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VIA EFILE AND HAND DELIVERY

March 16, 2015

David Collins, Executive Secretary
Maryland Public Service Commission
William Donald Schaefer Tower
6 St. Paul Street
Baltimore, MD 21202

Re: Case No. 9361 - In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc.

Dear Executive Secretary Collins:

On behalf of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, and Delmarva Power & Light Company (the "Joint Applicants"),[1] enclosed for the Commission's consideration please find the Joint Applicants' Request for Adoption of Settlements, with attachments.

An original and seventeen (17) copies are enclosed for filing in the above-referenced docket. If you have any questions or concerns, please do not hesitate to contact me.

Respectfully submitted,

J. Joseph Curran, III
Counsel to the Joint Applicants

Enclosure
cc: Service List – Case No. 9361

[1] The Joint Applicants also include Exelon Energy Delivery Company, LLC and Special Purpose Entity, Inc.

BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

IN THE MATTER OF THE MERGER OF	)	**Case No. 9361**
EXELON CORPORATION AND	)	
PEPCO HOLDINGS, INC.	)	

JOINT APPLICANTS' REQUEST FOR ADOPTION OF SETTLEMENTS

The Joint Applicants are pleased to inform the Commission that they have entered into two comprehensive settlement agreements that they believe resolve all contested issues in this proceeding.[1] The settlement agreements are with a number of critical parties. The *first settlement*, filed on March 2, 2015 (the "TASC Settlement"), was reached with The Alliance for Solar Choice, who represents the interests of distributed solar generation.[2] The *second settlement*, being filed contemporaneously with this Request for Adoption of Settlements, is a Settlement Agreement and Stipulation (the "Multi-Party Settlement") (provided as Attachment A to this Request) the Joint Applicants have entered into with Montgomery County, Prince George's County,[3] the National Consumer Law Center, the National Housing Trust, the

[1] The "Joint Applicants" are: Exelon Corp. ("Exelon"), Pepco Holdings, Inc. ("PHI"), Potomac Electric Power Company ("Pepco"), Delmarva Power & Light Company ("Delmarva"), Exelon Energy Delivery Company ("EEDC"), and Special Purpose Entity ("SPE"). The proposed merger of Exelon and PHI is hereinafter referred to as the "Merger." References to the "Application" include the Joint Application filed on August 19, 2014 seeking the Maryland Public Service Commission's (the "Commission") authorization for Exelon, EEDC and SPE to exercise substantial influence over the policies and actions of Pepco and Delmarva, and further testimony and commitments filed thereafter.

[2] *See* Case No. 9361, Docket No. 177 (Notice of Settlement). The Joint Applicants also agreed to a parallel set of commitments at the transmission level, further ensuring a level playing field for interconnection of new generation resources. Initial Brief Appendix A (Commitment 21).

[3] The Joint Applicants have also entered into a separate letter agreement with Prince George's County, which is provided for informational purposes as Attachment B to this request.

Maryland Affordable Housing Coalition, the Housing Association of Nonprofit Developers, and the Mid-Atlantic Off-Road Enthusiasts (and related parties).[4]

These parties join an extensive list of other parties who have expressed public support for the Merger, demonstrating the Merger's strong local government and community backing, including support by: (1) a wide array of Maryland's philanthropic and educational organizations, (2) diverse suppliers including organizations promoting the interests of diverse suppliers, (3) the International Brotherhood of Electrical Workers, AFL-CIO Locals 1238, 1307, and 1900 – the labor unions that represent the interests of employees of Pepco and Delmarva, (4) other Maryland businesses and business organizations including the Maryland and numerous county chambers of commerce, as well as (5) environmental organizations including the Arbor Day Foundation and the Anacostia Watershed Society.[5]

These settlements significantly enhance – to unprecedented levels – the benefits and protections the Merger will bring to Pepco's and Delmarva's customers. They will make Maryland a national leader in distributed generation, the grid-of-the-future, microgrids, energy efficiency, and solar generation development. A Green Sustainability Fund will provide an important new source of funds supporting advances in innovative green technologies; it will be funded with a $50 million contribution from Exelon to support programs across the PHI

