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PUBLIC SERVICE COMMISSION OF THE

DISTRICT OF COLUMBIA

IN THE MATTER OF THE JOINT APPLICATION OF EXELON CORPORATION, PEPCO HOLDINGS, INC., POTOMAC ELECTRIC POWER COMPANY, EXELON ENERGY DELIVERY COMPANY, LLC AND NEW SPECIAL PURPOSE ENTITY, LLC FOR AUTHORIZATION AND APPROVAL OF PROPOSED MERGER TRANSACTION.	Formal Case 1119 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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C O N T E N T S

EXHIBIT NO.	MARKED	RECEIVED
AOBA Cross 98	2494	2654
AOBA Cross 99	2536	2654
DCG Cross 108 through 116		2654
Joint Applicants (2K), (2K)-1 through (2K)-12, (3K), (3K)-1 through (3K)-2, (4K) and (4K)-1		2654
OPC (A), (A)-1 through (A)-45, (2A), and (2A)-1 through (2A)-5	2658	2730
Joint Applicants Cross 9	2661	2730
Joint Applicants Cross 10	2679	2730
Joint Applicants Cross 11	2680	2730
Joint Applicants Cross 12	2682	2730
Joint Applicants Cross 13	2685	2730
Joint Applicants Cross 14	2693	2730
Joint Applicants Cross 15	2695	2730
Joint Applicants Cross 16	2701	2730
OPC (C) and (C)-1 through (C)-17	2733	2759

(Exhibits continued on the next page.)

EXHIBIT NO.	MARKED	RECEIVED
OPC (2C), (2C)-1 and (2C)-2	2733	2759
Joint Applicants Cross 17	2764	2773
Joint Applicants Cross 18	2768	2773
OPC (D) and (D)-1 through (D)-6	2772	2772
Joint Applicants Cross 19	2783	2825
Joint Applicants Cross 20	2785	2825
Joint Applicants Cross 21	2787	2825
Joint Applicants Cross 22 and 23	2789	2825
Joint Applicants Cross 24	2796	2825
Joint Applicants Cross 25	2801	2825

P R O C E E D I N G S

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

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

MR. LORENZO: None, Your Honor.

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

Mr. Coyle?

MR. COYLE: I had one, Your Honor.

CHAIRMAN KANE: One. Yes, Mr. Coyle.

MR. COYLE: The joint applicants have indicated privately that they're proposing to waive cross-examination on D.C. government witness Dr. Wilson. Dr. Wilson is local and can be made available for questions for the Commission. I don't expect an answer, you know, off the top of your head, but if you could think about it and let us know. It's no inconvenience for us to produce him.

CHAIRMAN KANE: Thank you. We will consider that.

All right. You may present your witness.

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

WHEREUPON,

ELLEN LAPSON,

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

MR. LORENZO: May I proceed, Your Honor?

CHAIRMAN KANE: Yes, please.

DIRECT EXAMINATION

BY MR. LORENZO:

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

A Ellen Lapson.

Q And by whom are you employed?

A Lapson Advisory.

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

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

CHAIRMAN KANE: Yes, please.

BY MR. LORENZO:

Q Good morning.

A Good morning.

Q In the supplemental direct testimony, AOBA witness Mr. Oliver claims that because joint applicants' commitment number 35 does not explicitly require Exelon to contribute additional equity capital to PHI and PEPCO, Exelon will inadequately fund PEPCO's equity needs. Do you agree?

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

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

But what is really relevant for the funding of the capital needs of PEPCO by Exelon is that Exelon will be committed or bound only to the same extent that PHI is. At the present time, PHI does not have any formal commitment to fund capital into PEPCO, and yet it does for the same motivation that Exelon will have, and that motivation is the expectation that this Commission will allow a just and reasonable return on capital.

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

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

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

A Yes, it would. I think that most of the witnesses here have acknowledged that the first and primary source of funding for the equity needs of PEPCO is PEPCO's retained earnings, but in the event that those retained earnings are not enough due to the large capital budget that PEPCO has, PEPCO of course has access to receive equity commitments from Exelon, and if Exelon were not able to do so, then PHI and PEPCO both have the ability to issue preferred stock, and there is no preferred stock at either PHI or PEPCO at the present time.

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

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

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

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

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

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

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

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

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

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

A Well, based on my very long experience in the capital markets and as a financial analyst and debt analyst, I do not see any reason for ring-fencing separating PEPCO from the other PHI utility affiliates. The companies Atlantic City Electric and Delmarva are -- present very minimal -- minimal risk of default that could possibly affect PEPCO.

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

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

A If I remember correctly, Dr. Wilson advocates for a ban on removing the ring-fencing measures for ten years, and then only in a formal proceeding with a stringent positive benefits test.

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

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

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

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

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

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

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

Q Thank you, Ms. Lapson.

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

CHAIRMAN KANE: Thank you. People's Counsel.

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

CHAIRMAN KANE: Ms. Francis?

MS. FRANCIS: Good morning, commissioners.

CROSS-EXAMINATION

BY MS. FRANCIS:

Q Good morning, Ms. Lapson.

A Good morning.

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

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

BY MS. FRANCIS:

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

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

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

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

A Yes.

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

A Yes.

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

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

BY MS. FRANCIS:

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

A Yes.

Q And is that response true and correct?

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

Q Yes, of course.

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

I do acknowledge them.

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

MS. FRANCIS: Your Honor, what's been marked for identification as AOBA Exhibit 89 is the joint applicants' response to AOBA data request 2-10, which I would like to have marked for the record as AOBA 98.

CHAIRMAN KANE: It will be so marked.

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

BY MS. FRANCIS:

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

A Yes.

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

A Yes, it was.

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

A Number 89?

Q Yes.

A Is that what you're asking about?

Q Yes. Correct.

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

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

A In the course of these proceedings and proceedings in Maryland and New Jersey, I thought about things that could give rise to a need to change a ring-fencing commitment and realized it could be very granular.
Q So the response is not incorrect; it's that you now want to supplement --
A To amplify it, yes.
Q To amplify it. Now, did you provide a written amplification or a written supplemental response?
A No, I haven't.
Q All right. Thank you.
Now, Ms. Lapson, am I correct that you testified during my cross-examination of you in Maryland in case 9361 -- that seems ages ago --
A It certainly does seem ages ago.
Q -- that, since founding Lapson Advisory, you try to keep abreast of utility ratings reports from each of the major ratings agencies: Fitch, Moody's and S&P?
A Yes.

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

A Correct.

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

A I'm sorry. Could you --

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

A Oh. That's correct.

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

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

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

Do you understand that?

A Yes.

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

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

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

A Correct.

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

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

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

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

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

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

Q Okay.

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

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

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

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

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

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

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

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

A I'm there.

Q Now, at page 3, lines 4 through 6 of your February 17th supplemental direct testimony, you testify that Joint Applicants' Exhibit (4K)-1 lists all the commitments relating to ring-fencing and affiliate transactions and identifies the effects resulting from each of these commitments. Is that correct?

A Yes, that is what it says here.

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

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

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

Q Okay. Is the designation of the Exelon/Constellation merger as the current industry standard a designation that you've attributed to the package of ring-fencing provisions or is there some independent and authoritative person, organization, that has announced that designation?

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

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

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

MR. LORENZO: Your Honor, I believe the

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

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

BY MS. FRANCIS:

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

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

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

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

I do think that the commitment that I mentioned before on the part of the joint applicants to reduce the debt of PHI by paying down -- paying off and not replacing the long-term debt of PHI is a very specific commitment, addressing a specific situation at PHI. You wouldn't expect that to occur in other cases if there wasn't leverage that needed to be addressed.

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

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

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

Q Extremely detailed and specific --

A Specific.

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

A They don't miss a trick. I see.
Well, I think they are very comprehensive, but I think that the fact that they're so detailed and specific makes it transparent that the Commission and all of the other parties to this case can understand what they say.
Q So you didn't miss anything?
A I don't believe so.
Q Now, am I correct that a number of the ring-fencing provisions that you list in Exhibit (4K)-1 have their origins in the New Jersey stipulation?
A The current version of them was influenced by the New Jersey stipulation. That is to the best of my knowledge.
Q The current version being (4K)-1?
A If that is (4K)-1, yes.
Q Now, do I understand correctly that when the joint applicants negotiated with the parties in New Jersey, substantial detail was added to the joint applicants' initially proposed ring-fencing

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

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

Q So the answer to my question is yes?

A Yes.

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

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

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

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

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

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

A Substantive consolidation is a doctrine in bankruptcy in which the bankruptcy court would treat two different parties as being a single party in the bankruptcy if the -- so one entity was the original bankrupt party and another affiliate of that company could be substantively consolidated or drawn into the bankruptcy along with its parent company or its affiliate if it had not maintained clear separation, if it had given creditors reason to believe that its resources were available to pay the debts and liabilities of the other party, if it had been entered into as a fraudulent transaction, its only purpose being to avoid bankruptcy law.

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

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

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

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

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

Tell me when you have that, Ms. Lapson.

A Yes, I have that.

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

A Yes. That's correct.

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

Is that correct?

A Correct.

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

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

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

A I'm there.

Q In commitment 29 on the first page of

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

Is that correct?

A The stricken language?

Q Yes.

A Correct.

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

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

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

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

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

A That's correct.

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

A I have no idea.

Q Could you please explain to me, why do we need a 20-day lag in order for the joint applicants to produce the books and records to the District of Columbia Public Service Commission?

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

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

A No, I do not know.

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

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

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

Are you at commitment 57?

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

Q Now, at the end of commitment 57, we find more than nine full lines of stricken text. Do you see that?

A Yes.

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

A Yes, I see that line.

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

A That is my understanding.

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

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

Q You did not do that?

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

a witness; I'm not a party.
Q But you are a witness in this proceeding, correct?
A Correct.
Q All right. And these commitments are under your testimony -- you're the sponsoring witness, correct, in this proceeding?
A Yes. And I felt that, substantively, these commitments were materially the same and equally strong.
Q You felt by striking that language, this commitment in this proceeding was materially the same as that -- as in the New Jersey settlement? Is that your testimony, Ms. Lapson?
A No. My testimony is that the aggregate of all the commitments, not any one specific commitment numerically -- there are about 70-some -- there are 72 commitments listed here. And I was saying that in the aggregate, the sum of all the commitments is quite strong. Very robust.
Q Could you please tell me, why should the New Jersey Board of Public Utilities be provided

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

A I cannot answer that question.

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

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

CHAIRMAN KANE: Yeah.

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

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

MR. LORENZO: Thank you, Your Honor.

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

CHAIRMAN KANE: I said that while the witness has answered other questions indicating she doesn't know the reason why a particular change was made, she has not yet answered the most recent question that you asked.

MS. FRANCIS: Thank you, Your Honor.

BY MS. FRANCIS:

Q Shall I ask it again, Ms. Lapson?

A Yes, please do.

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

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

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

A I do not know, but I also -- I would have to review all of these commitments to make sure that there is not some other commitment that has other bearing on this, because there are 72 commitments here. So it is possible that there is some other commitment that has bearing on this that I've just not -- don't have access to at this instant.

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

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

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

A Among the 72, I do not know.

Q Let's assume, for the purposes of my next question -- let's call it a hypothetical -- that it's not somewhere else in the 72. So assuming that it's not somewhere else, I'm going to ask you the question again.

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

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

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

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

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

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

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

A And current practice.

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

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

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

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

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

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

A Yes.

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

BY MS. FRANCIS:

Q Now, in the last sentence of the response to part A of AOBA data request 2-10, you state, An indicator for the need for ring-fencing or the ability to remove or relax ring-fencing restriction is, quote, the credit ratings of Exelon Corp. are equivalent to or higher than the current credit ratings, unquote, for PHI and PEPCO.

Is that correct?

A   That's what it says here.

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

A   Yes. The relative risks could change over time.

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

A   That's correct.

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

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

Q Yes.
A Thank you.
Q Okay. Now, in this discussion, you reference the possibility of removal of ring-fencing after five years on lines 6 through 7; is that correct?
A Yes.
Q Now, in order for the Commission to find that removal or relaxation of ring-fencing provisions is justified, would you agree that there will need to be substantial evidence that the credit ratings of PHI, PEPCO and Exelon can be expected to remain similar on a going-forward basis?
A No. I completely disagree. This relates to my greater understanding or changed understanding of what the -- what it means to change a ring-fencing commitment. There are 72 ring-fencing commitments here. They're very detailed. And I have come to the conclusion over time, as we've been thinking and talking about this, that specific individual commitments may

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

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

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

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

Exhibit 2.

BY MS. FRANCIS:

Q Do you have that book, Ms. Lapson?

A Yes.

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

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

A Correct.

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

A Does this relate to the payment of dividends?

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

Now, is it -- in item 17, in the original version, does that provide that a dividend will not be paid if it would cause the common equity ratio to fall below the common equity ratio accepted in recent rate cases by the applicable commission?

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

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

Q Okay. I'm looking at --

A I can follow the -- number 17 --

Q Okay.

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

I see that.

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

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

Q Now, please turn to (2K)-9 of your conformed direct testimony.
A Yes.
Q And again, I would like to direct your attention to commitment 61, which is on page 7 of 10. Are you there?
A Yes.
Q Am I correct that in this conformed version of your Exhibit (2K)-9, the language of commitment 61, the commitment with respect to the common equity requirement has been changed?
A Yes. It now says that the common -- if -- the dividend payment could not be made if the common equity level would fall below 48 percent as equity levels are calculated upon the rate-making precedence of the commission.
Q Okay. Now, other than the fact that the joint applicants, or you, agreed to 48 percent in New Jersey, am I correct that you have not provided any justification for the 48 percent threshold?
A First of all, I would like to make it

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

Q Okay.

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

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

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

Q Yes, I understand that. I'm going to try to ask my -- I think my question was inartfully stated, so I'm going to state it again, and I'd like to focus on a different part of the question because I don't believe you answered it.

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

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

Q When you initially suggested the use of an equity percentage that was tied to the Commission's determination in PEPCO's most recent rate case, you are now proposing -- scratch that -- the joint applicants are now proposing a commitment that sets the applicable equity threshold at 48 percent; is that correct?

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

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

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

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

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

Q Did you recommend that commitment?

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

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

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

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

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

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

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

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

A I told you I don't know.

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

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

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

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

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

Commission determination of 49.19 percent?

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

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

So most typically, if a utility had 48 percent or 49 percent equity as a matter of standard doing business practice, the covenant to maintain the ratio at a certain level would be set way below that. It might say that the ratio will not fall below 42 percent or 44 percent or 38 percent. So it would be a significantly lower level.

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

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

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

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

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

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

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

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

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

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

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

BY MS. FRANCIS:

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

A Yes. Page numbers are the same.

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

Do you see that?

A Yes.

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

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

Do you see that, Ms. Lapson?

A Yes, I do.

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

Do you see that?

A Yes, I see that.

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

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

Do you see that, Ms. Lapson?

A Yes, I see that.

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

Do you see that, Ms. Lapson?

A Yes, I do.

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

Do you see that?

A Yes, I do.

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

Do you see that, Ms. Lapson?

A Yes, I see that.

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

Do you see that, Ms. Lapson?

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

Q Are you familiar with Iberdrola, Ms. Lapson?

A Iberdrola.

Q Iberdrola.

A Iberdrola, yes.

Q How did you pronounce it?

A Iberdrola.

Q Okay. Iberdrola. Are you familiar with it?

A Yes.
Q Do you acknowledge that Iberdrola is the parent company of Rochester Gas, and it is a foreign entity located in Spain?
A That is correct.
Q Now, please let's turn to page 30. I'd like to look for a moment at Public Service Electric and Gas. Would you agree with me that the S&P's report states, The utility's rating continues to be affected by its parent's large, non-rate regulated generation business that is directly affected by the low prices of electricity?
Do you see that?
A Yes, I see that.
Q And the last one, please focus on page 28 of the S&P report. I'd like to look at Pennsylvania Power Company. Would you agree with me that this paragraph states, The utility's ratings continue to be affected by FirstEnergy's non-rate-regulated generation and retail business that are materially pressured by the low price of

power?

Do you see that?

A Which company did you state that related to?

Q Pennsylvania Power.

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

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

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

Do you see that, Ms. Lapson?

A Yes, I do.

MS. FRANCIS: Your Honor, thank you. That's all the questions that I have.

CHAIRMAN KANE: Thank you, Ms. Francis.

D.C. government?

CROSS-EXAMINATION

BY MR. COYLE:

Q Good morning, Ms. Lapson.

A Mr. Coyle.

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

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

Q Just let me know when you're ready.

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

Q Ready?

A Yes.

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

A What was the page number, sir?

Q Page 26.

A Yes.

Q You state there that no rating agency placed a negative watch on PHI or any PHI operating company in connection with the proposed merger, correct?
A Correct.
Q Why would they?
A If they had thought that there was a danger associated with the ownership of the utilities as a result of the merger with Exelon, they would have placed them on a ratings watch negative. If they thought that Exelon was more risky than PHI as an owner or that the ownership would cause a downgrade, they would have placed them on a rating watch negative.
Q A 20 to 25 percent premium over the market price of the shares of a company about to be acquired is hardly cause for concern about that company, is it?
A I'm sorry, it's sort of a non-sequitur.
Q Well, let me back up and ask a preliminary question. You do you understand that Exelon offered a substantial premium for the

purchase of PHI, correct?
A Correct.
Q And that premium, depending on how you calculate it, is somewhere in the range of 20 to 25 percent, right?
A If you say so. I do not have those numbers in front of me.
Q Okay. But a premium of that size would not be --
A Are you speaking -- pardon me, sir. Are you speaking of a premium to the market price of a stock before the announcement of the merger or --
Q Yes, ma'am.
A Okay.
Q Yes, ma'am. A premium of that size would not be cause to put a -- the acquired company or the company to be acquired on any sort of a negative watch, would it?
A It would not be relevant to the determination. I don't see what the relevance would be, Mr. Coyle.
Q Okay. Great. Now, one of the rating

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

A Correct.

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

A I've got DCG 40.

Q No, 4.

A Is it another volume?

I have it. Thank you.

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

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

Q That's correct.

A Okay. I have it in front of me.

Q And it says there, doesn't it, that you were aware of and had read all of the attachments to the response to data request DCG 1-9, correct?

A That's correct.

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

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

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

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

Q It's all right. Take your time.

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

Q All right.

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

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

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

CHAIRMAN KANE: You may proceed.

BY MR. COYLE:

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

A That's correct.

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

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

Q Yes.

A Financing plan. I see that.

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

A Yes, I've read it.

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

A Yes.

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

Do you see that?

A I see that.

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

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

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

A Yes.

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

A That's correct.

Q Could you explain that sentence?

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

So, for example, if equity units were used in a -- were issued right now, they would not reflect that as equity today in the equity as a percentage of capital of the company. However, the way that the ratings are performed is from a projection model so that the -- the analysts at Fitch do a projection of future cash flow ratios. The driving factor in the credit ratings is typically cash flow measures and cash flow measures on a projected forward basis.

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

Q Okay. Thank you.

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

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

Q I'm not sure I understood your answer. Premium to the current price of equity? What do you mean by that?

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

Q Okay.

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

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

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

might have pressured the stock price more.
Q Okay. Pardon me for being a little slow here, but the pressure that we're talking about on the prices of the stock is a downward pressure, given the operation of the laws of supply and demand, correct?
A Correct.
Q Thank you. Now, why does Fitch not give mandatory convertible securities equity credit until they convert?
A Because they are represented -- the equity unit is a unit in which they're represented by a debenture, which is a senior debt instrument, for the first N number of years; that is to say, in this case, I believe it was -- subject to check -- and I don't know if it was a three year or four-year period but, you know, for the number of years -- for a number of years there is a debt instrument. At the conclusion of that time, the debt instrument is surrendered in exchange for common shares.
Q Okay. All right. So would it be

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

A That is correct.

Q Okay. Thank you.

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

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

A Yes.

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

A Yes. I did.

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

A Correct.

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

A Correct.

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

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

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

Do you see that?

A Yes. I see it.

Q What does that mean, meaningfully weaker than Exelon's stand-alone credit profile without a significant reduction in the risk profile?

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

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

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

coverage in the range of 5.5 times to 6.0 times -- do you see that?
     A   Yes.
     Q   FFO is shorthand for funds from operations, correct?
     A   Correct.
     Q   And is fixed charge coverage the same as debt service or does that mean something different in Fitch parlance?
     A   Well, for each rating agency, it means a different thing. And you would have to consult the criteria of each agency to find out what is included and what is excluded. I don't have -- I don't have something in front of me that would tell me just exactly what they meant by how they calculate that.
     Q   Fair enough. You were talking about Standard & Poor's earlier. Standard & Poor's uses an FFO-to-debt ratio. I guess the same answer, right? You don't know whether FFO --
     A   Well -- no, no. Those are two different things.

Q Okay.
A FFO-to-debt --
Q Yeah.
A Fitch also uses FFO-to-debt ratios as a measure of leverage. So FFO, meaning funds from operations, relative to debt is a measure of leverage.
Funds from operations relative to fixed charges would be a coverage ratio, so fixed charges might include debt interest, and it might also include lease rental payments or a portion of lease rental payments. It might even include some payment -- capacity payments under purchase power agreements. I really -- that is a matter of detail that I don't know right now.
Q Okay. All right. Thank you.
Would you take a look next at what Fitch had to say about ratings triggers, and particularly read the paragraph that begins, "Negative:" to yourself. Let me know when you're ready.
A Yes. Yes.

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

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

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

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

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

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

Q Well, thanks for that.

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

A That is correct.

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

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

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

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

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

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

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

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

COMMISSIONER FORT: While she's looking for that, I would like to ask counsel for the joint applicants a question about this exhibit we were just looking at, particularly since the counsel, Mr. Coyle, read a good bit of it into the record while we were looking at it. It's the Fitch Ratings report, and it's marked as confidential. Can you tell me why it's confidential?

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

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

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

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

COMMISSIONER FORT: Okay. Thank you.

MR. LORENZO: Sure.

BY MR. COYLE:

Q Do you have Exhibit DCG 3?

A I do, but -- yes.

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

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

Q Okay.

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

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

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

COMMISSIONER FORT: What document are we

on?

CHAIRMAN KANE: What document are we on?

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

CHAIRMAN KANE: Is this a confidential document?

MR. COYLE: No.

BY MR. COYLE:

Q Are you ready?

A Yes.

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

A Yes.

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

A Yes.

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

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

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

Do you see that?

A Yes.

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

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

A My understanding of that is that Standard & Poor's utilizes different ratings benchmarks for the amount of leverage and the financial ratios of companies depending upon whether they are of standard volatility or reduced volatility. Those are not exactly the categories, the names of the Standard & Poor's categories. I've just forgotten what their name is.

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

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

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

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

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

Q Leverage generally refers to debt, does it not?

