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

ORDER

March 23, 2016

FORMAL CASE NO. 1119, IN THE MATTER OF THE JOINT APPLICATION OF EXELON CORPORATION, PEPCO HOLDINGS, INC., POTOMAC ELECTRIC POWER COMPANY, EXELON ENERGY DELIVERY COMPANY, LLC AND NEW SPECIAL PURPOSE ENTITY, LLC FOR AUTHORIZATION AND APPROVAL OF PROPOSED MERGER TRANSACTION, Order No. 18148

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") grants the Motion of the Exelon Corporation ("Exelon"), Pepco Holdings, Inc. ("PHI"), the Potomac Electric Power Company ("Pepco"), Exelon Energy Delivery Company, LLC ("EEDC"), and New Special Purpose Entity, LLC ("SPE") (collectively, the "Joint Applicants") to file the Joint Applicants' Request for Other Relief that was received on March 7, 2016.[1] In addition, a majority of the Commission, comprised of Commissioners Fort and Phillips, adopts the terms and conditions set out in Option 2 in the Joint Applicants' Request, as modified by this Order, as a resolution on the merits of the Merger Application as filed for the Commission's approval, pursuant to D.C. Code §§ 34-504 and 34-1001. The majority of the Commission also determines that the Joint Application for a change of control of Pepco to be effected by the Proposed Merger of PHI with Purple Acquisition Corp. ("Merger Sub"), a wholly-owned subsidiary of Exelon ("Joint Application"), as filed by the Joint Applicants and as amended by the terms set out in Attachment B to this order, is in the public interest and, therefore, is approved. Chairman Kane's dissent from the majority decision is attached at Attachment A.

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[1] *Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction* ("*Formal Case No. 1119*"), Joint Applicants' Request for Other Relief Pursuant to 15 DCMR § 130.17 and Order No. 18109, filed March 7, 2016 ("Joint Applicants' Request"). The Commission treats the Joint Applicants' March 7, 2016 filing as a motion pursuant to Commission Rule 105.8 ("Written motions may be filed at any time in accordance with this chapter. Responses to a written motion shall be filed no later than ten (10) calendar days after a motion has been served.").

II. BACKGROUND

2. On April 30, 2014, Exelon Corporation announced Exelon's purchase of PHI. On June 18, 2014, the Joint Applicants filed a Joint Application for approval by the Commission, pursuant to D.C. Code §§ 34-504 and 34-1001, for a change of control of Pepco (the "Proposed Merger or Merger Application"). Upon completion of the Proposed Merger, Exelon would become the sole owner of PHI and PHI's subsidiaries, including Pepco, and Pepco would be controlled in the future by Exelon under a management structure that was previously described and discussed in Commission Order No. 17947.[2] Further procedural history of *Formal Case No. 1119* up to the issuance of Order No. 17947 is incorporated by reference to Paragraphs 25-37 of Order No. 17947.[3]

3. Following four days of Community hearings and 11 days of evidentiary hearings, the Commission, on August 27, 2015, issued Order No. 17947, which denied the Joint Application and found that the proposed merger as filed was not in the public interest.[4]

4. On October 6, 2015, the Joint Applicants; Office of the People's Counsel ("OPC"); the District of Columbia Government ("the District Government"); the District of Columbia Water and Sewer Authority ("DC Water"); the National Consumer Law Center, National Housing Trust, the National Housing Trust-Enterprise Preservation Corporation ("NCLC/NHT"); and the Apartment and Office Building Association of Metropolitan Washington ("AOBA") (collectively, the "Settling Parties") filed a Motion to Reopen the Record in *Formal Case No. 1119* to Allow for Consideration of a Nonunanimous Full Settlement Agreement and Stipulation ("NSA"), which was submitted as Attachment A in that Motion.[5] Further procedural history of *Formal Case No. 1119* subsequent to the issuance of Order No. 17947 is incorporated by reference to Paragraphs 8-13 of Order No. 18109. A full description of the proposed NSA can be found at Attachment A of Order No. 18109.

5. Following two days of Community hearings and three days of public interest hearings, the Commission, on February 26, 2016, issued Order No. 18109.[6] First, pursuant to Commission Rule 130.16, a majority of the Commission, composed of Chairman Kane and

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2 *Formal Case No. 1119*, Order No. 17947, ¶¶ 22-24, rel. August 27, 2015 ("Order No. 17947").

3 The Commission incorporates by reference the description of the Joint Applicants in Paragraphs 13-17, and the description of the Proposed Merger in Paragraphs 18-24, of Order No. 17947. The parties are identified in Paragraph 27 of Order No. 17947. *Formal Case No. 1119*, Order No. 17947, ¶ 27. WGL Energy Systems, Inc. and WGL Energy Services, Inc. (together "WGL Energy") were granted limited participation in this proceeding by Order No. 18018. *Formal Case No. 18018*, rel. October 30, 2015 ("Order No. 18018").

4 *Formal Case No. 1119*, Order No. 17947, ¶ 358.

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

6 *Formal Case No. 1119*, Order No. 18109, rel. February 26, 2016 ("Order No. 18109).

Commissioner Fort, rejected as not in the public interest the NSA as filed.[7] Commissioner Phillips dissented from that decision concluding, instead, that the NSA is in the public interest as filed and should be approved. Commissioner Fort, however, proposed alternative terms that would allow her to conclude that the Revised NSA is in the public interest.[8] Chairman Kane dissented from that view, stating that the additional terms would not make the NSA acceptable to her. Although Commissioner Phillips believed that additional terms were unnecessary because the NSA was in the public interest as filed, he nevertheless voted to proceed under Rule 130.17(b) to allow Commissioner Fort to propose her alternative terms for the Settling Parties to accept or to give the Settling Parties the opportunity to request other relief. Commissioners Fort and Phillips voted further that if all of the Settling Parties accepted the Revised NSA, the merger would be approved without further action by the Commission.[9]

6. On March 7, 2016, the Joint Applicants filed a Request for Other Relief Pursuant to 15 DCMR § 130.17(b) and Order No. 18109 ("Joint Applicants' Request") and Revised Terms and Conditions of Merger as set forth in their Request for Other Relief.[10] On March 11, 2016, Settling Parties OPC, AOBA, the District Government, and NCLC/NHT each filed their notice and response to Order No. 18109 and their response to the Joint Applicants' Request. Additionally, on March 11, 2016, Nonsettling Party MAREC filed its response to the Joint Applicants' Request.[11] On March 14, 2016, Settling Party DC Water filed its notice and response

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7 *Formal Case No. 1119*, Order No. 18109, ¶ 1.

8 Commissioner Fort's proposed alternative terms are explained in Paragraphs 139-161 of her concurrence and are set forth in the Revised NSA in Attachment A of that Order and in the redline version of the Revised NSA at Attachment D of Order No. 18109.

9 *Formal Case No. 1119*, Order No. 18109, ¶¶ 3-4. Order No. 18109 directed the Settling Parties to file a Notice with the Commission Secretary no later than fourteen (14) days from the date of the Order indicating whether they accept the Revised NSA at Attachment A or request further relief under Commission Rule 130.17(b). Further, if the Settling Parties propose other relief under Commission Rule 130.17(b), the Order advised the Nonsettling Parties that they may file comments or any request for other relief within seven (7) days.

10 *Formal Case No. 1119*, The Joint Applicants' Request for Other Relief, pursuant to 15 DCMR § 130.17(b) and Commission Order No. 18019, filed March 7, 2016 ("Joint Applicants' Request"); and *Formal Case No. 1119*, the Joint Applicants' Revised Terms and Conditions of Merger as set forth in their Request for Other Relief, filed March 7, 2016 ("Joint Applicants' Revised Terms").

11 *Formal Case No. 1119*, The Office of People's Counsel's Response to Commission Order No. 18019, filed March 11, 2016 ("OPC's Response"); *Formal Case No. 1119*, The Apartment and Office Building Association of Metropolitan Washington ("AOBA") Notice and Response to Commission Order No. 18109 and the Joint Applicants' Request for Other Relief, filed March 11, 2016 ("AOBA's Response"); *Formal Case No. 1119*, The Notice of the District of Columbia Government Regarding Alternative Settlement Terms and Response to Joint Applicants' Request for Other Relief, filed March 11, 2016 ("District Government's Response"); *Formal Case No. 1119*, The Notice of the National Consumer Law Center, National Housing Trust and Notional Housing Trust-Enterprise Preservation Corporation Pursuant to Order No. 18109, ¶ 206 and Response to "Joint Applicants' Request for Other Relief Pursuant to 15 DCMR § 130.17(b) and Order No. 18109", filed March 11, 2016 ("NCLC/NHT's Response"); and *Formal Case No. 1119*, The Mid-Atlantic Renewable Energy Coalition ("MAREC") Response to the Joint Applicants on March 7, 2016 Request for Other Relief, filed March 11, 2016 ("MAREC's Response").

to Order No. 18109 and its response to the Joint Applicants' Request.[12] On March 17, 2016, Nonsettling Parties DC Solar United Neighborhoods ("DC SUN") and Maryland District Virginia Solar Energy Industries Association ("MDV-SEIA") filed their joint opposition to the Joint Applicants' Request ("DC SUN/ MDV-SEIA's Opposition").[13] Additionally, on March 17, 2016, Nonsettling Party GRID2.0 Working Group ("GRID2.0") filed its Opposition to the Joint Applicants' Request; Nonsettling Party the United States General Services Administration ("GSA") filed a response to the Joint Applicants' Request; and WGL Energy filed a joint response to the Joint Applicants' Request.[14] On March 21, 2016, DC SUN/MDV-SEIA filed a response to the Settling Parties' March 11 filings.[15] No filing was made by the Independent Market Monitor, the remaining Nonsettling Party. Additionally, the Commission notes that numerous comments were filed by Advisory Neighborhood Commissions and other members of the community concerning the Joint Applicants' Request for Alternative Relief.[16]

III. REQUEST FOR OTHER RELIEF AND COMMENTS

A. The Joint Applicants' Request for Other Relief

7. The Joint Applicants assert that "[t]here is broad agreement that the Merger, properly conditioned, is in the public interest and will leave the District and Pepco's customers better off than they would be without the Merger" because "[t]he Settling Parties reached that conclusion when they executed the Settlement Agreement. . ." and the Commission agreed in Order No. 18109 "with only limited revisions, which it asked the Settling Parties to review."[17]

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[12] *Formal Case No. 1119*, The Notice of the District of Columbia Water and Sewer Authority Concerning Order No. 18109 Alternative Settlement Terms and Response to Joint Applicants' Request for Other Relief, filed March 14, 2016 ("DC Water's Response").

[13] *Formal Case No. 1119*, DC Solar United Neighborhoods ("DC SUN") and Maryland District Virginia Solar Energy Industries Association ("MDV-SEIA") Opposition to the Joint Applicants' Motion for Other Relief, filed March 17, 2016 ("DC SUN/MDV-SEIA's Opposition").

[14] *Formal Case No. 1119*, GRID2.0 Working Group ("GRID2.0") Opposition to the Joint Applicants' Motion for Other Relief, filed March 17, 2016 ("GRID2.0's Opposition"); *Formal Case No. 1119*, The United States General Services Administration's Response to the Joint Applicants on March 7, 2016 Request for Other Relief, filed March 17, 2016 ("GSA's Response"); and *Formal Case No. 1119*, WGL Energy Services, Inc. and WGL Energy Systems, Inc. (together "WGL Energy") Response to the Joint Applicants on March 7, 2016 Request for Other Relief, filed March 17, 2016 ("WGL Energy's Response").

[15] *Formal Case No. 1119*, DC Solar United Neighborhoods and MDV-SEIA's Response to the Settling Parties' March 11 Filings, filed March 21, 2016 ("DC SUN/MDV-SEIA's Response"). Although there is an issue concerning the timeliness of the Response, because DC SUN/MDV-SEIA may have been treating the filings of the Settling Parties on March 11 as requests for other relief to which responses would be due by March 21, and because the arguments in DC SUN/MDV-SEIA's Response are being addressed in this Order in any event, we will accept the document as timely filed.

[16] The Commission appreciates the submissions of the many commenters, including the ANCs and community members, and has given the comments filed on the Joint Applicants' Request the consideration and weight that they are due in our ultimate determination in this matter.

[17] *Formal Case No. 1119*, Joint Applicants' Request at 1.