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[4] The Mid-Atlantic Off-Road Enthusiasts parties include Trail Riders of Today, Inc., Potomac Bridle and Hiking Trail Association, Inc., Equestrian Partners in Conservation, Inc., Potomac Appalachian Trail Club, Inc., Montgomery County Road Runners Association, Inc., the International Mountain Bicycling Association, Inc., the Maryland Horse Council, Inc., and the American Hiking Society (collectively, with The Alliance for Solar Choice, Montgomery County, and Prince George's County, constitute the "Settling Intervenors") (collectively, the TASC Settlement and the Multi-Party Settlement constitute the "Settlements") (collectively, the contents of the Multi-Party Settlement, including the conditions contained in the TASC Settlement, constitute the "Settlement Conditions.").

[5] *See* below at pages 13-15 for a more detailed listing of the Merger's broad-based support from a number of stakeholders.

footprint, which is in addition to the $94.4 million Maryland Customer Investment Fund ("CIF"), and will not be paid for by customers.

These settlement commitments and the Merger represent a tremendous opportunity for Maryland and for Pepco's and Delmarva's customers. Pepco and Delmarva will be placed on a clear path to joining the ranks of the nation's premier first-quartile-performing utilities far more quickly than contemplated by PHI on a standalone bases. Moreover, the Merger will provide Maryland with extensive economic opportunities, and energy and environmental benefits, while delivering enhanced protections for Pepco and Delmarva and real, tangible benefits for their customers.

There is an extensive record that gives rise to these settlements. However, the Joint Applicants believe it may be appropriate to provide parties an opportunity to respond to the settlements. Accordingly, the Commission could provide parties wishing to respond to the settlement terms two weeks (until March 31, 2015) to submit written responses to the settlement terms; and (2) provide the settling parties one week (until April 7, 3015) to submit written replies to the responses. The Joint Applicants have attached (as Attachment C) a stipulation to adjust the deemed-filed date of their Application to provide the Commission extra time (until April 29, 2015) to reach its decision in this proceeding commensurate with such a schedule. The Joint Applicants further recognize, however, that the Commission may, in advance of any additional briefing, wish to hold a hearing on the settlement terms. They are prepared to cooperate in such a process, including by working with the Commission to supply an alternative stipulation to adjust the deemed-filed date.

The Multi-Party Settlement, described in more detail below, includes both 27 substantive conditions *and* an additional set of stipulations (contained in Exhibit A to the Multi-Party

Settlement) by which the Joint Applicants – in response to the other parties' initial briefs – add to and further refine the commitments they had made through their Initial Brief. The Multi-Party Settlement includes for the Commission's and the parties' convenience an exhibit (Exhibit B to the Multi-Party Settlement) identifying which of the Joint Applicants' commitments (made as of their Initial Brief) have been superseded by the conditions contained in the Multi-Party Settlement or by the stipulations attached thereto. The Commission should grant the Joint Applicants' Application, adopting as the conditions of its order the Settlement Conditions without modification.

I. New Elements Contained in the Settlement Conditions

The Joint Applicants have endeavored to anticipate and respond constructively to concerns raised by intervening parties in discovery and testimony, and later by the Commission in its questioning of witnesses at hearing. Accordingly, the Settlement Conditions include a number of additions to the already-significant benefits and protections contained in the Initial Brief, addressing the questions and requests of the Commission, the public, and the parties.

New elements contained in the Settlement Conditions include the following:

Accelerated First-Quartile Reliability for Pepco – The Settlement Conditions build on the already-strong commitment to improved reliability by further accelerating the speed of reliability improvements to be achieved by Pepco, so as to deliver first-quartile reliability by 2018 – *two years earlier than in Pepco's current proposed RM43 goals* – while continuing to build on those improvements through 2020 to achieve reliability 22% better than within Pepco's current proposed RM43 goals.[6] The condition incorporates specified reliability budget increases for only 2016 and 2017, while holding 2018, 2019, and 2020 spending to the level of the existing

[6] Compare Multi-Party Settlement ¶ 4 with Joint Applicants' Initial Brief, Appendix A, Commitment 2.

