  
20 come out and stated that they would ensure that in  
21 future rate cases the costs to achieve that they  
22 seek to recover from customers will not exceed the

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1 savings.

2           So what -- he said that that's something  
3 that could be considered. I guess I was hoping  
4 that at this point in these proceedings the  
5 company would have made a more affirmative  
6 statement that they would not seek to recover cost  
7 to achieve in excess of the savings.

8           Q     Did you review Mr. -- did you listen in  
9 at home when Mr. Khouzami was being crossed?

10          A     For brief periods, and did I read some of  
11 the transcripts, but I couldn't say that I read  
12 or -- either seen or read his entire cross.

13          Q     Would you accept, subject to check, that  
14 he's already -- that he stated in  
15 cross-examination -- and it's at transcript  
16 page 1797, lines 5 through 18, that we've already  
17 stipulated -- we've already said in my own  
18 testimony that we'd be open to some sort of  
19 amortization process if that's what the Commission  
20 deemed was appropriate; at this time, though, we  
21 think it premature to discuss that, given that it  
22 should be something that is discussed in a rate

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1 proceeding?

2 A Yes, I do recall reading that.

3 Q Thank you.

4 Switching topics, I want to talk a little  
5 bit about push-down accounting. And I believe you  
6 address that on -- in your direct testimony at  
7 page 22. And I'm particularly looking at lines 10  
8 through 12. And I believe your concern here is  
9 the fact that if costs are pushed -- if the  
10 acquisition premium is pushed down into the  
11 service company and some of the service company  
12 costs are allocated to PEPCO, that indeed some of  
13 the acquisition premium would be -- and that was  
14 included in rates, that some of the acquisition  
15 premium would be paid by PEPCO ratepayers. Is  
16 that a fair summary of your concerns?

17 A Yes. And that continued in my  
18 supplemental testimony as well. I do acknowledge  
19 that the joint applicants have made some further  
20 commitments with regards to the push-down  
21 accounting issue, but they still do not  
22 specifically state that there would be no purchase

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1 accounting adjustments for PHI Service Company.

2 So as of the time I wrote my supplemental

3 testimony, it was still a concern with regards to

4 the service company costs that could be passed on

5 to PEPCO in D.C.

6 Q Is it a concern today?

7 A I seem to recall during the cross of -- I

8 believe it was Mr. Khouzami, and correct me, of

9 course -- feel free -- that they were willing to

10 commit not to push those costs down to PHI Service

11 Company, but I haven't seen anything in writing in

12 the merger commitments. So I would hope that

13 somehow that would end up in a final decision in

14 this case, that if it's not added to the merger

15 commitments explicitly, that there's something in

16 the Commission's order just to make it clear that

17 those PHI Service Company assets won't be inflated

18 as a result of the acquisition if it's

19 consummated.

20 Q So you'll agree, subject to check, that

21 Mr. Khouzami informed Chair Kane on April 8th --

22 and, again, it's at transcript 2134 -- that we are

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1 not pushing down purchase accounting below the PHI  
2 level?

3 A Yeah, I recall reading that was the  
4 intent. I don't -- without having the transcript  
5 here, I can't say it was a firm commitment he  
6 made, but hopefully it would be beneficial if that  
7 is a firm commitment that he's making.

8 Q Okay. I want to talk a little bit about  
9 net operating loss carry-forwards, a complex  
10 subject at best --

11 A And not a fun one.

12 Q -- and we'll see if we can make this --  
13 we'll see if we can make some sense out of this.

14 And I believe that's discussed in your  
15 testimony on page 29. This is your direct  
16 testimony, OPC Exhibit (C).

17 A Yes, it begins on page 29 and continues  
18 to at least the next page.

19 Q Yes. Do you know how big PEPCO's net  
20 operating loss carry-forward is?

21 A Yes, if you give me a moment. As of the  
22 current date, I do not. In a data response, I did

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1 provide the balance for PHI Service Company and  
2 for PEPCO as of December 31st, 2013. However, I  
3 don't have the current balance. And I do know  
4 that at the end of December of this year, that  
5 bonus depreciation was extended into 2014. So  
6 that presumably would have some impact on the  
7 current balance of the net operating loss  
8 carry-forward.

9 I don't know if that would have increased  
10 it or decreased it because I haven't seen any  
11 information at this point as to what that current  
12 balance or the December 2014 balance was.

13 Q But just for a ballpark number, what  
14 number do you have there for December 31st, 2013,  
15 was it, or 2014?

16 A The number I had is at December 31st,  
17 2013, on a PEPCO basis, it was \$169 million. And  
18 give me a moment because I want to make sure that  
19 that's the -- I don't know if that's the net  
20 operating loss carry-forward amount or the  
21 deferred tax asset that would be in FERC  
22 account 190. So if you'll give me just a

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1 moment --

2 Q Sure.

3 A -- I want to make sure I'm giving you the  
4 right number.

5 Yeah. The 169 million as of  
6 December 31st, 2013, was a net operating loss  
7 carry-forward deferred tax asset. So that would  
8 be determined by multiplying the various tax rates  
9 by the net operating loss carry-forward balance,  
10 which would be significantly higher than the  
11 \$169 million.

12 Q Okay. Would you accept, subject to  
13 check, it's around \$700 million? Does that sound  
14 right?

15 A On a PHI basis?

16 Q On a PHI basis.

17 A On a PHI basis, that sounds about right.  
18 But again, I don't know the current balance.

19 Q Sure. Now, under Internal Revenue Code  
20 section 382, there's an annual limitation on the  
21 use of net operating loss carry-forwards, correct?

22 A Yes. And in fact, it was a response to a

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1 data request that the joint applicants responded  
2 to that first drew my attention to that fact, so  
3 then I researched that section of the code  
4 further.

5 Q Right. And you'll agree that one of the  
6 reasons for this section is to prevent sort of  
7 trafficking in tax losses, having -- buying  
8 companies that have nothing but tax losses in  
9 order to take advantage of the NOL?

10 A That would make senses, but I would not  
11 like to speculate on why the IRS sets up any  
12 provisions within the code, but that would -- it  
13 could be the reason.

14 Q And the basic calculation of the  
15 limitation, you take the value of the lost  
16 corporation -- in this case, PHI -- and you  
17 multiply it by the federal tax-exempt long-term  
18 rate, correct?

19 A Yeah. What you do is you take the value  
20 of the company immediately prior to the  
21 acquisition being consummated. So you would take  
22 the stock price right before the merger, multiply

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1 by the number of shares to get the value, and then  
2 you would multiply that by the long-term  
3 tax-exempt rate, and it's the highest rate for the  
4 prior three months before the date the calculation  
5 is made.

6 Q And you'll agree that's running about  
7 2-1/2 percent right now?

8 A Actually, I just looked it up yesterday.  
9 It was about 2.68 percent as of February 2015, was  
10 the most recent number I had found.

11 Q Right. And you'll agree, when  
12 determining the fair market value of a  
13 corporation, you add to the corporation -- you add  
14 to that fair market value any assumed debt that  
15 Exelon in this case would be taking over?

16 A I believe it spells out that the  
17 determination is basically you take the stock  
18 price times the market value of the stock as of  
19 the date right before the acquisition.

20 Q But isn't there a 2003 revenue procedure  
21 that allows you to include the assumed debt in a  
22 fair market value calculation?

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1           A       If there is, I'm not aware of that.  But  
2 there may be.

3           Q       There may be.  And aren't you also  
4 allowed to include the annual depreciation on the  
5 acquired assets as -- included in that  
6 calculation?

7           A       If you are, I'm not aware of that.  And  
8 again, I didn't provide the calculation.  I did  
9 indicate in my testimony that I requested the  
10 company to provide that calculation and was not  
11 provided that.  But there can be nuances in that  
12 calculation, and that's why I didn't present the  
13 calculation with my testimony.  It's numbers the  
14 company would need to provide.

15          Q       Would you agree, subject to check, that  
16 the current outstanding debt of PHI and PEPCO is  
17 around \$5 billion?

18          A       Subject to check.

19          Q       And that if we assume the fair market  
20 value of PHI is what, in fact, Exelon paid for it,  
21 that the stock price on -- at or near the closing  
22 will be the stock -- the share price that Exelon

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1 is paying; that's about \$6.8 billion?

2 A Correct. I would agree with that. But  
3 again, as I said before, I'm not certain about  
4 that offset for debt because I hadn't read  
5 anything about that debt offset within  
6 section 382.

7 Q Okay. And then whatever the fair market  
8 value is, if it's \$6.8 billion or \$6.8 billion  
9 plus the \$5 billion in debt, that would be  
10 multiplied by the 2.68 percent that you alluded  
11 to?

12 A That's my understanding. But, again, I  
13 can't vouch for the accuracy of the debt offset  
14 that you referenced.

15 Q Okay. Very good.

16 Are you aware of how -- of whether Exelon  
17 itself has net operating loss carry-forwards?

18 A Based on a response to a discovery  
19 request in this case, they did as of the end of  
20 2013. The response had indicated that they had  
21 anticipated using that up in 2014, but I'm not  
22 sure if that -- I believe that response was

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1 prepared before the announcement of the bonus  
2 depreciation for 2014. So I have no knowledge of  
3 whether or not they currently have a net operating  
4 loss carry-forward on their books or not.

5 Q Did you have an opportunity to review  
6 PEPCO's response to a bench data request that was  
7 filed with the Commission last Friday before you  
8 testified today?

9 A I don't believe so. I don't recall  
10 having -- was it specifically to a net operating  
11 loss carry-forward number?

12 Q Yes.

13 A No, then I don't recall having reviewed  
14 that.

15 MR. LORENZO: Your Honor, I ask your  
16 indulgence. I brought some extra copies of our  
17 response to the --

18 CHAIRMAN KANE: Speak into the mic,  
19 please.

20 MR. LORENZO: Sorry. I brought some  
21 extra copies of our response to the data request,  
22 and would like to see if any of the information in

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1 that data request would change the witness'  
2 opinion. I can't obviously introduce the data  
3 request as an exhibit through her because she  
4 can't vouch for it. We intend to do that with  
5 Mr. McGowan when he takes the stand. But I would  
6 like to see if any of the information there would  
7 change her opinion.