Despite this seeming consensus, the Joint Applicants state that "the Merger is on the verge of failure because of differing opinions over how a portion of the $72.8 million Customer Investment Fund ("CIF") — which, in total, the Commission and the Settling Parties agreed was sufficient — should be allocated."[18] The Joint Applicants explain that "[they] have carefully reviewed the RNSA [proposed by Commissioner Fort in Order No. 18109] and are ready to proceed with the Merger in accordance with its terms. The other Settling Parties, however, have been unable to agree to the Commission's conditions — which, according to press releases, appears largely due to uncertainty arising from the Commission's deferral of a decision on the allocation of a $25.6 million rate credit until Pepco's next base rate proceeding."[19] The Joint Applicants express concern that this difference of opinion "threatens to derail the Merger entirely — destroying all the other benefits, which go well beyond the $72.8 million CIF, that the Settling Parties and the Commission majority agree the Merger would bring to the District and Pepco's customers."[20]

8. The Joint Applicants' Request presents three options for Commission action which, they allege, would avoid the loss of the $78 million of benefits to Pepco customers, along with other benefits related to the Proposed Merger and are acceptable to the Joint Applicants: (1) the Commission adopt the NSA without Order No. 18109's alternative terms; (2) the Commission adopt the RNSA proposed by Commissioner Fort in Order No. 18109; and (3) the Commission adopt the terms of the RNSA with a revised CIF allocation to preserve the benefits of the Residential Customer Base Rate Credit. The Joint Applicants ask the Commission to adopt any one of these three options as a resolution on the merits and approve the merger without any further steps. The Joint Applicants specifically ask for a decision by April 7, 2016.[21]

1. The NSA without Order No. 18109's alternative terms

9. In Option 1, the Joint Applicants request that the Commission adopt the NSA without Order No. 18109's alternative terms "as a resolution on the merits and approve the Merger without any further steps."[22] The Joint Applicants state that they "believe that the Residential Customer Base Rate Credit, as structured in the Settlement Agreement, will not

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[18] *Formal Case No. 1119*, Joint Applicants' Request at 2.

[19] *Formal Case No. 1119*, Joint Applicants' Request at 2, citing Executive Office of the Mayor, Statement from Mayor Bowser on Public Service Commission's Order (Mar. 1, 2016), *available at* http://mayor.dc.gov/release/statement-mayor-bowser-public-service-commission%E2%80%99s-order; Office of People's Counsel, People's Counsel Opposes the PSC's Revised Pepco-Exelon Merger Settlement Agreement (Mar. 1, 2016), http://www.opc-dc.gov/index.php/consumer-topics-a-z/press-release/1236-people-s-counsel-opposes-the-psc-s-revised-pepco-exelon-merger-settlement-agreement. DC Water has also opposed the alternative terms proposed by the Commission on the grounds that they will "provide substantially less benefit to the Authority's ratepayers" than the Settlement Agreement. *See* DC Water Statement on Revised Pepco-Exelon Merger Settlement Agreement (March 3, 2016), available at https://www.dcwater.com/news/listings/press_release762.cfm.

[20] *Formal Case No. 1119*, Joint Applicants' Request at 2. (Footnote omitted).

[21] *Formal Case No. 1119*, Joint Applicants' Request at 16.

[22] *Formal Case No. 1119*, Joint Applicants' Request at 3.

undermine the Commission's ability to achieve its stated policy of correcting the historical inequity of negative class rates of return" and point out that large commercial customers such as AOBA, DC Water, and DC Government supported the NSA.[23] Further, the Joint Applicants contend that "the receipt by residential customers of significant rate credits should facilitate the Commission's implementation of that readjustment."[24] The Joint Applicants also state that "the District Government has made an express commitment above and beyond its execution of the Settlement Agreement (over which the Commission has jurisdiction to enforce) to ensure that the funds allocated under the Settlement Agreement are used for the specified purposes agreed to by the Settling Parties."[25]

2. The RNSA proposed by Commissioner Fort in Order No. 18109

10. In Option 2, "the Joint Applicants request that the Commission adopt the terms of the RNSA [proposed by Commissioner Fort in Order No. 18109] as a resolution on the merits and approve the merger without any further steps."[26] The Joint Applicants state that "[t]he Commission majority has already concluded that 'the Revised NSA and the amended Merger Application, when taken as a whole, is now in the public interest.'"[27] The Joint Applicants state that "Commission precedent permits the Commission to now approve the Merger conditioned by the terms of the RNSA as a resolution on the merits without any further steps."[28] The Joint Applicants state that "[i]f the terms of the RNSA are adopted by the Commission, the Joint Applicants will continue to actively advocate for use of the 'Customer Base Rate Credit' created pursuant to Paragraph 4 of the RNSA to offset increases in rates to residential customers."[29] They explain that "[their] commitment to fund this offset and to seek its application for the benefit of residential customers in no way impairs the Commission's fundamental authority to approve just and reasonable rates. In fact, this funding provides an additional tool for the Commission to pursue a rate design that reduces cross subsidization between rate classes. This benefit is available *only* if the Merger is approved and consummated."[30] Further, the Joint Applicants state that "[they] would continue to advocate that the monies reallocated by the Commission to the new Formal Case No. 1130 ("FC 1130") Modernizing the Energy Delivery System for Increased Sustainability ("MEDSIS") Pilot Project Subaccount be spent for projects closely aligned to the

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23 *Formal Case No. 1119*, Joint Applicants' Request at 4.

24 *Formal Case No. 1119*, Joint Applicants' Request at 3.

25 *Formal Case No. 1119*, Joint Applicants' Request at 3.

26 *Formal Case No. 1119*, Joint Applicants' Request at 4.

27 *Formal Case No. 1119*, Joint Applicants' Request at 4, citing *Formal Case No. 1119*, Order No. 18109, ¶¶ 163, 207.

28 *Formal Case No. 1119*, Joint Applicants' Request at 4.

29 *Formal Case No. 1119*, Joint Applicants' Request at 4.

30 *Formal Case No. 1119*, Joint Applicants' Request at 5.

Settling Parties' priorities of renewable energy, sustainability and green buildings reflected in the Settlement Agreement's original allocation."[31]

3. The terms of the RNSA with a revised CIF allocation to preserve the benefits of the Residential Customer Base Rate Credit

11. In Option 3, the Joint Applicants propose alternative terms to the RNSA proposed by Commissioner Fort in Order No. 18109 to "address [the Commission's] concerns with the Residential Customer Base Rate Credit, as well as the Settling Parties' concerns with the terms of the RNSA, through additional alternative terms which preserve the function of the Residential Customer Base Credit *and* move $20 million in CIF monies from the newly created MEDSIS Pilot Project Subaccount to a separate Customer Base Rate Credit fund."[32] The Joint Applicants assert that "[p]reserving the $25.6 [million] Residential Customer Base Rate Credit for residential customers will maintain the certainty of a provision of the Settlement Agreement that is essential for certain Settling Parties. And with an additional $20 million for potential rate credits to be used across rate classes at the Commission's discretion, there would be no risk that the Commission's hands were 'inappropriately tie[d]' in pursuing its mandate to 'set rates that are fair, just and reasonable.'"[33]

12. The Joint Applicants state that this proposal will "allow the Commission to decide how to allocate [the additional $20 million] in the context of a base rate case where it will have more information on the size of any rate increases, rate design and other information it felt is currently lacking" and provide "[a]ll interested parties [ ] and opportunity in [the] upcoming Pepco base rate case to advocate as to how the $20 million in funds should be deployed."[34] The Joint Applicants further assert that "the revised allocation provides the Commission with additional discretion over how best to use $20 million of the $72.8 million CIF to advance its competing priorities."[35] The Joint Applicants explain that these funds "can be used at the Commission's discretion for one or some combination of the following purposes: (i) to offset increases in the rates charged commercial customers (or other customers if the Commission so chose) approved by the Commission in any Pepco base rate case filed after the close of the Merger, (ii) to otherwise address negative class rates of return, (iii) to provide assistance to low and limited income customers in the District of Columbia, including under LIHEAP, or (iv) to reallocate to the MEDSIS Pilot Project Subaccount if determined to be the best use of those

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31 *Formal Case No. 1119*, Joint Applicants' Request at 5.

32 *Formal Case No. 1119*, Joint Applicants' Request at 6. (Emphasis in original).

33 *Formal Case No. 1119*, Joint Applicants' Request at 8, quoting *Formal Case No. 1119*, Order No. 18109, ¶ 88 (Commission Fort's Concurring).

34 *Formal Case No. 1119*, Joint Applicants' Request at 9.

35 *Formal Case No. 1119*, Joint Applicants' Request at 6-7.

funds."[36] Finally, the Joint Applicants include in its filing a revision to Paragraph 4 of the RNSA to clarify the details of how the base rate credit would operate.[37]

4. Authority to Grant the Requested Relief

13. The Joint Applicants assert that "[u]nder the D.C. Code and the Commission's regulations and precedent, the Commission plainly has the authority to grant any of the relief requested herein . . ."[38] The Joint Applicants state that "[p]ursuant to Rule 130.17(b), the Commission may determine that the Merger is in the public interest with any of these sets of conditions."[39] The Joint Applicants also state that "[i]n similar circumstances, in Formal Case No. 951, the Commission found that 'the merger as proposed' between Pepco and BGE was not necessarily in the public interest, but that the merger *would* be in the public interest "subject to the conditions stated" in the order itself."[40] The Joint Applicants note that in Order No. 17947 the Commission "believed that the 'base of benefits for ratepayers' was not large enough to justify this step; that the 'Joint Applicants ha[d] already argued against' certain potential conditions; and that the Commission did not wish to 'take on the task of shoring up [the] proposal' itself. The situation today is the opposite. In proposing the RNSA, the Commission majority has already determined the Merger's benefits are large enough to warrant its approval; the Joint Applicants have expressly said that they will accept any of the sets of conditions identified above; and the potential approval conditions need not be crafted by the Commission, but instead are already set forth in the Settlement Agreement, the RNSA, or the modified proposal submitted here."[41]

14. The Joint Applicants further explain that as "[Order No. 18109] explained, the Commission always has authority to adopt a settlement proposal 'as a resolution *on the merits*,' even when the proposal cannot 'operate of its own force' as a settlement agreement—so long as the Commission can conclude, based on 'substantial evidence on the record as a whole, that the proposal is in the public interest.'"[42] The Joint Applicants go on to explain that when the

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36 *Formal Case No. 1119*, Joint Applicants' Request at 8.

37 *Formal Case No. 1119*, Joint Applicants' Request at 9-10.

38 *Formal Case No. 1119*, Joint Applicants' Request at 10.

39 *Formal Case No. 1119*, Joint Applicants' Request at 11, citing 15 DCMR § 130.17 (b).

40 *Formal Case No. 1119*, Joint Applicants' Request at 11, quoting *Formal Case No. 951, In the Matter of the Joint Application of Baltimore Gas and Electric Company, Potomac Electric Power Company and Constellation Energy Corporation for Authorization and Approval of Merger and for a Certificate Authorizing the Issuance of Securities* ("*Formal Case No. 951*"), Order No. 11075, pp. 3, 107, rel. October 20, 1997 ("Order No. 11075").

41 *Formal Case No. 1119*, Joint Applicants' Request at 11 n. 21, quoting *Formal Case No. 1119*, Order No. 17947, ¶¶ 351-353.

4242 *Formal Case No. 1119*, Joint Applicants' Request at 11, quoting *Formal Case No. 1119*, Order No. 18109, ¶ 23, rel. February 27, 2016 (quoting *Mobil Oil C. v. Federal Power Commission*, 417 U.S. 283, 314 (1974), also citing *Formal Case No. 1119*, Order No. 18109, ¶ 81 (Commissioner Fort's Opinion), rel. February 27, 2016; *Placid Oil Co. v. Fed. Power Comm'n*, 483 F.2d 880, 893 (5th Cir. 1973) (although opposition to settlement proposal "precluded the possibility of its functioning as a settlement in the traditional sense, FPC adopted it as a decision on

Commission acts in this manner "it may always modify the conditions proposed by the parties, as it did, for example, in Formal Case No. 945, when it found that particular "modifications … should be adopted" as a condition of the Commission's approval. The relief sought here is thus no different than what the Commission has repeatedly granted."[43]

15. The Joint Applicants state that "in strikingly similar circumstances, the D.C. Circuit held that a commission commits reversible error if it declines to consider a proposed, but not accepted, offer as a resolution on the merits."[44] The Joint Applicants explain that "[i]n *Michigan Consolidated Gas Co. v. Federal Power Commission*, 283 F.2d 204 (D.C. Cir. 1960), one party proposed new terms as a resolution while an application for reconsideration was pending; the other parties, however, rejected the proposal[,]" and the Federal Power Commission "refused to consider the settlement proposal 'whatever its merits,'" solely because the other parties had rejected it."[45] The Joint Applicants state that the D.C. Circuit "held that the Federal Power Commission was *obligated* to 'consider the proposal on its merits' as a resolution of the case . . . because, the court explained, '[i]n viewing the public interest, the Commission's vision is not to be limited to the horizons of the private parties to the proceeding'; rather, so long as the proposal 'appears prima facie to have merit,' its consideration is 'indispensable to . . . any public interest determination" in the proceeding with the authority as the 'final decision maker'."[46] Based on this case and citing Commissioner Fort's separate opinion, the Joint Applicants assert

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the merits"); *Columbia Gulf Transmission Co. Columbia Gas Transmission Corp.*, 34 FERC ¶ 61408, 61773 (Mar. 28, 1986) ("While it is clear that the numerous objections which have been filed to the settlement offer render the proposal ineffective as a settlement, it is likewise clear that we are obligated to consider the filing on its merits as a recommended disposition. … [I]t is necessary for the Commission to evaluate both the terms and effects of the proposal carefully in order to determine whether the offer is in the public interest, either as filed or as it may reasonably be conditioned."); *Felmont Oil Corp. & Essex Offshore, Inc.*, 32 FERC ¶ 63071, 65213 (Aug. 28, 1985) ("a contested offer of settlement should be considered by the Commission to determine whether it is an appropriate resolution of the proceeding on its merits"); *Re United Gas Pipe Line Co. Opinion No. 52, Docket Nos. Rp71-41 et al. July 31, 1979.*, 8 FERC ¶ 61082, 61317 (July 31, 1979) ("While it is clear that the objections which have been filed to the settlement render the proposal ineffective as a settlement, it likewise appears that we are obligated to consider the filing on its merits as recommended disposition of these proceedings."); *Metro. Washington Bd. of Trade v. PSC*, 432 A.2d 343, 363 (D.C. 1981) ("administrative agencies not only have the flexibility to consider 'offers of settlement,' but also have the responsibility to consider such offers on their merits in light of the evidence of record"); *United States v. PSC*, 465 A.2d 829, 832 (D.C. 1983) (similar); *District of Columbia v. PSC*, 802 A.2d 373, 378 (D.C. 2002) (similar).