Pepco reliability budget. And, the conditions include automatic un-recoverability of any operations and maintenance spending above budget, as well as penalties for failure to stay within capital budgets. The conditions also provide for an acceleration of Delmarva's SAIFI performance in 2018 to ensure it achieves second-quartile reliability by 2018. Delmarva's accelerated performance will be achieved within existing reliability budget levels, and will be subject to the same types of penalties described above if budget levels are exceeded.

Expansion of Energy-Efficiency and Low-Income Programs – The Settlement Conditions ensure the availability of funds for energy-efficiency program support, including for low-income customers. In particular, $57.6 million of the $94.4 million CIF will be dedicated for energy-efficiency programs.[7] Of that amount, $42 million is dedicated to programs to be administered by Montgomery County and Prince George's County. Each of the counties set forth in testimony their interest in, experience with, and plans for promoting energy efficiency among their residents; these funds will provide a powerful boost to the counties' plans, benefitting county residents and businesses, most of whom are Pepco customers, by reducing their demand for electricity.[8] The specific programs to be implemented are specified in the Multi-Party Settlement, and include programs that benefit businesses and landlords, while also ensuring a substantial portion of the funds are directed to benefit low- and moderate-income residents.[9] The Settlement Conditions also provide for Pepco to continue its collaboration to support Montgomery County's energy-performance benchmarking efforts and to make available

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[7] See Multi-Party Settlement ¶ 3. The provision sets out the allocation of the $94.4 million Maryland CIF (equivalent to approximately $128 per customer), which provides to customers up front over 250% of the net synergy savings projected by the Joint Applicants to be achieved in the first five years post-Merger for Pepco's and Delmarva's Maryland operations.

[8] Bannerman Direct at 7-11; Coffman Direct at 3-4.

[9] Multi-Party Settlement ¶ 5-6.

tools and processes to provide building owners accessible, useful, and accurate energy-performance data.[10] Moreover, $15.6 million of the CIF is earmarked to fund additional energy-efficiency programs, again including programs benefitting low-income customers, as directed by the Commission.[11] While the Commission has discretion as to how this $15.6 million will be deployed, the Parties anticipate that these funds will be available to benefit customers in the Delmarva Power service territory.[12]

Along with these substantial investments in energy-efficiency programs, the remaining $36.8 million of the $94.4 million CIF will be allocated for direct rate credits of approximately $50 for each Pepco and Delmarva Maryland electric distribution customer.[13]

Establishing a "Green Sustainability Fund" to Support Renewables Development – The Settlement Conditions provide innovative means of supporting and promoting investment in and development of solar, storage and other behind-the-meter and distributed generation; energy efficiency and whole home solutions; utility 2.0 and microgrids; water conservation in buildings; clean transportation; community solar; and similar developing energy technologies, through the establishment of a "Green Sustainability Fund" fund (the "Fund"). The $50 million Fund (with $19.8 million allocated to Maryland) is in addition to the $94.4 million CIF, and will enable low-interest loans, interest subsidies, and other means to help finance projects installed by or on behalf of counties, municipal and other local government organizations, universities and

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[10] Multi-Party Settlement ¶ 8.

[11] Multi-Party Settlement ¶ 7

[12] Delmarva and Pepco will cooperate with the agencies designated by the Commission to receive such funding on the development and implementation of the energy-efficiency programs for customers; provided that the parties recommend that $3.1 million in total of the $15.6 million shall be dedicated to energy-efficiency investments in affordable multi-family housing. Multi-Party Settlement ¶ 7.

[13] Multi-Party Settlement ¶ 3(a).

community colleges, 501(c)(3) organizations and similar charitable groups, low income housing, multi-unit housing in low income neighborhoods, and commercial businesses.[14] This will spur customer investment in renewable generation and energy efficiency, reducing customers' demand for electricity.

Direct Investment in Renewables – The Settlement Conditions further provide for direct investment by Exelon in solar generation in Maryland. Exelon will develop or assist in the development of 15 MWs of solar generation in Maryland, including 5 MW in Prince George's County, 5 MW in Montgomery County, and 5 MW in Delmarva's service territory.[15] And, on top of the commitments in the Settlement Conditions, Exelon will develop *an additional* 5 MW of solar generation in Maryland pursuant to a power purchase agreement with Prince George's County, at no cost to Prince George's County for 15 years.[16] This will result in the development of a total of 20 MW of solar generation in Maryland.