8 CHAIRMAN KANE: You want to show her the  
9 exhibit --

10 MR. LORENZO: Show it to her.

11 CHAIRMAN KANE: -- that you propose to  
12 introduce later?

13 MR. LORENZO: Yes.

14 CHAIRMAN KANE: Yes.

15 MR. LORENZO: Thank you, Your Honor.

16 CHAIRMAN KANE: Well, let me ask the  
17 People's Counsel, were you about to make -- no  
18 objection. Okay. Thank you.

19 MR. LORENZO: And Your Honor, I note this  
20 is a confidential data request that we submitted,  
21 because it deals with company taxes in that way,  
22 but I'll ask the bench's indulgence. Should I

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1 distribute it to the parties who signed a  
2 confidentiality agreement or should I just -- can  
3 I just show it to the witness?

4 CHAIRMAN KANE: Well, if it's  
5 confidential, how are we going to ask her --

6 MR. LORENZO: Well, I have to --

7 CHAIRMAN KANE: You plan to ask her  
8 questions about it that will not violate the  
9 confidential nature of it?

10 MR. LORENZO: Yes.

11 CHAIRMAN KANE: Have you filed this with  
12 us already?

13 MR. LORENZO: We filed this as a data  
14 request last Friday.

15 CHAIRMAN KANE: Last Friday. Data  
16 request. And it was filed as confidential?

17 MR. LORENZO: It was filed as  
18 confidential.

19 CHAIRMAN KANE: Then presumably anyone  
20 who has -- is there anyone in the room who has not  
21 signed the confidentiality agreement or who isn't  
22 Commission staff?

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1 All right. Since it was just filed last  
2 Friday, we do need to give it to the witness to  
3 look at, and to the secretary.

4 Mr. Lorenzo, would you again identify  
5 what the title or the name of this document is?

6 MR. LORENZO: Yes, Your Honor. It is  
7 joint applicants' confidential response to bench  
8 data request number 5, filed with the Commission  
9 on April 17th, 2015.

10 BY MR. LORENZO:

11 Q Ms. Ramas, after you've had a chance to  
12 review it, let me know.

13 A It's a little lengthy, so it might take  
14 me just a moment.

15 All right. I've read it.

16 Q Thank you.

17 A Was there a question outstanding?

18 Q No, there was not.

19 A Okay. Again, by reading this, within my  
20 testimony, part of what I recommended was that the  
21 companies report on the impact of any potential  
22 net operating loss carry-forward. I didn't

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1 recommend these specific adjustments, just that  
2 the companies be required to report that  
3 information to the Commission, as well as report  
4 any information regarding any changes in tax  
5 selections made post-merger.

6           So that would continue to be my  
7 recommendation, that that reporting should still  
8 be required, even with the information provided in  
9 this confidential bench request response.

10       Q     You'll agree that the confidential bench  
11 response indicates that Exelon anticipates being  
12 able to consume PHI's NOLC, net operating loss  
13 carry-forward, by 2017?

14       A     Yes. It's a confidential response, so I  
15 don't want to say too much more about, but yeah,  
16 it indicates that that's their current  
17 anticipation.

18       Q     And their -- and that PEPCO's current --  
19 strike that.

20           And that, on a stand-alone basis, PHI and  
21 PEPCO anticipate they will not be able to use the  
22 NOLC carry-forward fully to 2019. That's in

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1 response E.

2 A That's what the confidential response  
3 indicates.

4 Q Thank you.

5 A But again, that wouldn't alleviate my  
6 recommendation that that information, once it's  
7 known, be reported to the Commission so it has it  
8 to evaluate in future proceedings.

9 Q Very good. I want to talk a little bit  
10 about another of your -- another of your  
11 recommendations which deal with rate case filing  
12 requirements. And I believe those appear on  
13 page 32 through 33 of your direct testimony.

14 A Yeah, I had several recommended reporting  
15 requirements. And this specific section you cite  
16 has to do with information regarding costs that  
17 are direct charge or allocated to PEPCO.

18 Q That's right. And I was going to ask you  
19 to explain what the filing requirements were.

20 A I specifically quoted them directly from  
21 the Commission's order in the prior case, from the  
22 prior rate case, and they're pretty

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1 self-explanatory.

2 Q Okay.

3 A I can read them if you --

4 Q No, it's not necessary. What I want to  
5 know is if, in your expert opinion as a regulatory  
6 expert who's testified here on numerous occasions,  
7 would these reporting requirements -- do these  
8 reporting requirements apply to PEPCO to report  
9 the same information for the Exelon Business  
10 Service Corporation as well as for PHI Service  
11 Company?

12 A It's my opinion that they should, but the  
13 way they were specifically spelled out in the  
14 order of the case that I cite to, order  
15 number 17424, at that time, this merger wasn't  
16 being considered so they were specific to PEPCO's  
17 service company. So the reason I recommended this  
18 is so that that information doesn't slip through  
19 the cracks, that they also be required to provide  
20 the same information for the EBSC, Exelon Business  
21 Service Company, as well as PEPCO's service  
22 company.

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1 Q So I take it your answer to the question  
2 is, no, you don't believe these are applicable to  
3 the Exelon Business Service Company, these  
4 reporting requirements?

5 A I hope they are, but the way they're  
6 worded in the order -- that's why I raise them in  
7 my testimony, is I don't want something like that  
8 to slip through the cracks because there have been  
9 frustrations in prior cases, getting the amount of  
10 costs coming to D.C. on a D.C. jurisdictional  
11 basis -- and I hope to alleviate in future cases  
12 potential discovery issues with this subject.

13 So it would be preferable that any order  
14 coming out in this case specify that those filing  
15 requirements also apply to Exelon Business Service  
16 Company as well.

17 Q Okay.

18 MR. LORENZO: That's all I have, Your  
19 Honor.

20 CHAIRMAN KANE: Thank you.

21 MS. FRANCIS: No questions, Your Honor.

22 CHAIRMAN KANE: Mr. Coyle?

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1 MR. COYLE: No questions from D.C.  
2 government, Your Honor.

3 MS. SPENCER: Your Honor, we have no  
4 questions.

5 CHAIRMAN KANE: D.C. Water?

6 MS. WHITE: No questions from D.C. Water.

7 MS. ELEFANT: No questions.

8 CHAIRMAN KANE: Redirect?

9 MR. SEARS: No redirect.

10 CHAIRMAN KANE: No redirect.

11 No questions from the commissioners.  
12 You're excused.

13 THE WITNESS: Thank you.

14 (Witness excused.)

15 CHAIRMAN KANE: Exhibits.

16 MR. SEARS: OPC moves for admission of  
17 Exhibit OPC (C), Exhibits OPC (C)-1 through  
18 (C)-17, (2C), (2C)-1 and (2C)-2.

19 CHAIRMAN KANE: They are moved.

20 (OPC Exhibit Numbers (C), (C)-1 through  
21 (C)-17, (2C), (2C)-1 and (2C)-2 were received into  
22 evidence.)

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1 CHAIRMAN KANE: All right. You're  
2 excused.

3 It's ten after 5:00. We've been back for  
4 a little over two hours. I note on the estimated  
5 schedule we have Witness Woolridge, estimated for  
6 15 minutes. And MAREC, your witness, estimated  
7 for half an hour.

8 MS. ELEFANT: Yes, that's correct. And  
9 just to clarify -- and this is something I have  
10 raised with the applicants -- our witness will  
11 just be available today, so hopefully we will get  
12 to him by 6:30 or so. It seems like we will, by  
13 the estimates.

14 MR. LORENZO: Your Honor, I anticipate  
15 that Mr. Woolridge's cross-examination will be  
16 between 15 minutes and a half-hour.

17 CHAIRMAN KANE: Then I'm going to -- that  
18 adds up to about 45 minutes. I'm going to take a  
19 ten-minute break, give the reporter and all of us  
20 a break. Back in ten minutes. And we should be  
21 able to finish up today by around 6:00, which  
22 means we'll have to move Mr. McGowan -- start with

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1 Mr. McGowan in the morning rather than trying to  
2 get in 15, 20 minutes or so of him this evening.

3 Very good.

4 (Whereupon, a short recess was taken.)

5 CHAIRMAN KANE: We're back on the record  
6 at 5:21 p.m. Has the witness been sworn in?

7 WHEREUPON,

8 J. RANDALL WOOLRIDGE,

9 called as a witness, and after having been first  
10 sworn by the secretary, was examined and testified  
11 as follows:

12 MS. LOPEZ: Good afternoon. My name is  
13 Danielle Lopez. I'm here representing the Office  
14 of the People's Counsel.

15 DIRECT EXAMINATION

16 BY MS. LOPEZ:

17 Q Good afternoon, Dr. Woolridge.

18 A Good afternoon.

19 Q Can you please state your full name,  
20 occupation and address.

21 A My name is the initial J, Randall  
22 Woolridge, and that's spelled W-O-O-L-R-I-D-G-E.

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1 I am a professor of finance at Pennsylvania State  
2 University.

3 Q And do you have before you your direct  
4 testimony in this case? It was pre-marked  
5 Exhibit OPC (D), along with the accompanying  
6 Exhibits OPC (D)-1 through (D)-6.

7 A I do.

8 Q And was this testimony prepared by you or  
9 under your direct supervision?

10 A Yes.

11 Q And do you adopt this testimony as your  
12 sworn testimony here in this case?

13 A Yes, I do.

14 MS. LOPEZ: The witness is available for  
15 cross-examination.

16 CHAIRMAN KANE: Thank you.

17 Mr. Lorenzo?

18 MR. LORENZO: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. LORENZO:

21 Q Good afternoon, Dr. Woolridge.

22 A Good afternoon.

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1 Q I want to discuss with you page 13,  
2 lines 1 and 2 of your testimony. Tell me when  
3 you've gotten there.

4 A Yes.

5 Q And you ask yourself, do you agree that  
6 the financial strength of Exelon is a benefit to  
7 PEPCO?

8 Do you see that?

9 A Yes.

10 Q And you respond, no.

11 A That's correct.

12 Q That's correct. So let's examine that a  
13 little closer. Can you turn to what has been  
14 previously marked for identification as Joint  
15 Applicants' Exhibit 30.

16 MR. LORENZO: I want that marked Joint  
17 Applicants' Exhibit Number 17, I believe we're up  
18 to.

19 THE WITNESS: Are those the  
20 cross-examination exhibits?

21 BY MR. LORENZO:

22 Q Yes. There should be a book up there

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1 that says joint applicants -- cross-examination  
2 binder of joint applicants.