[43] *Formal Case No. 1119*, Joint Applicants' Request at 12, citing *Formal Case No. 945, In the Matter of Investigation into Electric Service Market Competition* ("*Formal Case No. 945*"), Order No. 11576, p. 31, rel. December 30, 1999 ("Order No. 11576").

[44] *Formal Case No. 1119*, Joint Applicants' Request at 12.

[45] *Formal Case No. 1119*, Joint Applicants' Request at 12, quoting *Michigan Consol. Gas Co. v. Fed. Power Comm'n*, 283 F.2d 204, 224 (D.C. Cir. 1960). (Internal quotations omitted).

[46] *Formal Case No. 1119*, Joint Applicants' Request at 12, quoting *Michigan Consol. Gas Co.*, 283 F.2d at 224-225.

that "the Commission is obligated to weigh the terms of the Settlement Agreement, the RNSA, and the RNSA as revised for their consistency with the public interest."[47]

16. The Joint Applicants assert that "to adopt the Settlement Agreement, the terms of the RNSA, or the RNSA as revised as a resolution on the merits, no more process is required than what Order No. 18109 already sets forth — the opportunity to 'file comments on [this] filing . . . within seven (7) days.'"[48] The Joint Applicants point to *Formal Case No. 777* and state that "the Commission expressly held that the 'need for an adequate record' to adopt a settlement proposal as a resolution on the merits 'is not tied rigidly to the same procedures in every instance,' and that in some cases, 'the mere review by the agency of the record already before it may provide the requisite support,' with no 'full evidentiary hearing . . . warranted.'"[49] Additionally, the Joint Applicants quote the Court of Appeals to state that "the Commission 'is not bound to hold a hearing on every question' when evaluating a proposed settlement . . . [and the Commission] has a wide range of latitude in determining the range of issues it will explore . . . as long as it still evaluates whether the [proposal] is in the public interest."[50] Finally, the Joint Applicants point out that "in Formal Case No. 951, the Commission granted exactly the relief sought here — approving a merger subject to conditions — without providing for *any* further process on the conditions set forth in the Commission's order."[51]

B. Comments in Response to the Request for Other Relief

1. OPC's Response

17. OPC states that "[it] cannot and does not accept the Revised NSA" put forward in Order No. 18109 because "the Revised NSA removed a principal benefit to residential electricity

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47 *Formal Case No. 1119*, Joint Applicants' Request at 12-13, citing *Formal Case No. 1119*, Order No. 18109, ¶ 138 (Commission Fort's Concurring).

48 *Formal Case No. 1119*, Joint Applicants' Request at 13, quoting *Formal Case No. 1119*, Order No. 18109, ¶ 208.

49 *Formal Case No. 1119*, Joint Applicants' Request at 13, quoting *Formal Case No. 777, In the Matter of Application of Chesapeake & Potomac Tele. Co.* ("*Formal Case No. 777*"), Order No. 7546, p. 8, rel. April 16, 1982;and citing *Formal Case No. 934*, Order No. 10464 ("In some instances, therefore, the mere review of the record already before the Commission may provide the necessary evidentiary support, while a full hearing may be appropriate in other cases."); *In re Hugoton-Anadarko Area Rate Case*, 466 F.2d 974, 980 (9th Cir. 1972) ("the Commission was empowered to consider the settlement proposal on its merits without … opening the proceeding to adversary evidentiary hearings" where the proposal was "preceded by a vast evidentiary hearing" and "did not interject new factual issues"); *Pennsylvania Gas & Water Co. v. Fed. Power Comm'n*, 463 F.2d 1242, 1250-51 (D.C. Cir. 1972) ("an offer of settlement may be accepted by the Commission as a resolution of a … proceeding on the merits …, and the proceeding terminated without a full and formal evidentiary hearing"); *S. Florida Hosp. & Healthcare Ass'n v. Jaber*, 887 So. 2d 1210, 1212 (Fla. 2004) (affirming Commission approval made "without conducting an evidentiary hearing").

50 *Formal Case No. 1119*, Joint Applicants' Request at 13-14, quoting *District of Columbia v. PSC*, 802 A.2d 373, 378 (D.C. 2002).

51 *Formal Case No. 1119*, Joint Applicants' Request at 13-14, citing *Formal Case No .951*, Order No. 11075, p. 107.

customers by eliminating the guarantee of no rate increases for residential ratepayers through March 2019."[52] OPC states that each of the three options put forward by the Joint Applicants "suffer from fatal procedural or substantive defects and therefore are not viable."[53] Regarding Option 1, the adoption of the original NSA, OPC cannot support that option because it bypasses Commission Rule 140 concerning requests for reconsideration and is "inconsistent with OPC's advocacy of an open and fair process."[54]

18. Regarding Option 2, the adoption of the Revised NSA, OPC states that "[it] should be rejected out of hand because it is not in the public interest" because the Revised NSA eliminated the provisions that "'insulate[d] residential ratepayers from any increase through March 2019.'"[55] OPC states that it and other parties to the Original NSA "bargained for an assured period of repose for residential customers from base distribution rate increases until at least March 2019 (any amount of the credit not utilized by that time would continue to be applied against any future residential class rate increase – another benefit of the NSA taken away by Paragraph 4 of the Revised NSA)."[56] OPC concludes that "[p]aragraph 4 of the Revised NSA provides residential customers no assurance whatsoever of such rate relief" and therefore "residential ratepayers will not know what, if any, amount of the credit will be provided to them until the end of the next rate case."[57] OPC recognizes that Paragraph 4 "gives residential customers the right to argue against an allocation of the credit to other classes" however they point out that "OPC already has the right to argue for and against a particular cost allocation in the next base rate case."[58]

19. Regarding Option 3, the Revised NSA with a revised CIF allocation to preserve the benefits of the Residential Customer Base Rate Credit, OPC concludes that it "is also unacceptable" because "other elements of that option [specifically the incremental offset] ignore the Commission's specifically stated customer class allocation concerns that led to the Original NSA's rejection."[59] Additionally, OPC states that "Option 3 introduces a level of uncertainty by vesting the Commission with the authority to exercise it[s] discretion regarding how the

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52 *Formal Case No. 1119*, OPC's Response at 2-3.

53 *Formal Case No. 1119*, OPC's Response at 3.

54 *Formal Case No. 1119*, OPC's Response at 4.

55 *Formal Case No. 1119*, OPC's Response at 4, quoting *Formal Case No. 1119*, Initial Brief of the Office of the People's Counsel, p. 7, filed December 16, 2015.

56 *Formal Case No. 1119*, OPC's Response at 4.

57 *Formal Case No. 1119*, OPC's Response at 4-5.

58 *Formal Case No. 1119*, OPC's Response at 5.

59 *Formal Case No. 1119*, OPC's Response at 5.

transferred funds will be used."[60] OPC requests that the Commission "make an expeditious decision and bring closure to this matter."[61]

2. AOBA's Response

20. AOBA supports the Revised NSA because "[it] clarifies the responsibilities of Exelon and Pepco in a post-merger environment, permits all ratepayers to participate in the benefits of the merger, ensures that funds that are intended to benefit ratepayers and improve Pepco's electric system in the District of Columbia are not diverted to other purposes, and retains the Commission's statutory authority to enforce the terms and conditions of the RNSA."[62] AOBA states that "[it] believes a thorough review of comments in response to the RNSA can be undertaken, and a timely decision issued without the need for additional hearings, while ensuring the due process rights of all the parties and the public."[63] Additionally, AOBA takes issue with how the Joint Applicants might approach the allocation of the $25.6 million base rate credit in the next rate case and spells out its position.[64]

21. AOBA does not support Option 1 and states that procedurally it is deficient because "Option 1 represents an effective request for reconsideration of the Commission's determination in Order No. 18109 without a showing that the Commission erred in any of its determinations in that order."[65] AOBA also does not support Option 3 because "[t]he modifications to the RNSA the Joint Applicants suggest. . . are in direct conflict with key elements of the Commission's determinations in Order No. 18109."[66] AOBA points out that the Joint Applicants "make no commitment to advocating the allocation of any CIF dollars to commercial customers" even from the reallocated $20 million and "despite the Commission's findings in Order No. 18109, the Joint Applicants fail to provide any compelling rationale that would support exclusion of commercial customers from participating in such benefits."[67] Additionally, AOBA notes that the $20 million of reallocated funds would no longer be made available within sixty (60) days after the Merger closes but would be held by Exelon "for at least a year" until the Commission issues a rate case decision.[68]

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60 *Formal Case No. 1119*, OPC's Response at 5.

61 *Formal Case No. 1119*, OPC's Response at 6.

62 *Formal Case No. 1119*, AOBA's Response at 1-2.

63 *Formal Case No. 1119*, AOBA's Response at 3.

64 *Formal Case No. 1119*, AOBA's Response at 8-10.

65 *Formal Case No. 1119*, AOBA's Response at 5.

66 *Formal Case No. 1119*, AOBA's Response at 5.

67 *Formal Case No. 1119*, AOBA's Response at 6.

68 *Formal Case No. 1119*, AOBA's Response at 7.

3. District Government's and DC Water's Responses

22. The District Government and DC Water filed substantially similar notices rejecting the Revised NSA included as Attachment A to Order No. 18109.[69] Additionally, they indicate their continued support for the NSA proposed on October 6, 2015 because they provide "direct and tangible benefits to ratepayers" and remain in the public interest.[70] Finally, they express support for Joint Applicants' Option 1, the adoption of the Original NSA as a resolution on the merits.[71]

4. NCLC/NHT's Response

23. NCLC/NHT in reviewing changes made in the Revised NSA, observes that "while [they] continue to view the creation of the $11.25 million energy efficiency fund quite favorably, we continue to see great value for the District's low-income ratepayers in the funding provided for LIHEAP in the NSA and in the protection from residential rate increases provided by the $25.6 million in NSA ¶ 4."[72] NCLC/NHT concludes that "because the RNSA [ ] cuts back programs and policies within the original NSA that address the needs of residential and low-income consumers, we unfortunately are not able to support it."[73] Regarding Option 1, NCLC/NHT states that while they "would gladly see that NSA approved, this simply does not seem like a viable option."[74]

24. NCLC/NHT "urge[s] the Commission to give the [Joint Applicants'] third option serious consideration."[75] NCLC/NHT states that "the JAs have presented, in their third option, a route that largely preserves the benefits to which the Settling Parties agreed and also gives due consideration to the new funding allocations sought in the RNSA, but leaves final decisions as to those allocations to future cases. NCLC/NHT strongly recommend[s] that the Commission view the JAs' third option as a route forward to an equitable resolution of this proceeding, one that can meet the collective interests of the public, the Commission, and the Settling Parties."[76] While acknowledging that Option 3 "is unquestionably a substantial change from the RNSA, NCLC/NHT note, as the JAs already have, that no party had sought funding for the MEDSIS

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69 *See Formal Case No. 1119*, District Government's Response at 1; and *Formal Case No. 1119*, DC Water's Response at 1.

70 *See Formal Case No. 1119*, District Government's Response at 1; and *Formal Case No. 1119*, DC Water's Response at 1.

71 *See Formal Case No. 1119*, District Government's Response at 1; and *Formal Case No. 1119*, DC Water's Response at 1.

72 *Formal Case No. 1119*, NCLC/NHT's Response at 3.

73 *Formal Case No. 1119*, NCLC/NHT's Response at 3-4.

74 *Formal Case No. 1119*, NCLC/NHT's Response at 5.

75 *Formal Case No. 1119*, NCLC/NHT's Response at 6.

76 *Formal Case No. 1119*, NCLC/NHT's Response at 7.