Pursuit of Microgrids – The Settlement Conditions provide that Pepco will, within one year following Merger close, file with the Commission a proposal for two pilot public-purpose microgrid projects – one each in Prince George's County and in Montgomery County – thereby jump starting the consideration and evolution of microgrids in Maryland.[17]

Participation in Grid-of-the-Future Issues – The Settlement Conditions also ensure that the Joint Applicants will help promote discussion of grid-of-the-future issues in Maryland. Pepco and Delmarva will make a filing with the Commission requesting that the Commission

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[14] Multi-Party Settlement ¶ 9-17.

[15] Multi-Party Settlement ¶ 18.

[16] This additional 5 MW is pursuant to the letter with Prince George's County identified in FN 3, *supra*.

[17] Multi-Party Settlement ¶ 19

initiate a proceeding to examine opportunities to transform the electric distribution grid, including the incorporation of smart-grid technology, microgrids, renewable resources, and distributed generation.[18] As part of this filing, the companies will request formation of a collaborative stakeholder process to study relevant issues. And, Exelon will fund up to $500,000 for the Commission to retain consultants to study relevant issues and/or facilitate the proceeding.

Enhanced EmPOWER Maryland Commitment – The Settlement Conditions provide that Pepco and Delmarva will work with Staff and other stakeholders to develop and, within six months, file with the Commission a distinct set of milestones as to how they will accelerate and enhance their EmPOWER Maryland plans, including proposed penalties for failure to meet Commission-approved goals.[19]

Additional Strengthening of Reliability and Customer Service Commitments – The Settlement Conditions add a number of items to address Staff proposals in the areas of reliability and customer service.[20] They provide that Pepco and Delmarva commit to meet whatever RM43 performance levels the Commission adopts for Pepco and Delmarva for 2016-2020, even if those levels are more stringent than those proposed by Pepco and Delmarva in RM43 or those contained in the Settlement Conditions, subject to necessary budget adjustments. Further, Exelon will maintain Pepco's and Delmarva's existing or planned vegetation management programs in compliance with the standards as established in RM43. And, Exelon will cooperate with Staff and other stakeholders to determine the funding and other resources necessary to meet future resiliency targets that may be established by the Commission. Moreover, to address

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[18] Multi-Party Settlement ¶ 20.

[19] Exhibit A to the Multi-Party Settlement (Commitment 22).

[20] Exhibit A to the Multi-Party Settlement (Commitments 25, 26, 27, 28).

overall customer satisfaction, Exelon will conduct an analysis of, and develop an action plan to improve, Pepco's customer-satisfaction scores.

Recognition of the Importance of Supplier Diversity – The Settlement Conditions give recognition to the importance of promoting supplier diversity in Maryland's energy industry by integrating supplier diversity goals into the implementation of the Green Sustainability Fund program. They also make explicit Pepco's and Delmarva's dedication to their Memoranda of Understanding with the Commission.[21]

Support for Workforce Development – Exelon will provide $4 million to support workforce development initiatives in Pepco's and Delmarva's Maryland service territories, particularly in the area of sustainable energy, including energy efficiency and renewable energy, as well as other Science, Technology, Engineering, and Math ("STEM") fields.[22] This includes both partnerships between the Joint Applicants and local governments, as well as funding support for programs.

Introduction of Public Recreational Use of Pepco Utility Corridors – The Settlement Conditions ensure the establishment of a pilot project in Pepco's service territory by which Pepco will grant to an appropriate entity in both Montgomery County and Prince George's County a license to access specified portions of Pepco's transmission-line property for recreational use by the public.[23] Pepco will coordinate with the Maryland Department of Natural Resources ("DNR"), Montgomery County, Prince George's County and the Maryland - National Capital Park and Planning Commission ("M-NCPPC") to establish the pilot and to define license terms. The first pilot project will be a combined paved and natural surface trail system along the

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[21] Exhibit A to the Multi-Party Settlement (Commitment 29).