3 A Yes.

4 Q Are you there?

5 CHAIRMAN KANE: How are they marked?

6 MR. LORENZO: Excuse me, Your Honor?

7 CHAIRMAN KANE: I just want you to repeat  
8 the number of the exhibits, how it's marked.

9 MR. LORENZO: The exhibit is  
10 preliminarily marked as Joint Applicants' Exhibit  
11 Number 30 --

12 CHAIRMAN KANE: 30, all right.

13 MR. LORENZO: -- and I want it marked as  
14 Joint Applicants' Cross Exhibit Number 17.

15 CHAIRMAN KANE: 17, thank you.

16 (Joint Applicants Cross Exhibit Number 17  
17 was marked for identification.)

18 MR. LORENZO: You're welcome, Your Honor.

19 BY MR. LORENZO:

20 Q And you'll agree with me this is a  
21 Moody's Investors Service credit opinion --

22 MR. LORENZO: And this is a confidential

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1 attachment, again, which we have permission from  
2 the company, as I found out, permission to use  
3 excerpts from it live in cross-examination.

4 BY MR. LORENZO:

5 Q And would you agree, Dr. Woolridge, that  
6 this is a Moody's Investors Service credit opinion  
7 on Potomac Electric Power Company?

8 A Yes.

9 Q And you'll agree that, if we look at the  
10 first page and go down to the bottom of the page,  
11 they have an opinion, and they call it rating  
12 drivers. Do you see that?

13 A Yes.

14 Q And the last rating driver is that the  
15 merger into the Exelon family viewed positively?

16 A Yes. I mean, they -- they indicate here  
17 it's viewed positively, and I guess they have a  
18 paragraph which supports that on page 3 of the  
19 document.

20 Q That's correct. And am I reading the  
21 last sentence of that paragraph correctly when we  
22 say, We think being part of the bigger and more

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1 diverse Exelon Corporation -- corporate family  
2 will benefit PEPCO because specific regulatory  
3 commitments will be made as part of the merger  
4 proceeding and because Exelon's larger suite of  
5 T&D utilities will provide relief of PHI's  
6 increasingly untenable dividend policy?

7 Do you see that?

8 A Yes, I see that. I mean, obviously this  
9 was just published. It was long before my --  
10 well, it was before I published my initial  
11 testimony. And in my testimony, I related to the  
12 fact that -- looking for financial benefits based  
13 on the statements of Mr. Crane about the financial  
14 strength of Exelon, and in fact, I made that  
15 objection in my direct testimony, and neither  
16 Mr. Crane or Ms. Lapson really came back  
17 with (sic) any respect about the traceable  
18 benefits to PEPCO of the -- the merger with  
19 Exelon.

20 Q How do you interpret Moody's statement  
21 about PHI's increasingly untenable dividend  
22 policy?

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1           A       Well, I mean, the traceable benefits are  
2 supposed to be to customers, not to management,  
3 and this looks like the untenable dividend policy  
4 is really a management issue, not a customer  
5 issue. I mean, you go back to what the benefits  
6 are supposed to be. If the financial strength is  
7 a benefit, then there should be benefits to  
8 ratepayers, not to management.

9                   And the debt -- dividend policy is set by  
10 management. It's not set by ratepayers.

11           Q       Would you agree as a general -- all  
12 things being equal, that more positive credit  
13 ratings from rating agencies such as Moody's and  
14 Fitch are a benefit to customers?

15           A       But their credit ratings are not better  
16 than PEPCO's. I mean, obviously, in this case,  
17 Potomac Electric is a BAA-1, which is above where  
18 Exelon is. I mean, it's -- it's roughly the same  
19 as Exelon. Obviously S&P has better ratings for  
20 Potomac Electric than it does for Exelon.

21                   So again, you know -- I know Ms. Lapson  
22 goes on at length about, well, the bond -- the

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1 credit ratings are about the same. Well, the  
2 credit ratings are about the same; I don't see  
3 where it's a financial benefit to the ratepayers.

4 Q Would you agree -- going back to the  
5 untenable dividend policy -- again, it's a nice  
6 speech, but you haven't answered my question on,  
7 how do you interpret what PHI's untenable dividend  
8 policy -- what Moody's means by that?

9 A I don't know.

10 Q Could you turn to what has been  
11 previously marked as Exhibit -- Joint Applicants'  
12 Exhibit Number 31 --

13 MR. LORENZO: And I'd like that to be  
14 marked as Joint Applicants' Cross Exhibit 18.

15 CHAIRMAN KANE: So marked.

16 (Joint Applicants Cross Exhibit Number 18  
17 was marked for identification.)

18 BY MR. LORENZO:

19 Q And you agree this is a Fitch rating  
20 report --

21 A Yes.

22 Q -- from April 10th, 2015? And they also

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1 view the merger as credit-positive for PEPCO,  
2 correct?

3 A They do. They make the statement about  
4 greater financial flexibility. Again, they don't  
5 define that. And again, I'm not sure what that  
6 means in terms of the benefit -- financial benefit  
7 to ratepayers.

8 Q Do you --

9 A I do think that if that was a benefit,  
10 that in their rebuttal testimony to me, Mr. Crane  
11 or Ms. Lapson would have drawn out what the  
12 financial benefits are of the merger with Exelon.

13 Q Do you see where it says -- we can go  
14 through some of this. If you go to page 5, the  
15 paragraph discussing the Exelon merger, do you see  
16 where Fitch says, Fitch considers the pending  
17 merger to being credit-positive; it would create a  
18 stronger, better capitalized parent company with a  
19 far greater financial -- with far greater  
20 financial flexibility? Then, going on, Fitch  
21 anticipates PEPCO would benefit from the improved  
22 operating efficiencies and lower costs as a result

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1 of the merger.

2 Do you see that?

3 A I see that, but again, I don't see where  
4 the financial benefit is. Where is the -- where  
5 are the direct positives for the ratepayers?  
6 Certainly they didn't change the ratings for  
7 either -- PEPCO's ratings didn't go up because of  
8 the -- you know, if they went up, maybe if Exelon  
9 was rated A and PEPCO was triple-B, you could see  
10 where the stronger capitalized company -- there  
11 would be a benefit in terms of lower cost capital  
12 for the ratepayers of PEPCO. But I don't see, and  
13 certainly the company witnesses haven't laid out,  
14 what are the direct, traceable financial benefits  
15 to ratepayers.

16 Q Do you think, again -- once again, you  
17 don't think the merger being viewed as  
18 credit-positive by Moody's and Finch (sic) is a  
19 benefit -- a long-term benefit to better credit  
20 ratings?

21 A They didn't change the credit ratings, so  
22 no. The credit ratings haven't changed, so

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1 there's no benefit. There's no traceable benefit  
2 to ratepayers.

3           If they changed the ratings and boosted  
4 them up, which I don't know how likely that is  
5 given the ratings of Exelon, I would say there's a  
6 positive there; there's a traceable benefit. That  
7 means they can issue bonds at lower rates in the  
8 future.

9           But there is no credit rating change  
10 here. They just said they see it as a positive  
11 without any movement. Just because it's a  
12 positive doesn't mean you're going to issue bonds  
13 at a lower rate. Only if there's a upgrade in  
14 their bond ratings will there be a lower interest  
15 rate on their bonds.

16       Q     You'll agree that on the first page of  
17 this report where they discuss rating  
18 sensitivities, they also say that one of  
19 negative -- negative rating action would result  
20 from the inability to close the EXC merger -- and  
21 EXC is the stock exchange ticker for Exelon?

22       A     Yes.

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1 Q Very good.

2 MR. LORENZO: I have no further  
3 questions.

4 MS. FRANCIS: No questions, Your Honor.

5 MR. COYLE: No questions, Your Honor.  
6 Thank you.

7 MS. SPENCER: No questions.

8 MS. WHITE: No questions, Your Honor.

9 MS. ELEFANT: No questions, Your Honor.

10 CHAIRMAN KANE: Redirect? OPC?

11 MS. LOPEZ: No redirect.

12 CHAIRMAN KANE: And any exhibits?

13 MS. LOPEZ: Yes. I would like to have  
14 Exhibit OPC (D) and supporting Exhibits OPC (D)-1  
15 through (D)-6 marked and admitted.

16 CHAIRMAN KANE: They are so marked and  
17 admitted.

18 (OPC Exhibit Numbers (D) and (D)-1  
19 through (D)-6 were marked for identification and  
20 received into evidence.)

21 MR. LORENZO: Joint applicants would move  
22 admission of Joint Applicants' Exhibits 17 and 18.

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1 CHAIRMAN KANE: They are moved.

2 (Joint Applicants Cross Exhibit Numbers  
3 17 and 18 was received into evidence.)

4 CHAIRMAN KANE: You are excused,  
5 Mr. Woolridge.

6 (Witness excused.)

7 CHAIRMAN KANE: Okay. Moving right  
8 along.

9 MS. ELEFANT: Good afternoon, Your Honor.  
10 My name is Carolyn Elefant. I represent the  
11 Mid-Atlantic Renewable Energy Coalition, and we  
12 will have Mr. Burcat as our witness.

13 WHEREUPON,

14 BRUCE BURCAT,  
15 called as a witness, and after having been first  
16 sworn by the secretary, was examined and testified  
17 as follows:

18 MS. ELEFANT: Your Honor, before I begin,  
19 I wanted to just address a preliminary matter. In  
20 reviewing the paper copies of the testimony -- and  
21 I typically, and unfortunately perhaps, usually  
22 look at electronically filed copies -- I realized

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1 that I had inadvertently omitted the Exhibit 3  
2 which is referenced on page 13. This was part of  
3 our prefiled testimony that was submitted  
4 November 4th, but when we filed our conformed  
5 testimony, it was inadvertently omitted. It's  
6 discussed within the testimony. I'll pass it  
7 around, and I will wait to see if there are any  
8 objections at that time, if that's all right.

9 CHAIRMAN KANE: And is it the same as you  
10 filed in November?

11 MS. ELEFANT: Yes, Your Honor, and I can  
12 question the witness as to that as well.

13 CHAIRMAN KANE: Go ahead.

14 MS. ELEFANT: This is confidential, so I  
15 assume whoever is getting a copy is subject to the  
16 confidentiality.

17 CHAIRMAN KANE: I believe everyone in the  
18 room is subject to that. But if there is anyone,  
19 please do not take a copy.

20 DIRECT EXAMINATION

21 BY MS. ELEFANT:

22 Q Good afternoon, Mr. Burcat. Could you

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1 please state and spell your name for the record.