Pilot Project Subaccount at any point in the proceeding, nor had the Commission previously identified the failure to include such funding as a flaw."[77]

25. Based on the positions taken by the parties and Commissioners Fort and Phillips, NCLC/NHT states "there is clearly majority support for either the NSA, as filed, or a somewhat amended version of it. Put in other terms, there are many parties who see value in the merger proceeding, and it is worth the effort to find terms upon which it can proceed with broad support."[78] NCLC/NHT observes that "[s]hould the merger collapse, all of the benefits that Commissioners Phillips and Fort saw arising from the NSA, respectively, as proposed or revised, will be lost."[79] NCLC/NHT highlights that this "includes loss of sizeable funding that would defer future rate increases[,] . . . the loss of funding for much-needed energy efficiency investments in affordable housing[,] . . . [and the] develop[ment of] an Arrearage Management Program."[80] On this basis, NCLC/NHT concludes "[c]ollapse of the merger will unquestionably leave low-income households worse off, by more fully exposing them to future Pepco rate increases; making it harder to reduce consumption in affordable multifamily housing; and allowing low-income customers to fall into debt with few routes to dig out."[81]

5. DC SUN/MDV-SEIA's Opposition

26. DC SUN/MDV-SEIA asserts that "the Commission need not consider the Joint Applicants' proposals. The Commission may simply implement the executory provisions of Order No. 18109 that require unanimity among the Settling parties and deny the merger application"[82] Further, they state that when assessed on the merits the options proposed "are inconsistent with the Commission's determination of the public interest in this case" and therefore the Commission should deny the request.[83] Generally, DC SUN/MDV-SEIA states that "the first two options are precluded by Order No. 18109 and should be rejected because they are inconsistent with the public interest. [While t]he third option, . . . is either (1) an immaterial twist on option two that is not supported by the key Settling Parties and is not in the public interest or (2) a substantive change the would undercut the Commission's policy decision . . ."[84]

27. Regarding Option 1, DC SUN/MDV-SEIA states that "[t]he Joint Applicants make no attempt to address the specific deficiencies that the Commission identified" and as

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77 *Formal Case No. 1119*, NCLC/NHT's Response at 8, citing *Formal Case No. 1119*, Joint Applicants' Request at 6 n.13.

78 *Formal Case No. 1119*, NCLC/NHT's Response at 6.

79 *Formal Case No. 1119*, NCLC/NHT's Response at 7.

80 *Formal Case No. 1119*, NCLC/NHT's Response at 7-8.

81 *Formal Case No. 1119*, NCLC/NHT's Response at 8.

82 *Formal Case No. 1119*, DC SUN/MDV-SEIA's Opposition at 2.

83 *Formal Case No. 1119*, DC SUN/MDV-SEIA's Opposition at 2.

84 *Formal Case No. 1119*, DC SUN/MDV-SEIA's Opposition at 2.

explained in a footnote "[a]ny claim that the Commission erred in finding that the NSA is not in the public interest must be made in a request for reconsideration."[85] Regarding Option 2, DC SUN/MDV-SEIA asserts that it is "foreclosed by Order No. 18109" because "the unanimous agreement of all of the Settling Parties was a condition precedent to finding that the modified terms in the RNSA could be in the public interest."[86] They point out that major now-dissenting Settling Parties have determined that "the modified terms will not protect key public interests" and state that "[t]he Commission should not jettison its express condition for its public interest finding . . ."[87] Regarding Option 3, DC SUN/MDV-SEIA states that even if the Commission considers it on the merits "[the Commission] should find that this proposal undercuts essential elements of Commission policy and priorities and, therefore, is not in the public interest."[88] In support, DC SUN/MDV-SEIA state that Option 3 "strip[s] $20 million – almost 93% - from the MEDSIS Pilot Project Subaccount" and that this transfer "belittles the Commission's well-reasoned priorities and cannot be squared with Order No. 18109."[89]

28. Turning to the Joint Applicants use of the *Michigan Consolidated* case, DC SUN/MDV-SEIA state, "As the Court made clear in this pre-FERC case, however, only 'the special circumstances in this case' obliged the [Federal Power Commission] to consider the merits of a single party's proposed resolution."[90] They outline three areas where the facts of the *Michigan Consolidated* case differ from the instant case and point out that the Court specifically limited the decision to the unique facts of that case and those facts are not present here. DC SUN/MDV-SEIA add in a footnote that "[t]he District of Columbia Court of Appeals would apply a different set of statutes and regulations that give the Commission greater flexibility in deciding whether to consider Joint Applicants' new proposal on the merits."[91]

6. GSA's Response

29. GSA states that "[it] neither supports nor opposes the Merger, but is committed to ensuring that federal utility customers and taxpayers are not excluded from direct, tangible, and guaranteed benefits of a merger of the Joint Applicants."[92] Additionally, GSA indicates that "[it] does not oppose the Commission's decision [in Order No. 18109], nor does GSA oppose the

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85 *Formal Case No. 1119*, DC SUN/MDV-SEIA's Opposition at 4 and 4 n.10, citing *Formal Case No. 1119*, OPC's Response at 3-4, *Formal Case No. 1119*, AOBA's Response at 5.

86 *Formal Case No. 1119*, DC SUN/MDV-SEIA's Opposition at 4-5. (Citation omitted).

87 *Formal Case No. 1119*, DC SUN/MDV-SEIA's Opposition at 5-6.

88 *Formal Case No. 1119*, DC SUN/MDV-SEIA's Opposition at 6-7.

89 *Formal Case No. 1119*, DC SUN/MDV-SEIA's Opposition at 7, 10.

90 *Formal Case No. 1119*, DC SUN/MDV-SEIA's Opposition at 7-8, citing *Michigan Consol. Gas Co.*, 283 F.2d at 226 (D.C. Cir. 1960).

91 *Formal Case No. 1119*, DC SUN/MDV-SEIA's Opposition at 8 n.29.

92 *Formal Case No. 1119*, GSA's Response at 4.

terms set forth in the RNSA."[93] However, GSA asserts that the Joint Applicants' Request "should be denied without the Commission's consideration as it fails to comply with the filing requirements of Order No. 18109."[94]

30. First, GSA points out that the Joint Applicants' Requests "lacks the support of all the Settling Parties" and concludes that it "is directly contrary to the Commission's decision in Order No. 18109, which required a joint filing by all the Settling Parties."[95] GSA also highlights that the Commission has deemed the Joint Applicants' individual Request for Other Relief a motion, governed by Rule 105.8, because the Joint Applicants' filing does not comply with the Commission's decision and order."[96] In response to the Joint Applicants' request that one of the options in their Motion be adopted as a resolution on the merits, GSA states that "the Joint Applicants fail to recognize the unique steps taken by the Commission to reopen the record in this case after a 'final decision' was issued to allow the Commission to admit the NSA into the record, and the sole and limited purpose for which the Commission allowed all of the Settling parties to consider the RNSA."[97] GSA explains that the Commission had to "'waive[ ] the first sentence of Commission Rule 130.10 pertaining to when settlements may be presented).'"[98] Additionally, GSA points out that the Commission "'reopen[ed] the record in Formal Case No. 1119 solely for the very limited purpose of considering whether the [NSA] filed by the Settling Parties is in the public interest.'"[99] Based on these facts, GSA argues that Joint Applicants' failure to comply with Commission Order No. 18109, specifically that all of the Settling Parties request other relief under Rule 130.17(b), should lead the Commission to deny the request.[100]

31. Additionally, GSA takes issue with the Joint Applicants' reliance on Formal Case Nos. 951 and 945, as well as *Michigan Consolidated* for the proposition that the Commission should adopt one of the options presented and to not consider such options would be reversible error.[101] First, GSA contends that "Formal Case No. 951 is not applicable here" because that case did not involve "the offer of subsequent alternative terms, pursuant to Rule 130.17, which required that all of the parties to the Settlement Agreement jointly accept or reject the alternative terms or jointly request other relief."[102] Second, GSA points out that "[i]n Formal Case No. 945,

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93 *Formal Case No. 1119*, GSA's Response at 12.

94 *Formal Case No. 1119*, GSA's Response at 4.

95 *Formal Case No. 1119*, GSA's Response at 5. (Emphasis omitted).

96 *Formal Case No. 1119*, GSA's Response at 5, citing *Formal Case No. 1119*, Notice from Commission Staff to *Formal Case No. 1119* parties regarding Response Times to Requests for Other Relief, filed March 9, 2016.

97 *Formal Case No. 1119*, GSA's Response at 6.

98 *Formal Case No. 1119*, GSA's Response at 6, quoting *Formal Case No. 1119*, Order No. 18011, ¶ 52.

99 *Formal Case No. 1119*, GSA's Response at 6, quoting *Formal Case No. 1119*, Order No. 18011, ¶ 58.

100 *Formal Case No. 1119*, GSA's Response at 6-7.

101 *Formal Case No. 1119*, GSA's Response at 7.

102 *Formal Case No. 1119*, GSA's Response at 7.

all of the Settling Parties accepted the Commission's alternative terms, pursuant to Rule 130.17."[103] Finally, GSA states that "*Michigan Consolidated* is factually distinguishable from [this case] and the U.S. Court of Appeals of the District of Columbia ("D.C. Circuit") limited its holding to the 'special circumstances' of that case."[104] GSA argues that "[u]nder the Joint Applicants' reasoning, the Commission is obligated to consider any and all revisions to the NSA . . . but such is not the ruling in Michigan Consolidated. There, the D.C. Circuit Court did not hold that a Commission commits reversible error if it declines to consider subsequent revisions of Commission considered and rejected settlement proposals."[105]

32. Regarding Option 1, GSA characterizes it as "a petition for reconsideration, which is governed by 15 DCMR § 140[,]" and urges its rejection because "the Joint Applicants have failed to set forth any grounds on which [they] consider the Commission's decision to be unlawful or erroneous."[106] GSA also raises identical arguments about Options 2 and 3 being considered petitions for reconsideration.[107] Regarding Option 2, GSA states that "[it] does not oppose the terms set forth in the RNSA. However, [Option 2] would require the Commission's approval of the RNSA without acceptance of the RNSA by all the Settling Parties, a clear departure from the Commission's decision in Order No. 18109 and Rule 130.17."[108] GSA highlights that "[t]he Commissioners' respective comments, in Order No. 18109, did not constitute a vote finding the RNSA to be in the public interest nor did the Commission's comments represent a vote for approval of the RNSA" absent the acceptance of all the Settling Parties.[109] Regarding Option 3, GSA contends that "[it] actually raises new issues and arguments that, with due diligence, could have been raised earlier in the proceeding." However, GSA states that "[i]f the Commission considers [Option 3] to be a new Settlement Agreement under 130.10, [Option 3] should likewise be denied because allowing the Joint Applicants' revision of the Commission's revision of the NSA would be inconsistent with the sole and limited purpose for which the Commission reopened the record in [this case]; namely, to consider the NSA."[110] For that reason, GSA contends "any consideration of [Option 3] must be considered in a new

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103 *Formal Case No. 1119*, GSA's Response at 8, citing *Formal Case No. 945*, Order No. 11576, p. 32.

104 *Formal Case No. 1119*, GSA's Response at 8, quoting *Michigan Consol. Gas Co.*, 283 F.2d at 226.

105 *Formal Case No. 1119*, GSA's Response at 9.

106 *Formal Case No. 1119*, GSA's Response at 10-11, citing 15 DCMR § 140.2 ("[a]pplication for reconsideration or modification shall set for specifically the grounds on which the applicants considers the order or decision of the Commission to be unlawful or erroneous.").

107 *See Formal Case No. 1119*, GSA's Response at 13 ("[Option 2] may also be seen as a petition or motion for reconsideration under Rule 140 . . ."); and 14 ("If the Commission considers [Option 3] to be a petition for reconsideration, it should be denied, because similar to [Option 1] . . .").

108 *Formal Case No. 1119*, GSA's Response at 12.

109 *Formal Case No. 1119*, GSA's Response at 12-13.

110 *Formal Case No. 1119*, GSA's Response at 15.

proceeding subject to all normal Commission rules and time-frames for parties to intervene, conduct discovery, comment, participate in hearing, and file briefs."[111]

7. GRID2.0's Opposition

33. GRID2.0 asserts that "the acquisition of Pepco by Exelon has never really been oriented toward the public interest, and that there has never been broad agreement that it does, in fact, serve the public interest" and "the fleeting agreement among 'Settling Parties' on the NSA to satisfy the public interest test dissolved when the Commission identified intrinsic failings and offered instead the RNSA."[112] Regarding Option 1, GRID2.0 states that "[b]ecause the NSA remains as initially drafted, and nothing has changed to result in any different outcome than described in the Commission's denial . . . there is no reason that this option should receive any further consideration . . . It is a dead end."[113] Regarding Option 2, GRID2.0 also concludes it is a "dead end" because "[i]n the absence of an agreement by all Settling Parties on the proposed terms of the RNSA, which was reasonably presented as a requirement for finding that the merger is in the public interest, the Commission should abide by its own stated condition for finding that the merger is in the public interest."[114] GRID2.0 states that "[t]he Commission's proposal demonstrates explicit acknowledgment that the public interest beyond a one-time pay-off to rate payers and a spider web of protections from the numerous risks to rate payers accompanying this proposed deal – including expected rate increases."[115] Additionally, GRID2.0 states that it "concurs with the Commission's reasoning in Order [N]o. 18109" for establishing and allocating funds to the MEDSIS sub-account.[116]

34. Regarding Option 3, GRID2.0 views it as "unacceptable" because it "transfer[s] over 90% of the RNSA MEDSIS sub-account - $20 million, to largely offset rate increases."[117] Additionally, GRID2.0 states this "would effectively preclude any sort of substantive support for the modernization of the grid in FC 1130, which runs counter to a stated priority of the Commission in PSC Order No. 18109."[118] GRID2.0 agrees with OPC, that the inclusion of the "Incremental Offset" in Option 3 goes against the Commission's decision in Order No. 18109.[119] GRID2.0 states that Option 3 "is insufficient—it does not satisfy short-term interests of

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111 *Formal Case No. 1119*, GSA's Response at 15.