[22] Multi-Party Settlement ¶ 21-24.

[23] Multi-Party Settlement ¶ 27.

transmission corridor from Westlake Drive near Montgomery Mall to the Soccerplex in Germantown (the "Bethesda-Dickerson Corridor"). Within four months of the closing of the Merger, Pepco will solicit the input and work cooperatively with the DNR, Montgomery County, Prince George's County, M-NCPPC and other interested parties on the design of an unpaved trail in the portion of the Bethesda-Dickerson Corridor between the Soccerplex and Quince Orchard Road (the "Unpaved Trail"). This condition addresses the policy objective raised by a substantial number of the public commenters in the proceeding.

Additional Ring-Fencing and Affiliate Protections Requested by Staff – The Settlement Conditions add more ring-fencing measures beyond those that are part of the "gold standard" adopted for Baltimore Gas and Electric Company, including: (1) maintenance of an average annual equity ratio of at least 48%;[24] and (2) a future re-analysis of Exelon's operational and financial risk to determine the adequacy of existing ring-fencing measures.[25] In addition, the Joint Applicants will provide an annual side-by-side comparison of pre- and post-merger shared-services costs allocations to Pepco and Delmarva for three post-Merger years, with the first comparison to be filed no later than the end of the second quarter of 2017.[26]

Reporting on Performance and Status of Utilities – While the Joint Applicants do not agree there is any harm to customers associated with the Maryland Energy Administration ("MEA") admonition of a purported loss of "across the fence" comparisons between Pepco and BGE, the Settlement Conditions add a commitment that will provide the Commission with more information than it would have in the absence of the Merger. If the Commission so desires, Exelon and PHI will file annual "across the fence reports" comparing the performance and status

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[24] Exhibit A to the Multi-Party Settlement (Commitment 31).

[25] Exhibit A to the Multi-Party Settlement (Commitment 30).

[26] Exhibit A to the Multi-Party Settlement (Commitment 23).

of the utilities within the Exelon family (including Pepco, Delmarva, and BGE) to each other and against the performance and status of other utilities inside and outside of Maryland.[27] The reports will 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.

Support for Consumer Public Advocacy at PJM – The Joint Applicants reaffirm in Maryland a commitment previously made in Delaware that Exelon will provide funds to the Consumer Advocates of PJM States Inc. ("CAPS") to support it in its advocacy work at PJM.[28] Further, Exelon will support reasonable proposals to have PJM members fund CAPS on a sustaining basis.[29] Such funding will provide meaningful support for a voice at PJM that is separate from Exelon, and its generation, and is entirely controlled by the consumer advocates of the various PJM states.

II. The Settlement Conditions Provide A Powerful Package Of Benefits And Protections

The Merger, inclusive of the Settlement Conditions, will generate huge benefits to customers, including rate credits, better reliability, and support for energy efficiency and distributed generation. Particular attention has been paid to the needs of low-income customers in crafting these benefits. Many of the concessions that the intervenors sought have now been accepted by the Joint Applicants and are incorporated into the Settlement Conditions. For

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[27] Exhibit A to the Multi-Party Settlement (Commitment 32).

[28] Exhibit A to the Multi-Party Settlement (Commitment 33).

[29] *Id.*

example, differences between the parties over the Joint Applicants' reliability commitments, involving performance levels, cost, measurement period, and penalties for non-compliance, have been addressed. Similarly, parties' issues regarding the appropriate customer protections, including appropriate ring-fencing measures, have been addressed. In particular, nearly all of Staff's proposals have been incorporated into the Settlement Conditions.