A Financial leverage --

Q Yes.

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

Q All right. Thank you.
Now, the reference to 15 or 20 cents in Mr. Thayer's comment, do you recall that at the time that this earnings call took place, which was also Exelon announcement of the merger, part of the discussion about the announcement of the merger was that Exelon expected the acquisition of PEPCO Holdings to be accretive in earnings per share on the order of 15 to 20 cents per share?
A Is this a question or is this a statement?
Q It was a question.
A What was the question?
MR. COYLE: Do you want to read it back.
THE WITNESS: I'm sorry. What was the question?
MR. COYLE: I was asking the reporter if she'd read it back.
CHAIRMAN KANE: If the court reporter would read the question back, please. Thank you.
(The reporter read the record as requested.)

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

BY MR. COYLE:

Q Okay. Now, let me ask you --

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

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

MR. COYLE: Okay.

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

MR. COYLE: Yep. Okay.

BY MR. COYLE:

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

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

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

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

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

MR. COYLE: Thank you.

BY MR. COYLE:

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

Is that right, Ms. Lapson?

A Yes.

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

A Yes.
Q Just read that section to yourself and then I have a couple of questions for you.
A Yes, I've read it.
Q Okay. You see that that paragraph talks about Exelon's EPS accretion guidance, right?
A Yes.
Q And EPS is an abbreviation for earnings per share; is that right?
A Correct.
Q What does the expression "optically possible" mean?
A I don't know. I've never seen it before.
Q Okay. Do you recall the elements of Exelon's proposed financing of its acquisition of PHI? Let me go down a list and see if you agree they're elements of the financing. All right?
First there was $3.5 billion in debt; is that right?
A I think I -- starting the other direction, I recall that they had -- that there was equity, there was mandatory convertibles,

there was the sale of generating assets.

Q Yep.

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

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

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

Q Did you know what assets Exelon is selling?

A There was a list of generating assets.

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

A I do not recall.

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

A I really don't know. I don't recall.
Q How about the Hillabee Energy Center in Alabama?
A I couldn't say.
Q Do you know whether Exelon has completed the asset sales that it contemplated using to fund part of the financing of this acquisition?
A I'm not sure if they have or not.
Q All right. And then how much mandatory convertibles were we talking about, do you recall?
A Well, I know that the amount that was issued was 1.1 billion.
Q Okay.
A I think that was a little higher than the initial target amount.
Q Now, let me ask you to take a look at the second page of that commentary. Before we do that, actually, go back to the paragraph we were just looking at where it talks about accretion guidance being optically possible. And it refers, among other things, to low cost HoldCo debt, correct?

A The use of converts, merchant asset sales --
Q Yeah.
A It refers to merchant asset sales, use of converts and use of low-cost HoldCo debt.
Q Okay. And then the commentary refers to page 2, right? That paragraph refers over to page 2?
A Yes.
Q And table 1 on page 2 is a calculation of the earnings per share accretion, correct?
A Yes.
Q And is that a type of calculation with which you are familiar based on your experience with Fitch Ratings or elsewhere?
A No. This is an equity -- sort of an equity concept in which earnings per share are more important. And when you said with my experience with Fitch Ratings, that was as a debt analyst where we're more likely to use cash flow -- projected cash flow metrics in the future.
Q Okay.

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

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

A Yes, I am familiar with this.

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

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

A Yes.

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

A Yes.

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

A Correct.

Q Okay. And do you know what Exelon's number of shares outstanding is in 2015?
A No.
Q Would you accept 860 million, subject to check?
A Subject to check.
Q Okay. So if we wanted to know what kind of money Exelon was expecting that the acquisition of PHI would generate in 2015, we would multiply 19 cents by 860 million shares, right?
A Yes.
Q Okay. And you do the same calculation for 2016 based on 42 cents a share?
A I guess my immediate thought here is that this was a very optimistic analyst if he thought that the acquisition would get done so early in the year that there would be an opportunity to earn this amount of money on it. It must be an analyst who thought that things were going to go lightning fast in D.C. and Maryland.
Q As Robert Burns says, the best-laid plans of mice and men aft gang agley.

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

A That was what he was saying here.

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

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

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

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

Q Okay.

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

Q I understand.

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

A Yes.

Q And --

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

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

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

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

Q Okay. Thank you.

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

synergies?
A Yes.
Q And the synergies contribute zero dollars, or are projected to contribute zero dollars in 2015?
A Correct.
Q And then a penny per share in 2016 and 2017?
A Correct.
Q Okay. And then, as we look down a little further under costs, you see a line that's entitled, Debt cost, correct?
A Yes.
Q Okay. And again, this is -- the analyst is looking at the issuance of $3.4 billion in debt, correct?
A That's what I see here.
Q Okay. And after-tax -- what does that mean, after-tax yield of 2.7 percent in the context of debt?
A The debt interest expense is tax-deductible.

Q Okay. So that's another way of saying the net cost of the debt after your tax deductions?
A Yes.
Q Okay.
A But I see that he understated the amount of mandatory convertibles; in fact, 1.1 billion of mandatory convertibles were issued, and he forecasted only 792 billion. So there's just a different allocation of those two --
Q Sure.
A -- categories.
Q Sure. He also predicted some values for asset sales, correct?
A Yes.
Q Or -- well --
A Losses of earnings per share.
Q Okay. I'm sorry?
A He predicted losses of earnings per share --
Q Yep.
A -- through the sales of assets.

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

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

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

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

Q Right.

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

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

A No.

Q Okay. Thank you.

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

Ms. Lapson?
A As I understand it, it would mean that if there are more shares outstanding, then the net income of a company is divided by a greater number of shares.
Q Okay. And this analyst was contemplating an equity issuance of $1.6 billion?
A In 2015.
Q Right. And then the same comment about the convertibles; the analyst was looking at 800 million in mandatory convertibles and your recollection is, in actuality, that number was more like 1.1 billion, correct?
A Right. So there was $2 billion of equity that was actually issued in 2014 and a billion-1 of mandatory convertibles.
Q Okay. So all of that leads the analyst to conclude there will be a net earnings per share accretion in the bottom line of table 1 of 4 cents per share in 2015, 12 cents per share in 2016, and 16 cents per share in 2017, right?
A Correct. I see that written here.

Q Would you --

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

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

MR. COYLE: I do. Yes.

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

MS. ELEFANT: No questions.

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

(Whereupon, a short recess was taken.)

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

Mr. Coyle.

MR. COYLE: Thank you, Your Honor.

BY MR. COYLE:

Q Ms. Lapson, before we leave Exhibit

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

A Yes.

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

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

Q I was asking you about your views.

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

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

A It is used here to say that there are -- that the generation business is facing lower natural gas prices and an overabundance of power supply in the PJM territory, and I think that both of those continue to be true.

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

A Let's take those page numbers again.

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

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

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

A Yes.

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

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

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

Q That's correct. Yep.

A Yes, we disagree on that point.

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

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

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

A Yes.

Q Okay. (2K)-8 is a graphic representation of the proposed post-merger corporate structure under the joint applicants' proposed ring-fencing conditions, right?

A Correct.

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

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

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

A No. Exelon Energy Delivery Company.

Q Okay. Thank you.

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

A Correct.

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

A I'm sorry. RF HoldCo --
Q Yes.
A -- sits between EEDC and Baltimore Gas and Electric.
Q Okay. And Baltimore Gas and Electric is an operating utility company, correct?
A Correct.
Q Okay. Am I correct that the placement of RF HoldCo in the corporate structure depicted in Exhibit (2K)-8 was required by the Maryland Public Service Commission in approving Exelon's merger with Constellation Energy?
A It was a part of the conditions of the merger. I don't know who required it. I really don't know. But it was a condition of the merger.
Q Okay. And the Maryland commission had to approve those conditions in order for the merger to take place, right?
A Correct.
Q Okay. Now, if I could ask you to go back to take a look at your supplemental direct again, Exhibit (2K), page 25, lines 16 to 17.

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

Q I tricked you, didn't I?

A Yes, you did. Yes.

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

Do you see where I am?

A Yes.

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

A Yes, I use that expression.

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

A There's a unnecessary entity -- there could be an unnecessary entity in the organization structure, there could be fees, there could be legal formalities associated with maintaining those organizations in effect.

Q For whom is that inconvenient, Ms. Lapson?

A It may just gum up the organization structure.

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

A That could be.

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

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

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

Q Now, if you'll indulge me in a hypothetical, suppose that the SPE is interposed between the operating companies of PHI. Right?
A Yes.
Q The way that RF HoldCo in Maryland is interposed between Baltimore Gas and Electric and EEDC. Are you with me?
A Yes.
Q Okay. And in that case, it isn't really additional special purpose entities, because it wouldn't be necessary to have one between PHI and EEDC, would it?
A There would then be a single special purpose entity as opposed to three special purpose entities.
Q I don't know. Let's assume there is. Let's assume there's a special --
A I'm sorry, but I'm just not -- I'm not familiar with that structure. I can't think about a special purpose entity being the parent company of something. Special purpose entities don't do anything. They can't do anything. They're not

permitted to do anything.

Q Right.

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

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

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

A Oh, it was a hypothetical.

Q Yes, ma'am.

A I see.

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

have that redundancy that you were talking about in your testimony, do you?
A In a hypothetical sense, no.
Q Do you know -- you were just mentioning that special purpose entities don't do anything. What do you consider to be adequate capitalization for a special purpose entity?
A Adequate capitalization for a special purpose entity could be as little as almost nothing. It could be very -- it could be a token amount. It could be 1 percent of -- it could be -- I've certainly seen -- in the case of some structured transactions, I've seen 1 percent or less, half of a percent, fraction of a percent.
Q And the reason we care about adequate capitalization of the special purpose entity is to prevent substantive consolidation, correct?
A The special purpose entity is just a separator. It's just being interposed as a separator. It should -- it's really not going to do anything. It's not going to fund the transaction. It's not going to make any

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

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

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

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

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

In fact, substantive consolidation of utilities is not really a very significant risk. It is so minor that I'm not aware of any case of substantive consolidation of a utility that was not ring-fenced that did not have an SPE. Substantive consolidation is just not happening as a regular basis.

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

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

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

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

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

Q Okay.

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

Q Okay. Great. Thank you.

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

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

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

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

A Yes.

Q Now, in your CV, you talk about your

previous testimonial experience, correct?
A It's listed there, yes.
Q Okay. And then what's been marked for identification as Exhibit DCG 113 asks you specifically about your involvement in bankruptcy cases, correct?
A Correct.
Q Okay. I want to focus your attention on page numbered 32 of 53 on the bottom.
A Yes.
Q And I'd like you to read the first paragraph of that page to yourself. Let me know when you're finished.
A Is this concerning NorthWestern Corporation?
Q That's correct.
A Yes.
Q Are you ready?
A Yes.
Q Okay. What exactly did you do in connection with the NorthWestern bankruptcy?
A I was a credit analyst and was managing

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

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

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

A That's absolutely true.

Q Great. Thank you.

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

A That certainly is not my -- the way that

I would interpret the reason for their bankruptcy.
     Q   Was Exelon required to -- I'm sorry. Exelon. I beg your pardon.
          Was NorthWestern required to recognize an impairment to goodwill in the neighborhood of $800 million with respect to its Expanets subsidiary?
     A   I do not remember the exact number, but I -- I certainly recall that there was an impairment.
     Q   Do you recall what the total size of NorthWestern's balance sheet was at the time that the impairment was recognized?
     A   No, I do not.
     Q   Okay. Could you explain for the Commission what impairment means?
     A   Well, this is -- impairment is an accounting concept, and it means that something that is valued on the balance sheet has to be reviewed under certain circumstances to see whether it could continue to be carried on the balance sheet -- if it's an asset, can it be

carried on the balance sheet at that value?

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

Q Thank you.

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

Q Do you know why NorthWestern was the

direct owner of the utility transmission and distribution system it had purchased from Montana Power Company in 2002?
A No.
Q Do you know that the -- do you recall that section 10 of the Public Utility Holding Company Act of 1935 required utility holding companies to operate an integrated utility with a utility property that they acquired? Is that part of your working knowledge?
A Yes, I was familiar with the Public Utility Holding Company Act.
Q All right. Are you aware that NorthWestern had utility operating assets in South Dakota?
A No.
Q And that when it acquired utility assets in Montana, it had utility assets in asynchronous interconnections?
A I have no such recollection, not being an engineer.
Q Okay. Do you know what the significance

of operating an -- asynchronous interconnections is, Ms. Lapson?
A No.
Q Okay.
A But I presume it meant that they were not integrated.
Q Good guess.
Do you know how much advance notice the Montana commission got concerning NorthWestern's recognition of the impairment associated with Expanets?
A No, I don't.
Q Do you know how much advance notice the Montana commission got about NorthWestern's bankruptcy filing?
A No, I do not.
Q Do you know whether the Montana Public Service Commission imposed ring-fencing conditions as a condition of its non-objection to NorthWestern's plan of reorganization?
A I presume that they may have come upon ring-fencing at that point in time.

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

A No.

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

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

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

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

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

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

A Right. For example, maintaining separate debt -- putting the non-utility businesses into separate subsidiaries, having a holding company that owned the non-utility businesses and owned separate subsidiaries of utility businesses, having separate bank accounts, having separate debt ratings, having separate bondholders, maintaining -- there are a large number of ring-fencing mechanisms that would have created sufficient separation here.

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

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

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

Q Let's go back to --

A But I object to the word "maximum." You can do unreasonable things to provide more and more separation. There is no reason to have to go that far when you have limited and minimized the possibility of substantive consolidation to a non-threat, a complete non-threat.

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

A Yes.

Q -- is that right?

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

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

Q Okay. So you did sound the alarm?

A We said that it was a less protective

structure for bondholders.

Q All right.

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

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

A I don't recall.

Q Okay. Thank you.

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

A Yes.

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

years, and you disagree?
A I think the ten years is very long. I think that five years is -- it wasn't my choice of numbers. That was a commitment that the -- was proposed by the joint applicants, but there's nothing wrong with that number. You know, I might have proposed they would -- I might have proposed at any time with the consent of the Commission. That would have been my advice.
Q All right.
A I would not have recommended any stay-out. I would have said, let the Commission decide.
Q Okay. You do not -- as a matter of counterpoint, though, you do not favor an automatic sunset provision on ring-fencing; is that correct?
A No, I do not recommend an automatic sunset.
Q Okay. And what you do say, looking at page 27, line 17, to page 28, line 6, is that the Commission may deem that it is no longer desirable

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

Right?

A Yes, I wrote that.

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

A I'm sorry. What happens to what?

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

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

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

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

So I think that there -- I now foresee -- I now understand this differently than I did when we started out. It's really not yes ring-fencing or no ring-fencing. Of course there is going to be ring-fencing, as I wrote in my testimony. Of course we want -- and I think that everyone in this case wants to have good corporate governance with separation of the utility from its parent holding company and the separate viability of the utilities. That is very good operating practice. It's good management practice. It's good utility practice. And it is something that I think will be deemed to be desirable at any time.

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

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

A I think that the disagreement comes at the special purpose entity. I don't think anyone is -- the joint applicants are not proposing that they should convert the structure of this into one in which there's no protections in the form of separateness and viability for the utility.

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

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

But aside from that, there is no -- the whole purpose of ring-fencing is to avoid harm. So you cannot say that the standard -- it would be totally illogical to say that the standard for changing a ring-fencing provision is to gain a benefit because it was never there to create a benefit; it was there to avoid harm.

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

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

A Yes.

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

A If the ring-fencing provisions, as you must always use your left hand to shake hands with, and you wish to substitute shaking hands with your right hand, there would be -- there would be no harm or benefit one way or another. You would simply show that there was no harm by shaking hands with your right hand rather than your left hand.

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

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

So I don't understand ten years. It

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

Q But you --

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

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

A My personal view is that -- you know, I don't know why five years was originally proposed by the joint applicants. And I could understand if a year went by and there was some provision that was inconvenient and causing greater expense or difficulty for the operations of the utility, that the joint applicants might at that time bring it to the Commission. And I think it would be quite fitting for the Commission to consider it because there are so many and such detailed commitments here.

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

A How far did you wish me to read?

Q Page 27, line 16.

A It actually goes on much farther than that.

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

A Okay. I finished that.

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

A That's correct.

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

A Yes.
Q Let me ask you to look now at what's been marked for identification as Exhibit DCG 114 which is --
A I have it.
Q -- joint applicants' response to data request DCG 8-101.
A Yes.
Q You are the sponsor of that data request response, are you not?
A Yes.
Q On the basis of that response, you acknowledge, would you not, that whatever your views on the subject of double leverage, some United States jurisdictions believe it's appropriate to adjust the capital structure used to determine the allowed return on an operating subsidiary of a holding company to reflect the holding company's cost of financing; is that right?
A Yes. As I indicated here, I'm aware that Iowa and Tennessee have that practice.

Q Are you aware whether this Commission has ever done so in cases involving utility holding companies?
A I am not aware if they have ever done so back in history, but I am aware that in recent PEPCO rate cases, the Commission has not done so and has rejected arguments to do so.
Q Okay. How about the Maryland Public Service Commission? Are you aware of what the Maryland Public Service Commission does?
A Well, I know that since only Iowa and Tennessee do have such practices, the Maryland Public Service Commission does not.
Q You're sure that only Iowa and Tennessee apply --
A No, actually, I'm not sure.
Q Okay. All right. Thank you.
Now, are you -- have you become familiar with an individual who works for Exelon by the name of William von Hoene, senior executive vice president and chief strategy officer?
A I'm sorry. Name is?

Q von Hoene.
A No, I don't know him.
Q We discussed a little earlier in your cross-examination how the acquisition of PHI is supposed to be accretive to Exelon's earnings per share. Do you recall that?
A You mean you took me through an analyst's report --
Q Yep.
A -- written by a Bank of America analyst?
Q Yep.
A I recall that we discussed that report.
Q Okay. Good.
Let me ask you now to take a look at what is in evidence as Exhibit DCG 92.
MR. COYLE: Before I examine, I'll note for the record that DCG 92 is labeled confidential, and ask Mr. Lorenzo whether I may examine in open session on it.
MR. LORENZO: As with the other documents, you may. We'll keep the designation of the document as confidential, but you may examine.

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

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

BY MR. COYLE:

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

A I do not have access to internal documentation.

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

Have you seen Exhibit DCG 92 before?

A No, I have not.

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

A Yes.

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

A Yes.

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

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

Q Great. Thank you.

Do you know what PHI's dividend is today,

Ms. Lapson?
A I don't have those numbers at hand.
Q Okay. Would you accept, subject to check, the dividend is $1.08 per share?
A Per PHI share?
Q Yes.
A Okay. If you say so, subject to check.
Q And that PHI has approximately 251 million shares outstanding?
A Subject to check.
Q Great. Now, let me ask you to take a look at what's been marked for identification as Exhibit DCG 115. And that is the joint applicants' response to District government data request 9-14. And you are the author of that response, correct, Ms. Lapson?
A Correct.
Q You state in that response that the Exelon/Constellation merger is the only merger case of which you are aware that involves a restriction on payment of dividends as a condition of the merger, correct?

A Yes. That's what it says here.
Q Do you know whether the ring-fencing conditions established with respect to NorthWestern by the Montana Public Service Commission contain a dividend payment restriction?
A No, I do not.
Q Let me ask you this: When you tie a dividend limitation to the maintenance of a debt-equity ratio in a ring-fenced company's capital structure, how do you deal with goodwill in the capital structure? Do you include goodwill as equity in the calculation of the debt-equity ratio?
MR. LORENZO: Your Honor, I'm going to object. This calls for a legal conclusion based upon what the Commission's precedent is for setting the equity ratio in the District which is what the Commission (sic) is based on and it's something I don't believe Ms. Lapson is qualified to opine on.
CHAIRMAN KANE: The witness can indicate whether she can answer this.

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

BY MR. COYLE:

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

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

Q Does goodwill provide any useful service to utility customers, Ms. Lapson?

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

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

Q Okay.

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

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

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

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

Q Let me know when you get there.

A Yes.

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

A I have not done a detailed study into the distant past. I am, however, familiar with this Commission's order 1103 in the -- issued in the first quarter of 2014 in a PEPCO rate case in which this Commission rejected the proposal by OPC and AOBA to impute debt or to reduce the equity percentage of PEPCO. And the Commission said in that order, we decline to do either -- that was to do either of reducing the amount of equity, as suggested by OPC, or to add short-term debt as OPC and AOBA have urged to do.

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

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

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

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

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

A Yes, I would agree with that.

Q Great.

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

MR. LORENZO: I have no problem with

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

MR. COYLE: I think it's 111.

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

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

CHAIRMAN KANE: So you're indicating that

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

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

CHAIRMAN KANE: Accept that.

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

BY MR. COYLE:

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

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

MR. COYLE: That's correct.

MR. LORENZO: Yes, Your Honor.

THE WITNESS: 111 and 112?

BY MR. COYLE:

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

A Yes.

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

A Which is Mr. Khouzami's exhibit.

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

A Yes.

Q -- to staff 1-21.

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

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

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

A I have seen it before.

Q Thank you very much. On that basis --

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

CHAIRMAN KANE: Thank you.

DC SUN?

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

CHAIRMAN KANE: D.C. WASA?

MS. WHITE: No, we have no questions.

CHAIRMAN KANE: MAREC?

MS. ELEFANT: No questions, Your Honor.

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

Commissioner Fort?

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

THE WITNESS: Excuse me for a moment. (2K)?

COMMISSIONER FORT: (2K), 19 --

THE WITNESS: Page 19.

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

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

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

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

THE WITNESS: There are companies that are usually formed specifically for the purpose of providing such officers, usually legally experienced people, to be directors of special purpose entities that are used in structured transactions.

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

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

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

THE WITNESS: No. I've never set up a special purpose entity or administered it. When I was at the credit rating agency, we would -- we would have our legal department review the provisions of the formation of a special purpose entity to determine that it had been appropriately set up, that the special purpose entity had appropriate officers or directors who had -- you know, who had the appropriate instructions to act under.

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

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

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

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

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

THE WITNESS: Right. I understand.

COMMISSIONER FORT: Are there independent criteria --

THE WITNESS: There are well -- I think

there are well-known companies.

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

THE WITNESS: Thank you. Sorry.

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

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

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

THE WITNESS: Yes. Yes.

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

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

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

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

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

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

COMMISSIONER FORT: Have you seen other SPE governing documents?

THE WITNESS: Yes, I have.

COMMISSIONER FORT: Do they set out the

criteria for the directors?

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

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

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

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

As I said before, the SPE is not managing the utility. It's not going to have transactions or to conduct business. So the directors of that entity are only in place to take action in very limited circumstances. That's all that you want them to do.

COMMISSIONER FORT: And that's what we're talking about, and I'm trying to get an idea of how they do that when we want them to do it.