112 *Formal Case No. 1119*, GRID2.0's Opposition at 1-2. (Emphasis omitted) (Citations omitted).

113 *Formal Case No. 1119*, GRID2.0's Opposition at 4.

114 *Formal Case No. 1119*, GRID2.0's Opposition at 4.

115 *Formal Case No. 1119*, GRID2.0's Opposition at 5, citing *Formal Case No. 1119*, Order No. 18109, ¶¶ 60-61.

116 *Formal Case No. 1119*, GRID2.0's Opposition at 5. (Citation omitted).

117 *Formal Case No. 1119*, GRID2.0's Opposition at 6.

118 *Formal Case No. 1119*, GRID2.0's Opposition at 6, citing *Formal Case No. 1119*, Order No. 18109, ¶ 65.

119 *Formal Case No. 1119*, GRID2.0's Opposition at 6.

ratepayers, or the longer term interests of the PSC, or to prevent or mitigate the substantial threats to competition, rates, renewables, local control, and other key local interests that Exelon's acquisition of Pepco would pose for the city and ratepayers in the foreseeable future."[120] Finally, GRID2.0 asserts "[the Joint Applicants] have not satisfied a key and essential determination of the relevance and quality of their proffered benefits . . . does the [Joint Applicants'] application create a local distribution company that distributes electricity more efficiently and more reliably than the current local distribution company? They do not."[121]

8. MAREC's Response

35. MAREC indicates that "[it] continues to strenuously oppose the merger."[122] Additionally, MAREC states that Joint Applicants' Request, like the NSA, "does little to ensure that the District can meet its renewable energy goals or to mitigate Exelon's dominance throughout the region."[123]

9. WGL Energy's Response

36. WGL Energy states that "[it] is satisfied that Order No. 18109 provides the necessary protections of competitive energy markets in the District and does not support Option (1)."[124] Additionally, WGL Energy states that "both Options (2) and (3) would implement and follow the necessary protection of competitive markets set out in Order No. 18109, and WGL Energy would support either of those options."[125] Finally, WGL Energy states that "[it] has confirmed with the Joint Applicants that under either Option (2) or Option (3), Exelon will act as a 'developer' of solar projects totaling 7 megawatts in the District and will competitively bid the construction and operation of those solar projects to competitive providers including qualified local businesses."[126]

IV. DECISION

37. The first issue to be decided by the Commission is whether to accept for consideration the Joint Applicants' Request. As stated in the Commission notice to the parties, Order No. 18109 contemplated that a joint filing for other relief would be made by all of the Settling Parties. Consequently, to give all parties an opportunity to be heard on the filing, the Commission opted to treat the Joint Applicants' Request as a motion and to provide all parties

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120 *Formal Case No. 1119*, GRID2.0's Opposition at 9.

121 *Formal Case No. 1119*, GRID2.0's Opposition at 9.

122 *Formal Case No. 1119*, MAREC's Response at 1.

123 *Formal Case No. 1119*, MAREC's Response at 1.

124 *Formal Case No. 1119*, WGL Energy's Response at 1.

125 *Formal Case No. 1119*, WGL Energy's Response at 1.

126 *Formal Case No. 1119*, WGL Energy's Response at 1.

the full ten calendar days allotted under Commission rules to reply to a motion.[127] In its responses, GSA argues that the request should be denied for failure to comply with Commission Order No. 18109's requirement that all of the Settling Parties request other relief under Rule 130.17(b). DC SUN/MDV-SEIA and OPC assert that the Commission need not consider the Joint Applicants' proposal and "may simply implement the executor provisions of Order No. 18109 that require unanimity among the Settling Parties and deny the merger application."[128]

38. The Joint Applicants and other parties, including the OPC, request that the Commission expeditiously resolve this matter. We agree that in the interests of justice, and considering the fact that we have thoroughly considered this matter with a well-developed record, the Joint Applicants' Request should be considered as a resolution on the merits.[129] The Commission is not persuaded to reject the Joint Applicants' Request by the arguments of OPC, GSA and DC SUN/MDV-SEIA because they rely on the language of Order No. 18109 that requires the consent of all of the Settling Parties to make the Revised NSA self-executing without further action by the Commission. Although the Commission contemplated a joint filing by the Settling Parties asking for other relief, neither the Commission's rules nor the language of Order No. 18109 state that unless "all of the Settling Parties" join in the request for other relief, then any request for other relief filed separately could not be considered by the Commission. In the absence of any other reasons to deny the Joint Applicants' motion, and for the reasons discussed below, the Commission grants the motion and accepts Joint Applicant's Request.

39. Turning now to the substance of Joint Applicant's Request, it asks the Commission to accept one of the three proposed options as a resolution on the merits of this proceeding and find that the proposed change of control is in the public interest under the terms set out in the selected option. Each option would modify the original Merger Application by the terms negotiated in the NSA, except that Options 2 and 3 contain further modifications of the NSA. As noted by the Joint Applicants, the Commission would not be accepting a settlement agreement in the traditional sense, but cases like *Placid Oil* allow the Commission, under these unique circumstances, to consider the options presented as a resolution of this matter on the merits and adopt one of the options as such if doing so would be in the public interest and supported by substantial evidence on the record as a whole.[130] As the Commission is reviewing the three options as a resolution on the merits, we must also consider whether the options are in the public interest taking into account the effects of the option on the seven public interest factors established at the outset of this proceeding.[131] This latter task has been made easier because the

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127 *See* 15 DCMR § 105.8.

128 *Formal Case No. 1119*, DC SUN/MDV-SEIA's Opposition at 2; *see also* OPC Response at 3.

129 *See Formal Case No. 1119*, Order No. 18011, ¶ 57.

130 *Placid Oil Co.*, 483 F.2d at 890-94.

131 *See Formal Case No. 1119*, Order No. 17597, ¶ 124. The Commission will consider the effects of the transaction on:

> (1) ratepayers, shareholders, the financial health of the utilities standing alone and as merged, and the economy of the District; (2) utility management and administrative operations; (3) public safety and the safety and reliability of

terms of the NSA were set out using the seven public interest factor framework and the Settling Parties concluded that the NSA (and therefore Option 1) was in the public interest. In paragraphs 171-173 of his opinion in Order No. 18109, Commissioner Phillips accepted this determination asserting that the NSA as filed is in the public interest.[132] In Order No. 18109, Commissioner Fort did not accept the conclusion that the NSA (and therefore Option 1) was in the public interest, but found that the Revised NSA (and therefore Option 2) is in the public interest for the reasons discussed in paragraphs 162-170 of her opinion.[133]

40. In regards to Option 1, the Commission accepts the arguments of AOBA, OPC, and DC SUN that Option 1 is procedurally inappropriate because it is nothing more than a request for reconsideration of the NSA outside of the confines of Commission Rule 140. Moreover, even if the Commission were to consider the Joint Applicants' Request or the responses of the DC Government, DC Water, OPC and NCLC/NHT to be appropriately submitted motions for reconsideration, none of the filings identify any error of law or fact that warrant changing our determination on the NSA. Consequently, the Commission does not accept Option 1.

41. In regards to Option 3, the Commission finds it unacceptable for three reasons. First, the proposal rededicates the $25.6 million base rate credit solely to the residential and

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> services; (4) risks associated with all of the Joint Applicants' affiliated non-jurisdictional business operations, including nuclear operations; (5) the Commission's ability to regulate the new utility effectively; (6) competition in the local retail, and wholesale markets that impacts the District and District ratepayers; and (7) conservation of natural resources and preservation of environmental quality.

[132] In these paragraphs of his dissenting opinion, Commissioner Phillips discusses why he believes the Settlement Agreement as presented is in the public interest. Specifically, Commissioner Phillips asserts that the Joint Applicants have addressed all of the deficiencies that the Commission raised in relation to the seven public interest factors in Order No. 17947 stating:

> In rejecting the initial merger, the majority explained in great detail why the merger was deficient and essentially laid out how the Joint Applicants could correct it. Yet, when the Joint Applicants worked to address those deficiencies, and got most of the parties to agree to a settlement, the majority effectively moved the goal post in order to reject the settlement. In my view, once the Joint Applicants submitted a settlement that corrected the deficiencies identified by the Commission, then the settlement should have been deemed in the public interest, absent a substantial reason to reject it. *Formal Case No. 1119*, Order No. 18109, ¶ 172.

Furthermore, Commissioner Phillips stated: [W]hile I reserve my judgment on the substance of the alternative terms proposed by Commissioner Fort, I do not believe her terms alter my determination that the settlement agreement is in the public interest." *Formal Case No. 1119*, Order No. 18109, ¶ 173.

[133] In these paragraphs of her concurring opinion, Commissioner Fort discusses in detail why, in light of the seven public interest factors, the Settlement Agreement, as revised by her conditions, is in the public interest stating: "I conclude that the Revised NSA and the amended Merger Application, when taken as a whole, is now in the public interest . . ." *Formal Case No. 1119*, Order No. 18109, ¶ 162.

Master Metered Apartment ("MMA") classes but provides no additional persuasive rationale, other than pointing to the protests of OPC and the District Government, to justify allocating the base rate credit exclusively to the residential class. Second, although the Joint Applicants have added additional details to Paragraph 4 of the Revised NSA about how the rate credit would work (most of which were discussed during the evidentiary hearing), that information, in the absence of an actual rate application, is still insufficient to determine the rate implications of the base rate credits now being proposed. Finally, the shift of funding from the MEDSIS Subaccount to an additional base rate subaccount would come at the expense of funding projects focused on making the distribution grid better able to handle additional distributed energy resources. That change is simply unacceptable to the Commission. For all of these reasons, the Commission cannot accept Option 3.

42. In Option 2, the Joint Applicants propose that the Commission adopt the Revised NSA, presented in Attachment A of Order No. 18109, as a resolution on the merits of this proceeding. Option 2 is based on the NSA which was the subject of a Public Interest Hearing and Community Hearings and the subject of comments filed with the Commission Secretary during a two month comment period. Therefore, the changes that were made to the NSA in the Revised NSA were responsive to comments and criticisms established in the evidentiary hearing and made during the comment period.

43. Option 2 is acceptable to AOBA and WGES Energy; it is not accepted by OPC, the DC Government, DC Water, NCLC/NHT and MAREC. DC SUN, GRID2.0, and GSA assert that the adoption of Option 2, if not supported by *all* of the Settling Parties, would not be in the public interest under the Commission's terms set out in Order No. 18109. As noted, their reading of Order No. 18109 is incorrect. The Commission required all the Settling Parties to agree to the Revised NSA for the limited purpose of making Order No. 18109 self-executing; *i.e*., to allow the Merger as modified by the terms of the Revised NSA to be approved without further action by the Commission. That did not occur. However, the lack of unanimity among the Settling Parties on the Revised NSA has no bearing on whether the terms proposed in the Revised NSA (now Option 2) are in the public interest. As explained in her concurring opinion in Order No. 18109, Commissioner Fort independently concluded that the terms of the Revised NSA would result in a Merger Application which is, taken as a whole, in the public interest. Commissioner Phillips found the NSA as filed to be in the public interest; and by voting to proceed under Commission Rule 130.17(b), he agreed to allow the Settling Parties an opportunity to accept the Revised NSA.

44. OPC argues that Option 2 is not in the public interest because, in addition to the removal of the guarantee that all of the $25.6 million base rate credit will be allocated to residential ratepayers, the Revised NSA also removed the guaranteed "period of repose for residential customers" by way of an incremental offset to cover any rate increases not covered by the $25.6 million base rate credit "until at least March 2019." The Commission clarifies that it was not our intention to take away a benefit offered by the Joint Applicants in the NSA, especially one that could be used by the Commission to mitigate any upcoming rate increases in a manner that is supported by an evidentiary record at the time that the Commission makes its decision in the next Pepco rate case. We are persuaded by OPC that the Revised NSA did not preserve the incremental offset that was negotiated in the NSA. The Joint Applicants' Request in Option 1 and Option 3 shows that it continues to offer and support an incremental offset that

could be used in addition to a base rate credit to mitigate the impact of certain future distribution rate increases. The Commission recognizes an incremental offset provided by the Joint Applicants on the terms set out in Option 1 and Option 3 is a benefit and therefore should be retained under Attachment B. The Commission therefore includes in Paragraph 2 under Attachment B, in addition to the $25.6 million base rate credit, a provision for an incremental offset of up to $1 million per year to be funded by the Joint Applicants and treated as a regulatory asset with a 5% return that could be used along with the base rate credit to further delay increases for ratepayers with the decision on whether and how the offset will be used to be made by the Commission in Pepco's next base rate proceeding.