While many parties have sought increases to the benefits contained in the Joint Applicants' commitments, mostly to be directed to their specific, narrow interests, there is little outright opposition to the Merger. Some parties have expressed concerns about generation conflicts, dominance, or "loss of voice," and that the combined company will not have an interest in pursuing energy efficiency or renewables, or new technologies supporting the grid of the future. This has been the basis of MEA's and the Office of People's Counsel's ("OPC") stated opposition to the Merger.[30] The Joint Applicants emphatically disagree that these concerns reflect reality, as explained in testimony and the Initial Brief. The Joint Applicants further disagree with MEA's and OPC's assertions that, even if one accepts that there is such a potential harm, it cannot be mitigated. Now, through the Settlement Conditions, the Joint Applicants have made extraordinary commitments that demonstrate their deep support for renewables, distributed generation, energy efficiency, and other customer-benefitting innovations, as well as provide extensive mitigation to these perceived harms.

The Settlement Conditions provide tens of millions of dollars of funding for customers' development of solar generation and implementation of energy efficiency measures in Maryland, while providing comprehensive assurances that the interconnection process will be more efficient for Pepco and Delmarva customers and solar development. Moreover, under the

[30] MEA Initial Brief at 3; OPC Initial Brief at 2-3.

Settlement Conditions, Exelon itself will develop or assist in the development of 16 MW of new solar generation. This is a Merger that ensures that Maryland's energy market will continue to evolve for the benefit of customers and that Pepco and Delmarva will, with the support of the other Joint Applicants, support the goals of customers and the Commission in that ongoing evolution.

The tremendous benefits of the Merger are recognized by a broad array of parties and stakeholders. With the Settlement Conditions, the Merger has broad-based support from a number of stakeholders, including:

- Montgomery County, Prince George's County, and the other settling parties, including as they represent the interests of the numerous public commenters speaking on behalf of distributed solar generation, low-income customers, and public recreation access to transmission corridors;
- a wide array of philanthropic and educational organizations in Maryland, including the National Association for the Advancement of Colored People,[31] Wor-Wic Community College,[32] Big Brothers Big Sisters,[33] Junior Achievement,[34] the Salvation Army,[35] the United Way,[36] the Living Classrooms Foundation,[37] the Maryland Science Center,[38] Goodwill

[31] Prince George's County Public Hearing Tr. 18:13-20:8 (Jan. 14, 2015).

[32] Wicomico County Public Hearing Tr. 10:9-11:23 (Jan. 8, 2015).

[33] Wicomico County Public Hearing Tr. 15:4-16:23 (Jan. 8, 2015).

[34] Wicomico County Public Hearing Tr. 25:3-26:14 (Jan. 8, 2015).

[35] Montgomery County Public Hearing Tr. 15:16-19:6 (Jan. 13, 2015).

[36] Prince George's County Public Hearing Tr. 12:9-17:3 (Jan. 14, 2015).

[37] Montgomery County Public Hearing Tr. 141:13-144:21 (Jan. 13, 2015).

[38] Montgomery County Public Hearing Tr. 168:6-169:17 (Jan. 13, 2015).

Industries,[39] Interfaith Works,[40] the Maryland Soccer Foundation,[41] 100 Black Men of Prince George's County and the March of Dimes,[42] and the Collective Empowerment Group;[43]

- diverse suppliers and organizations promoting the interests of diverse suppliers, including the Maryland-Washington Minority Companies Association,[44] the Greater Washington Hispanic Chamber of Commerce,[45] the Maryland Hispanic Chamber of Commerce,[46] and The Aspen Group;[47]
- the labor unions that represent the interests of employees of Pepco and Delmarva, including International Brotherhood of Electrical Workers, AFL-CIO Locals 1238, 1307, and 1900;[48]
- other Maryland businesses and business organizations, including the Maryland Chamber of Commerce,[49] the Prince George's County Chamber of Commerce,[50] the Montgomery County Chamber of Commerce,[51] the Talbot

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[39] Prince George's County Public Hearing Tr. 58:23-61:22 (Jan. 14, 2015).

[40] Montgomery County Public Hearing Tr. 125:22-127:18 (Jan. 13, 2015).

[41] Montgomery County Public Hearing Tr. 153:10-156:13 (Jan. 13, 2015).

[42] Prince George's County Public Hearing Tr. 40:13-42:14 (Jan. 14, 2015).

[43] Prince George's County Public Hearing Tr. 97:7-98:23 (Jan. 14, 2015).

[44] Prince George's County Public Hearing Tr. 62:1-66:5 (Jan. 14, 2015).