So on lines 10 through 13 of your testimony, it says, In addition, the SPE will issue a non-economic interest in the SPE called the golden share to an administration company that's in the business of protecting SPEs and separate from the administration company retained to provide the person to serve as the independent director for the SPE.

Is that a different set of administration companies that --

THE WITNESS: Yes. I think it is describing here two different administration companies.

COMMISSIONER FORT: And what does the second administration company do and what's an example of that company?

THE WITNESS: These two are to be two unrelated companies, each of whom would supply a director, and each of them would have no business other than providing such ministerial services, and they would do so subject to a set of instructions or directions or legal obligations of a director.

COMMISSIONER FORT: Can that company have a relationship with Exelon?

THE WITNESS: I don't believe so.

COMMISSIONER FORT: You don't believe so?

THE WITNESS: No, I don't believe so.

COMMISSIONER FORT: So that in order to be independent, it would have to be someone who is not working in any way at all for Exelon?

THE WITNESS: Yes. That's my understanding.

COMMISSIONER FORT: Did the bankruptcies that you have dealt with previously -- I think they were listed on one of the exhibits that you discussed with Mr. Coyle from the D.C. government -- did they use SPEs?

THE WITNESS: I would have to look through the list again, but I don't believe there were any SPEs involved in those cases.

COMMISSIONER FORT: When you developed your criteria or you evaluated the commitments in this proceeding, did you look at the structure of the Portland Electric Company, the one that was involved in Enron?

THE WITNESS: I did.

COMMISSIONER FORT: And are all the provisions that that company had included in the? Commitments here.

THE WITNESS: Actually, the commitments here are far in excess, and the ring-fencing measures here are far in excess of the measures that existed at Portland General Electric.

So I did make that comparison and came to the conclusion that although Portland General Electric was not consolidated -- there was never a substantive consolidation, it was not drawn into the bankruptcy of its parent, the ultimate parent being Enron Corporation -- there was far less ring-fencing than is present in this transaction.

COMMISSIONER FORT: Well, you know, you could have ten very good provisions and you could have 71 provisions that are not so good. So in the case of Portland General Electric, we know that their provisions worked, right?

THE WITNESS: Yes. There was no provision at Portland General Electric that was stronger than the provisions that are proposed here. And there -- there was no -- there was no special purpose entity in that case.

There was -- I'm trying to remember now where the differences occurred, but there was no provision that said that the officers of Portland General Corporation and Portland General Electric would not also hold offices at their parent company, Enron. And we know that there were, in fact, cases in which the -- they did act -- officers of Portland General did act part-time to perform roles in the management of Enron. We know that Enron shared offices -- Enron's trading personnel shared offices in the Portland General office.

And -- so there were numerous forms of separation that did not exist there that are precluded in these ring-fencing commitments.

COMMISSIONER FORT: I understand that there are elements in the commitments that we are looking at that are different and maybe better --

THE WITNESS: Stronger.

COMMISSIONER FORT: -- and you say are stronger. I just wanted to know if all of the elements that were present in Portland General are also present in these commitments, if you looked at that?

THE WITNESS: Yes, I did look at that, and yes, there are all -- there are parallels for all those that were present in the Portland General transaction, but in addition, there are many more and stronger commitments here.

COMMISSIONER FORT: What fees are associated with an SPE?

THE WITNESS: I do not know. I think someone else might be better able to provide that information.

COMMISSIONER FORT: Do you know whether or not those are fees that are passed on to ratepayers?

THE WITNESS: That's a matter of determination by the Commission as to whether that expense is allowed or not allowed.

COMMISSIONER FORT: In your testimony, your rejoinder this morning with Mr. Lorenzo, did I hear you say that PHI does not have any preferred stock?

THE WITNESS: It does not currently have any preferred stock. Nor does PEPCO.

COMMISSIONER FORT: Are you familiar with how -- are you familiar with the $180 million that Exelon is paying to PHI as part of this merger that is being acquired, I think we were told -- that was being paid, I think we were told, through the purchase of preferred stock?

THE WITNESS: No.

COMMISSIONER FORT: Those are all my questions.

CHAIRMAN KANE: Thank you. Two quick follow-up questions before we break for lunch.

You were being questioned by Mr. Coyle about the length of time for reviewing the ring-fencing provisions. And you spoke of when that might be appropriate to trigger or when parties might want to trigger a review if, as I recall your words, it became onerous.

What -- or would a review to increase the protections also be appropriate? And if -- under the five-year stay-out provision, if a commission determined that they were not strong enough, there was a need to increase the protections, would that be prohibited under this proposal for five years?

THE WITNESS: I believe the way that this proposal is structured, the joint applicants can bring an application to make a change. The way that the proposal is structured, I don't think that it has any provision for the Commission to bring an application for a change.

CHAIRMAN KANE: So your interpretation -- or would your interpretation be that the

Commission would then be prohibited from bringing -- initiating an investigation of the need for a change?

THE WITNESS: Well, I guess I would have to ask -- I would have to answer that by saying that I think -- under your authorities, I don't think that -- I don't know that you have the authority to implement a change unless -- to require a change or to implement a change in the parent holding company, in the relationship between the parent holding company or at the SPE level, but there are many things at PEPCO itself that you do have authority over.

So when we're talking about ring-fencing provisions here, there are some ring-fencing provisions that have to do with PEPCO and that would be well within the Commission's authority. But things that have to do with the EEDC and the SPE and PHI -- I'm sorry to use those terminologies --

CHAIRMAN KANE: We understand what those are. We've been familiar with them over the last ten days.

THE WITNESS: EEDC is the Exelon Energy Distribution Corp., I think.

CHAIRMAN KANE: Yes, Company. Yes.

THE WITNESS: Company. And then the special purpose entity. And PHI might not be within your authority, whereas other things might be, and that's not my area of expertise.

CHAIRMAN KANE: But the ring-fencing proposal that is in the joint applicants' application does affect other than PEPCO? In other words, it -- it's more comprehensive than that, correct?

THE WITNESS: Yes, it is. Much more comprehensive.

CHAIRMAN KANE: So your statement -- is your statement, then, that were that accepted, the Commission would be prohibited unless -- except at the initiative of the joint applicants, for reviewing or initiating any proposed changes in those aspects of ring-fencing that are not directly PEPCO?

THE WITNESS: That's the way I read the commitment.

CHAIRMAN KANE: Are you familiar with the affiliate transaction provisions of the D.C. law that we operate under?

THE WITNESS: I believe that I was shown the affiliate transaction regulations. I do not remember them now. I remember I have reviewed the ring-fencing provisions, and I think I was shown the affiliate transaction provisions.

CHAIRMAN KANE: And so my question is, have you compared the proposed ring-fencing proposals in the joint applicants' proposal and either -- and I realize you're not a lawyer -- either the provisions of D.C. code, including the broad definition of affiliate in D.C. code, and the regulations that have been promulgated by this Commission?

THE WITNESS: Well, I did look specifically at the ring-fencing provisions, not the -- I didn't look with as much detail at the affiliate transaction provisions. But there are -- if I recall correctly, there were two ring-fencing provisions that were significant and that were both encompassed among the 72 ring-fencing commitments that are being taken on here. So those I did specifically deem were consistent.

But if -- on the affiliate transaction side, I didn't really -- I wasn't taking responsibility for the affiliate transaction aspects of this transaction, so I didn't do that detailed a review. But my understanding is that anything that you have in the D.C. code would, of course, apply no matter what it says in the -- in this -- in these commitments. I don't think these commitments can be less than your D.C. code.

CHAIRMAN KANE: But I'm trying to put that together with your earlier statement that we would not be able to change anything at our own initiative, the Commission would -- anything that had to do with PHI or the relationship with PHI --

THE WITNESS: Well, with regard --

CHAIRMAN KANE: -- which are all

affiliates, correct?

THE WITNESS: So with regard to your affiliate transaction code, I'm sure that you have -- that all exists and you have that power. And you have the authority to do those things. So if it's within your existing authorities, then of course you would have the ability to do it.

I simply meant that if you wish EEDC to have five directors instead of four or something like that, I don't think that that is within your affiliate transaction code. But I don't know. I'm not an attorney, and I don't know the specifics of your affiliate transaction code.

CHAIRMAN KANE: Let me ask a follow-up question to a question Commissioner Fort was asking about, this SPE administration company. And as I understood what you were talking about, there are two different ones. I'm trying to get a picture of -- is this like a business that sort of rents directors to SPEs? I mean, they're not employees. They're like a temp firm for SPE directors? I'm trying to identify what the business model is. And sort of, then, who gets held accountable for selecting them and for their actions?

THE WITNESS: Well, it's something like a trust administrator. I mean, you must have some concept that there are people who administer trusts, who are trustees, who are -- and I think it is someone who undertakes that, perhaps -- perhaps there's some bonding of such individuals. I'm not familiar with it, but I don't think -- you know, I don't think that they're -- I have not known of transactions where a problem occurred because of the lack of independence of the SPE directors. I -- I would surely have become aware of it if that happened.

CHAIRMAN KANE: Thank you. No further questions.

Redirect? I'm sorry. Commissioner Phillips?

COMMISSIONER PHILLIPS: No questions.

CHAIRMAN KANE: Okay.

REDIRECT EXAMINATION

BY MR. LORENZO:

Q Just one short follow-up on Commissioner Fort's question regarding who pays for the SPE. Could you open your testimony to your Exhibit (4K)-1. And then I'm going to direct you to paragraph 68 on page 9 of 15. And could you road that into the record?

A Oh, yes. Thank you.

None of the cost of establishing, operating or modifying the SPE will be borne by PEPCO or its distribution customers. The cost of obtaining the opinion of legal counsel referred to in paragraphs 60 and 67 or any future opinion will not be borne by PEPCO or its distribution customers.

MR. LORENZO: Thank you. That's all I had, Your Honor.

CHAIRMAN KANE: Thank you.

MR. LORENZO: And I'd like to move the admission of Exhibits -- Joint Applicants' Exhibits (2K), (2K)-1 through (2K)-12, (3K), (3K)-1 through (3K)-2, and (4K) and (4K)-1.

CHAIRMAN KANE: They are moved into evidence.

(Joint Applicants Exhibit Numbers (2K), (2K)-1 through (2K)-12, (3K), (3K)-1 through (3K)-2, (4K) and (4K)-1 were received into evidence.)

MS. FRANCIS: Your Honor, AOBA would like to move its Exhibits 98 and 99.

CHAIRMAN KANE: They are moved into evidence.

(AOBA Cross Exhibit Numbers 98 and 99 were received into evidence.)

CHAIRMAN KANE: Mr. Coyle?

MR. COYLE: Your Honor, District government moves the admission of Exhibits DCG 108 through 116, inclusive, including specifically Exhibit DCG 112.

MR. LORENZO: Your Honor, we have reviewed the exhibit and will stipulate to its truthfulness and authenticity.

CHAIRMAN KANE: Thank you. Very good.

(DCG Cross Exhibit Numbers 108 through

116 were received into evidence.)

CHAIRMAN KANE: It is 2:00 p.m. We have just spent three-and-a-half hours on our one-and-a-half-hour witness. But we will then -- you are excused.

THE WITNESS: Thank you.

(Witness excused.)

CHAIRMAN KANE: And everyone is excused for lunch, and we will reconvene at 3:00 with Mr. Dismukes.

(Whereupon, at 2:01 p.m., a lunch recess was taken.)

AFTERNOON SESSION

(3:03 p.m.)

CHAIRMAN KANE: We're back on the record. It is 3:04 -- 3:03 p.m. And -- Mr. Lorenzo.

MR. LORENZO: Two points, Your Honor, both dealing with Ms. Lapson's testimony. One, we checked with the company regarding the confidentiality of -- especially of the Fitch report.

CHAIRMAN KANE: Yes.

MR. LORENZO: And I understand being a year old, it's already out of date. So we could declassify it, as it were, in that way.

The second offer we have is Commissioner Fort asked a number of questions about the set-up and administration of an SPE, sort of the nitty-gritty of how it's done. And if it's the Commission's desire, we will offer to respond that to that via a bench data request in order to answer those questions.

CHAIRMAN KANE: Yeah. We'd be interested in seeing that.

MR. LORENZO: Okay. Very good, Your Honor.

CHAIRMAN KANE: Now, you said the Fitch report is out of date. Are you indicating that it's not relevant?

MR. LORENZO: No. It's -- the Fitch report that Mr. Coyle was using to question is about a year old. It was from April of 2014. So the confidential nature of -- the sensitivity of the information is no longer --

CHAIRMAN KANE: Thank you for clarifying that.

MR. LORENZO: Okay. Very good.

CHAIRMAN KANE: All right. OPC, you may call your witness.

MR. GRAY: Thank you, Your Honor. Jason Gray for the Office of People's Counsel. At this time, the People's Counsel would like to call Dr. David Dismukes.

WHEREUPON,

DAVID DISMUKES,

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

DIRECT EXAMINATION

BY MR. GRAY:

Q Good afternoon, Dr. Dismukes.

A Good afternoon.

Q Could you please state your name for the record.

A David E. Dismukes.

MR. GRAY: And, Your Honor, pursuant to order 17790, I'd like to mark Dr. Dismukes' prefiled testimony at this time. It is his direct testimony, which is Exhibit OPC (A), and the supporting exhibits, OPC (A)-1 to OPC (A)-45, as well as Dr. Dismukes' supplemental direct testimony, OPC (2A) and supporting exhibits OPC (2A)-1 to OPC (2A)-5.

CHAIRMAN KANE: They are so marked.

(OPC Exhibit Numbers (A), (A)-1 through (A)-45, (2A), and (2A)-1 through (2A)-5 were marked for identification.)

MR. GRAY: And conformed versions of the

prefiled testimony were filed on March 25th. However, this morning we noted one correction that needs to be made to Dr. Dismukes' direct testimony, and I would like to clear that issue up now, if that's okay.

CHAIRMAN KANE: Yes.

BY MR. GRAY:

Q Dr. Dismukes, do you have that correction?

A I do not. I think it's on page 99, line 7.

Q Very good guess.

A Thank you.

Q Page 99, line 7, there's a reference to PHI's. I believe that reference should be to PEPCO; is that correct?

A Yes, sir.

MR. GRAY: And with that one change, Your Honor, I would tender the witness for cross.

CHAIRMAN KANE: Company?

MR. GADSDEN: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. GADSDEN:

Q Dr. Dismukes, my name is Tom Gadsden. I'm one of the attorneys representing the joint applicants in this proceeding.

Your attachment A to your direct testimony, which is your curriculum vitae, lists a number of regulatory and legislative proceedings in which you've presented testimony; is that correct?

A Yes, sir.

Q And am I correct that several of those appearances involved PEPCO or one of its affiliates, Delmarva or ACE, Atlantic City Electric?

A Yes, sir.

Q And specifically at page 2 of your direct testimony, you note that you previously testified before this Commission in formal case numbers 1087 and 1103. Do you see that?

A Yes, sir.

Q Are those the only proceedings in which you've appeared before this Commission or have there been others?

A Those are the only two.

Q And were they both rate cases?

A Yes, sir.

Q Dr. Dismukes, am I correct that you've never submitted formal testimony in proceedings involving a utility merger or change of control?

A Yes, sir. That's correct.

Q Could you turn to -- and there should be a binder up there somewhere. Could you turn to what has been preliminarily marked for identification in your binder as Joint Applicants' Cross-Examination Exhibit 21 --

MR. GADSDEN: -- which I would ask, Your Honors, be marked for the record as Joint Applicants' Exhibit 9.

CHAIRMAN KANE: So marked.

(Joint Applicants Cross Exhibit Number 9 was marked for identification.)

BY MR. GADSDEN:

Q Do you have that, Dr. Dismukes?

A Yes, sir.

Q Am I correct that Exhibit 9 comprises the OPC's response to PEPCO data request number 1-3, which you co-sponsored with some other OPC witnesses?

A Yes, sir.

Q And in your response, you indicated that even though you had not presented any testimony, any formal testimony in a merger proceeding, you had published an article, quote, associated with merger-related regulatory issues.

Do you see that?

A That's correct.

Q Is attachment 1-3 to your response entitled, Electric M&A, a regulator's guide, the article that you refer to?

A Yes, sir.

Q I've got just a few questions with respect to that article, Dr. Dismukes. On the first page of the article, which has been identified as page 2 of 5 of Cross-Examination Exhibit 21, in the right-hand column you note, Many regulators believe the broader public interest standard encompasses a host of quantifiable (objective) and non-quantifiable (normative) criteria.

Do you see that?

A Yes, sir.

Q Is that still your understanding?

A Yes, sir.

Q If we could go to the second page of the article which is page 3 of Exhibit 21 -- and this would be the second full paragraph.

A In the left column?

Q The right-hand column, I'm sorry.

A Okay.

Q You state, Regulators should consider -- I'm sorry. Left-hand column. Regulators -- it's right above that, I'm sorry. I've given you -- first full paragraph under rate impacts --

A Okay.

Q -- left-hand column. And you state that, Regulators should consider restricting their investigation of a proposed merger to the merits of the merger alone, deferring rate design changes to a future rate investigation or a later annual merger savings review.

Do you see that?

A Yes.

Q Does that continue to be your opinion?

A I don't know in this particular proceeding that it would be. I think that, looking at the potential benefits associated with this merger should also include the impacts associated with what the merger will have on rates for ratepayers. And in this particular instance, I think it's an important component of that.

I think if you look at the time and the context within which this article was written, I think you'll notice on page 1 -- this was back in 1996, you know, which is quite some time ago now -- when we saw the first big explosion of electric M&A activity -- in fact, if you look back at this time period, a lot of that M&A activity was different in nature than what you've seen today.

And I think the historic standards and

the progressing standards in policy for these have changed some. Some things have continued to be the same, but others I think have progressed as well.

And one of the things that you've seen in many of these mergers has been the fact that rate freezes or some kind of holding constant of rates has been a constant component of those proposals.

Q In the right-hand column, the second full paragraph, you state, Merged companies that meet or exceed projected savings could be allowed to keep a gradually larger share of such savings.

Do you continue to subscribe to that view or is this also something which you've reconsidered over the years?

A Well, I think it depends on the nature of the offer that's on the table. I think -- one thing to keep in mind about this article is it's kind of a scoping article that surveys the literature and surveys kind of the current status of what was going on as of 1996 when a lot of these mergers were occurring.

One of the things that I was pointing out here is that you could have, as part of a merger proposal, some kind of performance-based plan where you have a minimum guarantee of merger savings that are going back to ratepayers, and to the extent that the utility beats that ex-post merger, you may have a performance benefit or reward as a consequence of that.

So it depends on the nature -- that kind of proposal has not been offered here in this particular merger. It's been a one-time CIF to kind of get away from these issues of debating and trying to figure out what those merger savings would be. But as you can imagine, in other proceedings it's different.

Q Okay. Finally, at the bottom of page 2, the sentence that carries over, you wrote, Most PUCs, however, have struck a middle ground and allowed utilities to recover the cost of the acquisition premium from the savings that result. Any excess savings are then passed on to customers. Do you see that?

A Yes, sir.

Q Dr. Dismukes, I have a few questions regarding your discussion of the merger standard to be applied in this case, and would ask you to turn to page 6 of your direct testimony. Tell me when you're there.

A I'm there.

Q Okay. At lines 15 and 16, you quote from the Commission's order number 11075 to the effect that a merger, quote, must produce a direct and traceable financial benefit to ratepayers.

And I believe, as you note in footnote 5, that quote comes from the Commission's decision in the 2002 PEPCO/Conectiv merger proceeding?

A Yes, sir.

Q What is your understanding of what it means for a benefit to be direct and traceable?

A My interpretation of that is comparable to what's used in rate-making in terms of a known and measurable benefit that can be quantified.

Q Now, if you look at page 7 of your direct testimony this time, and specifically line 19 --

and here you're referring to the Commission's order number 17530, and you refer to mergers producing, quote, a direct and tangible benefit to ratepayers.

Preliminarily -- that order was one that was issued earlier in this proceeding; is that correct?

A Yes, sir.

Q Is there a difference in your mind between a traceable benefit and a tangible benefit?

A No, sir.

Q Does the absence of the word "financial" mean that the Commission will consider non-financial benefits?

A I presume the Commission can consider non-financial benefits as well, yes.

Q If you now look at page 8 of your testimony, specifically lines 11 and 12, here you refer to direct and quantifiable ratepayer benefits. Do you see that?

A Yes, sir.

Q What does quantifiable mean in this context?
A Those that are measurable.
Q And the -- did the quantifiable standard come from a prior commission order or is that your interpretation of a prior commission order or what?
A Well, in this particular Q&A what I'm focusing on is the criteria by which both myself as well as some of the other witnesses have evaluated -- and the office of public (sic) counsel has evaluated this merger with a particular emphasis on those things that are known and measurable and direct and quantifiable that are tangible benefits that the Commission can recognize and see as positive outcomes of the proposed merger.
Q On page 9 of your direct testimony, now at lines 3 and 4, here you referred to clear net benefits. What did you have in mind there?
A In this instance, clear benefits that show that ratepayers will be better off as a

consequence of this merger occurring.

Q How do we determine whether they're net?

A Net of those costs, net of the costs associated with the proposed transaction.

Q Okay. And you believe that the Commission should balance overall benefits and harms and determine whether there's a net benefit?

A Yes, sir.

Q Beginning on page 10 -- and maybe this is what you alluded to before -- but page 10 of your direct testimony, you use the "phrase direct, quantifiable, traceable and tangible benefits." And that's on line 3.

Is that the standard that you ended up using in evaluating potential merger benefits?

A Yes, sir.

Q Would it be fair to say that you did not apply the direct, quantifiable, traceable and tangible standard when it came to evaluating potential merger harms and costs?

A I think many of those were difficult to actually quantify and I don't believe that the company had quantified those in its application. But just because they were non-quantifiable doesn't mean that they should be ignored or not be considered as a consequences of the merger.

Q Well, let's take a look at the bottom of page 26 of your direct testimony, if we could. The answer that begins on line 18, if you could just review that and tell me when you've had a chance to do so.

A Okay.

Q Here in the sentence that begins on line 19, you state, Ratepayers have no assurances to any of the longer-term merger-related efficiency benefits asserted by the joint applicants, and you discuss certain efficiency benefits that may or may not arise.

Then on line 23, you state, Compare this with the wide range of potential direct and indirect merger-related costs discussed earlier which, while also uncertain, will likely be larger than the limited number of potential merger benefits.