45. The final issue for the Commission to decide is whether the Proposed Merger and Joint Application, as modified by the revised terms and conditions described in Option 2, when taken as a whole, is in the public interest pursuant to D.C. Code §§ 34-504 and 34-1001. We start with the fact that the Settling Parties already decided that the NSA as submitted (and as reflected in Option 1) met this threshold test. Commissioner Phillips already concurred in that determination. What remains to be decided is whether the limited changes made to the NSA in Option 2 result in a Merger that is still in the public interest. Commissioner Fort already concluded that it does. Commissioner Phillips now joins in that decision.

46. The amount of the CIF, $72.8 million, including the amount of the CIF that is available for base rate credits, $25.6 million, remains unchanged. These are all funds that will not be available to District ratepayers or the District if the Merger is not approved. The incremental offset as an additional tool to mitigate rate increases has been restored. While the placement of some of the CIF funds has changed, the funds will continue to be available to the District and other stakeholders to use for energy efficiency and energy conservation and usage programs, especially for low- and limited-income residents, and for projects that will help to modernize our distribution grid and enable it to accept more distributed resources in all areas of the District, thereby further promoting the District's sustainability agenda. The two additional changes made between Option 1 and Option 2 ensure that the District's market remains a competitive one for suppliers who want to bring more renewable energy resources to our city while still requiring Exelon to invest in 7 MW of new solar in the District and 100 MW of new wind resources in our PJM region. Based on these findings, and the specific facts and circumstances presented, the Commission concludes that the Proposed Merger, as modified by the revised terms and conditions as now set out in Attachment B to this Order, and when taken as a whole, is in the public interest pursuant to D.C. Code §§ 34-504 and 34-1001, and, therefore, the Joint Application for the Merger should be approved.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

47. Based on the foregoing, the evidence presented in the record for this proceeding, the Commission makes the following findings:[134]

A. Joint Application was filed on June 18, 2014, for approval by the Commission, pursuant to D.C. Code §§ 34-504 and 34-1001, for a change of control of the Potomac Electric Power Company to be effected by the Proposed Merger of Pepco Holdings, Inc. with Purple Acquisition Corp., a wholly-owned subsidiary of Exelon Corporation ("Merger Application") and was amended on February 18, 2015. The Merger Application was filed by Exelon, PHI, Pepco, Exelon Energy Delivery Company, LLC, and New Special Purpose Entity, LLC (collectively, the "Joint Applicants").

B. PHI is a public utility holding company with headquarters in the District of Columbia, which, through its regulated subsidiaries, delivers electricity in the District of Columbia, Maryland, Delaware, and New Jersey.

C. Pepco is a wholly owned subsidiary of PHI and is the public utility regulated by this Commission pursuant to D.C. Code § 1-204.93 and D.C. Code § 34-101 *et seq.*

D. Exelon is a utilities services holding company with headquarters in Chicago, Illinois, which, through its subsidiaries, delivers electricity and natural gas to customers in Illinois, Pennsylvania, and Maryland and generates electricity for sale throughout the United States.

E. Under the terms of the Merger Agreement entered into between Exelon, PHI and Merger Sub, PHI will merge with Merger Sub, and, as the surviving corporation, PHI will become an indirect, wholly owned subsidiary of Exelon and PHI's stock will no longer be publicly traded.

F. Merger Sub is a Delaware corporation and a wholly owned subsidiary of Exelon that was formed for the sole purpose of affecting the Proposed Merger.

G. Under the terms of the Proposed Merger Agreement, PHI will become the subsidiary of SPE, and SPE will be a subsidiary of EEDC, which owns Exelon's regulated public utility companies.

H. Upon completion of the Proposed Merger, PHI's subsidiaries, including Pepco, will operate as part of Exelon's holding company system.

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[134] The Commission incorporates by reference all of the findings from Order Nos. 17947 and 18109 not specifically adopted below to the extent that those findings are consistent with the findings, determinations, and conclusions made in this Order.

I. The Proposed Merger is structured as an all-cash transaction for approximately $6.8 billion.

J. Upon consummation of the Proposed Merger, Exelon will purchase the stock of the PHI shareholders for the price of $27.25 per share; that share price represents a $1.6 billion stock acquisition premium.

K. The Proposed Merger Agreement provides for a $180 million reverse break-up fee whereby Exelon will purchase up to $180 million of non-voting preferred stock in PHI. Under certain conditions, PHI will retain the $180 million reverse break-up fee proceeds if the Proposed Merger does not close.

L. The total Proposed Merger synergies, including both regulated and non-regulated affiliates, is $225 million over the first 5 years.

M. The Joint Applicants' original synergy study estimated that the net cost savings for PHI utility operating companies resulting from the Proposed Merger would approximate $92 million over the first five years.

N. These findings incorporate by reference the Merger Application as modified by the revised terms and conditions (the Joint Applicants' current commitments) set forth in Attachment B to this Order.

O. The Joint Applicants created a Customer Investment Fund and then allocated a portion of that savings to each PHI utility operating company based on the ratio of that company's meter accounts to the total number of meter accounts in all PHI utility operating companies.

P. The portion of the Customer Investment Fund allocated to the District of Columbia is valued at $72.8 million, which represents a benefit of $215.94 per distribution customer (based on a customer account of 337, 117 as of December 31, 2013).

Q. Exelon commits to provide a Customer Base Rate Credit in the amount of $25.6 million, which can be used as a credit to offset rate increases for Pepco customers approved by the Commission in any Pepco base rate case filed after the close of the Merger until the Customer Base Rate Credit is fully utilized and an Incremental Offset of up to $1 million per year to be funded by Exelon and treated as a regulatory asset with a 5% return.

R. Exelon commits to fund a one-time direct bill credit of $14 million to be distributed among Pepco residential customers (including RAD Program customers).

S. Exelon commits to the creation of a *Formal Case No. 1119* Escrow Fund that Exelon will fund in the amount of $21.55 million for the *Formal Case No. 1130* MEDSIS Pilot Project Fund Subaccount as part of the Joint Applicants commitment to support and facilitate the implementation of pilot projects the Commission approves that emerge from *Formal Case No. 1130*.

T. Exelon commits to the creation of a *Formal Case No. 1119* Escrow Fund that Exelon will fund in the amount of $11.25 million for the Energy Efficiency and Energy Conservation Initiatives Fund Subaccount to support innovative energy efficiency and energy conservation initiatives with a primary focus on assisting low and limited income residents and to help reduce the burden of energy bills.

U. The Joint Applicants have included energy efficiency and customer arrearage relief benefits for low-income customers in its commitments.

V. The record evidence does not clearly demonstrate that the Proposed Merger will add to Pepco's financial strength, nor does it show an immediate harm either.

W. The immediate financial impact of the Proposed Merger on Pepco with respect to its cash flow after the Proposed Merger closes was not established on the record because the testimony was inconsistent.

X. The Proposed Merger changes how Pepco will access capital. Decisions will be as set out in the Delegation of Authority document.

Y. The Proposed Merger will result in Pepco competing with a larger pool of companies (*i.e.*, seven regulated distribution companies and Exelon's unregulated generation affiliates as compared to PHI's four regulated utilities) for additional investment dollars.

Z. Pepco's ability to use its net operating loss carry overs will be enhanced by the Proposed Merger to the benefit of District ratepayers; however the amount of the purported benefit has not been quantified on the record.

AA. There would be no significant improvement in Pepco's credit ratings due to the Proposed Merger.

BB. Pepco and PHI, as subsidiaries of Exelon, could be exposed to additional financial risks from the Proposed Merger due to Exelon's unregulated businesses.

CC. The Joint Applicants have made a commitment to hire 102 new union workers for Pepco-DC; some unspecified number of the new union workers will replace existing workers and contractors; there is no commitment to include a certain number of District residents in the new hires. The incremental cost of these hires will be included in rates only to the extent that workers have actually been hired and will not be included in customer rates until after January 1, 2017.

DD. Exelon will colocate Exelon corporate headquarters in the District of Columbia for Exelon Corporate Strategy and Exelon Utilities by moving the primary offices of Exelon Utilities' Chief Executive Officer, Exelon's Chief Financial Officer and Exelon's Chief Strategy Officer to the District of Columbia. Exelon's Chief Executive Officer will also have an office in the District of Columbia. The Joint Applicants have also committed to transfer Pepco Energy Services' operations in Arlington, Virginia to PHI Headquarters in the District. The commitment to

establish the District of Columbia as Exelon's co-Corporate Headquarters, Exelon Utilities Headquarters and the transfer of Pepco Energy Services will cause the relocation of 100 positions to the District of Columbia.

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

FF. The Joint Applicants commit to ensure no net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at Pepco's utility operations in the District for at least five years.

GG. There are 257 positions at the PHI Service Company scheduled to be eliminated as part of the Proposed Merger; however, Exelon commits to no net reduction greater than 100 positions for EBSC and PHI combined.

HH. Exelon and its subsidiaries commit to donate an annual average of $1.9 million to charitable organizations located in the District or to organizations that support charitable activities that benefit District residents will benefit the District's economy.

II. PHI is financially healthy as a stand-alone company and there is no record evidence that it would not continue to be so if the merger is not consummated.

JJ. The acquisition of the PHI utilities will enhance Exelon's earnings picture for the future; this enhancement is a major reason for the acquisition.

KK. The credit rating agencies give similar ratings to Exelon, PHI, and Pepco.

LL. Exelon will be able to use Pepco's net operating loss carry forward ("NOLCs") more quickly than PHI providing a benefit to District ratepayers; however the amount of the benefit has not been quantified on the record.

MM. The Joint Applicants commit to allowing Pepco to have a CEO who will also be the CEO of PHI and who will be a member of the Exelon Executive Committee, and attend meetings of the Exelon Board of Directors.

NN. Exelon's Delegation of Authority sets forth the hierarchy of decision makers based on set dollar amount thresholds for key management and policy decisions. There is minimal management and budget authority delegated to the Pepco CEO and other Pepco senior management.

OO. The Pepco CEO has the authority to make rate case decisions, taking into consideration the input of the Pepco Regional President. Exelon Utilities CEO O'Brien will be involved in reviewing rate cases before filing in the District of Columbia.

PP. The Joint Applicants commit to PHI having a board of directors consisting of 7 or more people with 4 of the directors being independent and at least one director selected from each of the service territories of PHI utility subsidiaries and at least one independent director being a resident of the District. The CEO of Pepco will be one of the PHI directors.

QQ. After the Proposed Merger is consummated, the Joint Applicants commit that David Velazquez will become the PHI CEO and the Pepco CEO. Mr. Velazquez will be extended an employment contract for no less than two years.

RR. Exelon Utilities CEO O'Brien asserts that he would look to PHI CEO Velazquez to make most decisions; however, he notes that Exelon CEO Crane and Exelon Utilities CEO O'Brien may also make some decisions.

SS. With respect to administrative operations, the Proposed Merger would result in Pepco being subject to a new management model.

TT. None of the current Exelon distribution companies operate within a separate holding company or in multiple jurisdictions.

UU. The Proposed Merger will combine the PHI Service Company and Exelon Business Service Company.

VV. The Joint Applicants commit to annual levels of system reliability performance in the District of Columbia that exceed the Electric Quality of Service Standards ("EQSS") for SAIDI and SAIFI (excluding major service outages) between 2016 and 2020, subject to a forfeiture and non-compliance payments if the performance levels to which they commit are not met.

WW. The Joint Applicants commit to meet system reliability performance in the District of Columbia without exceeding certain annual reliability-related capital and O&M spending levels between 2016 and 2020. If Pepco exceeds the reliability-related capital budgets, Pepco will place in escrow a non-compliance payment in the amount of $63,000 for every $1 million spent in excess of the reliability-related capital budget for the year.

XX. Reliability improvements resulting from DC PLUG cannot be considered products of, or benefits from, the Proposed Merger and must be excluded from Exelon's projections regarding merger-related reliability benefits. The Joint Applicants commit to not seek reevaluation of the current EQSS reliability performance standards for 2016 through 2020.

YY. The Joint Applicants commit to the sharing of best practices between Exelon and Pepco in distribution system design and improvements that leverages the knowledge and experience of Pepco and Exelon to ensure system reliability.

ZZ. The Joint Applicants commit that Pepco will conduct a root-cause analysis of, and develop an action plan to improve, Pepco's customer-satisfaction scores in the District of Columbia.

AAA. The Joint Applicants commit that Pepco will report on its safety performance and safety initiatives, and Exelon's existing safety and cybersecurity policies.