2 A Sure. It's Bruce Burcat, B-U-R-C-A-T.

3 Q And on whose behalf are you testifying  
4 today?

5 A The Mid-Atlantic Renewable Energy  
6 Coalition.

7 Q And do you have before you what has been  
8 preliminarily marked as MAREC (1A), entitled,  
9 Amended direct testimony on behalf of Bruce Burcat  
10 on behalf of MAREC?

11 A I do.

12 Q And does that testimony have appended to  
13 it two exhibits?

14 A Yes.

15 Q And then I just circulated a third  
16 exhibit. Do you recognize that exhibit?

17 A I didn't -- oh, I do have it. Yes. Yes,  
18 I do.

19 Q And that was part of your -- is that part  
20 of your testimony as well? Or is that referencing  
21 your testimony?

22 A Yes, it is.

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1 Q Did you prepare this testimony by  
2 yourself or was it prepared under your  
3 supervision.

4 A It was prepared by myself.

5 MS. ELEFANT: And at this time, I would  
6 like to tender Mr. Burcat for cross-examination.

7 CHAIRMAN KANE: Thank you.

8 Mr. Lorenzo.

9 MR. KULAK: Good afternoon, Your Honors.  
10 Ken Kulak of the law firm of Morgan Lewis  
11 appearing on behalf of the joint applicants.

12 CROSS-EXAMINATION

13 BY MR. KULAK:

14 Q Good afternoon, Mr. Burcat.

15 A Good afternoon, Mr. Kulak.

16 Q Mr. Burcat, in this proceeding you've  
17 advocated for a condition on the merger that would  
18 require competitively sourced long-term power  
19 purchase agreements from D.C. -- eligible  
20 resources for D.C.'s Renewable Portfolio Standard,  
21 or RPS, right?

22 A That's correct.

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1 Q And on page 19 of your testimony, you  
2 cite provisions of D.C. law which require PEPCO to  
3 solicit fixed price offers of one-year, two-year  
4 or three or more years for standard offer service,  
5 right?

6 A That is correct.

7 Q I believe your view, as you explain on  
8 page 19, is that this provision provides  
9 flexibility -- that's your word -- to allow  
10 long-term contracting for renewable resources,  
11 right?

12 A Yes. To the Commission, yes.

13 Q Mr. Burcat, you understand PEPCO meets  
14 RPS requirements associated with standard offer  
15 service by obtaining the requisite renewable  
16 energy credits, or RECs, from wholesale suppliers  
17 providing standard offer service, right?

18 A That's the procedure that's being -- in  
19 use at this time, yes.

20 Q So in this proceeding, as part of this  
21 condition, you're proposing that PEPCO and this  
22 Commission alter the current procurement

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1 arrangements so that PEPCO would do its own RFP  
2 for some portion of the RPS requirements for a  
3 standard offer service load, right?

4 A Well, no, not exactly. As part of this  
5 proceeding, we are opposed to the merger, but we  
6 have stated that -- or I have stated that if the  
7 merger -- if the Commission decides to impose  
8 conditions on the merger to approve the merger in  
9 that respect, then we would believe that certain  
10 conditions should attach in that particular  
11 instance.

12 Q Well, with respect to the long-term  
13 contract condition you've proposed, who would be  
14 the counterparty to the wind developer or wind  
15 facility under your condition?

16 A It would be the utility, PEPCO, in D.C.

17 Q So that would be a change in the current  
18 process, right, Mr. Burcat?

19 A Well, my understanding is that PEPCO is  
20 the counterparty under the standard offer service  
21 in D.C. to the wholesale contracts that are  
22 currently in existence.

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1 Q But you're not envisioning that the  
2 renewable developers would be providing standard  
3 offer service?

4 A No.

5 Q And Mr. Burcat, are you proposing that  
6 the terms of those renewable power purchase  
7 agreements should be three years?

8 A No, I am not.

9 Q What would be the minimum term of those  
10 renewable power purchase agreements associated  
11 with the condition you're proposing?

12 A We've talked about long-term contracts,  
13 and generally what we talk about are 10 to 15, and  
14 possibly up to 20 years.

15 Q So if those contracts were won by a wind  
16 generator, including potentially members of MAREC,  
17 those contracts would be fixed price contracts,  
18 right?

19 A That's correct.

20 Q And so they would lock in a rate for wind  
21 energy or wind energy renewable energy credits for  
22 10 years or 20 years that customers would pay as

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1 part of standard offer service?

2 A That's correct.

3 Q Mr. Burcat, MAREC was an intervenor in  
4 proceedings before the New Jersey Board of Public  
5 Utilities relating to approve of the Exelon/PHI  
6 merger, right?

7 A Yes.

8 Q And in your supplemental testimony you  
9 explained MAREC's decision not to oppose the  
10 settlement reached between the companies and the  
11 parties in the New Jersey proceedings for approval  
12 of the merger, right?

13 A In this testimony, we talked about the  
14 differences between New Jersey's set of  
15 circumstances and what the circumstances are here  
16 in D.C. and, yes, we basically -- definitely  
17 decided that there were reasons not to oppose the  
18 merger because we agreed to a -- essentially a  
19 letter that provided some benefit to MAREC as far  
20 as doing a proceeding in New Jersey or potentially  
21 opening a proceeding in New Jersey that would look  
22 at long-term contracting.

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1 Q And just to be specific, as I understand  
2 it, that letter states that Exelon would, quote,  
3 not object to and consider -- excuse me, I'm  
4 quoting from your testimony -- would, quote, not  
5 object to and consider it reasonable for MAREC to  
6 request to open a proceeding, if the merger is  
7 consummated in New Jersey, to consider the use of  
8 a competitive process for Atlantic City Energy  
9 Company for procurement of a portion of energy and  
10 renewable energy credits bundled through long-term  
11 contracts, unquote, to meet RPS requirements,  
12 right?

13 A That's correct.

14 Q In your supplemental testimony in this  
15 proceeding, you also explain that the New Jersey  
16 settlement shouldn't apply in D.C. because,  
17 quote -- and I believe this is from page 18 of  
18 your supplemental testimony -- the landscape is  
19 far different in New Jersey because Atlantic City  
20 Electric is the third largest out of the four  
21 investor-owned electric utilities in New Jersey,  
22 right?

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1 A That's one of the reasons.

2 Q There are also proceedings for approval  
3 of this merger before the Delaware Public Service  
4 Commission relating to Delmarva Power, an  
5 affiliate of PEPCO, right?

6 A That's correct.

7 Q And in the Delaware proceedings, MAREC is  
8 also an intervenor, right?

9 A That's correct.

10 Q And you yourself filed testimony in that  
11 proceeding, right?

12 A I did not.

13 Q Excuse me. But MAREC is --

14 A Yes, Mr. Bradford, who filed in Maryland,  
15 also filed in Delaware for us.

16 Q Thank you for that correction.

17 Through Mr. Bradford, MAREC raised many  
18 of the same concerns it has presented to this  
19 Commission in your testimony, particularly  
20 regarding Exelon's position on the expired wind  
21 production tax credit, or PTC, right?

22 A That's correct.

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1 MR. KULAK: Your Honors, I'd like to  
2 introduce the exhibit that has been marked as  
3 Applicants' Cross Exhibit Number 33. This would  
4 be Applicants' Cross Exhibit Number 19.

5 CHAIRMAN KANE: So marked.

6 (Joint Applicants Cross Exhibit Number 19  
7 was marked for identification.)

8 BY MR. KULAK:

9 Q Mr. Burcat, do you have that exhibit  
10 there?

11 A I do not.

12 Q All right. Let's help you with that.  
13 It's in the binder --

14 A Okay.

15 Q -- labeled cross exhibit binders of the  
16 joint applicants.

17 A Okay.

18 Q And it will be under tab 33.

19 A I found it.

20 MR. KULAK: For the record, I'd like to  
21 note this exhibit has been filed with the  
22 Commission.

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1 BY MR. KULAK:

2 Q Mr. Burcat, you've seen this document  
3 before, correct?

4 A Sure.

5 Q In fact, it's your signature appearing on  
6 page 32 of this document, right?

7 A That's correct.

8 Q And this is the amended settlement that  
9 was filed in the Delaware proceedings?

10 A Yes, it is.

11 Q And per the settlement, MAREC is, in  
12 fact, supporting the approval of the merger in  
13 Delaware, right?

14 A That's correct.

15 Q And this is in part because of a  
16 commitment in that proceeding, number 84, relating  
17 to long-term renewable power purchase agreement  
18 contracts, right?

19 A That is correct.

20 Q MAREC also filed a brief in support of  
21 the Delaware settlement, correct?

22 A Yes, we did.

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1 MR. KULAK: Your Honors, I'd like to now  
2 introduce Joint Applicants' Exhibit previously  
3 marked as Number 34 as Cross Exhibit Number 20.

4 CHAIRMAN KANE: So marked.

5 (Joint Applicants Cross Exhibit Number 20  
6 was marked for identification.)

7 BY MR. KULAK:

8 Q Mr. Burcat, I assume you're also familiar  
9 with this document?

10 A I am.

11 Q Your signature at the end?

12 A Double-check. Yes.

13 Q All right. I'd like to just direct your  
14 attention to page 7 at the end of the brief.

15 A Okay.

16 Q I think you state on page 7 -- MAREC  
17 states in its brief that Exelon's commitment  
18 regarding long-term contracts in the context of  
19 the entire agreement is, quote, a fair resolution  
20 of our major concern with the proposed merger,  
21 unquote, in Delaware, right?

22 A That's correct.

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1 Q Mr. Burcat, how many investor-owned  
2 electric utilities are there in Delaware?

3 A There's one investor-owned utility in  
4 Delaware, electric utility. Delmarva Power.

5 Q Delmarva Power, right. And the electric  
6 load not served by Delaware -- Delmarva Power is  
7 served by electric cooperatives right?

8 A And municipalities.

9 Q Do you know what percentage of the total  
10 retail electric customer load is served in  
11 Delaware by Delmarva Power?

12 A Somewhere in the neighborhood -- it may  
13 have changed since my -- since I knew this last,  
14 but somewhere in the range of maybe 70 to  
15 75 percent of the load.

16 Q Do you happen to know what percentage of  
17 electric customers by customer count are served by  
18 Delmarva Power?

19 A I mean, if you're counting residential  
20 and industrial customers, I would say it's  
21 probably close to 80 percent.