Do you see that?
A Yes, sir.
Q So for purposes of your analysis, merger costs need not be direct. They can be indirect. And they need not be quantifiable and traceable, but instead can be potential and uncertain. Is that a fair summary?
A Well, I think in this instance, they -- because they had not been quantified, they certainly should be considered here.
Q Very well.
A I can -- if you look at, at least, the direct and traceable benefits that were provided, they were relatively low, I think primarily associated with those that had been offered in the CIF as a direct, quantifiable benefit, and at that time, for the direct testimony, was somewhere around $52 a customer.
I think if you compare those, at least subjectively, with the wide range of costs and risks that have been outlined not only by myself but by a number of other witnesses for public

counsel that include some of the financial risk, some of the accounting and regulatory risk, some of the reliability-oriented risk, you need not come up with a specific number to show that, relative to $52 a customer, those are likely to be probably greater even if you could try to take a stab at quantifying them.

Q I understand that's your position.

Dr. Dismukes, on page 2 of your direct testimony on line 13, you note that you were retained by the OPC to serve as its main policy witness. Do you see that?

A Yes, sir.

Q And as I understand it, one of your duties -- and I believe you state as much -- was to introduce the OPC's other witnesses and to summarize their testimony and recommendations, correct?

A Yes, sir.

Q Presumably, in preparing your testimony, you first reviewed the testimony to be submitted by the OPC's other witnesses?

A Yes, sir.

Q Is there anything in that testimony of the other witnesses with which you disagree?

A No, sir.

Q If you could turn to page 11 of your testimony. Beginning at the answer that begins on line 9, you're somewhat critical of the joint applicants for not recommending a specific use of the CIF, but instead, in your words, punting that issue to the Commission. Do you see that?

A Yes, sir.

Q Is it your belief that the Commission is not equipped to make that decision on its own?

A No, sir.

Q And if we move over to page 30 of your direct testimony, here at lines 8 through 10 -- and this is a portion of your testimony in which you're summarizing certain recommendations; is that correct?

A Yes, sir.

Q At lines 8 through 10, you state, The District's CIF payment should be increased to a one-time payment/distribution that should be allocated to all customers over the 12 months following merger approval as a bill credit.

A Yes, sir.

Q Okay. When you wrote this last October, what did you mean when you said the CIF should be increased? Increased to what?

A I didn't have a specific number, just that $52 seemed like a low number in my opinion.

Q And when you said it should be allocated to all customers, what did you have in mind?

A As a credit on their bill.

Q Well, would every customer get the same amount or did you have something else in mind?

A I didn't have a specific allocation in mind. One that is equitably distributed across customer classes was my intent in making this recommendation.

Q So that's an issue that you prefer to punt to the Commission; is that correct?

A No, I think it would be one that would be consistent with the Commission's rate design policies in the past, rate-making practices in the past.

Q At page 11 of your supplemental direct testimony -- if you could turn to that.

MR. GRAY: There should be two binders.

THE WITNESS: Is it in the back of the second binder?

MR. GRAY: It's a yellow cover binder. There's volume 1 and volume 2. I believe you are in volume 1.

THE WITNESS: I didn't see the supplemental. I don't see it in here. It says direct only.

MR. GRAY: Could we go off the record for just one second?

CHAIRMAN KANE: Yes.

(Discussion held off the record.)

THE WITNESS: Okay. I have it, Mr. Gadsden. What page were you saying again? I'm sorry.

BY MR. GADSDEN:

Q I'm sorry. Page 11. Are with you me?

A Yes, sir.

Q Okay. Down at the bottom of the page, starting on line 20, you state, rate affordability is an important factor when determining if the level of the CIF is reasonable. A key consideration must be whether the proposal negatively impacts the ability for seniors, those on fixed income and other economically challenged customers to be able to afford this essential service.

Do you see that one?

A Yes, sir.

Q Do you believe that rate affordability should be taken into account in determining how the District's share of the CIF should be allocated to customers?

A I have not proposed that in my recommendation.

Q What is your recommendation as to the allocation of the CIF?

A It should be allocated on a basis that's comparable to the cost of service rate-making purposes. If the company or the Commission would like to address any other issues related to low-income households, that would be something that is supplemental to the primary CIF.

Q Would you oppose the allocation of some portion of the CIF to low-income customers?

A No, sir.

Q If I could ask you to go back to your direct testimony at page 31 -- this is still in the section of your direct where you're discussing various recommended conditions to merger approval. And I would draw your attention to the section which begins in the middle of -- subsection which begins in the middle of page 31 dealing with corporate governance.

A Yes, sir.

Q Your first recommendation reads, At least one-third and no fewer than two members of PEPCO's board of directors should be independent; is that correct?

A Yes, sir.

Q If you could find your cross-examination exhibit binder, I would ask you to turn to what we have preliminarily identified as Joint Applicants' Cross-Examination Exhibit 22, which consists of your response to our data request 3-11.

MR. GADSDEN: And, Your Honors, I would ask that that document be identified as Joint Applicants' Exhibit 10.

CHAIRMAN KANE: So identified.

(Joint Applicants Cross Exhibit Number 10 was marked for identification.)

MR. GADSDEN: Thank you, Your Honor.

BY MR. GADSDEN:

Q Do you have that one, Dr. Dismukes?

A Yes, sir.

Q In this data request we asked you whether the majority of PEPCO's board was independent today, and you responded that you did not know because that information was not readily available; is that correct?

A Yes, sir.

Q If you would now turn to what we've marked as Joint Applicants' Cross-Examination

Exhibit 23 --

MR. GADSDEN: -- which, Your Honors, I would ask be identified as Joint Applicants' Exhibit 11.

CHAIRMAN KANE: So marked.

(Joint Applicants Cross Exhibit Number 11 was marked for identification.)

BY MR. GADSDEN:

Q Dr. Dismukes, would you accept, subject to check, that this document is an excerpt from PEPCO's 2013 form 1 report filed with the Federal Energy Regulatory Commission?

A Yes, sir.

Q Okay. Have you had a chance to look at this?

A Yes, sir.

Q And if we turn to page 8 of that exhibit, which is the final page, I believe --

A Yes, sir.

Q -- can we agree that PEPCO's directors are listed there?

A Yes, sir.

Q And if we go back to page 6 of that same exhibit, can we agree that PEPCO's officers are listed there?

A Yes, sir.

Q And from this exhibit, can we agree that all of the directors listed on page 8, with the exception of Mr. Charles Dickerson, are identified as officers of PEPCO on page 6?

A Yes, sir.

Q And would you accept, subject to check, that Mr. Dickerson is an officer of PHI?

A Yes, sir.

Q Another recommendation that you offer on page 31 of your direct testimony at line 14 is that the majority of PHI's board should remain independent. Do you see that one?

A Yes, sir.

Q And could you now turn to what we have marked for identification as Joint Applicants' Cross-Examination Exhibit 24 --

MR. GADSDEN: -- which, Your Honor, I would ask be marked for the record as Joint

Applicants' Exhibit 12.

CHAIRMAN KANE: So marked.

(Joint Applicants Cross Exhibit Number 12 was marked for identification.)

BY MR. GADSDEN:

Q Dr. Dismukes, am I correct that this is your response to our data request number 3-12?

A Yes, sir.

Q Here we asked you if you were aware of any subsidiary of a holding company, the majority of whose board was independent; is that correct?

A Yes, sir.

Q And you answered that you were not aware of any of that type because that type of information is not generally publicly available; is that correct?

A Yes, sir.

Q And from our prior discussion of PEPCO's FERC form 1, am I correct that you did not review FERC form 1s filed by other utility holding companies?

A I did, and I didn't realize this was

limited to just utility holding companies. I thought it was just holding companies generally.

Q Okay. One last question in this area, Dr. Dismukes, and it's really in the nature of a request for clarification. At page 32 of your direct testimony, line 3, you state -- again, another corporate governance recommendation -- you state, PEPCO's and PHI's CEOs should reside in PEPCO's service territory, correct?

A Yes, sir.

Q And if we were to go to page 99 -- and I'm not asking you to do it except subject to check, or you can look if you'd like, but page 99 of your direct testimony you repeat the same language.

A Okay.

Q But at page 19 of your supplemental direct testimony, at lines 5 and 6 -- I'll read the whole sentence beginning at line 3: Certainly, showing a strong commitment to the District and maintaining a strong local presence would be served by supporting my recommendation that the majority of PEPCO's board, as well as its CEO, reside in the District.

I guess the question is, since PEPCO's service territory spans both the District and Maryland, are you insisting that the CEO reside in the District or is Maryland an acceptable alternative?

A I was recommending that the CEO be in the district because that's where the headquarters is located.

Q Okay.

A Or supposed to be located.

Q Well, it is located, isn't it?

A Right. It is.

Q And company has not indicated any plans to change the location of its headquarters, has it?

A No, it has not.

Q Move on to a new area, Dr. Dismukes. If I could ask you to turn to page 1 of 3 of your direct testimony.

A Yes, sir.

Q Here, and in the discussion that follows, you note that PEPCO's reliability performance has been an issue with the OPC in the past; is that correct?

A Yes, sir.

Q And if we page over to 106, at the bottom of the page, 106, line 17, you state, Moreover, in formal case 1103, the Commission reiterated its belief that PEPCO's reliability performance was continuing to improve.

Do you see that?

A Yes, sir.

Q I think you indicated previously that you testified in case 1103, did you not?

A Yes, sir.

Q Could you refer to what appears in your binder as Joint Applicants' Cross-Examination Exhibit Number 25 --

MR. GADSDEN: -- which I would ask be marked as Joint Applicants' Exhibit 13.

CHAIRMAN KANE: So marked.

(Joint Applicants Cross Exhibit Number 13 was marked for identification.)

MR. GADSDEN: Thank you, Your Honor.

THE WITNESS: Okay.

BY MR. GADSDEN:

Q Do you recognize this as OPC's response to PEPCO data request 1-4?

A Yes, sir.

Q And in this data request, we asked you to identify proceedings in which you had presented testimony in cases involving either PEPCO or its affiliates; is that correct?

A Yes, sir.

Q If you could take just a minute and confirm that what we have attached to the cover sheet of that data request are excerpts from three of the proceedings that you identify in the narrative description on the first page.

A Okay.

Q And those, I believe, you had identified in your data response as attachments 1-4A, 4B and 4F.

A Okay. I'll agree, subject to check, that

those match up those --
Q Okay. Could you --
A -- to file names.
Q -- turn to attachment 1-4B.
A These aren't marked that way. So if you could help me -- just tell me what page number of the exhibit, we will probably...
Q I believe that excerpt -- and this is an excerpt from your testimony in case 1103 before the D.C. Public Service Commission -- begins on page 28.
A Okay.
Q If you could turn to page 32 of the exhibit, or page 3 of the testimony at the bottom.
A Yes, sir.
Q And we can confirm that at line 13, running down to line 15, you state -- you testified in that proceeding, While PEPCO's reliability-related performance over the past year has improved substantially from prior levels, the company continues to perform poorly relative to other utilities.

Do you see that?
A Yes, sir.
Q If I could ask you to turn to attachment 1-4F of that response, which I believe begins on page 42.
A Okay.
Q And if we turn to page 61 of Cross-Examination Exhibit 25, which is the final page of the excerpt -- well, let me back up.
Do you recognize this as testimony that you presented before the Maryland Public Service Commission in case number 9286?
A Yes, sir.
Q Okay. If we move to page 18, the final page.
A Yes, sir.
Q You testified in that case, did you not, that PEPCO's past reliability measures -- and here I'm reading from line 20 -- raise serious questions about its ability to perform in the future. And then again at line 23, you stated, The company's past capital budgeting performance

suggests that it has a consistently difficult time accurately forecasting its overall and reliability-related investment needs.

Do you see that?

A Yes, sir.

Q Dr. Dismukes, if you could turn to page 58 of your direct testimony and tell me when you're there.

A I'm there.

Q Okay. Here, in an answer that starts on line 5 of page 58 --

A Yes, sir.

Q -- you discuss what you characterize as a meta-study, M-E-T-A, study --

A Yes, sir.

Q -- performed by Lawrence Berkeley labs?

A Yes, sir.

Q And it was, in part, on the results of this study that Dr. Tierney relied in her calculations; is that correct?

A That's correct. The calculator that she used to estimate the reliability benefits based off the results included in that Lawrence Berkeley lab study in part.

Q I don't know whether you still have our Cross-Examination Exhibit 25, which was the one that had excerpts from your prior testimony attached to it.

A Yes, sir.

Q I think that was marked for the record as Joint Applicants' Exhibit 13. Would you refer to attachment 1-4A, which begins at page 3 of that exhibit, and confirm that that is an excerpt from testimony that you presented before the Delaware Public Service Commission in docket number 13-115?

A Yes, sir.

Q I forgot to make a note here, Dr. Dismukes, so it may take me a minute.

MR. GADSDEN: If I could have a minute, Your Honor.

My apologies, Your Honor.

BY MR. GADSDEN:

Q Okay. I found it.

A Okay.

Q Sorry about that.
Let me direct you to page 16 of your Delaware testimony. Here in the answer that begins on line 3, you discuss the company's position regarding measurement of reliability investment cost-effectiveness; is that correct?
A Are we on page 16?
Q Page 12.
A Page 12. Oh. No wonder I can't find that. Okay.
Q That's my trick question.
A There you go. All right. I'm there, yes.
Q Page 12?
A Uh-huh.
Q Now, you refer in the answer that begins on line 3 to a 2008 Department of Energy meta-study. Is this the same meta-study that you talk about in your direct testimony in this case?
A Yes, sir.
Q And can we agree that you conclude that answer at lines 14 and 15 by stating, It is not

clear why a similar methodology could not be applied to the company's proposed reliability programs in Delaware?

Is that correct?

A Yes, sir.

Q Dr. Dismukes, on page 20 of your direct testimony in this case, you list in bullet form a number of costs that you claim will outweigh the benefits of the merger.

A Yes, sir.

Q The last item that you list reads as follows: Corporate positions on renewable energy that are philosophically different from those established by the Commission.

Do you see that?

A Yes, sir.

Q By "the Commission," am I correct that you're referring to this Commission, the District of Columbia Public Service Commission?

A Yes, sir.

Q Could you open your binder to what we have preliminarily marked for identification as

Cross-Examination Exhibit Number 26 --

MR. GADSDEN: -- which I would ask be marked for the record as Joint Applicants' Exhibit 14.

CHAIRMAN KANE: So marked.

(Joint Applicants Cross Exhibit Number 14 was marked for identification.)

BY MR. GADSDEN:

Q If you're there, Dr. Dismukes, can you confirm -- or do you recognize this document as your response to PEPCO data request 1-8?

A Yes, sir.

Q And in this data request we asked you to describe in detail the Commission's philosophy on renewables, and you responded by directing us to the testimony and exhibits sponsored by OPC witness Morgan; is that correct?

A Yes, sir.

Q Did you review Mr. Morgan's testimony before you prepared your own?

A Yes, sir.

Q And did you look at it before drafting this response?

A Yes, I did.

Q Can we agree -- or would you accept, subject to check, that nowhere in his direct testimony does Mr. Morgan discuss the Commission's philosophy on renewables or specific positions that it may have established with respect to renewables?

A That's not my understanding.

Q What is your understanding?

A It was my understanding that he was critical about those positions with regards to positions that Exelon had taken in other jurisdictions.

Q We're not talking about Exelon's positions at this point. We're talking about the Commission's philosophy with regard to renewables and positions that it has established with respect to renewables.

A Oh. And you're asking me, did he outline each of those philosophies?

Q Did he outline any of them?

A I don't recall that he did.
Q Now, on page 24 at lines 17 and 18, you ask yourself to explain some of the problems OPC has with Exelon's corporate philosophy regarding renewables. Do you see that?
A Yes, sir.
Q If you could refer to what has been preliminarily marked in your binder as Joint Applicants' Cross-Examination Exhibit 27 --
MR. GADSDEN: -- which, Your Honors, I would ask be identified as Joint Applicants' Exhibit 15.
CHAIRMAN KANE: So marked.
(Joint Applicants Cross Exhibit Number 15 was marked for identification.)
MR. GADSDEN: Thank you, Your Honor.
BY MR. GADSDEN:
Q Dr. Dismukes, do you recognize this document as your response to PEPCO data request 1-9?
A Yes, sir.
Q In this data request, we asked you to

describe the Exelon corporate philosophy on renewables that you referred to in this portion of your testimony, and again, you responded by directing us -- well, in this case, you responded by directing us to your response to data request 1-8 which, as we just established, you referred us to Mr. Morgan's testimony; is that correct?

A Yes, sir.

Q Now, what aspects of Mr. Morgan's testimony did you have in mind here?

A "Here" being where?

Q "Here" being in your direct testimony when you're talking about problems that OPC has with Exelon's corporate philosophy.

A Can you reask that question? I got lost on that. I'm sorry.

Q All right. Let's start again. Page 24 of your direct testimony, the question at lines 17 and 18 reads, Can you explain some of the problems OPC has with Exelon's corporate philosophy regarding renewables?

Are you with me so far?
A Yes, sir.
Q Okay. We asked you to flesh that out in the answer that followed. And you referred us to your previous response to data request 1-8 which, in turn, referred us to Mr. Morgan's testimony.
A Correct.
Q And my question is what aspects of -- what specific problems did you have in mind that presumably we can find if we go to Dr. -- Mr. Morgan's testimony?
A I think, as a general matter, Mr. Morgan expressed concerns about the relatively aggressive opposition that the company had had -- that Exelon had had with regards to the renewals of the production tax credits.
Q Oh. Is it your understanding that Mr. Morgan supported an extension of the production tax credit for wind?
A I don't recall.
Q Did you have occasion to review Mr. Morgan's cross-examination on this issue?

A I saw some of it, yes.
Q Would you accept, subject to check, that Mr. Morgan indicated when he was questioned on this issue that he did not have a specific position on the extension of the PTC and that, in fact, he found merit in arguments for ending the PTC?
A Yes, sir.
Q And in fact, Dr. Dismukes, in the past, you too have opposed extension of the wind production tax credit, have you not?
A Yes, sir.
Q And if we look at the attachments to Joint Applicants' Exhibit 15, we will find two articles that you authored on that subject; is that correct?
A Yes, sir.
Q And do those two attachments appear to be complete and accurate copies of the articles that you authored on the subject of the wind production tax credit?
A Yes, sir.

MR. GADSDEN: Your Honor, if we could just take one moment here. We had a little mishap with respect to our last cross-examination exhibit. This will be the last one that we move. It is in the binder as Cross-Examination Exhibit 28. It is a very large, multi-page Excel spreadsheet. I apologize for its size, but we'll represent to you that it was provided to us by Dr. Dismukes electronically, that when we went to print it out, it was 12 pages of largely indecipherable stuff. So we have chosen to give you a larger version.

CHAIRMAN KANE: Something we can read.

MR. GADSDEN: Something you can read.

The mishap is that the versions that were placed in your binder do not have the question that was asked and the narrative response that was provided that introduced this as an attachment. And Ms. Travers now has those. And I don't know what the procedure is for amending it, but I'm sure you'll tell me.

CHAIRMAN KANE: Thank you. The procedure

is to give them to the Commission secretary who will see that they're properly marked and added and distributed, as well as to the witness.

MR. GADSDEN: And my apologies to you, Dr. Dismukes, for not including that earlier.

CHAIRMAN KANE: Again, for the record, this is the two-page -- two pages that precede the attachment, the spreadsheet attachment.

MR. GADSDEN: Correct.

CHAIRMAN KANE: That should be included with that as one exhibit.

MR. GADSDEN: Correct.

BY MR. GADSDEN:

Q Tell me when you've had a chance to review that, Dr. Dismukes.

A I have.

Q So let's go back to page 10 of your direct testimony, if we could. I believe you alluded to this earlier in discussing why you believe that the original proposed CIF was inadequate.

And you stated in the sentence beginning at line 15, In addition, it is important to recognize that this 100 million seed money represents a very small contribution relative to other merger-related statistics, general to the industry and even specific to the merging companies.

Do you see that?

A Yes, sir.

MR. GADSDEN: Your Honor, if I could have marked for identification as Joint Applicants' Cross-Examination Exhibit 28 and -- marked for the record as Joint Applicants' Exhibit 16 the late-arriving two-page narrative answer that Dr. Dismukes provided as well as a five-page Excel spreadsheet attachment.

CHAIRMAN KANE: Yes, that will be marked.

(Joint Applicants Cross Exhibit Number 16 was marked for identification.)

BY MR. GADSDEN:

Q And in this data request, Dr. Dismukes, we referenced your testimony at page 10, lines 15 through 18, the sentence that I just read and basically asked you to support it. And you provided us with a considerable amount of material, not all of which has been attached, because I believe the actual -- all of the attachments together would have totalled somewhere in excess of 300 pages. I believe there were a lot of EIA reports and things of that nature.

But I believe that the attachment which we did provide will be sufficient for purposes of my question, and if you feel otherwise, please feel free to say so.

A Okay.

Q In your response, you indicate that you've not conducted a comprehensive analysis of all mergers. And here I'm reading from subpart A of your response. But you go on to note that you're aware of what transpired in the Exelon/Constellation merger proceedings several years ago, and you point to four specific transactions, presumably for illustrative purposes. Is that a fair characterization?

A Yes, sir.

Q This could be a bit difficult, but if you could look at the Excel spreadsheet.
A Okay.
Q In your narrative response -- and again, we're not going to go through all four of these; I just want to get a sense of how this information was pulled together. The first transaction you refer to is Macquarie Consortium/Puget Energy, and you identify a figure of $95. Can you tell me what the $95 represents? Is that a per customer savings figure of some form?
A Yes, sir.
Q If we look at the spreadsheet and we go down about halfway, specifically to -- I think it's the 14th transaction, announcement date, far left-hand column of 10/26/07, year 2007, going across, we see Macquarie Consortium and Puget Energy; is that correct?
A Yes, sir.
Q And if we turn to the second page -- and here's where it gets even more difficult unless you count down 14, but if you go to the column E&G

and go down about halfway down the page, we see the $95 figure; is that correct?

A Yes, sir.

Q And am I correct that -- well, first of all, let me ask this: Did you perform all these calculations yourself?

A Yes. These were put together from various sources of information that we either compiled or had from prior work in examining the issue. And some of the sources vary from general public reports to, I think, some EIA information to other sources of information.

Q Okay.

A I think there was some S&L information that was included in here, et cetera.

Q If we go back to page 1, would I be correct -- or would you accept, subject to check, that the $95 per customer figure was derived -- and now we're on the far right-hand side of this matrix -- dividing the figure of $100 million under the estimated savings column by the target electric customers in the far right-hand column of

1,048,402? If we do that arithmetic, we get $95 per customer. Would you accept that, subject to check?

A Yes, sir.

Q As far as the estimated savings figure of $100 million, do you know whether that figure included anticipated generation-related savings?

A I don't recall.

Q Do you know whether it's net of cost to achieve?

A I don't recall.

Q Do you know over what period of time those savings were estimated to materialize?

A I don't recall. They should have been in those voluminous documents that you referenced earlier.

Q Do you know what the Washington Utilities and Transportation Commission did with this information?