BBB. Unlike in *Formal Case No. 951*, when Pepco was vertically integrated, the Commission's current ratemaking procedures do not consider inclusion of any costs from generating plants in the cost of service or the rate base of the local distribution company.

CCC. The Commission declines to find that the mere presence of the Joint Applicants' unregulated business to be a harm that cannot be mitigated; and notes that Credit agencies may take into account the business operations of an electric distribution company's parent and any steps that have been taken to protect a subsidiary company from any added risks from a parent's operations, including ring-fencing provisions.

DDD. There is no way that losses incurred by Exelon's aging nuclear fleet would be included in the rate base of Pepco as a local distribution company. However, there is a possibility that Pepco's cost of capital could be affected if there were no ring-fencing provisions to assure investors that the finances of Pepco and PHI were separate from the obligations of Exelon.

EEE. The Joint Applicants have strengthened their ring-fencing commitments to mitigate the financial risks from Exelon's unregulated businesses, provide a robust level of protection for PHI, Pepco and Pepco's ratepayers, and provide provisions for the divestiture of Pepco from Exelon.

FFF. The Joint Applicants commit to provide access to the books and records of Pepco, as well as all affiliates of Exelon that do business with Pepco and or PHI, on demand.

GGG. The Joint Applicants commit to abide by the Commission's Affiliate Transactions Code of Conduct.

HHH. The Joint Applicants commit to allocate costs to Pepco that will either substantially comply with the current PHI General Service Agreement or result in a lower cost allocation from EBSC to Pepco.

III. The Joint Applicants commit to establishing controls and procedures that provide reasonable assurance that PHI's subsidiaries will not bear costs associated with business activities of any other Exelon affiliate other than reasonable costs of providing materials and services to PHI.

JJJ. Pepco and EBSC commit to record costs and cost allocation procedures in sufficient detail to allow the Commission to analyze, evaluate, and render a determination as to their reasonableness for ratemaking purposes.

KKK. Exelon commits to being submitted to the Commission's jurisdiction on all matters related to the merger and affiliate transactions between Pepco and Exelon or its affiliates pertaining to Pepco's operations in the District of Columbia.

LLL. Exelon and PHI commit to filing annual across-the-fence reports comparing the performance and status of the utilities within the Exelon family that address substantive areas directed by the Commission.

MMM. Any concerns about the participation of the Joint Applicants in the District of Columbia's Standard Offer Service ("SOS") procurement process as both the SOS Administrator and a bidder can be adequately addressed by modifying the rules for the procurement procedures so that there could be no harm to District ratepayers under the wholesale SOS model adopted by this Commission. Consequently, on the SOS side, the effect of the Proposed Merger would be to leave wholesale market competition unharmed but with no noticeable benefits.

NNN. The District's efforts to address climate change, environmental sustainability goals, energy reduction goals, rising energy costs and the preservation of the natural environment as these goals have been set out in the enactment of key legislation like the Clean and Affordable Energy Act, Distributed Generation Amendment Act, and Community Renewable Energy Act, coupled with implementation of the Sustainable DC Plan that was developed by the Department of Energy and Environment and released in 2013 provide an appropriate framework against which to measure the effects of the Proposed Merger on conservation of natural resources and preservation of environmental quality in the District, given specific goals and objectives that the District has adopted.

OOO. The record shows that 81% of Exelon's total generation output comes from nuclear plants that support clean power production.

PPP. Nuclear power does not satisfy the District's RPS program under the Distributed Generation Amendment Act;[135] nor can an increased share of nuclear energy in the District's energy mix help the District satisfy its goal of obtaining 50% of its power from renewable sources by 2032.

QQQ. The Joint Applicants have added direct and tangible evidence of how this Proposed Merger advances the conservation of natural resources and the preservation of environmental quality in the District of Columbia, including Exelon's commitment to develop 7 MW of solar generation in the District of Columbia, Exelon's commitment to provide $5 million of capital to creditworthy

[135] Tr. at 1591:20-22.

governmental entities for the development of renewable energy projects in the District of Columbia, and Pepco's commitment to coordinate with the District Government to facilitate planning for renewable generation interconnection to be developed by the District Government, and Exelon's commitment to procure 100 megawatts of wind energy.

B. Conclusions of Law

48. Based on the entire record in this proceeding, the Commission makes the following conclusions of law:

A. The Commission has jurisdiction to render a decision on the Joint Application's request for a change of control of Pepco.

B. The Commission has both express and implied statutory authority to review an application for a change of control and authority to merge, and to set forth the terms and conditions upon which a merger may be approved or denied.

C. The Proposed Merger, as modified by the revised terms and conditions set forth in Attachment B to this Order, produces direct and tangible benefits to ratepayers and upon balance of the interests of Pepco's shareholders and investors with the interests of ratepayers and the community, the benefits to the shareholders do not come at the expense of the ratepayers.

D. The Proposed Merger, as modified by the revised terms and conditions set forth in Attachment B to this Order, will benefit District ratepayers and the District rather than merely leave them unharmed.

E. The Proposed Merger, as modified by the revised terms and conditions set forth in Attachment B to this Order, when taken as a whole, is in the public interest under D.C. Code §§ 34-504 and 34-1001.

THEREFORE IT IS ORDERED THAT:

49. The Joint Applicants' Request for Other Relief is **GRANTED**;

50. The terms and conditions in Option 2 of the Joint Applicants' Request for Other Relief filed pursuant to Order No. 18109 by Exelon Corporation, Pepco Holdings, Inc., the Potomac Electric Power Company, Exelon Energy Delivery Company, LLC, and New Special Purpose Entity, LLC (collectively, the "Joint Applicants") on March 7, 2016, as modified by this Order, are **ADOPTED** as a resolution on the merits of the Merger Application;

51. The Joint Application for approval of a change of control of Pepco submitted on June 18, 2014, as amended by Attachment B of this Order, is **APPROVED** as being in the public interest pursuant to D.C. Code §§ 34-504 and 34-1001;

52. Pepco is directed to file a plan along with a sample bill with the Commission on how it intends to apply the $14 million residential customer bill credit identified in Paragraph 3, of Attachment B of this order within thirty (30) days of the date of this Order;

53. The Commission reserves the right to issue such orders as may be necessary to implement the Merger and enforce the terms contained in Attachment B to this Order;

54. No later than three (3) business days following Merger Closing, the Joint Applicants shall notify the Commission of the exact date when the Proposed Acquisition has taken place and shall confirm that no material modifications were made to the terms and conditions of the Purchase Agreement;

55. The Joint Applicants' Application for Reconsideration of the August 27, 2015 Order is **DEEMED DENIED** as moot;

56. The DC Solar United Neighborhoods Motion for Notice of Public Documents filed on January 15, 2016 is **DEEMED DENIED** as moot; and

57. Order No. 17947 released on August 27, 2015, which originally denied the Merger on the merits is hereby **SUPERSEDED** by this Order.

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

CHIEF CLERK: **BRINDA WESTBROOK-SEDGWICK**
COMMISSION SECRETARY

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

March 23, 2016

ATTACHMENT A: DISSENTING OPINION OF CHAIRMAN BETTY ANN KANE, FORMAL CASE NO. 1119, ORDER NO. 18148

1. For the reasons stated in my dissent to the majority decision under rule 130.17(b) in Order No. 18109, which I hereby incorporate by reference, I continue to find that the change in control and acquisition of Pepco by Exelon is not in the public interest.[136] Indeed, developments in the record since my "No" vote on February 26, 2016 give me even stronger reasons to find that the takeover of the District's electric distribution company by a multi-faceted vertically integrated generation-focused holding company, as proposed in the order before us, benefits Pepco and Exelon shareholders but does not provide sustainable benefits to District ratepayers, places Pepco within a structure that is contrary to District law and policy, and should be rejected.

2. In Order No. 18109 the majority found that IF the changes proposed by Commissioner Fort to the Nonunamimous Settlement Agreement were accepted by ALL of the settling parties, the revised Nonunanimous Settlement Agreement would be "deemed approved as being in the public interest . . . without necessity of any further Commission action." There is some value in settlements, which can represent compromise as well as the avoidance of further costly litigation, which I assume is why the majority required the agreement of all the settling parties in order for the revised NSA to be deemed in the public interest. However, almost all of the settling parties have soundly rejected the proposed alternative terms, as have all of the nonsettling parties. Any potential value that can come with a settlement is gone. We are left with a Commission-proposed terms of acquisition which must be decided, in the face of near-unanimous opposition, based "on its merits."

3. Based on its merits, I find that while the proposed changes address some of my concerns, many others remain. Most importantly, none of the revisions to the 142 terms of the proposed acquisition change the fundamental inherent conflict which has led me on two prior occasions to find that the proposal is not in the public interest. There are many promises and a

[136] *See Formal Case No. 1119*, Order No. 18109, ¶¶ 54-80, rel. February 26, 2016.

lot of money being offered. Expensive wedding gifts are nice. But all the wedding gifts in the world can't make a bad marriage good.

4. Before I conclude I want to say something about the issue of rates. At the outset of this case, nearly two years ago, the Commission determined that it was not a rate case.[137] However, much of the focus has been on the potential rate impacts of the acquisition. The Joint Applicants have stated on the record that they assumed that they would file a $55 million rate increase request later this spring.[138] Concern about "protecting" residential ratepayers, particularly low-income customers, from rate increases has reached near hysteria. However—here is a fact the People's Counsel and others seem to be totally ignoring: low-income customers are ALREADY protected from electric distribution rate increases. Under the Commission's Residential Aid Discount ("RAD") Program, low-income residential customers receive a credit on their bill equal to the entire electric distribution rate.[139] In other words, low-income customers get the entire amount of Pepco's distribution charges that are regulated by the Commission absolutely FREE. If the Commission raises Pepco's distribution rates in a future rate case, the Residential Aid Credit ("RAC") for low-income customers already would automatically protect them from paying that increase. Low-income customers do not pay the RAD surcharge that funds the RAD Program.[140] Low-income customers are also exempt by statute from paying the Energy Assistance Trust Fund surcharge[141] that finances low-income customer support programs, are exempt by statute from paying the Sustainable Energy Trust Fund surcharge[142] that funds the energy efficiency, renewable energy and green job programs of the Sustainable Energy Utility, and are exempt by statute from paying any forthcoming surcharges to fund the District's bonds and Pepco's costs that will be incurred to carry out the electricity infrastructure undergrounding program ("DC PLUG").[143] The costs for the protection of low-income customers from all these costs, of course, are shifted to other commercial and residential customers.

5. Unlike a rate case, the sale of Pepco won't be reviewed by the Commission and can't be adjusted every few years. It is gone forever. The stated motive of the sellers is to

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137 *See Formal Case No. 1119*, Order No. 17597, ¶ 86, rel. August 22, 2014.

138 *See* Tr. at 269:5-270:9 (Chairman Kane questioning Velasquez).

139 *See Formal Case No. 1120*, Order No. 18059, ¶¶ 31 and 36, rel. December 15, 2015.

140 *See Formal Case No. 1120*, Order No. 18059, ¶ 34, rel. December 15, 2015.

141 *See* § 8-1774.11 (b)(4)

142 *See* § 8-1774.10 (b)(4)

143 *See* §§ 34-1313.01 (a) (4) and 34-1313.10 (c)(1).

increase PHI shareholder value.[144] The motive of the buyers is to add regulated revenue to prop up Exelon's failure to pay dividends to its shareholders. However the needs of Pepco's customers and the District are for a safe, reliable, modern electricity delivery distribution system at a just and reasonable cost. I vote No.

144 *See* NSA Tr. at 871:21–872:2 (Chairman Kane questioning Rigby).

ATTACHMENT B:
REVISED TERMS AND CONDITIONS FOR MERGER ("MERGER") OF EXELON CORPORATION ("EXELON") AND PEPCO HOLDINGS, INC. ("PHI"), INCLUDING POTOMAC ELECTRIC POWER COMPANY ("PEPCO")[145]

Terms Addressing Commission Factor No. 1

Customer Investment Fund

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

Customer Base Rate Credit

2. Exelon will provide a Customer Base Rate Credit in the amount of $25.6 million, which can be used as a credit to offset rate increases for Pepco customers approved by the Commission in any Pepco base rate case filed after the close of the Merger until the Customer Base Rate Credit is fully utilized. Exelon will also provide an Incremental Offset of up to $1 Million per year to be treated as a regulatory asset with a 5% return. The parties in the next Pepco base rate case will be provided an opportunity to propose to the Commission how the Customer Base Rate Credit and Incremental Offset will be allocated among Pepco customers and over what period of time. No portion of the Customer Base Rate Credit shall be recovered in utility rates.