22 Q Changing subjects, Mr. Burcat. On

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1 page 13 of your amended direct testimony, you  
2 state that the PTC results in cost savings that  
3 are, quote, ultimately passed along to ratepayers  
4 in the form of lower energy and RPS compliance  
5 costs, right?

6 A That's correct.

7 MR. KULAK: Your Honors, I'd like to now  
8 introduce the document that has been marked as  
9 Joint Applicants' Cross Exhibit Number 41. We  
10 would like to have that admitted as Cross Exhibit  
11 Number 21.

12 CHAIRMAN KANE: So marked.

13 (Joint Applicants Cross Exhibit Number 21  
14 was marked for identification.)

15 BY MR. KULAK:

16 Q Do you have the document, Mr. Burcat?

17 A I do.

18 Q Mr. Burcat, you've been provided with a  
19 copy of this Commission's report on D.C. RPS  
20 compliance for 2013 sent to city council by Chair  
21 Kane on January 30th, 2015. I'd like to direct  
22 your attention to page 15 of this report. If you

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1 want to take a moment and just review the second  
2 table on that report -- page.

3 A Okay.

4 Q Mr. Burcat, this table appears to  
5 indicate an average weighted price of \$2.38 for  
6 wind renewable energy credits for wind in the  
7 District, right?

8 A That's what it says, yes.

9 Q You have no reason to doubt that's  
10 correct, right?

11 A Well, I mean, I do -- it's been my  
12 understanding, and certainly even more recently,  
13 that these prices have gone up. This is a 2013  
14 number.

15 Q Right. But you haven't provided any  
16 different testimony or data on those prices?

17 A Yeah, but it's not necessarily my  
18 understanding of what the prices are.

19 Q But that's certainly your understanding  
20 of what the price was for 2013 compliance, right?

21 A No. I'm saying that's not my  
22 understanding of what the price was in 2013. I

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1 think that's what's been reported. I'm not  
2 necessarily taking issue with the Commission, but  
3 that's not my particular understanding of what  
4 prices were back then, and they've come up  
5 considerably since that point in time.

6 MR. KULAK: I'd like to now introduce the  
7 documents that have been marked as Joint  
8 Applicants' Cross Exhibits Number 39 and 40. And  
9 we'll have those marked as Cross  
10 Exhibits Number 22 and 23.

11 CHAIRMAN KANE: They are so marked.

12 (Joint Applicants Cross Exhibit Numbers  
13 22 and 23 were marked for identification.)

14 BY MR. KULAK:

15 Q Mr. Burcat, do you have those there?

16 A Yes, 39 and 40.

17 Q Right. Now, Number 39 is the document  
18 that is dated April 1st, 2013, again, a letter  
19 from Chair Kane to the council describing  
20 compliance for the year 2012 for the D.C. RPS,  
21 correct?

22 A I'm looking for -- 2012 on that document.

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1 I see 2013, but I don't see 2012.

2 Q I think if you turn to -- the page, it  
3 will explain that it is the -- I'm sorry. I  
4 apologize. It's 2011.

5 A Where does it say 2011 on the document?

6 Q Well, let's just turn to page 13 if we  
7 could. I think you'll see it there.

8 A Okay.

9 Q I think that shows for the year 2011 a  
10 wind price of \$2.67 for wind RECs, right?

11 A Yeah. I haven't reviewed this whole  
12 document, but for that particular table it does  
13 talk about 2011 prices for wind RECs.

14 Q And if you want to look at Exhibit 40,  
15 that's the report for the year 2012, and that I  
16 believe, same table, shows a price of \$2.37,  
17 right?

18 A \$2.37, yep.

19 Q So Mr. Burcat, in your testimony, you  
20 haven't provided any dollar amount for what you  
21 believe the PTC may have actually saved D.C.  
22 customers in terms of renewable -- RPS compliance

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1 costs, have you?

2 A Could you -- haven't done what?

3 Q Sure. You haven't provided any dollar  
4 amount for what you believe the wind production  
5 tax credit actually saved D.C. customers in terms  
6 of RPS compliance costs, have you?

7 A Not a specific amount, but there are -- I  
8 mean, it's clear that it has saved customers for  
9 several reasons. One is that the cost of wind --  
10 the pricing of wind is related to the operational  
11 costs of wind, the fact that there is the PTC  
12 and -- I mean, there are basically three  
13 components to that, and the PTC is part of that.

14 If you take the PTC out, which is a 23  
15 cent per kilowatt hour amount, it actually  
16 ultimately would be -- would have to be made up  
17 somewhere else. That's obviously showing that the  
18 price would be reduced if you took that production  
19 tax credit component out of the pricing of wind.

20 Q But you, sitting here today, can't tell  
21 us in the compliance years that I've shown you  
22 from these reports whether the investors in these

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1 projects took a larger portion of the PTC or even  
2 substantially all of it as opposed to be passing  
3 on the savings to D.C. customers, can you?

4 A Well, I can also go back -- this isn't,  
5 again, specific to D.C. customers, but I think it  
6 works across all utility customers -- the impacts  
7 of the PTC. I don't know how much I can talk  
8 about this confidential document that was  
9 Exhibit 3 in my testimony.

10 Q Not unless you're asked about it,  
11 Mr. Burcat.

12 A Well, no, you're asking me about the --

13 Q Well, let's just deal with my question.  
14 My question is --

15 A I think this is answering your question.

16 MS. ELEFANT: I just wanted to clarify.  
17 There is some -- the testimony was declassified,  
18 and so the information in the testimony that  
19 references it is certainly something that can be  
20 discussed in the open session since the joint  
21 applicants declassified the testimony on page 13.

22 THE WITNESS: Yeah. In this document, it

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1 talks about --

2 MS. ELEFANT: I'm sorry. But as for the  
3 document, there may be other information in the  
4 document that the applicants have continued to  
5 classify, and they would have to say if it would  
6 be permissible to discuss that, so...

7 THE WITNESS: It's in my testimony, my  
8 public testimony.

9 MS. ELEFANT: Your public testimony is  
10 the testimony that's in front of you --

11 THE WITNESS: Yes.

12 MS. ELEFANT: -- and, yes, whatever is  
13 discussed in your testimony is public and it's  
14 been declassified, so everything in there is open  
15 to discussion.

16 THE WITNESS: Yeah. I'm just going to --  
17 trying to find that page number. But the gist of  
18 it is that Exelon -- in Maryland, Exelon opposed  
19 an increase to the RPS standards in Maryland, and  
20 in order to do that, they did their own cost  
21 evaluation of what the costs would be to consumers  
22 in Maryland. And they basically said with the PTC

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1 and without the PTC.

2           And in that particular instance, they  
3 showed a pretty large differential between the  
4 two. If the PTC was not extended, then there  
5 would be a significant additional cost to Maryland  
6 ratepayers. And I think that particular document  
7 would be valid in the sense that -- I don't  
8 necessarily agree with the overall numbers, but  
9 that particular difference, where Exelon believes  
10 itself that the PTC does have a value, and that if  
11 you were to eliminate that value, it would be more  
12 expensive for Exelon customers in any  
13 jurisdiction. It would carry across jurisdictions  
14 if you believed your own particular analysis.

15 BY MR. KULAK:

16           Q     Mr. Burcat, my question was, who gets the  
17 payment. It can go to the investors or it could  
18 go to savings; you can't tell me how it's being  
19 divided today, can you, for D.C. customers?

20           A     Well --

21           Q     That's a yes or no question, Mr. Burcat.  
22 Can you tell me how much of the PTC goes to

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1 investors or how much is realized by savings by  
2 customers in the District of Columbia?

3 A I can't give you a specific number, but  
4 it's --

5 Q Thank you, Mr. Burcat.

6 A -- a competitive market, and in order to  
7 get the business, the -- the developers are going  
8 to bid their lowest price. So there's clearly a  
9 component that goes back to customers.

10 Q Mr. Burcat, in your testimony, you also  
11 contend that Exelon's opposition to the expired  
12 PTC was -- I believe you used the word  
13 hypocritical, because you believe that Exelon is  
14 seeking subsidies for its nuclear plants to,  
15 quote, avoid competitive pressures from the  
16 wholesale market, unquote, right?

17 A Yes.

18 Q And you cite the Ginna plant in New York  
19 where you state that Exelon is seeking relief from  
20 competitive market, right?

21 A That's correct.

22 Q I'd like to turn to Joint Applicants'

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1 Exhibit -- previously marked as Cross Exhibit  
2 Number 36 --

3 MR. KULAK: -- which I would like to  
4 introduce as Cross Exhibit Number 24.

5 CHAIRMAN KANE: So marked.

6 (Joint Applicants Cross Exhibit Number 24  
7 was marked for identification.)

8 BY MR. KULAK:

9 Q Mr. Burcat, I've given you a copy of a  
10 filing by Rockland General Electric with the New  
11 York PSC dated February 13th, 2015 which was  
12 before your March 20, 2015 supplemental testimony  
13 filing, right?

14 A You're saying it's part of my  
15 supplemental --

16 Q No, no. It was issued before your  
17 supplemental testimony was filed.

18 A Oh. Yes.

19 Q Do you know what Rockland General  
20 Electric is?

21 A Yeah, it's an operating utility in  
22 northwestern -- it's basically a distribution

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1 company in northwestern New York .

2 Q If you can take a moment and just review  
3 pages 2 and three of this filing.

4 A Okay.

5 Q Mr. Burcat, it's your understanding  
6 Rockland -- excuse me -- Rochester Gas and  
7 Electric is not affiliated with Exelon, right?

8 A That's correct.

9 Q And as explained in this filing, Exelon  
10 told state officials that closing the plant was  
11 under -- the Ginna plant was under consideration,  
12 right?

13 A That's correct.

14 Q And -- but if there was a need to  
15 continue to operate the plant for reliability  
16 reasons, Exelon would do so if it was compensated  
17 through what is known as a reliability support  
18 services agreement, correct?

19 A That's correct.

20 Q And in fact, the New York ISO concluded  
21 that there would be reliability violations if the  
22 plant was taken out of service, right?

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1 A My understanding, that's correct.

2 Q Let's turn to page 4 of this document.

3 Take a moment and read that.

4 A Okay.

5 Q So Rochester conducted an RFP to see if  
6 there were any alternatives, didn't they?

7 A I mean, that's basically what this is  
8 talking about, yes.

9 Q And, in fact, subsequently, the New York  
10 Public Service Commission concluded, as with the  
11 New York ISO, that there was a reliability need  
12 and ordered Exelon and Rochester to negotiate an  
13 RSSA, right?