A No, sir.

Q Am I correct that -- now turn over to page 2 -- that in addition to having 1,048,000 electric customers, Puget is also identified as having close to 722,000 gas customers?

A Yes, sir.

Q But I gather the gas customers were not taken into account and calculated in the $95 per customer figure, were they?

A I don't recall.

Q If you could turn back to the first page, this would be the fourth column from the right, captioned, Premium offer. Do you see that?

A Yes, sir.

Q Could you tell us what those figures represent?

A I believe that is the percent increase relative to the average share price five days before the transaction.

Q Okay. So in the case of the Macquarie transaction we were just looking at, the acquisition premium was a little over 26 percent?

A Yes, sir.

Q And for the 2002 -- 2001 PEPCO/Conectiv transaction, which appears at the bottom of that page, indicated premium is about 33 percent?

A Yes, sir.

Q And we'll take one more, maybe about the tenth item down, the 2010 acquisition of Allegheny Energy by FirstEnergy, that would be a premium of about 35 percent?

A Yes, sir.

Q Okay.

MR. GADSDEN: Your Honor, I believe that's all I have.

CHAIRMAN KANE: Thank you.

Ms. Francis?

MS. FRANCIS: No questions, Your Honor.

CHAIRMAN KANE: Mr. Coyle?

MR. COYLE: No questions, Your Honor.

CHAIRMAN KANE: DC SUN?

MS. SPENCER: We have no questions, Your Honor.

CHAIRMAN KANE: D.C. WASA?

MS. WHITE: No questions.

MS. ELEFANT: No questions.

CHAIRMAN KANE: The Commission has some

questions.

COMMISSIONER FORT: I just have a few, and it goes to your testimony on corporate governance.

THE WITNESS: Yes, ma'am.

COMMISSIONER FORT: Could you turn to page 95, lines 11 through 16. You're talking a bit about the fact that the PHI corporate governance guidelines are different, just kind of generally --

THE WITNESS: Yes, ma'am.

COMMISSIONER FORT: -- in that section. Can you give me an idea or describe with some more specificity what makes PHI's governance principles different from the Exelon utility companies as you understand it? I know you identify a difference in how they define how many independent members are on the board.

THE WITNESS: Right.

COMMISSIONER FORT: What else is causing you some concerns.

THE WITNESS: I don't recall. I think

the general point I was making there is that there were differences that had not been reconciled as part of the application that I felt needed to be reconciled as part of that, and unfortunately I don't remember them at this point right now.

COMMISSIONER FORT: When you say reconciled, how would that be reconciled? Is that not an issue that would occur during a transition period?

THE WITNESS: Yes, ma'am.

COMMISSIONER FORT: One of the items that you cite is that the PHI corporate governance guidelines -- in those guidelines there are requirements that the board members have significant credentials in a variety of areas. Do you have any reason to believe that the Exelon board members don't have similar experience or credentials?

THE WITNESS: No, ma'am.

COMMISSIONER FORT: And then on page 100, you make three recommendations on lines 7 through 9, and one of the recommendations says that the joint applicants should not relocate PEPCO's employees from the District of Columbia to Exelon's headquarters without notifying the Commission.

Can you tell me why you made that recommendation?

THE WITNESS: Just so the Commission would be notified in terms of the changing composition and concentration of work being done here in the District relative to the headquarters of Exelon and how that was changing over time as the transition period evolved.

COMMISSIONER FORT: As you understand it, is there currently any requirement for PHI to notify us if they sent somebody from their PHI office up to New Jersey?

THE WITNESS: No, ma'am.

COMMISSIONER FORT: And just so I understand, you think this is something we should adopt just so we know where people are? Would this occur at some particular level within the company?

THE WITNESS: I would at least argue maybe collectively for all the trades in other locations and then, as well, generally splitting it out by major areas for management employees that are shifting. And again, it's to give the Commission an idea of how -- a way of following up and holding accountable the company's claims about maintaining, you know, a viable presence here in the District with regards to its operations.

COMMISSIONER FORT: Okay. Thank you.

THE WITNESS: Yes, ma'am.

CHAIRMAN KANE: Thank you. I've got a couple of questions. Look at page 40 of your direct testimony, OPC (A), on line 8 and 9 so we set the context of the question. You note that one of the merger (sic) applicants' commitments is, quote -- it's item number 9 here -- continuation of existing demand response and energy efficiency programs.

Do you see that?

THE WITNESS: Yes, ma'am.

CHAIRMAN KANE: And then on page 25 of

your direct testimony, you make a reference to Commissioner Morgan's testimony starting at the top of that page on line -- former Commissioner Morgan's testimony, OPC witness Morgan's testimony, where you say, Mr. Morgan also notes there is little -- likely little to nothing Exelon can bring to the table on energy efficiency in the District and for PEPCO's ratepayers since the District's Clean and Affordable Energy Act, the CAEA, statute precludes direct utility involvement in energy efficiency program delivery.

Do you see that?

THE WITNESS: Yes, ma'am.

CHAIRMAN KANE: Okay. Are you familiar with the Clean and Affordable Energy Act?

THE WITNESS: No, ma'am.

CHAIRMAN KANE: So you're just referencing the fact that Mr. Morgan said this?

THE WITNESS: Yes, ma'am.

CHAIRMAN KANE: Okay. So you would not be able to tell me whether or not you know or could point to anything in that act that precludes the company from directly being involved in delivering energy efficiency programs?

THE WITNESS: No, ma'am.

CHAIRMAN KANE: So you are not -- are you familiar with the direct load control program that this Commission had ordered the company to carry out?

THE WITNESS: No, ma'am I'm not familiar with that.

CHAIRMAN KANE: So you're not aware that that is an energy efficiency program?

THE WITNESS: (Shaking head.)

CHAIRMAN KANE: All right. Then I won't ask any more questions about that since you're not familiar with it, because I was going to also ask if you knew about the sustainable energy utility.

THE WITNESS: No, ma'am, I'm not familiar with that.

CHAIRMAN KANE: Not at all, okay.

Let me then go on to another question which is about the use of the customer investment fund. I believe you said a few minutes ago, in response to company counsel's question, that you would recommend -- is it you or is it OPC -- would recommend the Commission, if it chose to do a bill credit -- if there were a merger, if there were a customer investment fund, and if the Commission chose to do a bill credit as a part of the use of that fund, that you would do it in the same way that cost of service allocation is done about customer classes?

THE WITNESS: Yes, ma'am, generally speaking.

CHAIRMAN KANE: Generally speaking. And I'm going to speak generally --

THE WITNESS: Okay.

CHAIRMAN KANE: -- because sometimes customer cost allocation is a litigious issue.

But are you aware that the residential customer class in the District in general is generally allocated in rate design the way the Commission does it anywhere from 15 to 25 percent at maximum of the cost of service or the revenue requirement in general?

THE WITNESS: In general, yes, ma'am, I am familiar with --

CHAIRMAN KANE: You are aware of that. So by making a recommendation to the Commission that if there were a merger and if there were a fund and if a bill credit were one of the things the Commission were to consider as part of the use of that fund, you would be aware that, for a residential customer, we would not be talking about anywhere near 50 or 95 or $128 per customer based on the way the Commission allocates cost and revenue among classes of customers.

THE WITNESS: Yes, ma'am.

CHAIRMAN KANE: Okay. Thank you. And then I want to ask you on page 19 of your direct testimony, starting at the bottom, if you'd turn to that page. Looking at -- starting on page --

THE WITNESS: Commissioner, let me back up just a second --

CHAIRMAN KANE: Sure.

THE WITNESS: I just want to make clear -- because I want to make sure that I'm speaking on the same terms that you are. When I make that general reference to cost of service, I would be suggesting that it be done on a revenue share responsibility based on the final revenue distribution that you've decided on in a rate case, not necessarily the true, you know, cost of service in terms of the earned rates of return from that cost of service. So I think that may be what you were getting at, as opposed to what the final decision was, say, for the company in the last rate case.

CHAIRMAN KANE: Well, I wasn't --

THE WITNESS: I was being less than general than you --

CHAIRMAN KANE: -- truly making -- I just wanted to have on the record an awareness that we do have a -- whether it's revenue or whether it's cost --

THE WITNESS: Yes, ma'am.

CHAIRMAN KANE: -- and they are not the same thing in any particular case, that the customer -- the residential customer class is a relatively small proportion of the overall.

THE WITNESS: Yes, ma'am.

CHAIRMAN KANE: Okay. Thank you.

Then turning to starting on line 18 on page 19, the question to you is, earlier you noted that the costs will outweigh the benefits associated with the proposed merger. And then you're asked, what are the costs? And you have, going over on to page 20, a list of costs: Sub-quality reliability performance, higher financial risk given the higher risk nature of Exelon's current business model, a reduction and, thereby, weakening of District-specific input into PEPCO's corporate governance, more difficult and costly commission regulation and oversight, local District employment losses and corporate positions on renewable energy that are philosophically different. You were asked about that.

These risks -- or these costs that you're citing here, would you characterize those as known and measurable?

THE WITNESS: No, ma'am. Not

necessarily.

CHAIRMAN KANE: And would you characterize them as potential?

THE WITNESS: I would characterize them as potential, yes, ma'am.

CHAIRMAN KANE: And would you characterize them as things that could happen in the future and that might persist for some time?

THE WITNESS: Yes, ma'am.

CHAIRMAN KANE: And that may affect future customers?

THE WITNESS: Yes, ma'am.

CHAIRMAN KANE: So again, I want to be clear on what -- because you're the policy witness for OPC. Something like a bill credit, however structured, is a one-time -- would you agree is a one-time payment to a particular definitive group of customers who exist at a certain time?

THE WITNESS: Yes, ma'am.

CHAIRMAN KANE: And -- whereas the risks and costs that you're citing are potential -- are future, could affect future customers over a significant amount of time?

THE WITNESS: Yes, ma'am. And I had a discussion, I think, to that effect that was in my supplemental testimony.

CHAIRMAN KANE: Thank you.

THE WITNESS: Yes, ma'am.

CHAIRMAN KANE: I think that concludes questions.

MR. GRAY: Just very little redirect.

REDIRECT EXAMINATION

BY MR. GRAY:

Q Dr. Dismukes, do you have in front of you Joint Applicants' Cross-Examination Exhibit Number 27 which was marked as Joint Applicants' Number 15?

A Yes.

Q Do you see at the bottom of the first page of that response there's a reference to your two articles on elimination of the federal production tax credit. Do you recall questions about that?

A Yes, sir.

Q Can you please explain, what is the difference, if there is a difference, between your opposition to the production tax credit and your understanding of Exelon's opposition to the production tax credit?

A Well, you know, my argument generally has been one of -- and it's been outlined in both of these papers -- that there are multiple policy issues related to these -- this particular tax incentive and how it impacts both taxpayers and ratepayers generally. It's my understanding that Exelon, however, on the other hand, has been pursuing these, looking at what they mean relative to their financial interest and their bottom line, particularly relative to their merchant fleet of nuclear generation.

Q Okay. Thank you. Do you recall a question by counsel about page 58 of your direct testimony? It was a reference to the Lawrence Berkeley lab meta-study.

A Yes, sir.

Q Can you please explain your position --

let me back up.

I believe the question was about your prior testimony in Delaware regarding the meta-study. Do you recall that?

A Yes, sir.

Q Can you please explain your position, with that prior testimony in mind, as to why the Commission should proceed with caution in using that type of study here?

A Right. So in these testimonies that counsel referenced in Maryland and in Delaware in particular, the issue at that time were some relatively aggressive proposals as well as some new rate-making mechanisms that had been requested by the company for reliability capital expenditures in both of those jurisdictions for a variety of programs that the Commission is familiar with that are similar to some of the ones that have been discussed here in the District.

As part of that process, I was somewhat critical of the company's applications in both jurisdictions, because no cost benefit studies had been provided during that time period and no attempts had been made at trying to even quantify benefits that may arise to get even an order of magnitude of what those benefits may be relative to the reliability investments that were being discussed at that time.

And I have -- also in both of those testimonies -- I think somewhere else in that Maryland testimony I noted, with the Commission, that there are potential estimates of benefits, which are through this ICE calculator that Dr. Tierney has used that the company has provided in these proceeding. But in those proceedings I also noted that while it gives you a good ballpark idea of benefits, there are certain challenges associated with those measurements, and they've been recognized here in the Mid-Atlantic region, in Maryland, I think in the District as well.

A meta-study is essentially a study of studies. It's a compilation or a survey of studies and study results that had been conducted by researchers about what the value of outages are. And so that calculator is derived from essentially an average or a compilation of these study results to compute what a dollar benefit would be for various different customer classes. And so it's as good as the underlying survey upon which it's based. And so that accuracy of it is based on essentially the underlying studies in the surveys.

It's not a specific study itself that quantifies these benefits, but one that goes out and pulls them from other places.

And so if you're looking at an analysis -- or that survey is highly proportioned to, say, studies that were done in California as opposed to the Mid-Atlantic region or those that were done in the south as opposed to, say, New England, or the geographic composition varied, it's going to have an implication associated with that calculator.

Another thing to keep in mind in that discussion that I had in those analyses versus what Dr. Tierney has done is that the mechanics of those two things differ a little bit. In those testimonies, which were in '11, '12 and in '13 time frame, some of the numbers that we were looking at at that time came directly from the physical hard copy of the study itself. It had been compiled in spreadsheets. And I think PEPCO had actually used one at one time early on in its cost benefit study of the undergrounding program.

That ICE calculator that we have today that is in the DOE web page is something that has now become more of a black box. You enter a number, and it calculates those benefits from (sic) you. And it changes based on how they change that calculator.

And one of the things that I've noticed with that calculator is if you try to go in and replicate numbers today that were submitted in the record in this proceeding as recently as a couple of weeks ago, that calculator changes.

So there's as much as a 10 percent difference in running some of these numbers when you look at those statistics. So it's a bit of a black box.

What I was looking at here was relatively to the physical hard copy numbers that come from the tables in the study, which has its own set of challenges. And now we've got this, you know, additional program that's out there as well that is a moving target.

So when it comes to looking at a big issue for policy-making purposes, such as the merger, I would -- you know, I would recommend some caution in what those benefit numbers may be, and looking at them relative to cost and benefits for the overall merger.

Q Thank you. Now, do you have in front of you Joint Applicants' Cross-Examination Exhibit 25 which was marked for the record as Joint Applicants' 13? This is the excerpt of your testimonies from Delaware, the District and Maryland.

A Yes, sir.

Q Could you please turn to page 28 of that exhibit.

A Okay.
Q I believe this is the excerpt from formal case 1103 here in the District; is that right?
A Yes, sir.
Q Could you please read the date at the bottom of that page?
A August 9th, 2013.
Q Thank you. Now, could you please turn to page 42 of that same exhibit.
A Okay.
Q This is your testimony from Maryland in case 9286. Could you read the date at the bottom of that page?
A Yes. It's March 23rd, 2012.
Q With regard to both of these sets of testimony, what was the last calendar year of actual reliability performance that you had available?
A I don't recall exactly, but it probably would have been a year prior to whenever that number -- the date of that testimony at least, and some of the spring numbers may have been earlier

than that. I -- I believe at least it would have been at least the prior year. So for '12 it would have been through '11, and for '13 it would have been through '12.

Q Do you know when this Commission established the EQSS?

A I don't recall the specific date. I think in the 2010 time frame. I don't recall exactly.

Q Do you have an understanding in relative terms of how PEPCO's 2014 actual reliability performance fared as compared to the historical levels you discuss in this prior testimony?

A They've improved significantly. I don't recall the specific numbers breakout between SAIDI and SAIFI, but I think with SAIDI, I think the company has had, if I'm not mistaken, something like a 20 percent improvement every year for the last two years at least.

Q Thank you.

MR. GRAY: That's all the questions I have.

MR. GADSDEN: Am I not allowed to cross-examine him on his redirect?

CHAIRMAN KANE: No.

MR. GADSDEN: No? Thank you.

CHAIRMAN KANE: That was part of the procedure we agreed to --

MR. GADSDEN: Very well.

CHAIRMAN KANE: -- hoping to kind of consolidate and streamline it a little bit.

I did -- having just said that, I do have one follow-up question. I just want to be sure. You speak of outweighing -- risks outweighing benefits, costs outweighing benefits, or vice versa, that benefits should outweigh the costs. And I just want to be clear. Are you talking about dollar costs or is another consideration that OPC is recommending to the Commission the persistence of -- or the sustainability of either a benefit or a risk?

THE WITNESS: That could be part of the overall issue as well because, as you -- our discussion was earlier, some of these risks could last on some time period, whereas the CIF is a one-time payment.

CHAIRMAN KANE: Well, I wasn't speaking specifically about CIF, but just in general --

THE WITNESS: I think --

CHAIRMAN KANE: -- when does one outweighs -- when you do the balance, could time -- is a legitimate consideration, in OPC's view, the time persistence of either the benefit or the risk?

THE WITNESS: I would say with the risk and the cost, yes. With the benefits, the only real benefit I see is the one-time benefit with the CIF. You know, potentially, some of the efficiency benefits that you go through time, but I mean, that's supposed to have some relationship with the CIF as well. Right?

So -- the caveat I would have on that would be with the energy efficiency, if you decided to put it in something a little bit longer on the benefits side.

CHAIRMAN KANE: Thank you. All right.

The witness may be excused, and we'll do our -- you will do your exhibits.

MR. GRAY: Your Honor, at this time, I would move for admission of Exhibits OPC (A), OPC(A)-1 to OPC (A)-45, OPC (2A) and OPC (2A)-1 to OPC (2A)-5.

CHAIRMAN KANE: They are admitted.

(OPC Exhibit Numbers (A), (A)-1 through (A)-45, (2A) and (2A)-1 through (2A)-5 were received into evidence.)

MR. GADSDEN: Your Honor, I would move Joint Applicants' Exhibits 9 through 16.

CHAIRMAN KANE: And they are admitted.

(Joint Applicants Cross Exhibit Numbers 9 through 16 were received into evidence.)

MR. GADSDEN: Thank you.

CHAIRMAN KANE: Very good. The witness is excused.

THE WITNESS: Thank you.

(Witness excused.)

CHAIRMAN KANE: And back to Witness Ramas.

WHEREUPON,

DONNA RAMAS,

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

MR. SEARS: Good afternoon, Commissioners. My name is Arick Sears on behalf of the Office of the People's Counsel.

DIRECT EXAMINATION

BY MR. SEARS:

Q Ms. Ramas, can you please state your name and business address for the record.

A Donna Marie Ramas. 4654 Driftwood Drive, Commerce Township, Michigan.

Q And do you have before you today your direct testimony, Exhibit OPC (C), consists of 36 pages, and Exhibits OPC (C)-1 through OPC (C)-17 which were prefiled on your behalf in this proceeding on November 3rd, 2014?

A Yes, I do.

Q Do you also have your supplemental direct testimony, Exhibit OPC (2C), consisting of 11 pages, and two supporting exhibits which was prefiled on your behalf in this proceeding on March 20th, 2015?

A I believe so. Just a moment.

Yes, I do.

Q And was this testimony and were these exhibits prepared by you or under your direct supervision and control?

A Yes, they were.

Q And do you have any additions or corrections to make to your testimony at this time?

A No, I do not.

Q And is this testimony and are these Exhibit true and correct to the best of your knowledge?

A Yes.

MR. SEARS: At this time, I ask that Witness Ramas' direct testimony be marked for identification as Exhibit OPC (C) and the supporting exhibits as Exhibit OPC (C)-1 through (C)-17.

CHAIRMAN KANE: They are so marked.

(OPC Exhibit Numbers (C) and (C)-1 through (C)-17 were marked for identification.)

MR. SEARS: In addition, I ask that Witness Ramas' supplemental direct testimony be marked for identification as Exhibit OPC (2C), and the supporting exhibits as Exhibits OPC (2C)-1 and (2C)-2.

CHAIRMAN KANE: They are so marked.

(OPC Exhibit Numbers (2C), (2C)-1 and (2C)-2 were marked for identification.)

MR. SEARS: With that, Witness Ramas is available for cross-examination.

CHAIRMAN KANE: Mr. Lorenzo?

MR. LORENZO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. LORENZO:

Q Good afternoon, Ms. Ramas.
A Good afternoon.
Q We've met here before, haven't we?
A Several times.
Q It's good to see you again.

A You too.
Q I want to talk a little bit about cost to achieve, and I want you to turn to page 15 of your direct testimony, OPC Exhibit (C). And why don't you look at -- around line 19 through 20. And you make the statement that, The costs to achieve exceed the projected savings target during the pre-close period and for the first full year post-merger.
Do you see that?
A Yes, I do.
Q And on the next page, on page 16, lines 13 through 18, you make the statement that if PEPCO were to file a rate case application post-merger that incorporated a test period that falls prior to the net cost savings becoming positive, the cost to achieve incorporated in such a filing could potentially exceed cost savings; is that correct?
A Correct.
Q And then on page 17, line 7 through 9, you say, The Commission should make it clear that

PEPCO will not be permitted to include any costs to achieve in rates charged to the District of Columbia ratepayers that exceed the demonstrated cost savings in rates.

Do you see that?

A Yes, I do.

Q And I believe that you repeat this criticism in your supplemental direct testimony around page 3, 18 through -- lines 18 through 22?

A I do recall saying that. I can confirm the page number if you'd like. Yes, I did also iterate that, because it was a concern that was not addressed in the supplemental testimony filed by the joint applicants.

Q Okay. That's where we're going.

And you also claim that you have -- that -- on page 11 in your supplemental direct -- yes, at lines 1 through 13 -- I'll just summarize this at 9 and 10 -- you criticize the joint applicants again, not addressing your proposal, saying that the joint applicants were free to identify alternative solutions and they did not.

Do you see that?

A I'm sorry. Which page were you on?

Q I am on page 11 of your supplemental direct. I'm looking at lines 9 and 10, but it's really the entire paragraph 1 through 13.

A Yes, that goes to that issue as well as other issues raised in my testimony.

Q That's right. Are you aware that D.C. Water Witness Gorman suggested, as an alternative solution to the problem of cost to achieve exceeding merger synergy savings, that those costs to achieve be amortized over a period of ten years?

A I recall him recommending amortization, but I haven't read his testimony recently, so I don't recall the period. But I could agree, subject to check.

Q Okay. Rather than pull his testimony out.

And Mr. Gorman describes a ten-year amortization of these costs as more equitable because of intergenerational equity concerns.

Would you agree with that? Would you agree that an amortization of costs to achieve would result in a more equitable distribution of the cost to achieve because of intergenerational equity concerns?

MS. WHITE: Excuse me, Your Honor. I had a question. I am not sure that Mr. Lorenzo is --

MR. LORENZO: That's why I --

MS. WHITE: The intergenerational equity issue.

MR. LORENZO: I apologize for that.