Residential Customer Bill Credit

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

Creation of Formal Case No. 1119 Escrow Fund

4. Within sixty (60) days after Merger close, Exelon shall provide Pepco with the funds and Pepco shall establish a Formal Case No. 1119 Escrow Fund with two subaccounts: the Formal Case No. 1130 MEDSIS Pilot Project Fund Subaccount and The Energy Efficiency and Energy Conservation Initiatives Fund Subaccount The escrowed funds shall be placed in an interest-bearing account or invested in instruments issued or guaranteed as to principle and interest and

[145] Option 2's terms have been taken from the Revised NSA provided in Order No. 18109 at Attachment A. However, the introduction and conclusion sections have been updated to reflect that it is no longer a settlement agreement.

shall be administered by a third party administrator to be paid from a portion of the interest proceeds with the approval of the Commission. Any unused interest will be deposited proportionally into the two subaccounts.

Support for Formal Case No. 1130

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

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

Support for Energy Efficiency and Energy Conservation Initiatives Fund

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

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

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

Corporate Presence in the District of Columbia

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

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

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

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

Employment in the District of Columbia

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

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

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

15. For at least five (5) years after Merger close, Exelon shall not permit a net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at Pepco's utility operations in the District. For purposes of this paragraph, "involuntary attrition"

includes transfer-or-quit offers where the employee decides to quit or retire rather than being transferred to a work location outside of the District.

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

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

18. As a result of the commitments in Paragraphs 14-19, Exelon, PHI and Pepco commit that the Merger's impact will be net jobs-positive for the District through at least January 1, 2018. Exelon will file a report with the Commission by April 1, 2018, demonstrating satisfaction of this commitment. Exelon, PHI and Pepco also commit that the Merger will not become net job-negative through involuntary attrition as a result of the Merger integration process through December 31, 2019. Exelon shall file a report with the Commission by April 1, 2020, demonstrating satisfaction of this commitment.

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

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

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

Workforce Development

22. In order to promote local employment and the local economy in the District, Exelon will contribute $5.2 million to District workforce development programs including those administered by the Department of Employment Services ("DOES"), the University of the

District of Columbia system, DC Water for green infrastructure training programs, and programs targeted to underserved communities, as directed by the District Government. These contributions will be in addition to the CIF, will not count toward meeting the annual charitable contribution commitment described in Paragraph 27, and will not be recovered in utility rates.

Economic Benefits Reporting

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

Development of an Arrearage Management Program

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

Charitable Contributions and Community Support

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

Cost Accounting and Synergy Savings

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

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

28. Exelon shall ensure that merger accounting is rate-neutral for Pepco customers. Exelon shall ensure that any accounting treatments associated with merger accounting do not affect rates

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

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

30. The Joint Applicants agree that PHI and its subsidiaries, including Pepco, will execute the GSA filed as Exhibit No. 7 with the Application. The Joint Applicants agree to allocate costs to Pepco in a manner that either substantially complies with the current PHI GSA, or results in a lower allocation of costs in the aggregate. The Joint Applicants agree to demonstrate this in the first District of Columbia base rate case filing occurring after the closing of the Merger as compared to Pepco's allocated costs pre-Merger.

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

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

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

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

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

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

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

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

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

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

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

36. Pepco shall promptly notify the Commission, Commission Staff and OPC when it has received notice that the SEC, the FERC, or the state regulatory commission in any state in which an affiliate utility company operates has initiated an audit of EBSC or PHISCo. Pepco shall

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

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

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

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

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

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

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

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

44. Pepco agrees that the Commission, under its authority pursuant to 15 D.C.M.R. §§ 3900-3999, may review the allocation of costs in sufficient detail to analyze their reasonableness, the

type and scope of services that EBSC provides to Pepco and the basis for inclusion of new participants in EBSC's allocation formula. Pepco and EBSC shall record costs and cost allocation procedures in sufficient detail to allow the Commission to analyze, evaluate, and render a determination as to their reasonableness for ratemaking purposes.

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

Future Rate Design in Pepco-DC Base Rate Cases

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

Tax Indemnity and Other Tax Commitments

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

finding by the Commission, after investigation and hearing upon application of Exelon, that the conditions under which such collateral security was originally required no longer exist.

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

Terms Addressing Commission Factor No. 2

Pepco's Management Structure

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

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

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

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

Board Structure

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

Terms Addressing Commission Factor No. 3

Service Reliability and Quality

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

Table 1

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

Failure to meet these reliability performance levels will result in the compliance measures described herein. If Pepco fails to meet the reliability-performance levels set out above as a Merger Commitment in any of the years 2016-2020, Pepco will file a corrective action plan by April 1 of the following year including an explanation as to why the target was missed, and the Commission can subject the utility to forfeitures as provided under the current EQSS regulations. In addition, if either of the SAIFI or SAIDI reliability-performance levels set out above as Merger Commitments are not met in any of the years 2018, 2019 or 2020, then Pepco will

automatically make a non-compliance payment by April 1 of the following year to the MEDSIS Pilot Project Fund Subaccount within the *Formal Case No. 1119* Escrow Fund, as set forth in Table 2 below, which payment will not be recoverable in Pepco customer rates:

Table 2

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

Pepco shall achieve the reliability standards set out as Merger Commitments in Table 1 above without exceeding certain annual reliability-related capital and O&M spending levels. Specifically, Table 3 sets forth Pepco's 2016 – 2019 Capital Budget and Forecast for the District of Columbia as contained in the Annual Consolidated Report filed with the Commission in 2015 for the identified categories of capital spending. Pepco commits to meeting the reliability standards set forth in Table 1 without exceeding the budget for the category of "Budget Commitment – Total Reliability net of DCPLUG and Emergency Restoration", absent changes in law or regulations requiring increases in reliability-related spending. Table 4 sets forth Pepco's projected reliability-related operations and maintenance ("O&M") budget as contained in the Annual Consolidated Report filed with the Commission in 2015, and Pepco commits to not exceed those amounts.

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

Table 3

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

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

Table 4

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

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

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

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

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

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

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

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

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

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

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

Root Cause Analysis to Improve Customer Satisfaction

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

Safety

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

Terms Addressing Commission Factor No. 4

Ring Fencing Protections

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

76. The SPE shall comply with Generally Accepted Accounting Principles in all material respects (subject, in the case of unaudited financial statements, to the absence of footnotes and to normal year-end audit adjustments) in all financial statements and reports required of it and issue such financial statements and reports separately from any financial statements or reports prepared for its affiliates; provided that such financial statements or reports may be consolidated with those of its affiliates if the separate existence of the SPE and its assets and liabilities are clearly noted therein.

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

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

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

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

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

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

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

84. PHI and its subsidiaries will maintain in its own name all assets and other interests in property used or useful in their respective business and will not transfer its ownership interest in any such property to Exelon or an Exelon affiliate (other than a PHI subsidiary) without requisite approval of the Commission and any approval required under the Federal Power Act; provided that the foregoing shall not limit the ability of PHI to transfer to Exelon or Exelon affiliates any business or operations of PHI or PHI subsidiaries that are not regulated by state or local utility regulatory authorities.

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

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

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

88. Immediately following the Merger close, PHISCo will remain as a subsidiary of PHI and will continue to perform functions and to maintain related assets currently involved in providing services exclusively to the PHI utilities. Other functions that are currently provided by PHISCo,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Table 5

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

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

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

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

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

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

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

Commission Approval of PHI Non-Utility Operations

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

Severance of the Exelon - Pepco Relationship

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

that indicates "substantial risks" (i.e., below B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, and such condition continues for more than six (6) months; or (iv) Exelon and/or PHI have committed a pattern of material violations of lawful Commission orders or regulations, or applicable provisions of the D.C. Code and, despite notice and opportunity to cure such violations, have continued to commit the violations.

Terms Addressing Commission Factor No. 5

Consent to the Commission's Jurisdiction

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

Prompt Access to Pepco's Books and Records

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

Exelon Utility Performance Comparison Reporting

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

Consent to Jurisdiction

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

Terms Addressing Commission Factor No. 6

Adherence to Code of Conduct and Provision of Standard Offer Service

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

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

Separate Employees to Engage in Advocacy

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

Advocacy for Energy Efficiency and Demand Response

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

Competition Protections

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

(a) Exelon commits that its Affiliated Transmission Companies shall each identify, with PJM's concurrence, at least three independent third-party engineering consulting firms that are qualified to conduct Facilities Studies under the PJM generator interconnection process. Any generation interconnection applicant may propose other independent third- party engineering consulting firms to Exelon for its consideration with respect to adding them to this list of qualified firms. Exelon shall make a decision with respect to whether any proposed independent

third-party engineering consulting firm can be included on such list within thirty days after a request to include any such proposed firm. Once approved, Exelon shall not be permitted to remove a third-party engineering consulting firm from such list unless and until it can demonstrate good cause as determined by the PJM Market Monitor or the FERC.

(b) Any generation developer that desires to interconnect to the transmission system of one of Exelon's Affiliated Transmission Companies may, in the developer's discretion and at the developer's expense, direct PJM to utilize one of the identified firms to conduct the Facilities Study for its generation project for upgrades and interconnection facilities required on the Affiliated Transmission Company's facilities.

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

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

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

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

Terms Addressing Commission Factor No. 7

Development of Solar/Renewable Generation

116. Exelon shall, by December 31, 2018, develop or assist in the development of 7 MW of solar generation in the District of Columbia outside of Blue Plains. Exelon shall sell the output of solar generation constructed in fulfillment of this commitment in the market, and shall not seek to recover the costs of this commercial solar development through Pepco District of Columbia distribution or transmission rates. The construction and installation shall be competitively bid with a preference for qualified local businesses. Exelon shall retain the solar renewable energy certificates and tax attributes for the solar projects; however, the SRECs created by such projects may not be used for District of Columbia Renewable Portfolio Standard compliance prior to December 31, 2018. SRECs created in years prior to 2019 may be banked and then used in 2019 or thereafter, to the extent permitted by law. Additionally, Exelon may apply for, and the Commission may grant, a waiver from prohibition of SREC usage prior to 2019, upon the finding of good cause by the Commission. In addition, Pepco shall support and expedite the interconnection for 5 MW of ground-mounted solar generation at Blue Plains that is developed, constructed and installed by a vendor selected by DC Water.

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

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

Enhancement to the Interconnection Process and Support for Customer-Owned Behind-the-Meter Distributed Generation[146]

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

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

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

(a) Service territory maps of circuits, within ninety (90) days after Merger closing, will be uploaded to the Pepco website, to be updated at least quarterly, that have the following information included: the area where circuits are restricted, and to what size systems the restrictions apply. Three different maps will depict different restriction sizes. Each map will have the circuit areas on the particular map highlighted in a different color. One map will show circuits that are restricted to all sizes. One map will show circuits restricted to systems less than 50kW. One map will show circuits restricted to less than 250kW. The maps will also serve to identify areas that are approaching their operating limits and could become restricted to larger systems in future years. As of September 1, 2015, there were no "restricted" secondary network circuits, but if they occur, a new map or method of depiction may be necessary. A second network circuit may become restricted if the active and pending generation would cause utility system operating violations. The categories of size restrictions depicted on the circuit maps will be made available for information purposes only, and will neither yield automatic cost allocation assumptions for resulting upgrades nor supplant the determination of the level of utility review afforded to the interconnection request.

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

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

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

(iii) PHI has provided data to National Renewable Energy Laboratory ("NREL") as part of its in-depth work to review utility interconnection criteria. A report is expected to be issued by the end of 2015. PHI will evaluate its criteria with the criteria outlined in the NREL report to identify any improvements that may be made including treatment of behind-the-meter storage equipment. PHI shall share information, discuss approaches, evaluating interconnection criteria, working with NREL, and providing an opportunity for stakeholders to comment on PHI's proposed recommendations on interconnection criteria prior

to public release. PHI will collaborate with stakeholders in good faith but nothing in these Terms and Conditions obligates PHI to accept or be bound by the recommendations of the stakeholders. This collaborative effort will be completed within one (1) year following the approval of the Merger.

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

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

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

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

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

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

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

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

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

124. In behind-the-meter applications where the battery never exports while in parallel with the grid and both the battery and the solar system share one inverter, no additional metering or monitoring equipment shall be required for a solar plus storage facility than would be required for a solar facility without storage technology. Pepco, through a stakeholder process, shall undertake appropriate further study of the issues regarding the coupling of solar and storage. As a result of such studies, stakeholders may recommend changes to this protocol to the Commission. Pepco, in consultation with Commission Staff and interested stakeholders, shall determine an appropriate target completion date for this review within one (1) year after Merger closing.

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

[Heading Deleted]

126. [Text Deleted]

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

127. The Commission, pursuant to Order No. 17912 issued on June 12, 2015, opened Formal Case No. 1130. Pepco, as the electric distribution utility in the District of Columbia, is an active participant in this proceeding and is subject to assessment to fund costs of the Commission and the OPC incurred in this proceeding in accordance with the laws of the District of Columbia. Exelon commits that it will support, and cause Pepco to continue to support, the Commission's objectives in opening this proceeding to identify technologies and policies that can modernize the District of Columbia energy delivery system for increased sustainability and to make the

District of Columbia energy delivery system more reliable, efficient, cost-effective and interactive. Further, Pepco and Exelon shall support and facilitate the implementation of any pilot projects approved by the Commission that emerge from the Formal Case No. 1130 proceeding.

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

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

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

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

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

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

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