14 A That's correct.

15 Q Do you know what the term of the RSSA is  
16 supposed to be?

17 A How many years?

18 Q Yes.

19 A I understand it's four years. And I also  
20 understand that the FERC has reviewed this and has  
21 raised some significant concerns about this  
22 particular agreement and has sent this back for

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1 further negotiation.

2 Q Is there anything in your testimony or in  
3 this summary of the history here that indicates  
4 that Exelon is keeping a plant open just because  
5 it can't compete or that Rochester is assisting  
6 Exelon in that effort?

7 A I don't think Rochester is assisting  
8 Exelon in that effort, but I do think that Exelon  
9 is participating in a competitive market. It's  
10 shown its strategy of, in these competitive  
11 markets with their nuclear plants, to basically --  
12 where they're facing some financial difficulty or  
13 some issues in these markets, to seek basically  
14 some kind of additional or state-subsidized  
15 remuneration during a particular term. In some  
16 cases -- in fact, the original request by Exelon  
17 in this particular case was for a long-term  
18 situation, not the four years that the Commission  
19 ordered, or ultimately pushed into the -- you  
20 know, the four-year settlement in this particular  
21 case.

22 So I do think there is a -- because we've

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1 seen it in other jurisdictions as well. We've  
2 seen it at three plants in Illinois, and continued  
3 discussion in Illinois about that particular --  
4 the same type of situation there.

5 Q Mr. Burcat, I'll ask my question again.  
6 Is there anything -- do you believe -- let me ask  
7 it slightly differently. Do you believe that the  
8 findings of the New York Public Service Commission  
9 and the New York ISO with respect to reliability  
10 aren't correct here?

11 A I'm not disputing the reliability piece  
12 of this. What I'm saying is that Exelon has a  
13 concerted effort on non-performing nuclear  
14 facilities to seek -- some might say a subsidy  
15 from ratepayers to keep these particular plants  
16 open.

17 I'm not disagreeing that there might be  
18 reliability issues impacted by this, but I do  
19 think that this is a strong effort by Exelon in  
20 these particular jurisdictions, yes.

21 Q Mr. Burcat, you also sponsored discovery  
22 responses in the Maryland proceeding relating to

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1 your testimony in that jurisdiction on behalf of  
2 MAREC, right?

3 A Correct.

4 MR. KULAK: Your Honors, if we could now  
5 turn to Joint Applicants' Number 35 which I like  
6 to have marked as Cross Exhibit Number 25.

7 CHAIRMAN KANE: So marked.

8 (Joint Applicants Cross Exhibit Number 25  
9 was marked for identification.)

10 THE WITNESS: I'm there.

11 BY MR. KULAK:

12 Q Mr. Burcat, this is a discovery request  
13 that asks you to provide data or assumptions with  
14 respect to your contention that the support for  
15 the expiration of the PTC would lead to higher  
16 costs for Maryland customers, right?

17 I'm just asking about the first page,  
18 Mr. Burcat.

19 A Yeah, I'm looking at that just to make  
20 sure that I'm comfortable with the way you  
21 characterized it.

22 Okay. Yes.

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1 Q This was prepared by you or under your  
2 supervision, correct?

3 A That's correct.

4 MR. KULAK: Nothing further, Your Honors.

5 MR. DANIELS: OPC has no questions.

6 MS. FRANCIS: AOBA has no questions.

7 MR. COYLE: District government has no  
8 questions.

9 MS. SPENCER: DC SUN has no questions.

10 MS. WHITE: D.C. Water has no questions.

11 CHAIRMAN KANE: Commission questions?

12 Yes, Commissioner Fort.

13 COMMISSIONER FORT: You were talking  
14 about the District SOS program, or standard offer  
15 service program, and the fact that the regulations  
16 allow the District to use a portfolio approach, is  
17 what you say. What do you understand a portfolio  
18 approach to be under those regs?

19 THE WITNESS: Under those regs? Okay.  
20 Essentially what I see it -- in this case is it's  
21 the length of the contracts that can be used for  
22 standard offer service. In that particular case,

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1 essentially maybe a mixture of shorter-term and  
2 medium-term and long-term contracts.

3 COMMISSIONER FORT: If I were to tell you  
4 that the mixture is one-year contracts and  
5 three-year contracts, does that impact your  
6 recommendation?

7 THE WITNESS: Well, if that's what it is,  
8 but I do see that the regulation does provide for  
9 the opportunity to do contracts greater than three  
10 years, according to those particular regulations.

11 I don't think -- there's certainly not a  
12 restriction, and there's a discussion which is  
13 highlighted in my testimony on page 19 that says  
14 the electric company shall select conforming  
15 offers to meet the Commission's percentage targets  
16 in accordance with the evaluation provision  
17 included in the RFP. The final contract mix  
18 should include contracts of at least three years  
19 for no less than 40 percent of the total load.

20 So at least three years to me means it  
21 could be a lot longer than that, or a little bit  
22 longer than that.

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1           COMMISSIONER FORT: And under your  
2 proposal, would the District have to do a  
3 competitive procurement or long-term purchase  
4 contracts? Is that how you're explaining it?

5           THE WITNESS: Yeah. Again, my -- our  
6 proposal is not our position, necessarily, because  
7 our proposal is basically saying we're opposing  
8 the merger. But what we are saying is that for --  
9 yes, our position would be that one of the -- and  
10 believe me, we are looking for a portfolio  
11 approach. We would never say -- I think it would  
12 be imprudent for the Commission to impose a  
13 hundred percent of the renewables purchases and  
14 energy coming from long-term contracts. I think  
15 that would be imprudent.

16           What we're talking about is a portfolio  
17 approach. It could be a mix of 25 percent of  
18 those contracts, 30 percent, 50 percent. And I  
19 don't think anything greater than 50 percent makes  
20 sense because we are looking -- we do strongly  
21 agree with the portfolio approach.

22           COMMISSIONER FORT: Do you know what

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1 percentage of the District's fuel mix is currently  
2 from wind?

3 THE WITNESS: I saw a document. I  
4 believe it's basically REC purchases, somewhere  
5 around 20 percent.

6 COMMISSIONER FORT: Do you know what  
7 percentage of the District's fuel mix is from  
8 nuclear energy?

9 THE WITNESS: That I do not know.

10 COMMISSIONER FORT: Is there -- other  
11 than the opposition to the PTC, is there any other  
12 reason that we should be concerned about Exelon?

13 THE WITNESS: Yeah. I think we  
14 touched -- I touched on it a little bit during my  
15 testimony during questioning by counsel that,  
16 clearly the concern about the fact that 55 percent  
17 of the capacity of Exelon generation, their  
18 affiliates' generation, is nuclear. Right now,  
19 we're talking about PEPCO and its affiliates being  
20 basically wires companies. So I think the  
21 Commission should be very concerned,  
22 extraordinarily concerned, about this change, a

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1 huge sea change that would occur with the merger  
2 when you're talking about a company that's so  
3 reliant on one form of energy.

4 I believe their energy purchases are even  
5 higher than their capacity levels, meaning that --  
6 or their energy production is even higher than the  
7 55 percent, as opposed to just what their capacity  
8 is in their system. So it's something that should  
9 be concerning, and again, related to what they're  
10 trying to do in some of these other jurisdictions.

11 That doesn't mean that they're not going  
12 to do it here or try to do something here in D.C.  
13 or in Maryland or New Jersey or in Delaware.

14 COMMISSIONER FORT: And when you say that  
15 it's something they're doing in other  
16 jurisdictions, what do you mean specifically?

17 THE WITNESS: I'm talking about with the  
18 Ginna plant -- I never pronounce that right -- but  
19 the Ginna plant in New York and the legislation  
20 that they're pursuing in Illinois to supplement  
21 their income, I guess, or their revenues coming in  
22 for their nuclear plants there through customer

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1 rates.

2 COMMISSIONER FORT: But do you understand  
3 that we are restructured and we have no generation  
4 here in the District of Columbia?

5 THE WITNESS: That's correct. And both  
6 of those jurisdictions are restructured  
7 jurisdictions as well.

8 COMMISSIONER FORT: But we have no  
9 generation -- no generating plants here in the  
10 District of Columbia.

11 THE WITNESS: That's right. But they  
12 still could come to this Commission, just like  
13 they did in New York. I realize that's in New  
14 York, but they could come to this Commission and  
15 basically say, we have a local plant, Calvert  
16 Cliffs, that's important to D.C., and -- I'm  
17 telling you -- a lot of pressure could be put on  
18 through the PJM process if they say that's a  
19 must-run facility and there's reliability issues.  
20 It's a possibility. I'm not saying it's something  
21 they're going to do.

22 And to being honest with you, I don't

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1 know what the financial shape is of that  
2 particular unit or the other units that could be  
3 possibly supplying energy to D.C.

4 COMMISSIONER FORT: But if that's a  
5 must-run, couldn't that happen anyway under the  
6 scenario you just --

7 THE WITNESS: It could be, but now it's  
8 your local utility saying it's -- there's a lot  
9 more connection to D.C. than it was in the first  
10 place. It's a local utility; there's a hundred  
11 percent of the load.

12 COMMISSIONER FORT: Thank you.

13 CHAIRMAN KANE: Thank you. Mr. Burcat, I  
14 know this is holding everybody up, but I want a  
15 clarification on this issue, because you saw there  
16 should be a requirement -- this is prefaced --  
17 you're opposed to it, but if we were to do it, or  
18 if it were to be approved, these were suggested --  
19 or your recommended conditions --

20 THE WITNESS: That's correct.

21 CHAIRMAN KANE: -- three of them.

22 Requirement for competitively sourced

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1 long-term purchase power agreements for a  
2 substantial procurement from resources eligible  
3 for the D.C. RPS, which would help mitigate  
4 adverse cost increases.

5 Can you show me -- what cost increases  
6 are you referring to?

7 THE WITNESS: Yeah, I probably should  
8 have put more description in --

9 CHAIRMAN KANE: Yes.

10 THE WITNESS: -- that particular -- but  
11 that's basically cost increases that -- for  
12 instance, during the polar vortex, rates could  
13 jump significantly because of -- the cost of  
14 electricity jumped dramatically because of the  
15 lack of natural gas capacity at those particular  
16 moments.

17 And there are times through history, not  
18 as much recently, when natural gas prices took a  
19 nose dive in the past couple of years, but we know  
20 over the past seven, eight years that natural gas  
21 was extremely high at some point and, through  
22 standard offer service, that amount can fluctuate.