MS. WHITE: I think it's shareholders, customers -- thank you, Your Honor.

MR. LORENZO: I'm sorry. I apologize for that.

BY MR. LORENZO:

Q Let me strike the previous question and ask, would you agree that amortizing the cost to achieve over ten years or over some period of time would be more equitable because of intergenerational equity concerns?

A It would depend on what is included in those costs to achieve.

MS. WHITE: I'm sorry, Madam Chairman.

CHAIRMAN KANE: Yes, Ms. White.

MS. WHITE: My objection on the characterization of Mr. Gorman is being -- concerned with intergenerational equity. That -- I think that's not an appropriate characterization of his testimony. I believe he was expressing concern about the allocation of benefits and risks between shareholders and customers.

MR. LORENZO: I apologize, Your Honor.

CHAIRMAN KANE: Again.

MR. LORENZO: Again. I was trying to get away from Mr. Gorman's testimony and just ask a question outright as a hypothetical to Ms. Ramas.

CHAIRMAN KANE: Without reference to Mr. Gorman's testimony.

MR. LORENZO: Without reference -- the only reference to Mr. Gorman's testimony was that he recommended a ten-year amortization period.

MS. WHITE: With that understanding, I have no problem with that question. Thank you.

CHAIRMAN KANE: Start the question again and without any reference to Mr. Gorman, please.

BY MR. LORENZO:

Q Without any reference to Mr. Gorman's testimony, would you agree that amortizing the cost to achieve over a period of time, such as ten years, would be more equitable due to intergenerational equity concerns?

A It could be. But you need to look at the specific costs to achieve and what savings those costs to achieve are triggering. And -- for example, I wouldn't agree that all costs to achieve should somehow be deferred and amortized over ten years.

I pointed out several issues with some of the costs to achieve in this case, such as the supplemental executive retirement plan costs, things to those (sic) effect. And some of the costs to achieve -- you really need to look at the specific cost to achieve, because some involve implementing new computer programs which would presumably then be depreciated over the life of those new programs. So I couldn't just outright say, yeah, ten years is appropriate.

But I would agree, if you have a rate case filing and the costs to achieve are, in fact, exceeding the cost savings, then that would be something at the Commission's disposal to consider is amortizing those to a future period if they are, in fact, appropriate costs to be passed down to customers.

Q Very good. And did you review Mr. Khouzami's rebuttal testimony on that issue?

A Yes.

Q And would you agree, subject to check, that Mr. Khouzami said that the joint applicants are not conceptually opposed to an amortization period for the cost to achieve?

A Yes. He said he wasn't opposed to it, but again, the disappointment expressed in my testimony was that the joint applicants haven't come out and stated that they would ensure that in future rate cases the costs to achieve that they seek to recover from customers will not exceed the

savings.
So what -- he said that that's something that could be considered. I guess I was hoping that at this point in these proceedings the company would have made a more affirmative statement that they would not seek to recover cost to achieve in excess of the savings.
Q Did you review Mr. -- did you listen in at home when Mr. Khouzami was being crossed?
A For brief periods, and did I read some of the transcripts, but I couldn't say that I read or -- either seen or read his entire cross.
Q Would you accept, subject to check, that he's already -- that he stated in cross-examination -- and it's at transcript page 1797, lines 5 through 18, that we've already stipulated -- we've already said in my own testimony that we'd be open to some sort of amortization process if that's what the Commission deemed was appropriate; at this time, though, we think it premature to discuss that, given that it should be something that is discussed in a rate

proceeding?

A Yes, I do recall reading that.

Q Thank you.

Switching topics, I want to talk a little bit about push-down accounting. And I believe you address that on -- in your direct testimony at page 22. And I'm particularly looking at lines 10 through 12. And I believe your concern here is the fact that if costs are pushed -- if the acquisition premium is pushed down into the service company and some of the service company costs are allocated to PEPCO, that indeed some of the acquisition premium would be -- and that was included in rates, that some of the acquisition premium would be paid by PEPCO ratepayers. Is that a fair summary of your concerns?

A Yes. And that continued in my supplemental testimony as well. I do acknowledge that the joint applicants have made some further commitments with regards to the push-down accounting issue, but they still do not specifically state that there would be no purchase accounting adjustments for PHI Service Company. So as of the time I wrote my supplemental testimony, it was still a concern with regards to the service company costs that could be passed on to PEPCO in D.C.

Q Is it a concern today?

A I seem to recall during the cross of -- I believe it was Mr. Khouzami, and correct me, of course -- feel free -- that they were willing to commit not to push those costs down to PHI Service Company, but I haven't seen anything in writing in the merger commitments. So I would hope that somehow that would end up in a final decision in this case, that if it's not added to the merger commitments explicitly, that there's something in the Commission's order just to make it clear that those PHI Service Company assets won't be inflated as a result of the acquisition if it's consummated.

Q So you'll agree, subject to check, that Mr. Khouzami informed Chair Kane on April 8th -- and, again, it's at transcript 2134 -- that we are not pushing down purchase accounting below the PHI level?

A Yeah, I recall reading that was the intent. I don't -- without having the transcript here, I can't say it was a firm commitment he made, but hopefully it would be beneficial if that is a firm commitment that he's making.

Q Okay. I want to talk a little bit about net operating loss carry-forwards, a complex subject at best --

A And not a fun one.

Q -- and we'll see if we can make this -- we'll see if we can make some sense out of this.

And I believe that's discussed in your testimony on page 29. This is your direct testimony, OPC Exhibit (C).

A Yes, it begins on page 29 and continues to at least the next page.

Q Yes. Do you know how big PEPCO's net operating loss carry-forward is?

A Yes, if you give me a moment. As of the current date, I do not. In a data response, I did provide the balance for PHI Service Company and for PEPCO as of December 31st, 2013. However, I don't have the current balance. And I do know that at the end of December of this year, that bonus depreciation was extended into 2014. So that presumably would have some impact on the current balance of the net operating loss carry-forward.

I don't know if that would have increased it or decreased it because I haven't seen any information at this point as to what that current balance or the December 2014 balance was.

Q But just for a ballpark number, what number do you have there for December 31st, 2013, was it, or 2014?

A The number I had is at December 31st, 2013, on a PEPCO basis, it was $169 million. And give me a moment because I want to make sure that that's the -- I don't know if that's the net operating loss carry-forward amount or the deferred tax asset that would be in FERC account 190. So if you'll give me just a

moment --
Q Sure.
A -- I want to make sure I'm giving you the right number.
Yeah. The 169 million as of December 31st, 2013, was a net operating loss carry-forward deferred tax asset. So that would be determined by multiplying the various tax rates by the net operating loss carry-forward balance, which would be significantly higher than the $169 million.
Q Okay. Would you accept, subject to check, it's around $700 million? Does that sound right?
A On a PHI basis?
Q On a PHI basis.
A On a PHI basis, that sounds about right. But again, I don't know the current balance.
Q Sure. Now, under Internal Revenue Code section 382, there's an annual limitation on the use of net operating loss carry-forwards, correct?
A Yes. And in fact, it was a response to a

data request that the joint applicants responded to that first drew my attention to that fact, so then I researched that section of the code further.

Q Right. And you'll agree that one of the reasons for this section is to prevent sort of trafficking in tax losses, having -- buying companies that have nothing but tax losses in order to take advantage of the NOL?

A That would make senses, but I would not like to speculate on why the IRS sets up any provisions within the code, but that would -- it could be the reason.

Q And the basic calculation of the limitation, you take the value of the lost corporation -- in this case, PHI -- and you multiply it by the federal tax-exempt long-term rate, correct?

A Yeah. What you do is you take the value of the company immediately prior to the acquisition being consummated. So you would take the stock price right before the merger, multiply by the number of shares to get the value, and then you would multiply that by the long-term tax-exempt rate, and it's the highest rate for the prior three months before the date the calculation is made.

Q And you'll agree that's running about 2-1/2 percent right now?

A Actually, I just looked it up yesterday. It was about 2.68 percent as of February 2015, was the most recent number I had found.

Q Right. And you'll agree, when determining the fair market value of a corporation, you add to the corporation -- you add to that fair market value any assumed debt that Exelon in this case would be taking over?

A I believe it spells out that the determination is basically you take the stock price times the market value of the stock as of the date right before the acquisition.

Q But isn't there a 2003 revenue procedure that allows you to include the assumed debt in a fair market value calculation?

A If there is, I'm not aware of that. But there may be.

Q There may be. And aren't you also allowed to include the annual depreciation on the acquired assets as -- included in that calculation?

A If you are, I'm not aware of that. And again, I didn't provide the calculation. I did indicate in my testimony that I requested the company to provide that calculation and was not provided that. But there can be nuances in that calculation, and that's why I didn't present the calculation with my testimony. It's numbers the company would need to provide.

Q Would you agree, subject to check, that the current outstanding debt of PHI and PEPCO is around $5 billion?

A Subject to check.

Q And that if we assume the fair market value of PHI is what, in fact, Exelon paid for it, that the stock price on -- at or near the closing will be the stock -- the share price that Exelon

is paying; that's about $6.8 billion?
A Correct. I would agree with that. But again, as I said before, I'm not certain about that offset for debt because I hadn't read anything about that debt offset within section 382.
Q Okay. And then whatever the fair market value is, if it's $6.8 billion or $6.8 billion plus the $5 billion in debt, that would be multiplied by the 2.68 percent that you alluded to?
A That's my understanding. But, again, I can't vouch for the accuracy of the debt offset that you referenced.
Q Okay. Very good.
Are you aware of how -- of whether Exelon itself has net operating loss carry-forwards?
A Based on a response to a discovery request in this case, they did as of the end of 2013. The response had indicated that they had anticipated using that up in 2014, but I'm not sure if that -- I believe that response was

prepared before the announcement of the bonus depreciation for 2014. So I have no knowledge of whether or not they currently have a net operating loss carry-forward on their books or not.

Q Did you have an opportunity to review PEPCO's response to a bench data request that was filed with the Commission last Friday before you testified today?

A I don't believe so. I don't recall having -- was it specifically to a net operating loss carry-forward number?

Q Yes.

A No, then I don't recall having reviewed that.

MR. LORENZO: Your Honor, I ask your indulgence. I brought some extra copies of our response to the --

CHAIRMAN KANE: Speak into the mic, please.

MR. LORENZO: Sorry. I brought some extra copies of our response to the data request, and would like to see if any of the information in that data request would change the witness' opinion. I can't obviously introduce the data request as an exhibit through her because she can't vouch for it. We intend to do that with Mr. McGowan when he takes the stand. But I would like to see if any of the information there would change her opinion.

CHAIRMAN KANE: You want to show her the exhibit --

MR. LORENZO: Show it to her.

CHAIRMAN KANE: -- that you propose to introduce later?

MR. LORENZO: Yes.

CHAIRMAN KANE: Yes.

MR. LORENZO: Thank you, Your Honor.

CHAIRMAN KANE: Well, let me ask the People's Counsel, were you about to make -- no objection. Okay. Thank you.

MR. LORENZO: And Your Honor, I note this is a confidential data request that we submitted, because it deals with company taxes in that way, but I'll ask the bench's indulgence. Should I distribute it to the parties who signed a confidentiality agreement or should I just -- can I just show it to the witness?

CHAIRMAN KANE: Well, if it's confidential, how are we going to ask her --

MR. LORENZO: Well, I have to --

CHAIRMAN KANE: You plan to ask her questions about it that will not violate the confidential nature of it?

MR. LORENZO: Yes.

CHAIRMAN KANE: Have you filed this with us already?

MR. LORENZO: We filed this as a data request last Friday.

CHAIRMAN KANE: Last Friday. Data request. And it was filed as confidential?

MR. LORENZO: It was filed as confidential.

CHAIRMAN KANE: Then presumably anyone who has -- is there anyone in the room who has not signed the confidentiality agreement or who isn't Commission staff?

All right. Since it was just filed last Friday, we do need to give it to the witness to look at, and to the secretary.

Mr. Lorenzo, would you again identify what the title or the name of this document is?

MR. LORENZO: Yes, Your Honor. It is joint applicants' confidential response to bench data request number 5, filed with the Commission on April 17th, 2015.

BY MR. LORENZO:

Q Ms. Ramas, after you've had a chance to review it, let me know.

A It's a little lengthy, so it might take me just a moment.

All right. I've read it.

Q Thank you.

A Was there a question outstanding?

Q No, there was not.

A Okay. Again, by reading this, within my testimony, part of what I recommended was that the companies report on the impact of any potential net operating loss carry-forward. I didn't recommend these specific adjustments, just that the companies be required to report that information to the Commission, as well as report any information regarding any changes in tax selections made post-merger.

So that would continue to be my recommendation, that that reporting should still be required, even with the information provided in this confidential bench request response.

Q You'll agree that the confidential bench response indicates that Exelon anticipates being able to consume PHI's NOLC, net operating loss carry-forward, by 2017?

A Yes. It's a confidential response, so I don't want to say too much more about, but yeah, it indicates that that's their current anticipation.

Q And their -- and that PEPCO's current -- strike that.

And that, on a stand-alone basis, PHI and PEPCO anticipate they will not be able to use the NOLC carry-forward fully to 2019. That's in

response E.
A That's what the confidential response indicates.
Q Thank you.
A But again, that wouldn't alleviate my recommendation that that information, once it's known, be reported to the Commission so it has it to evaluate in future proceedings.
Q Very good. I want to talk a little bit about another of your -- another of your recommendations which deal with rate case filing requirements. And I believe those appear on page 32 through 33 of your direct testimony.
A Yeah, I had several recommended reporting requirements. And this specific section you cite has to do with information regarding costs that are direct charge or allocated to PEPCO.
Q That's right. And I was going to ask you to explain what the filing requirements were.
A I specifically quoted them directly from the Commission's order in the prior case, from the prior rate case, and they're pretty

self-explanatory.
Q Okay.
A I can read them if you --
Q No, it's not necessary. What I want to know is if, in your expert opinion as a regulatory expert who's testified here on numerous occasions, would these reporting requirements -- do these reporting requirements apply to PEPCO to report the same information for the Exelon Business Service Corporation as well as for PHI Service Company?
A It's my opinion that they should, but the way they were specifically spelled out in the order of the case that I cite to, order number 17424, at that time, this merger wasn't being considered so they were specific to PEPCO's service company. So the reason I recommended this is so that that information doesn't slip through the cracks, that they also be required to provide the same information for the EBSC, Exelon Business Service Company, as well as PEPCO's service company.

Q So I take it your answer to the question is, no, you don't believe these are applicable to the Exelon Business Service Company, these reporting requirements?

A I hope they are, but the way they're worded in the order -- that's why I raise them in my testimony, is I don't want something like that to slip through the cracks because there have been frustrations in prior cases, getting the amount of costs coming to D.C. on a D.C. jurisdictional basis -- and I hope to alleviate in future cases potential discovery issues with this subject.

So it would be preferable that any order coming out in this case specify that those filing requirements also apply to Exelon Business Service Company as well.

Q Okay.

MR. LORENZO: That's all I have, Your Honor.

CHAIRMAN KANE: Thank you.

MS. FRANCIS: No questions, Your Honor.

CHAIRMAN KANE: Mr. Coyle?

MR. COYLE: No questions from D.C. government, Your Honor.

MS. SPENCER: Your Honor, we have no questions.

CHAIRMAN KANE: D.C. Water?

MS. WHITE: No questions from D.C. Water.

MS. ELEFANT: No questions.

CHAIRMAN KANE: Redirect?

MR. SEARS: No redirect.

CHAIRMAN KANE: No redirect.

No questions from the commissioners. You're excused.

THE WITNESS: Thank you.

(Witness excused.)

CHAIRMAN KANE: Exhibits.

MR. SEARS: OPC moves for admission of Exhibit OPC (C), Exhibits OPC (C)-1 through (C)-17, (2C), (2C)-1 and (2C)-2.

CHAIRMAN KANE: They are moved.

(OPC Exhibit Numbers (C), (C)-1 through (C)-17, (2C), (2C)-1 and (2C)-2 were received into evidence.)

CHAIRMAN KANE: All right. You're excused.

It's ten after 5:00. We've been back for a little over two hours. I note on the estimated schedule we have Witness Woolridge, estimated for 15 minutes. And MAREC, your witness, estimated for half an hour.

MS. ELEFANT: Yes, that's correct. And just to clarify -- and this is something I have raised with the applicants -- our witness will just be available today, so hopefully we will get to him by 6:30 or so. It seems like we will, by the estimates.

MR. LORENZO: Your Honor, I anticipate that Mr. Woolridge's cross-examination will be between 15 minutes and a half-hour.

CHAIRMAN KANE: Then I'm going to -- that adds up to about 45 minutes. I'm going to take a ten-minute break, give the reporter and all of us a break. Back in ten minutes. And we should be able to finish up today by around 6:00, which means we'll have to move Mr. McGowan -- start with

Mr. McGowan in the morning rather than trying to get in 15, 20 minutes or so of him this evening. Very good.

(Whereupon, a short recess was taken.)

CHAIRMAN KANE: We're back on the record at 5:21 p.m. Has the witness been sworn in?

WHEREUPON,

J. RANDALL WOOLRIDGE,

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

MS. LOPEZ: Good afternoon. My name is Danielle Lopez. I'm here representing the Office of the People's Counsel.

DIRECT EXAMINATION

BY MS. LOPEZ:

Q Good afternoon, Dr. Woolridge.

A Good afternoon.

Q Can you please state your full name, occupation and address.

A My name is the initial J, Randall Woolridge, and that's spelled W-O-O-L-R-I-D-G-E.

I am a professor of finance at Pennsylvania State University.

Q And do you have before you your direct testimony in this case? It was pre-marked Exhibit OPC (D), along with the accompanying Exhibits OPC (D)-1 through (D)-6.

A I do.

Q And was this testimony prepared by you or under your direct supervision?

A Yes.

Q And do you adopt this testimony as your sworn testimony here in this case?

A Yes, I do.

MS. LOPEZ: The witness is available for cross-examination.

CHAIRMAN KANE: Thank you.

Mr. Lorenzo?

MR. LORENZO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. LORENZO:

Q Good afternoon, Dr. Woolridge.

A Good afternoon.

Q I want to discuss with you page 13, lines 1 and 2 of your testimony. Tell me when you've gotten there.

A Yes.

Q And you ask yourself, do you agree that the financial strength of Exelon is a benefit to PEPCO?

Do you see that?

A Yes.

Q And you respond, no.

A That's correct.

Q That's correct. So let's examine that a little closer. Can you turn to what has been previously marked for identification as Joint Applicants' Exhibit 30.

MR. LORENZO: I want that marked Joint Applicants' Exhibit Number 17, I believe we're up to.

THE WITNESS: Are those the cross-examination exhibits?

BY MR. LORENZO:

Q Yes. There should be a book up there

that says joint applicants -- cross-examination binder of joint applicants.

A Yes.

Q Are you there?

CHAIRMAN KANE: How are they marked?

MR. LORENZO: Excuse me, Your Honor?

CHAIRMAN KANE: I just want you to repeat the number of the exhibits, how it's marked.

MR. LORENZO: The exhibit is preliminarily marked as Joint Applicants' Exhibit Number 30 --

CHAIRMAN KANE: 30, all right.

MR. LORENZO: -- and I want it marked as Joint Applicants' Cross Exhibit Number 17.

CHAIRMAN KANE: 17, thank you.

(Joint Applicants Cross Exhibit Number 17 was marked for identification.)

MR. LORENZO: You're welcome, Your Honor.

BY MR. LORENZO:

Q And you'll agree with me this is a Moody's Investors Service credit opinion --

MR. LORENZO: And this is a confidential

attachment, again, which we have permission from the company, as I found out, permission to use excerpts from it live in cross-examination.

BY MR. LORENZO:

Q And would you agree, Dr. Woolridge, that this is a Moody's Investors Service credit opinion on Potomac Electric Power Company?

A Yes.

Q And you'll agree that, if we look at the first page and go down to the bottom of the page, they have an opinion, and they call it rating drivers. Do you see that?

A Yes.

Q And the last rating driver is that the merger into the Exelon family viewed positively?

A Yes. I mean, they -- they indicate here it's viewed positively, and I guess they have a paragraph which supports that on page 3 of the document.

Q That's correct. And am I reading the last sentence of that paragraph correctly when we say, We think being part of the bigger and more diverse Exelon Corporation -- corporate family will benefit PEPCO because specific regulatory commitments will be made as part of the merger proceeding and because Exelon's larger suite of T&D utilities will provide relief of PHI's increasingly untenable dividend policy?

Do you see that?

A Yes, I see that. I mean, obviously this was just published. It was long before my -- well, it was before I published my initial testimony. And in my testimony, I related to the fact that -- looking for financial benefits based on the statements of Mr. Crane about the financial strength of Exelon, and in fact, I made that objection in my direct testimony, and neither Mr. Crane or Ms. Lapson really came back with (sic) any respect about the traceable benefits to PEPCO of the -- the merger with Exelon.

Q How do you interpret Moody's statement about PHI's increasingly untenable dividend policy?

A Well, I mean, the traceable benefits are supposed to be to customers, not to management, and this looks like the untenable dividend policy is really a management issue, not a customer issue. I mean, you go back to what the benefits are supposed to be. If the financial strength is a benefit, then there should be benefits to ratepayers, not to management.

And the debt -- dividend policy is set by management. It's not set by ratepayers.

Q Would you agree as a general -- all things being equal, that more positive credit ratings from rating agencies such as Moody's and Fitch are a benefit to customers?

A But their credit ratings are not better than PEPCO's. I mean, obviously, in this case, Potomac Electric is a BAA-1, which is above where Exelon is. I mean, it's -- it's roughly the same as Exelon. Obviously S&P has better ratings for Potomac Electric than it does for Exelon.

So again, you know -- I know Ms. Lapson goes on at length about, well, the bond -- the credit ratings are about the same. Well, the credit ratings are about the same; I don't see where it's a financial benefit to the ratepayers.

Q Would you agree -- going back to the untenable dividend policy -- again, it's a nice speech, but you haven't answered my question on, how do you interpret what PHI's untenable dividend policy -- what Moody's means by that?

A I don't know.

Q Could you turn to what has been previously marked as Exhibit -- Joint Applicants' Exhibit Number 31 --

MR. LORENZO: And I'd like that to be marked as Joint Applicants' Cross Exhibit 18.

CHAIRMAN KANE: So marked.

(Joint Applicants Cross Exhibit Number 18 was marked for identification.)

BY MR. LORENZO:

Q And you agree this is a Fitch rating report --

A Yes.

Q -- from April 10th, 2015? And they also

view the merger as credit-positive for PEPCO, correct?
A They do. They make the statement about greater financial flexibility. Again, they don't define that. And again, I'm not sure what that means in terms of the benefit -- financial benefit to ratepayers.
Q Do you --
A I do think that if that was a benefit, that in their rebuttal testimony to me, Mr. Crane or Ms. Lapson would have drawn out what the financial benefits are of the merger with Exelon.
Q Do you see where it says -- we can go through some of this. If you go to page 5, the paragraph discussing the Exelon merger, do you see where Fitch says, Fitch considers the pending merger to being credit-positive; it would create a stronger, better capitalized parent company with a far greater financial -- with far greater financial flexibility? Then, going on, Fitch anticipates PEPCO would benefit from the improved operating efficiencies and lower costs as a result

of the merger.

Do you see that?

A I see that, but again, I don't see where the financial benefit is. Where is the -- where are the direct positives for the ratepayers? Certainly they didn't change the ratings for either -- PEPCO's ratings didn't go up because of the -- you know, if they went up, maybe if Exelon was rated A and PEPCO was triple-B, you could see where the stronger capitalized company -- there would be a benefit in terms of lower cost capital for the ratepayers of PEPCO. But I don't see, and certainly the company witnesses haven't laid out, what are the direct, traceable financial benefits to ratepayers.

Q Do you think, again -- once again, you don't think the merger being viewed as credit-positive by Moody's and Finch (sic) is a benefit -- a long-term benefit to better credit ratings?

A They didn't change the credit ratings, so no. The credit ratings haven't changed, so there's no benefit. There's no traceable benefit to ratepayers.

If they changed the ratings and boosted them up, which I don't know how likely that is given the ratings of Exelon, I would say there's a positive there; there's a traceable benefit. That means they can issue bonds at lower rates in the future.

But there is no credit rating change here. They just said they see it as a positive without any movement. Just because it's a positive doesn't mean you're going to issue bonds at a lower rate. Only if there's a upgrade in their bond ratings will there be a lower interest rate on their bonds.

Q You'll agree that on the first page of this report where they discuss rating sensitivities, they also say that one of negative -- negative rating action would result from the inability to close the EXC merger -- and EXC is the stock exchange ticker for Exelon?

A Yes.

Q Very good.

MR. LORENZO: I have no further questions.

MS. FRANCIS: No questions, Your Honor.

MR. COYLE: No questions, Your Honor. Thank you.

MS. SPENCER: No questions.

MS. WHITE: No questions, Your Honor.

MS. ELEFANT: No questions, Your Honor.

CHAIRMAN KANE: Redirect? OPC?

MS. LOPEZ: No redirect.

CHAIRMAN KANE: And any exhibits?

MS. LOPEZ: Yes. I would like to have Exhibit OPC (D) and supporting Exhibits OPC (D)-1 through (D)-6 marked and admitted.

CHAIRMAN KANE: They are so marked and admitted.

(OPC Exhibit Numbers (D) and (D)-1 through (D)-6 were marked for identification and received into evidence.)

MR. LORENZO: Joint applicants would move admission of Joint Applicants' Exhibits 17 and 18.

CHAIRMAN KANE: They are moved.

(Joint Applicants Cross Exhibit Numbers 17 and 18 was received into evidence.)

CHAIRMAN KANE: You are excused, Mr. Woolridge.

(Witness excused.)

CHAIRMAN KANE: Okay. Moving right along.

MS. ELEFANT: Good afternoon, Your Honor. My name is Carolyn Elefant. I represent the Mid-Atlantic Renewable Energy Coalition, and we will have Mr. Burcat as our witness.

WHEREUPON,

BRUCE BURCAT,

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

MS. ELEFANT: Your Honor, before I begin, I wanted to just address a preliminary matter. In reviewing the paper copies of the testimony -- and I typically, and unfortunately perhaps, usually look at electronically filed copies -- I realized that I had inadvertently omitted the Exhibit 3 which is referenced on page 13. This was part of our prefiled testimony that was submitted November 4th, but when we filed our conformed testimony, it was inadvertently omitted. It's discussed within the testimony. I'll pass it around, and I will wait to see if there are any objections at that time, if that's all right.

CHAIRMAN KANE: And is it the same as you filed in November?

MS. ELEFANT: Yes, Your Honor, and I can question the witness as to that as well.

CHAIRMAN KANE: Go ahead.

MS. ELEFANT: This is confidential, so I assume whoever is getting a copy is subject to the confidentiality.

CHAIRMAN KANE: I believe everyone in the room is subject to that. But if there is anyone, please do not take a copy.

DIRECT EXAMINATION

BY MS. ELEFANT:

Q Good afternoon, Mr. Burcat. Could you

please state and spell your name for the record.

A Sure. It's Bruce Burcat, B-U-R-C-A-T.

Q And on whose behalf are you testifying today?

A The Mid-Atlantic Renewable Energy Coalition.

Q And do you have before you what has been preliminarily marked as MAREC (1A), entitled, Amended direct testimony on behalf of Bruce Burcat on behalf of MAREC?

A I do.

Q And does that testimony have appended to it two exhibits?

A Yes.

Q And then I just circulated a third exhibit. Do you recognize that exhibit?

A I didn't -- oh, I do have it. Yes. Yes, I do.

Q And that was part of your -- is that part of your testimony as well? Or is that referencing your testimony?

A Yes, it is.

Q Did you prepare this testimony by yourself or was it prepared under your supervision.

A It was prepared by myself.

MS. ELEFANT: And at this time, I would like to tender Mr. Burcat for cross-examination.

CHAIRMAN KANE: Thank you.

Mr. Lorenzo.

MR. KULAK: Good afternoon, Your Honors. Ken Kulak of the law firm of Morgan Lewis appearing on behalf of the joint applicants.

CROSS-EXAMINATION

BY MR. KULAK:

Q Good afternoon, Mr. Burcat.

A Good afternoon, Mr. Kulak.

Q Mr. Burcat, in this proceeding you've advocated for a condition on the merger that would require competitively sourced long-term power purchase agreements from D.C. -- eligible resources for D.C.'s Renewable Portfolio Standard, or RPS, right?

A That's correct.

Q And on page 19 of your testimony, you cite provisions of D.C. law which require PEPCO to solicit fixed price offers of one-year, two-year or three or more years for standard offer service, right?

A That is correct.

Q I believe your view, as you explain on page 19, is that this provision provides flexibility -- that's your word -- to allow long-term contracting for renewable resources, right?

A Yes. To the Commission, yes.

Q Mr. Burcat, you understand PEPCO meets RPS requirements associated with standard offer service by obtaining the requisite renewable energy credits, or RECs, from wholesale suppliers providing standard offer service, right?

A That's the procedure that's being -- in use at this time, yes.

Q So in this proceeding, as part of this condition, you're proposing that PEPCO and this Commission alter the current procurement arrangements so that PEPCO would do its own RFP for some portion of the RPS requirements for a standard offer service load, right?

A Well, no, not exactly. As part of this proceeding, we are opposed to the merger, but we have stated that -- or I have stated that if the merger -- if the Commission decides to impose conditions on the merger to approve the merger in that respect, then we would believe that certain conditions should attach in that particular instance.

Q Well, with respect to the long-term contract condition you've proposed, who would be the counterparty to the wind developer or wind facility under your condition?

A It would be the utility, PEPCO, in D.C.

Q So that would be a change in the current process, right, Mr. Burcat?

A Well, my understanding is that PEPCO is the counterparty under the standard offer service in D.C. to the wholesale contracts that are currently in existence.

Q But you're not envisioning that the renewable developers would be providing standard offer service?

A No.

Q And Mr. Burcat, are you proposing that the terms of those renewable power purchase agreements should be three years?

A No, I am not.

Q What would be the minimum term of those renewable power purchase agreements associated with the condition you're proposing?

A We've talked about long-term contracts, and generally what we talk about are 10 to 15, and possibly up to 20 years.

Q So if those contracts were won by a wind generator, including potentially members of MAREC, those contracts would be fixed price contracts, right?

A That's correct.

Q And so they would lock in a rate for wind energy or wind energy renewable energy credits for 10 years or 20 years that customers would pay as part of standard offer service?

A That's correct.

Q Mr. Burcat, MAREC was an intervenor in proceedings before the New Jersey Board of Public Utilities relating to approve of the Exelon/PHI merger, right?

A Yes.

Q And in your supplemental testimony you explained MAREC's decision not to oppose the settlement reached between the companies and the parties in the New Jersey proceedings for approval of the merger, right?

A In this testimony, we talked about the differences between New Jersey's set of circumstances and what the circumstances are here in D.C. and, yes, we basically -- definitely decided that there were reasons not to oppose the merger because we agreed to a -- essentially a letter that provided some benefit to MAREC as far as doing a proceeding in New Jersey or potentially opening a proceeding in New Jersey that would look at long-term contracting.

Q And just to be specific, as I understand it, that letter states that Exelon would, quote, not object to and consider -- excuse me, I'm quoting from your testimony -- would, quote, not object to and consider it reasonable for MAREC to request to open a proceeding, if the merger is consummated in New Jersey, to consider the use of a competitive process for Atlantic City Energy Company for procurement of a portion of energy and renewable energy credits bundled through long-term contracts, unquote, to meet RPS requirements, right?

A That's correct.

Q In your supplemental testimony in this proceeding, you also explain that the New Jersey settlement shouldn't apply in D.C. because, quote -- and I believe this is from page 18 of your supplemental testimony -- the landscape is far different in New Jersey because Atlantic City Electric is the third largest out of the four investor-owned electric utilities in New Jersey, right?

A That's one of the reasons.
Q There are also proceedings for approval of this merger before the Delaware Public Service Commission relating to Delmarva Power, an affiliate of PEPCO, right?
A That's correct.
Q And in the Delaware proceedings, MAREC is also an intervenor, right?
A That's correct.
Q And you yourself filed testimony in that proceeding, right?
A I did not.
Q Excuse me. But MAREC is --
A Yes, Mr. Bradford, who filed in Maryland, also filed in Delaware for us.
Q Thank you for that correction.
Through Mr. Bradford, MAREC raised many of the same concerns it has presented to this Commission in your testimony, particularly regarding Exelon's position on the expired wind production tax credit, or PTC, right?
A That's correct.

MR. KULAK: Your Honors, I'd like to introduce the exhibit that has been marked as Applicants' Cross Exhibit Number 33. This would be Applicants' Cross Exhibit Number 19.

CHAIRMAN KANE: So marked.

(Joint Applicants Cross Exhibit Number 19 was marked for identification.)

BY MR. KULAK:

Q Mr. Burcat, do you have that exhibit there?

A I do not.

Q All right. Let's help you with that. It's in the binder --

A Okay.

Q -- labeled cross exhibit binders of the joint applicants.

A Okay.

Q And it will be under tab 33.

A I found it.

MR. KULAK: For the record, I'd like to note this exhibit has been filed with the Commission.

BY MR. KULAK:
Q Mr. Burcat, you've seen this document before, correct?
A Sure.
Q In fact, it's your signature appearing on page 32 of this document, right?
A That's correct.
Q And this is the amended settlement that was filed in the Delaware proceedings?
A Yes, it is.
Q And per the settlement, MAREC is, in fact, supporting the approval of the merger in Delaware, right?
A That's correct.
Q And this is in part because of a commitment in that proceeding, number 84, relating to long-term renewable power purchase agreement contracts, right?
A That is correct.
Q MAREC also filed a brief in support of the Delaware settlement, correct?
A Yes, we did.

MR. KULAK: Your Honors, I'd like to now introduce Joint Applicants' Exhibit previously marked as Number 34 as Cross Exhibit Number 20.

CHAIRMAN KANE: So marked.

(Joint Applicants Cross Exhibit Number 20 was marked for identification.)

BY MR. KULAK:

Q Mr. Burcat, I assume you're also familiar with this document?

A I am.

Q Your signature at the end?

A Double-check. Yes.

Q All right. I'd like to just direct your attention to page 7 at the end of the brief.

A Okay.

Q I think you state on page 7 -- MAREC states in its brief that Exelon's commitment regarding long-term contracts in the context of the entire agreement is, quote, a fair resolution of our major concern with the proposed merger, unquote, in Delaware, right?

A That's correct.

Q Mr. Burcat, how many investor-owned electric utilities are there in Delaware?

A There's one investor-owned utility in Delaware, electric utility. Delmarva Power.

Q Delmarva Power, right. And the electric load not served by Delaware -- Delmarva Power is served by electric cooperatives right?

A And municipalities.

Q Do you know what percentage of the total retail electric customer load is served in Delaware by Delmarva Power?

A Somewhere in the neighborhood -- it may have changed since my -- since I knew this last, but somewhere in the range of maybe 70 to 75 percent of the load.

Q Do you happen to know what percentage of electric customers by customer count are served by Delmarva Power?

A I mean, if you're counting residential and industrial customers, I would say it's probably close to 80 percent.

Q Changing subjects, Mr. Burcat. On

page 13 of your amended direct testimony, you state that the PTC results in cost savings that are, quote, ultimately passed along to ratepayers in the form of lower energy and RPS compliance costs, right?

A That's correct.

MR. KULAK: Your Honors, I'd like to now introduce the document that has been marked as Joint Applicants' Cross Exhibit Number 41. We would like to have that admitted as Cross Exhibit Number 21.

CHAIRMAN KANE: So marked.

(Joint Applicants Cross Exhibit Number 21 was marked for identification.)

BY MR. KULAK:

Q Do you have the document, Mr. Burcat?

A I do.

Q Mr. Burcat, you've been provided with a copy of this Commission's report on D.C. RPS compliance for 2013 sent to city council by Chair Kane on January 30th, 2015. I'd like to direct your attention to page 15 of this report. If you want to take a moment and just review the second table on that report -- page.

A Okay.

Q Mr. Burcat, this table appears to indicate an average weighted price of $2.38 for wind renewable energy credits for wind in the District, right?

A That's what it says, yes.

Q You have no reason to doubt that's correct, right?

A Well, I mean, I do -- it's been my understanding, and certainly even more recently, that these prices have gone up. This is a 2013 number.

Q Right. But you haven't provided any different testimony or data on those prices?

A Yeah, but it's not necessarily my understanding of what the prices are.

Q But that's certainly your understanding of what the price was for 2013 compliance, right?

A No. I'm saying that's not my understanding of what the price was in 2013. I think that's what's been reported. I'm not necessarily taking issue with the Commission, but that's not my particular understanding of what prices were back then, and they've come up considerably since that point in time.

MR. KULAK: I'd like to now introduce the documents that have been marked as Joint Applicants' Cross Exhibits Number 39 and 40. And we'll have those marked as Cross Exhibits Number 22 and 23.

CHAIRMAN KANE: They are so marked.

(Joint Applicants Cross Exhibit Numbers 22 and 23 were marked for identification.)

BY MR. KULAK:

Q Mr. Burcat, do you have those there?

A Yes, 39 and 40.

Q Right. Now, Number 39 is the document that is dated April 1st, 2013, again, a letter from Chair Kane to the council describing compliance for the year 2012 for the D.C. RPS, correct?

A I'm looking for -- 2012 on that document.

I see 2013, but I don't see 2012.

Q I think if you turn to -- the page, it will explain that it is the -- I'm sorry. I apologize. It's 2011.

A Where does it say 2011 on the document?

Q Well, let's just turn to page 13 if we could. I think you'll see it there.

A Okay.

Q I think that shows for the year 2011 a wind price of $2.67 for wind RECs, right?

A Yeah. I haven't reviewed this whole document, but for that particular table it does talk about 2011 prices for wind RECs.

Q And if you want to look at Exhibit 40, that's the report for the year 2012, and that I believe, same table, shows a price of $2.37, right?

A $2.37, yep.

Q So Mr. Burcat, in your testimony, you haven't provided any dollar amount for what you believe the PTC may have actually saved D.C. customers in terms of renewable -- RPS compliance

costs, have you?
A Could you -- haven't done what?
Q Sure. You haven't provided any dollar amount for what you believe the wind production tax credit actually saved D.C. customers in terms of RPS compliance costs, have you?
A Not a specific amount, but there are -- I mean, it's clear that it has saved customers for several reasons. One is that the cost of wind -- the pricing of wind is related to the operational costs of wind, the fact that there is the PTC and -- I mean, there are basically three components to that, and the PTC is part of that.
If you take the PTC out, which is a 23 cent per kilowatt hour amount, it actually ultimately would be -- would have to be made up somewhere else. That's obviously showing that the price would be reduced if you took that production tax credit component out of the pricing of wind.
Q But you, sitting here today, can't tell us in the compliance years that I've shown you from these reports whether the investors in these

projects took a larger portion of the PTC or even substantially all of it as opposed to be passing on the savings to D.C. customers, can you?

A Well, I can also go back -- this isn't, again, specific to D.C. customers, but I think it works across all utility customers -- the impacts of the PTC. I don't know how much I can talk about this confidential document that was Exhibit 3 in my testimony.

Q Not unless you're asked about it, Mr. Burcat.

A Well, no, you're asking me about the --

Q Well, let's just deal with my question. My question is --

A I think this is answering your question.

MS. ELEFANT: I just wanted to clarify. There is some -- the testimony was declassified, and so the information in the testimony that references it is certainly something that can be discussed in the open session since the joint applicants declassified the testimony on page 13.

THE WITNESS: Yeah. In this document, it

talks about --

MS. ELEFANT: I'm sorry. But as for the document, there may be other information in the document that the applicants have continued to classify, and they would have to say if it would be permissible to discuss that, so...

THE WITNESS: It's in my testimony, my public testimony.

MS. ELEFANT: Your public testimony is the testimony that's in front of you --

THE WITNESS: Yes.

MS. ELEFANT: -- and, yes, whatever is discussed in your testimony is public and it's been declassified, so everything in there is open to discussion.

THE WITNESS: Yeah. I'm just going to -- trying to find that page number. But the gist of it is that Exelon -- in Maryland, Exelon opposed an increase to the RPS standards in Maryland, and in order to do that, they did their own cost evaluation of what the costs would be to consumers in Maryland. And they basically said with the PTC and without the PTC.

And in that particular instance, they showed a pretty large differential between the two. If the PTC was not extended, then there would be a significant additional cost to Maryland ratepayers. And I think that particular document would be valid in the sense that -- I don't necessarily agree with the overall numbers, but that particular difference, where Exelon believes itself that the PTC does have a value, and that if you were to eliminate that value, it would be more expensive for Exelon customers in any jurisdiction. It would carry across jurisdictions if you believed your own particular analysis.

BY MR. KULAK:

Q Mr. Burcat, my question was, who gets the payment. It can go to the investors or it could go to savings; you can't tell me how it's being divided today, can you, for D.C. customers?

A Well --

Q That's a yes or no question, Mr. Burcat. Can you tell me how much of the PTC goes to investors or how much is realized by savings by customers in the District of Columbia?

A I can't give you a specific number, but it's --

Q Thank you, Mr. Burcat.

A -- a competitive market, and in order to get the business, the -- the developers are going to bid their lowest price. So there's clearly a component that goes back to customers.

Q Mr. Burcat, in your testimony, you also contend that Exelon's opposition to the expired PTC was -- I believe you used the word hypocritical, because you believe that Exelon is seeking subsidies for its nuclear plants to, quote, avoid competitive pressures from the wholesale market, unquote, right?

A Yes.

Q And you cite the Ginna plant in New York where you state that Exelon is seeking relief from competitive market, right?

A That's correct.

Q I'd like to turn to Joint Applicants'

Exhibit -- previously marked as Cross Exhibit Number 36 --

MR. KULAK: -- which I would like to introduce as Cross Exhibit Number 24.

CHAIRMAN KANE: So marked.

(Joint Applicants Cross Exhibit Number 24 was marked for identification.)

BY MR. KULAK:

Q Mr. Burcat, I've given you a copy of a filing by Rockland General Electric with the New York PSC dated February 13th, 2015 which was before your March 20, 2015 supplemental testimony filing, right?

A You're saying it's part of my supplemental --

Q No, no. It was issued before your supplemental testimony was filed.

A Oh. Yes.

Q Do you know what Rockland General Electric is?

A Yeah, it's an operating utility in northwestern -- it's basically a distribution

company in northwestern New York .
Q If you can take a moment and just review pages 2 and three of this filing.
A Okay.
Q Mr. Burcat, it's your understanding Rockland -- excuse me -- Rochester Gas and Electric is not affiliated with Exelon, right?
A That's correct.
Q And as explained in this filing, Exelon told state officials that closing the plant was under -- the Ginna plant was under consideration, right?
A That's correct.
Q And -- but if there was a need to continue to operate the plant for reliability reasons, Exelon would do so if it was compensated through what is known as a reliability support services agreement, correct?
A That's correct.
Q And in fact, the New York ISO concluded that there would be reliability violations if the plant was taken out of service, right?

A My understanding, that's correct.
Q Let's turn to page 4 of this document. Take a moment and read that.
A Okay.
Q So Rochester conducted an RFP to see if there were any alternatives, didn't they?
A I mean, that's basically what this is talking about, yes.
Q And, in fact, subsequently, the New York Public Service Commission concluded, as with the New York ISO, that there was a reliability need and ordered Exelon and Rochester to negotiate an RSSA, right?
A That's correct.
Q Do you know what the term of the RSSA is supposed to be?
A How many years?
Q Yes.
A I understand it's four years. And I also understand that the FERC has reviewed this and has raised some significant concerns about this particular agreement and has sent this back for

further negotiation.

Q Is there anything in your testimony or in this summary of the history here that indicates that Exelon is keeping a plant open just because it can't compete or that Rochester is assisting Exelon in that effort?

A I don't think Rochester is assisting Exelon in that effort, but I do think that Exelon is participating in a competitive market. It's shown its strategy of, in these competitive markets with their nuclear plants, to basically -- where they're facing some financial difficulty or some issues in these markets, to seek basically some kind of additional or state-subsidized remuneration during a particular term. In some cases -- in fact, the original request by Exelon in this particular case was for a long-term situation, not the four years that the Commission ordered, or ultimately pushed into the -- you know, the four-year settlement in this particular case.

So I do think there is a -- because we've seen it in other jurisdictions as well. We've seen it at three plants in Illinois, and continued discussion in Illinois about that particular -- the same type of situation there.

Q Mr. Burcat, I'll ask my question again. Is there anything -- do you believe -- let me ask it slightly differently. Do you believe that the findings of the New York Public Service Commission and the New York ISO with respect to reliability aren't correct here?

A I'm not disputing the reliability piece of this. What I'm saying is that Exelon has a concerted effort on non-performing nuclear facilities to seek -- some might say a subsidy from ratepayers to keep these particular plants open.

I'm not disagreeing that there might be reliability issues impacted by this, but I do think that this is a strong effort by Exelon in these particular jurisdictions, yes.

Q Mr. Burcat, you also sponsored discovery responses in the Maryland proceeding relating to your testimony in that jurisdiction on behalf of MAREC, right?

A Correct.

MR. KULAK: Your Honors, if we could now turn to Joint Applicants' Number 35 which I like to have marked as Cross Exhibit Number 25.