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1 Wind, on the other hand, has no fuel  
2 cost. Therefore, its price is stable. When you  
3 do a long-term contract for wind on day one, you  
4 know what that price will also be on the end of  
5 the 15-year contract if it's a 15-year contract,  
6 and it's usually going to be the same price,  
7 because there's no fuel cost, as the first day,  
8 unless there is a small inflation factor included  
9 in that.

10 But you're going to know what the price  
11 is, and you're not going to see any volatility  
12 with that. So we think it's a very important  
13 hedge on long-term prices.

14 CHAIRMAN KANE: And when you speak of  
15 competitively sourced long-term purchase power  
16 agreements, again, you are referring only to the  
17 standard offer service procurement process?

18 THE WITNESS: Our proposal here, that's  
19 the case.

20 CHAIRMAN KANE: That's the case. But are  
21 you aware that that is the only procurement that  
22 this Commission has any role in or any authority

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1 over?

2 THE WITNESS: That's correct.

3 CHAIRMAN KANE: And are you suggesting  
4 that there is -- I still want to know what --  
5 you've talked about mitigate adverse cost  
6 increases. You are aware -- are you aware that  
7 our procurement for the SOS contract is -- for  
8 residential is three-year contracts, one-third of  
9 it expiring each year, and that for the small  
10 commercial, it's -- they're one-year contracts,  
11 and it's a fixed rate?

12 THE WITNESS: I used to be the executive  
13 director of the Delaware Public Service Commission  
14 for 15 years. We had the same exact process  
15 there. And we had some very -- while gas rates  
16 were really fluctuating, after we restructured,  
17 they went up, they went down, but they primarily  
18 went up significantly, even with those three-year  
19 rolling contracts.

20 So it is something that we think is very  
21 beneficial to the jurisdiction to do it that way.  
22 Plus, it ensures that if REC prices go

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1 significantly higher, that they would be fixed at  
2 this point in time. They would be part of the  
3 contract to the utility. So you would not be  
4 subject to any fluctuation in REC prices because  
5 you're -- basically, under those three-year  
6 contracts, the REC prices are provided by the  
7 wholesale suppliers, and that's inputted into the  
8 price the three-year price.

9           And we don't know how they're purchasing  
10 those particular RECs. They could be doing them  
11 on very short-term markets and arbitraging or they  
12 could be -- but they're including those costs in  
13 those three-year prices, and they can be quite  
14 significant for standard offer service customers  
15 going down the line.

16           CHAIRMAN KANE: Are you aware that the  
17 compliance fee in the District under the law, not  
18 something controlled by this Commission, but under  
19 the law, after 2016 for the most expensive RECs,  
20 which is solar, starts to go down significantly?

21           THE WITNESS: That's correct. And you  
22 don't want the compliance fee for wind to -- you

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1 don't want to get to the compliance fee for wind.

2 CHAIRMAN KANE: Right.

3 THE WITNESS: It's not -- you're

4 not necessarily building any new generation

5 because of that. And it's -- the prices would be

6 too high in my opinion to get to the alternative

7 compliance fee. So you wouldn't want that to be

8 the price that's controlling the costs for

9 consumers at that point.

10 CHAIRMAN KANE: But the compliance fee

11 does control the REC fee in the sense that --

12 would you agree that the alternative compliance

13 fee, which is usually a non-compliance fee, not

14 meeting the standard -- it sets the maximum that a

15 REC is going to go for?

16 THE WITNESS: That's correct. And you

17 don't want to hit that maximum. So what you want

18 to do is, through a process that we're explaining

19 through long-term contracts -- and if you have the

20 energy included in that, that the price is going

21 to be levelized through the term of that contract,

22 and the REC prices are never going to hit the

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1 alternative compliance fee in that case.

2 CHAIRMAN KANE: But if the -- I'm trying  
3 to follow -- the REC prices, by law, are going  
4 down, how does a long-term contract save money?

5 THE WITNESS: Well, my understanding is  
6 that the REC prices, by law, are not going to come  
7 down to the point during the term of this -- the  
8 RPS requirements, are not going to come down to  
9 the point where, if you do a long-term contract,  
10 you can assure that that price is going to be  
11 something less than the alternative compliance fee  
12 through the term of the contract.

13 CHAIRMAN KANE: I didn't mean to state  
14 that the REC prices were coming down by law; the  
15 non-compliance fee is coming down by law.

16 THE WITNESS: Right, but you're not going  
17 to hit that non-compliance fee, you know, through  
18 negotiations through a competitive procurement.  
19 If that were the case, you wouldn't do the  
20 contract.

21 CHAIRMAN KANE: Are you aware -- or is  
22 there, in your opinion, a shortage of renewable

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1 energy for retailers, including the SOS provider  
2 in its role as a retail provider -- is there a  
3 shortage of renewable energy eligible for meeting  
4 the District's RPS requirements, and if so, in  
5 which category of renewable resources?

6 THE WITNESS: Yeah. I mean, I could tell  
7 you that the biggest -- one of the biggest drivers  
8 of the construction, the development of wind  
9 energy farms, are through -- because of the fact  
10 that there's long-term contracting.

11 CHAIRMAN KANE: That wasn't my question.  
12 My question is, in each of the categories, the  
13 tier 1, tier 2, wind, biomass, solar, D.C.-based  
14 solar, geothermal, that are eligible for each  
15 retail supplier in the District, including the SOS  
16 provider who at the moment happens to be PEPCO,  
17 for them to purchase in order to meet the RPS  
18 requirements applicable -- is there a shortage?

19 Because your organization represents  
20 developers of renewable energy, correct?

21 THE WITNESS: For the most part. We have  
22 some public interest groups.

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1 CHAIRMAN KANE: Well, includes. I should  
2 say includes developers of renewable energy.

3 Is there a shortage of renewable  
4 resources eligible for use in compliance with the  
5 District's RPS requirements?

6 THE WITNESS: If you told me today, I  
7 would say no.

8 CHAIRMAN KANE: Okay.

9 THE WITNESS: If you told me several  
10 years down the road, just pure economics, if wind  
11 farms and -- wind farms are -- should be -- I  
12 mean, they're utility scale; they should be  
13 providing at some point probably most of the RECs  
14 for tier 1 compliance.

15 When you talk about black liquor -- well,  
16 black liquor is no longer --

17 CHAIRMAN KANE: Black liquor --

18 THE WITNESS: -- is gone.

19 CHAIRMAN KANE: -- is being phased out.

20 THE WITNESS: Right, so that will be out  
21 of there. You're talking about geothermal, you're  
22 talking about some hydro, but if you compare to

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1 all of those different resources, wind is going to  
2 be, if it's developed sufficiently with -- you  
3 know, through these long-term contracts because,  
4 quite frankly, without the long-term contracts, we  
5 have financing issues for our developers, so it's  
6 another reason to do these things. The wind  
7 developments are not going to get built, and then  
8 D.C. and other jurisdictions in this region will  
9 be left with a shortage at some point in time, and  
10 REC prices will definitely go up.

11 CHAIRMAN KANE: Will go up to meet the  
12 compliance fee?

13 THE WITNESS: Yeah. I don't know how far  
14 they'll go up, but they'll certainly rise. And  
15 our goal is not to have them rise.

16 CHAIRMAN KANE: The third suggestion you  
17 make is that Exelon should be required to plan and  
18 construct a transmission upgrade that Exelon would  
19 support and develop that would promote additional  
20 renewable capacity available to be transmitted to  
21 eastern PJM, and a new AC line would also allow  
22 low-cost wind energy to flow further east to the

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1 benefit of ratepayers.

2 THE WITNESS: It would also reduce  
3 congestion.

4 CHAIRMAN KANE: What is your  
5 understanding of the authority that this -- first  
6 of all, where would this transmission capacity be  
7 built, or were you suggesting it be built?

8 THE WITNESS: Well, in -- I mean, we have  
9 this proposal -- we had this proposal in Maryland  
10 as well, but we know this is a constrained area.  
11 Let me clarify that position, because it's another  
12 one that we clarified in Maryland when I was on  
13 the stand there.

14 We would not suggest that this not be  
15 done through the PJM process. What we would  
16 suggest is it would be need to be done through the  
17 PJM process. So -- and so we would hope, you  
18 know, through this process, if the Commission was  
19 to condition this merger, that they would  
20 condition the merger on Exelon going to PJM and  
21 working with PJM through their process. And we  
22 certainly wouldn't -- I think we clarified this in

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1 a discovery response, but we would not expect them  
2 to construct something that wasn't cost-effective  
3 and didn't satisfy the goals of the Commission if  
4 that were the case.

5 So hopefully I clarified that a little  
6 bit better.

7 CHAIRMAN KANE: I was really focusing on  
8 the word "required" and your understanding of what  
9 authority this Commission has over transmission.

10 THE WITNESS: I do want to emphasize that  
11 I think that this Commission has -- because it is  
12 a merger and because there's a strong public  
13 interest standard to approve the merger, that the  
14 Commission can certainly, in its conditions -- and  
15 this is my opinion -- but in the conditions, you  
16 know, could require things that would protect D.C.  
17 ratepayers and implement things that may typically  
18 not be direct control, but they could certainly  
19 require as a condition -- they don't have to  
20 accept it and the merger may not have to go  
21 through -- but as a direct -- yeah, you could  
22 require them to take some steps to determine if

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1 there was a viable transmission project to be  
2 built through the PJM process.

3 CHAIRMAN KANE: So you are amending this  
4 recommendation from require to plan and  
5 construct -- did I hear you to say require them to  
6 make an application or to explore the possibility  
7 of?

8 THE WITNESS: Explore -- I think  
9 that's -- planning is more like exploring, but I  
10 would want them to -- yeah, I would think they  
11 would do preliminary work to show that, at least  
12 initially, whether that even makes sense to go to  
13 PJM.

14 We do think it's important, because  
15 having come from Delaware, there's a -- it's a  
16 highly congested area there as well. I know it's  
17 a problem here. It not only impacts renewables  
18 coming into the jurisdiction, but it also impacts  
19 customer rates.

20 CHAIRMAN KANE: Delaware is how long? A  
21 hundred miles or so end to end? Is there  
22 transmission in Delaware that's under the control

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1 of the Delaware commission?