CHAIRMAN KANE: So marked.

(Joint Applicants Cross Exhibit Number 25 was marked for identification.)

THE WITNESS: I'm there.

BY MR. KULAK:

Q Mr. Burcat, this is a discovery request that asks you to provide data or assumptions with respect to your contention that the support for the expiration of the PTC would lead to higher costs for Maryland customers, right?

I'm just asking about the first page, Mr. Burcat.

A Yeah, I'm looking at that just to make sure that I'm comfortable with the way you characterized it.

Okay. Yes.

Q This was prepared by you or under your supervision, correct?

A That's correct.

MR. KULAK: Nothing further, Your Honors.

MR. DANIELS: OPC has no questions.

MS. FRANCIS: AOBA has no questions.

MR. COYLE: District government has no questions.

MS. SPENCER: DC SUN has no questions.

MS. WHITE: D.C. Water has no questions.

CHAIRMAN KANE: Commission questions? Yes, Commissioner Fort.

COMMISSIONER FORT: You were talking about the District SOS program, or standard offer service program, and the fact that the regulations allow the District to use a portfolio approach, is what you say. What do you understand a portfolio approach to be under those regs?

THE WITNESS: Under those regs? Okay. Essentially what I see it -- in this case is it's the length of the contracts that can be used for standard offer service. In that particular case, essentially maybe a mixture of shorter-term and medium-term and long-term contracts.

COMMISSIONER FORT: If I were to tell you that the mixture is one-year contracts and three-year contracts, does that impact your recommendation?

THE WITNESS: Well, if that's what it is, but I do see that the regulation does provide for the opportunity to do contracts greater than three years, according to those particular regulations.

I don't think -- there's certainly not a restriction, and there's a discussion which is highlighted in my testimony on page 19 that says the electric company shall select conforming offers to meet the Commission's percentage targets in accordance with the evaluation provision included in the RFP. The final contract mix should include contracts of at least three years for no less than 40 percent of the total load.

So at least three years to me means it could be a lot longer than that, or a little bit longer than that.

COMMISSIONER FORT: And under your proposal, would the District have to do a competitive procurement or long-term purchase contracts? Is that how you're explaining it?

THE WITNESS: Yeah. Again, my -- our proposal is not our position, necessarily, because our proposal is basically saying we're opposing the merger. But what we are saying is that for -- yes, our position would be that one of the -- and believe me, we are looking for a portfolio approach. We would never say -- I think it would be imprudent for the Commission to impose a hundred percent of the renewables purchases and energy coming from long-term contracts. I think that would be imprudent.

What we're talking about is a portfolio approach. It could be a mix of 25 percent of those contracts, 30 percent, 50 percent. And I don't think anything greater than 50 percent makes sense because we are looking -- we do strongly agree with the portfolio approach.

COMMISSIONER FORT: Do you know what

percentage of the District's fuel mix is currently from wind?

THE WITNESS: I saw a document. I believe it's basically REC purchases, somewhere around 20 percent.

COMMISSIONER FORT: Do you know what percentage of the District's fuel mix is from nuclear energy?

THE WITNESS: That I do not know.

COMMISSIONER FORT: Is there -- other than the opposition to the PTC, is there any other reason that we should be concerned about Exelon?

THE WITNESS: Yeah. I think we touched -- I touched on it a little bit during my testimony during questioning by counsel that, clearly the concern about the fact that 55 percent of the capacity of Exelon generation, their affiliates' generation, is nuclear. Right now, we're talking about PEPCO and its affiliates being basically wires companies. So I think the Commission should be very concerned, extraordinarily concerned, about this change, a huge sea change that would occur with the merger when you're talking about a company that's so reliant on one form of energy.

I believe their energy purchases are even higher than their capacity levels, meaning that -- or their energy production is even higher than the 55 percent, as opposed to just what their capacity is in their system. So it's something that should be concerning, and again, related to what they're trying to do in some of these other jurisdictions.

That doesn't mean that they're not going to do it here or try to do something here in D.C. or in Maryland or New Jersey or in Delaware.

COMMISSIONER FORT: And when you say that it's something they're doing in other jurisdictions, what do you mean specifically?

THE WITNESS: I'm talking about with the Ginna plant -- I never pronounce that right -- but the Ginna plant in New York and the legislation that they're pursuing in Illinois to supplement their income, I guess, or their revenues coming in for their nuclear plants there through customer rates.

COMMISSIONER FORT: But do you understand that we are restructured and we have no generation here in the District of Columbia?

THE WITNESS: That's correct. And both of those jurisdictions are restructured jurisdictions as well.

COMMISSIONER FORT: But we have no generation -- no generating plants here in the District of Columbia.

THE WITNESS: That's right. But they still could come to this Commission, just like they did in New York. I realize that's in New York, but they could come to this Commission and basically say, we have a local plant, Calvert Cliffs, that's important to D.C., and -- I'm telling you -- a lot of pressure could be put on through the PJM process if they say that's a must-run facility and there's reliability issues. It's a possibility. I'm not saying it's something they're going to do.

And to being honest with you, I don't

know what the financial shape is of that particular unit or the other units that could be possibly supplying energy to D.C.

COMMISSIONER FORT: But if that's a must-run, couldn't that happen anyway under the scenario you just --

THE WITNESS: It could be, but now it's your local utility saying it's -- there's a lot more connection to D.C. than it was in the first place. It's a local utility; there's a hundred percent of the load.

COMMISSIONER FORT: Thank you.

CHAIRMAN KANE: Thank you. Mr. Burcat, I know this is holding everybody up, but I want a clarification on this issue, because you saw there should be a requirement -- this is prefaced -- you're opposed to it, but if we were to do it, or if it were to be approved, these were suggested -- or your recommended conditions --

THE WITNESS: That's correct.

CHAIRMAN KANE: -- three of them.

Requirement for competitively sourced

long-term purchase power agreements for a substantial procurement from resources eligible for the D.C. RPS, which would help mitigate adverse cost increases.

Can you show me -- what cost increases are you referring to?

THE WITNESS: Yeah, I probably should have put more description in --

CHAIRMAN KANE: Yes.

THE WITNESS: -- that particular -- but that's basically cost increases that -- for instance, during the polar vortex, rates could jump significantly because of -- the cost of electricity jumped dramatically because of the lack of natural gas capacity at those particular moments.

And there are times through history, not as much recently, when natural gas prices took a nose dive in the past couple of years, but we know over the past seven, eight years that natural gas was extremely high at some point and, through standard offer service, that amount can fluctuate.

Wind, on the other hand, has no fuel cost. Therefore, its price is stable. When you do a long-term contract for wind on day one, you know what that price will also be on the end of the 15-year contract if it's a 15-year contract, and it's usually going to be the same price, because there's no fuel cost, as the first day, unless there is a small inflation factor included in that.

But you're going to know what the price is, and you're not going to see any volatility with that. So we think it's a very important hedge on long-term prices.

CHAIRMAN KANE: And when you speak of competitively sourced long-term purchase power agreements, again, you are referring only to the standard offer service procurement process?

THE WITNESS: Our proposal here, that's the case.

CHAIRMAN KANE: That's the case. But are you aware that that is the only procurement that this Commission has any role in or any authority over?

THE WITNESS: That's correct.

CHAIRMAN KANE: And are you suggesting that there is -- I still want to know what -- you've talked about mitigate adverse cost increases. You are aware -- are you aware that our procurement for the SOS contract is -- for residential is three-year contracts, one-third of it expiring each year, and that for the small commercial, it's -- they're one-year contracts, and it's a fixed rate?

THE WITNESS: I used to be the executive director of the Delaware Public Service Commission for 15 years. We had the same exact process there. And we had some very -- while gas rates were really fluctuating, after we restructured, they went up, they went down, but they primarily went up significantly, even with those three-year rolling contracts.

So it is something that we think is very beneficial to the jurisdiction to do it that way. Plus, it ensures that if REC prices go significantly higher, that they would be fixed at this point in time. They would be part of the contract to the utility. So you would not be subject to any fluctuation in REC prices because you're -- basically, under those three-year contracts, the REC prices are provided by the wholesale suppliers, and that's inputted into the price the three-year price.

And we don't know how they're purchasing those particular RECs. They could be doing them on very short-term markets and arbitraging or they could be -- but they're including those costs in those three-year prices, and they can be quite significant for standard offer service customers going down the line.

CHAIRMAN KANE: Are you aware that the compliance fee in the District under the law, not something controlled by this Commission, but under the law, after 2016 for the most expensive RECs, which is solar, starts to go down significantly?

THE WITNESS: That's correct. And you don't want the compliance fee for wind to -- you don't want to get to the compliance fee for wind.

CHAIRMAN KANE: Right.

THE WITNESS: It's not -- you're not necessarily building any new generation because of that. And it's -- the prices would be too high in my opinion to get to the alternative compliance fee. So you wouldn't want that to be the price that's controlling the costs for consumers at that point.

CHAIRMAN KANE: But the compliance fee does control the REC fee in the sense that -- would you agree that the alternative compliance fee, which is usually a non-compliance fee, not meeting the standard -- it sets the maximum that a REC is going to go for?

THE WITNESS: That's correct. And you don't want to hit that maximum. So what you want to do is, through a process that we're explaining through long-term contracts -- and if you have the energy included in that, that the price is going to be levelized through the term of that contract, and the REC prices are never going to hit the alternative compliance fee in that case.

CHAIRMAN KANE: But if the -- I'm trying to follow -- the REC prices, by law, are going down, how does a long-term contract save money?

THE WITNESS: Well, my understanding is that the REC prices, by law, are not going to come down to the point during the term of this -- the RPS requirements, are not going to come down to the point where, if you do a long-term contract, you can assure that that price is going to be something less than the alternative compliance fee through the term of the contract.

CHAIRMAN KANE: I didn't mean to state that the REC prices were coming down by law; the non-compliance fee is coming down by law.

THE WITNESS: Right, but you're not going to hit that non-compliance fee, you know, through negotiations through a competitive procurement. If that were the case, you wouldn't do the contract.

CHAIRMAN KANE: Are you aware -- or is there, in your opinion, a shortage of renewable energy for retailers, including the SOS provider in its role as a retail provider -- is there a shortage of renewable energy eligible for meeting the District's RPS requirements, and if so, in which category of renewable resources?

THE WITNESS: Yeah. I mean, I could tell you that the biggest -- one of the biggest drivers of the construction, the development of wind energy farms, are through -- because of the fact that there's long-term contracting.

CHAIRMAN KANE: That wasn't my question. My question is, in each of the categories, the tier 1, tier 2, wind, biomass, solar, D.C.-based solar, geothermal, that are eligible for each retail supplier in the District, including the SOS provider who at the moment happens to be PEPCO, for them to purchase in order to meet the RPS requirements applicable -- is there a shortage?

Because your organization represents developers of renewable energy, correct?

THE WITNESS: For the most part. We have some public interest groups.

CHAIRMAN KANE: Well, includes. I should say includes developers of renewable energy.

Is there a shortage of renewable resources eligible for use in compliance with the District's RPS requirements?

THE WITNESS: If you told me today, I would say no.

CHAIRMAN KANE: Okay.

THE WITNESS: If you told me several years down the road, just pure economics, if wind farms and -- wind farms are -- should be -- I mean, they're utility scale; they should be providing at some point probably most of the RECs for tier 1 compliance.

When you talk about black liquor -- well, black liquor is no longer --

CHAIRMAN KANE: Black liquor --

THE WITNESS: -- is gone.

CHAIRMAN KANE: -- is being phased out.

THE WITNESS: Right, so that will be out of there. You're talking about geothermal, you're talking about some hydro, but if you compare to all of those different resources, wind is going to be, if it's developed sufficiently with -- you know, through these long-term contracts because, quite frankly, without the long-term contracts, we have financing issues for our developers, so it's another reason to do these things. The wind developments are not going to get built, and then D.C. and other jurisdictions in this region will be left with a shortage at some point in time, and REC prices will definitely go up.

CHAIRMAN KANE: Will go up to meet the compliance fee?

THE WITNESS: Yeah. I don't know how far they'll go up, but they'll certainly rise. And our goal is not to have them rise.

CHAIRMAN KANE: The third suggestion you make is that Exelon should be required to plan and construct a transmission upgrade that Exelon would support and develop that would promote additional renewable capacity available to be transmitted to eastern PJM, and a new AC line would also allow low-cost wind energy to flow further east to the benefit of ratepayers.

THE WITNESS: It would also reduce congestion.

CHAIRMAN KANE: What is your understanding of the authority that this -- first of all, where would this transmission capacity be built, or were you suggesting it be built?

THE WITNESS: Well, in -- I mean, we have this proposal -- we had this proposal in Maryland as well, but we know this is a constrained area. Let me clarify that position, because it's another one that we clarified in Maryland when I was on the stand there.

We would not suggest that this not be done through the PJM process. What we would suggest is it would be need to be done through the PJM process. So -- and so we would hope, you know, through this process, if the Commission was to condition this merger, that they would condition the merger on Exelon going to PJM and working with PJM through their process. And we certainly wouldn't -- I think we clarified this in a discovery response, but we would not expect them to construct something that wasn't cost-effective and didn't satisfy the goals of the Commission if that were the case.

So hopefully I clarified that a little bit better.

CHAIRMAN KANE: I was really focusing on the word "required" and your understanding of what authority this Commission has over transmission.

THE WITNESS: I do want to emphasize that I think that this Commission has -- because it is a merger and because there's a strong public interest standard to approve the merger, that the Commission can certainly, in its conditions -- and this is my opinion -- but in the conditions, you know, could require things that would protect D.C. ratepayers and implement things that may typically not be direct control, but they could certainly require as a condition -- they don't have to accept it and the merger may not have to go through -- but as a direct -- yeah, you could require them to take some steps to determine if there was a viable transmission project to be built through the PJM process.

CHAIRMAN KANE: So you are amending this recommendation from require to plan and construct -- did I hear you to say require them to make an application or to explore the possibility of?

THE WITNESS: Explore -- I think that's -- planning is more like exploring, but I would want them to -- yeah, I would think they would do preliminary work to show that, at least initially, whether that even makes sense to go to PJM.

We do think it's important, because having come from Delaware, there's a -- it's a highly congested area there as well. I know it's a problem here. It not only impacts renewables coming into the jurisdiction, but it also impacts customer rates.

CHAIRMAN KANE: Delaware is how long? A hundred miles or so end to end? Is there transmission in Delaware that's under the control of the Delaware commission?

THE WITNESS: No, there isn't.

CHAIRMAN KANE: You had no say over building transmission?

THE WITNESS: No. And there was a condition --

CHAIRMAN KANE: Or siting?

THE WITNESS: No. There is a merger -- there's no siting at all.

CHAIRMAN KANE: In the State of Delaware.

THE WITNESS: In the State of Delaware. There was a condition that was agreed to. It was a settlement in the PEPCO/Conectiv/Delmarva merger in 2001, 2002, which required them to actually speed up the transmission -- a PJM planned transmission project two, three years in advance because of some severe congestion on the Delmarva peninsula. And that was a provision in the settlement agreement in that particular case.

CHAIRMAN KANE: Okay. Thank you for those clarifications. I have no further questions.

COMMISSIONER FORT: I do have one --

CHAIRMAN KANE: Commissioner Fort?

COMMISSIONER FORT: -- question, still on this idea of transmission upgrade. Have you looked at what the cost to District ratepayers would be?

THE WITNESS: No, and I think that would be the -- one of the main considerations. I know in the discovery response we provided the company that we would never ask the -- there would have to be some kind of cost benefit analysis, and we would never ask consumers to pay more than the benefit that they would receive in that particular instance.

We just think that the congestion issue is such a large issue that it's worth planning such -- or at least discussing such a project over PJM and see if there's a process that would lead to a benefit to the District if that were done, and we think that would have a -- help bringing in renewable energy.

COMMISSIONER FORT: Do you know whether

or not, if that was included in a District order, whether or not, under some reading of multi-driver approaches, that would come back on the District having to incur a portion of the cost?

THE WITNESS: Well, yeah. I mean, there's FERC order 1000.

COMMISSIONER FORT: Yes, there is.

THE WITNESS: So, you know, there might be some of that discussion going on to see if the jurisdictions would be willing -- if it came down to a cost allocation principle, that would be part of the cost benefit analysis, if there was some kind of FERC order 1000 requirement for the states under the statement state agreement approach, to take a look at that.

COMMISSIONER FORT: And I guess my question was, if we put in the order, does that make that more likely?

THE WITNESS: It's going to depend on how much -- how much it is to reduce congestion, which would be broadly allocated, and how much it would be related to the benefits to renewable energy.

It may be very limited, so the cost could be actually very minimal in the sense that it could be broadly disbursed according to PJM cost allocation rules. But that's not -- you know, if there was a pretty significant public policy piece to it, then the cost could be greater directly to the District.

So yes, I agree with you there is some review that obviously would be done, and it may be -- early on, you may know that this would not work, but it could work if it had sufficient planning, and I think -- we think it's a good idea.

CHAIRMAN KANE: Thank you.

Redirect? I'm sorry. Any other -- redirect?

MS. ELEFANT: No, there's no redirect.

CHAIRMAN KANE: Thank you. Exhibits.

MS. ELEFANT: Yes. I'd like to move the amended direct testimony of Mr. Burcat, which is MAREC (1A), and the attached Exhibits (1A)-1, (1A)-2, and then the confidential Exhibit (1A)-3, which was inadvertently omitted from this version, but filed as part of November. I'll entertain any objections.

CHAIRMAN KANE: Those are admitted.

(MAREC Exhibit Numbers (1A) and (1A)-1 through (1A)-3 were received into evidence.)

MS. ELEFANT: Thank you, Your Honor.

MR. KULAK: Your Honors, I would like to move Joint Applicants' Cross Exhibit Numbers 19 through 25 into evidence.

CHAIRMAN KANE: They are moved.

(Joint Applicants Cross Exhibit Numbers 19 through 25 were received into evidence.)

CHAIRMAN KANE: Does that conclude -- no other procedural matters? So we are --

MR. CALDWELL: Your Honor?

CHAIRMAN KANE: Oh, yes.

MR. CALDWELL: Brian Caldwell with the District of Columbia government. The parties have waived cross on DCG witness Subodh Mathur, and so I was -- my question is, does the Commission plan to ask any questions of Mr. Mathur? Otherwise, we can just move his testimony in by stipulation.

He submitted testimony on the impact of the transaction on low-income customers.

CHAIRMAN KANE: We may.

MR. CALDWELL: Thank you.

CHAIRMAN KANE: So we should hold that in abeyance. We may have some questions for him. We should be able to let you know in morning. Does he need advance notice to come?

MR. CALDWELL: He's in town. He would need a few hours.

CHAIRMAN KANE: He's local. Okay. That's fine. Thank you.

MS. WHITE: Madam Chair?

CHAIRMAN KANE: Yes.

MS. WHITE: If I might --

CHAIRMAN KANE: Yes.

MS. WHITE: -- it's my understanding that we have several witnesses tomorrow that are -- either flown in for tomorrow and have flights out tomorrow or that are only available tomorrow because of prior commitments on Wednesday, and I wondered if the parties should talk informally before we disperse about how we can accommodate people's schedules tomorrow.

COMMISSIONER FORT: Can we talk here? Because the Commission needs to know who they're going to see tomorrow.

MS. WHITE: Absolutely. Absolutely.

COMMISSIONER FORT: I know we don't -- aren't part of this process, but we really do need to know who's coming up tomorrow.

MS. ELEFANT: Your Honor, I'm sorry to interrupt. May my witness be excused because he actually --

CHAIRMAN KANE: Yes.

MS. ELEFANT: He does have a flight.

CHAIRMAN KANE: Yes.

MS. ELEFANT: I'm happy to stay.

CHAIRMAN KANE: Yes, excuse your witness. Thank you very much. Good to see you again.

(Witness excused.)

CHAIRMAN KANE: Tomorrow, in addition to Mr. McGowan, who is here --

MR. LORENZO: Who is here, and we would like to put him on and finish the company's case.

CHAIRMAN KANE: Yes.

MR. LORENZO: It's sort of been trickling out.

CHAIRMAN KANE: We did that just to accommodate schedules.

Well, besides Mr. McGowan, we do want to start with, if we can, tomorrow, we've got Mr. Mara, Smith, Comings, Shane, Gorman, Chang and Chambers.

Anyone aware that any of those people, if we -- they were to be held over or to not finish tomorrow, would not be available on Wednesday?

Mr. Coyle?

MR. COYLE: Yes, ma'am. Mr. Chambers and Mr. Shane are not going to be available on Wednesday. I don't know about Chang and Comings. I think I could probably -- if I can find a hotel for them, I can probably pay them to stick around.

Chambers and Shane have unalterable other scheduling commitments, I'm afraid.

CHAIRMAN KANE: All right.

Mara, Smith. Any others?

Ms. White, did you have --

MS. WHITE: Mr. Gorman is not available on the 22nd.

CHAIRMAN KANE: Okay. Not available on the 22nd.

MS. WHITE: That's --

CHAIRMAN KANE: Well, according to what we have, here is an estimate of only about half an hour for each of those three, who have been mentioned, plus any questions that the Commission may have.

So I'm going to suggest we start -- that Mara, Smith and Comings -- and you're going to check on Chang, if we had to hold over -- because we still have three other witnesses on Wednesday also.

I don't want to interrupt Mr. McGowan.

MR. LORENZO: I would rather, you know, we start with -- would suggest we start with Mr. McGowan and then take the witnesses who are unavailable on Wednesday, Chambers and Shane, and maybe Comings or --

CHAIRMAN KANE: And Gorman, yes.

MR. LORENZO: And move them up so that --

CHAIRMAN KANE: Move them up --

MR. LORENZO: Right after --

CHAIRMAN KANE: Yeah, we'll start with Mr. McGowan tomorrow, so we can -- we've got down three-and-a-half hours for him, plus some Commission; we should be able, even with a short lunch, be able to get him finished and then get to these other three witnesses before the end of the day. All right?

So if you will let Witnesses Mara, Smith, Comings and Chang know that one or another of those may need to be available on Wednesday.

Okay? Thank you. That done, we will all hopefully get home before these heavy windstorms and rain starts. Thank you. We are adjourned until 10:00 tomorrow morning.

(Whereupon, at 6:41 p.m., the above proceedings were adjourned.)

CERTIFICATE OF COURT REPORTER

I, DENISE M. BRUNET, Certified Court Reporter, do hereby certify that the statements and testimony that appear in the foregoing transcript are the statements and testimony taken by me in shorthand and thereafter reduced to computerized transcription by me or under my direction; do hereby certify that the foregoing transcript is a true and correct record of the statements and testimony given; that I am neither counsel for, related to, nor am employed by any of the parties to the action; and further, that I am not a relative of employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

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