2 THE WITNESS: No, there isn't.

3 CHAIRMAN KANE: You had no say over  
4 building transmission?

5 THE WITNESS: No. And there was a  
6 condition --

7 CHAIRMAN KANE: Or siting?

8 THE WITNESS: No. There is a merger --  
9 there's no siting at all.

10 CHAIRMAN KANE: In the State of Delaware.

11 THE WITNESS: In the State of Delaware.  
12 There was a condition that was agreed to. It was  
13 a settlement in the PEPCO/Conectiv/Delmarva merger  
14 in 2001, 2002, which required them to actually  
15 speed up the transmission -- a PJM planned  
16 transmission project two, three years in advance  
17 because of some severe congestion on the Delmarva  
18 peninsula. And that was a provision in the  
19 settlement agreement in that particular case.

20 CHAIRMAN KANE: Okay. Thank you for  
21 those clarifications. I have no further  
22 questions.

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1 COMMISSIONER FORT: I do have one --

2 CHAIRMAN KANE: Commissioner Fort?

3 COMMISSIONER FORT: -- question, still on  
4 this idea of transmission upgrade. Have you  
5 looked at what the cost to District ratepayers  
6 would be?

7 THE WITNESS: No, and I think that would  
8 be the -- one of the main considerations. I know  
9 in the discovery response we provided the company  
10 that we would never ask the -- there would have to  
11 be some kind of cost benefit analysis, and we  
12 would never ask consumers to pay more than the  
13 benefit that they would receive in that particular  
14 instance.

15 We just think that the congestion issue  
16 is such a large issue that it's worth planning  
17 such -- or at least discussing such a project over  
18 PJM and see if there's a process that would lead  
19 to a benefit to the District if that were done,  
20 and we think that would have a -- help bringing in  
21 renewable energy.

22 COMMISSIONER FORT: Do you know whether

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1 or not, if that was included in a District order,  
2 whether or not, under some reading of multi-driver  
3 approaches, that would come back on the District  
4 having to incur a portion of the cost?

5 THE WITNESS: Well, yeah. I mean,  
6 there's FERC order 1000.

7 COMMISSIONER FORT: Yes, there is.

8 THE WITNESS: So, you know, there might  
9 be some of that discussion going on to see if the  
10 jurisdictions would be willing -- if it came down  
11 to a cost allocation principle, that would be part  
12 of the cost benefit analysis, if there was some  
13 kind of FERC order 1000 requirement for the states  
14 under the statement state agreement approach, to  
15 take a look at that.

16 COMMISSIONER FORT: And I guess my  
17 question was, if we put in the order, does that  
18 make that more likely?

19 THE WITNESS: It's going to depend on how  
20 much -- how much it is to reduce congestion, which  
21 would be broadly allocated, and how much it would  
22 be related to the benefits to renewable energy.

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1           It may be very limited, so the cost could  
2 be actually very minimal in the sense that it  
3 could be broadly disbursed according to PJM cost  
4 allocation rules. But that's not -- you know, if  
5 there was a pretty significant public policy piece  
6 to it, then the cost could be greater directly to  
7 the District.

8           So yes, I agree with you there is some  
9 review that obviously would be done, and it may  
10 be -- early on, you may know that this would not  
11 work, but it could work if it had sufficient  
12 planning, and I think -- we think it's a good  
13 idea.

14           CHAIRMAN KANE: Thank you.

15           Redirect? I'm sorry. Any other --  
16 redirect?

17           MS. ELEFANT: No, there's no redirect.

18           CHAIRMAN KANE: Thank you. Exhibits.

19           MS. ELEFANT: Yes. I'd like to move the  
20 amended direct testimony of Mr. Burcat, which is  
21 MAREC (1A), and the attached Exhibits (1A)-1,  
22 (1A)-2, and then the confidential Exhibit (1A)-3,

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1 which was inadvertently omitted from this version,  
2 but filed as part of November. I'll entertain any  
3 objections.

4 CHAIRMAN KANE: Those are admitted.

5 (MAREC Exhibit Numbers (1A) and (1A)-1  
6 through (1A)-3 were received into evidence.)

7 MS. ELEFANT: Thank you, Your Honor.

8 MR. KULAK: Your Honors, I would like to  
9 move Joint Applicants' Cross Exhibit Numbers 19  
10 through 25 into evidence.

11 CHAIRMAN KANE: They are moved.

12 (Joint Applicants Cross Exhibit Numbers  
13 19 through 25 were received into evidence.)

14 CHAIRMAN KANE: Does that conclude -- no  
15 other procedural matters? So we are --

16 MR. CALDWELL: Your Honor?

17 CHAIRMAN KANE: Oh, yes.

18 MR. CALDWELL: Brian Caldwell with the  
19 District of Columbia government. The parties have  
20 waived cross on DCG witness Subodh Mathur, and so  
21 I was -- my question is, does the Commission plan  
22 to ask any questions of Mr. Mathur? Otherwise, we

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1 can just move his testimony in by stipulation.

2 He submitted testimony on the impact of  
3 the transaction on low-income customers.

4 CHAIRMAN KANE: We may.

5 MR. CALDWELL: Thank you.

6 CHAIRMAN KANE: So we should hold that in  
7 abeyance. We may have some questions for him. We  
8 should be able to let you know in morning. Does  
9 he need advance notice to come?

10 MR. CALDWELL: He's in town. He would  
11 need a few hours.

12 CHAIRMAN KANE: He's local. Okay.  
13 That's fine. Thank you.

14 MS. WHITE: Madam Chair?

15 CHAIRMAN KANE: Yes.

16 MS. WHITE: If I might --

17 CHAIRMAN KANE: Yes.

18 MS. WHITE: -- it's my understanding that  
19 we have several witnesses tomorrow that are --  
20 either flown in for tomorrow and have flights out  
21 tomorrow or that are only available tomorrow  
22 because of prior commitments on Wednesday, and I

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1 wondered if the parties should talk informally  
2 before we disperse about how we can accommodate  
3 people's schedules tomorrow.

4 COMMISSIONER FORT: Can we talk here?  
5 Because the Commission needs to know who they're  
6 going to see tomorrow.

7 MS. WHITE: Absolutely. Absolutely.

8 COMMISSIONER FORT: I know we don't --  
9 aren't part of this process, but we really do need  
10 to know who's coming up tomorrow.

11 MS. ELEFANT: Your Honor, I'm sorry to  
12 interrupt. May my witness be excused because he  
13 actually --

14 CHAIRMAN KANE: Yes.

15 MS. ELEFANT: He does have a flight.

16 CHAIRMAN KANE: Yes.

17 MS. ELEFANT: I'm happy to stay.

18 CHAIRMAN KANE: Yes, excuse your witness.  
19 Thank you very much. Good to see you again.

20 (Witness excused.)

21 CHAIRMAN KANE: Tomorrow, in addition to  
22 Mr. McGowan, who is here --

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1 MR. LORENZO: Who is here, and we would  
2 like to put him on and finish the company's case.

3 CHAIRMAN KANE: Yes.

4 MR. LORENZO: It's sort of been trickling  
5 out.

6 CHAIRMAN KANE: We did that just to  
7 accommodate schedules.

8 Well, besides Mr. McGowan, we do want to  
9 start with, if we can, tomorrow, we've got  
10 Mr. Mara, Smith, Comings, Shane, Gorman, Chang and  
11 Chambers.

12 Anyone aware that any of those people, if  
13 we -- they were to be held over or to not finish  
14 tomorrow, would not be available on Wednesday?

15 Mr. Coyle?

16 MR. COYLE: Yes, ma'am. Mr. Chambers and  
17 Mr. Shane are not going to be available on  
18 Wednesday. I don't know about Chang and Comings.  
19 I think I could probably -- if I can find a hotel  
20 for them, I can probably pay them to stick around.

21 Chambers and Shane have unalterable other  
22 scheduling commitments, I'm afraid.

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1 CHAIRMAN KANE: All right.

2 Mara, Smith. Any others?

3 Ms. White, did you have --

4 MS. WHITE: Mr. Gorman is not available  
5 on the 22nd.

6 CHAIRMAN KANE: Okay. Not available on  
7 the 22nd.

8 MS. WHITE: That's --

9 CHAIRMAN KANE: Well, according to what  
10 we have, here is an estimate of only about half an  
11 hour for each of those three, who have been  
12 mentioned, plus any questions that the Commission  
13 may have.

14 So I'm going to suggest we start -- that  
15 Mara, Smith and Comings -- and you're going to  
16 check on Chang, if we had to hold over -- because  
17 we still have three other witnesses on Wednesday  
18 also.

19 I don't want to interrupt Mr. McGowan.

20 MR. LORENZO: I would rather, you know,  
21 we start with -- would suggest we start with  
22 Mr. McGowan and then take the witnesses who are

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1 unavailable on Wednesday, Chambers and Shane, and  
2 maybe Comings or --

3 CHAIRMAN KANE: And Gorman, yes.

4 MR. LORENZO: And move them up so that --

5 CHAIRMAN KANE: Move them up --

6 MR. LORENZO: Right after --

7 CHAIRMAN KANE: Yeah, we'll start with  
8 Mr. McGowan tomorrow, so we can -- we've got down  
9 three-and-a-half hours for him, plus some  
10 Commission; we should be able, even with a short  
11 lunch, be able to get him finished and then get to  
12 these other three witnesses before the end of the  
13 day. All right?

14 So if you will let Witnesses Mara, Smith,  
15 Comings and Chang know that one or another of  
16 those may need to be available on Wednesday.

17 Okay? Thank you. That done, we will all  
18 hopefully get home before these heavy windstorms  
19 and rain starts. Thank you. We are adjourned  
20 until 10:00 tomorrow morning.

21 (Whereupon, at 6:41 p.m., the above  
22 proceedings were adjourned.)

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1 CERTIFICATE OF COURT REPORTER

2 I, DENISE M. BRUNET, Certified Court  
3 Reporter, do hereby certify that the statements  
4 and testimony that appear in the foregoing  
5 transcript are the statements and testimony taken  
6 by me in shorthand and thereafter reduced to  
7 computerized transcription by me or under my  
8 direction; do hereby certify that the foregoing  
9 transcript is a true and correct record of the  
10 statements and testimony given; that I am neither  
11 counsel for, related to, nor am employed by any of  
12 the parties to the action; and further, that I am  
13 not a relative of employee of any attorney or  
14 counsel employed by the parties thereto, nor  
15 financially or otherwise interested in the outcome  
16 of the action.

17  
18 *Denise M. Brunet*



Denise M. Brunet  
Certified Court Reporter

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