[45] Montgomery County Public Hearing Tr. 61:21-64:12 (Jan. 13, 2015).

[46] Montgomery County Public Hearing Tr. 122:20-125:19 (Jan. 13, 2015).

[47] Prince George's County Public Hearing Tr. 30:1-33:17 (Jan. 14, 2015).

[48] Prince George's County Public Hearing Tr. 22:9-26:2 (Jan. 14, 2015); *see also* Rigby Direct at 12; Case No. 9361, Docket No. 36 (Opposition to Petition to Intervene) at Exhibit A.

[49] Montgomery County Public Hearing Tr. 114:23-118:19 (Jan. 13, 2015).

[50] Prince George's County Public Hearing Tr. 66:8-69:2 (Jan. 14, 2015).

[51] Montgomery County Public Hearing Tr. 28:7-30:15 (Jan. 13, 2015).

County Chamber of Commerce,[52] the Dorchester County Chamber of Commerce,[53] the Salisbury Chamber of Commerce,[54] the Delmarva Shorebirds,[55] the Greater Prince George's Business Roundtable,[56] the Waterfront Partnership of Baltimore,[57] and Bith Energy;[58] and

- environmental organizations, including the Arbor Day Foundation[59] and the Anacostia Watershed Society.[60]

III. Conclusion

The Joint Applicants respectfully request that the Commission approve the Merger subject to the Settlement Conditions. The Settlement Conditions are the direct result of the Commission's process and the Commission's and parties' requests and questions. There is an extensive record that gives rise to these Settlement Conditions and supports approval of the Merger subject to them. As stated above, however, the Joint Applicants recognize the Commission may deem it appropriate to provide parties an opportunity to respond to the contents of the settlements. The Joint Applicants have proposed the process outlined above to accommodate that, but would agree to further hearings or testimony if requested by the Commission.

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[52] Talbot County Public Hearing Tr. 5:23-8:3 (Jan. 7, 2015).

[53] Wicomico County Public Hearing Tr. 21:6-24:18 (Jan. 8, 2015).

[54] Wicomico County Public Hearing Tr. 12:3-15:2 (Jan. 8, 2015).

[55] Wicomico County Public Hearing Tr. 28:12-31:4 (Jan. 8, 2015).

[56] Prince George's County Public Hearing Tr. 7:18-10:9 (Jan. 14, 2015).

[57] Prince George's County Public Hearing Tr. 10:11-12:6 (Jan. 14, 2015).

[58] Montgomery County Public Hearing Tr. 30:18-34:20 (Jan. 13, 2015).

[59] Prince George's County Public Hearing Tr. 26:4-29:22 (Jan. 14, 2015); Montgomery County Public Hearing Tr. 179:5-182:21 (Jan. 13, 2015).

[60] Prince George's County Public Hearing Tr. 50:18-54:21 (Jan. 14, 2015).

[Signature page follows]

March 16, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, J. Joseph Curran, III, hereby certify that on this 16th day of March, 2015, the foregoing Joint Applicants' Request for Adoption of Settlements was sent via electronic service to the service list in Maryland Public Service Commission Case No. 9361.

J. Joseph Curran, III

Attachment A

SETTLEMENT AGREEMENT AND STIPULATION

WHEREAS, Exelon Corporation ("Exelon") and Pepco Holdings, Inc. ("PHI") executed an Agreement and Plan of Merger on April 29, 2014, and an Amended and Restated Agreement and Plan of Merger on July 18, 2014 (the "Merger");

WHEREAS, on August 19, 2014, Exelon, PHI, Potomac Electric Power Company ("Pepco"), Delmarva Power & Light Company ("Delmarva Power"), and other related entities (collectively, the "Joint Applicants") filed an application with the Maryland Public Service Commission (the "Commission") seeking approval of the proposed merger of Exelon and PHI and the resulting change in control of Pepco and Delmarva Power, pursuant to Md. Code, Public Utilities Article, § 6-105 (the "Application");

WHEREAS, on August 19, 2014, the Commission initiated a proceeding for examination and investigation of the Application under Case No. 9361;

WHEREAS, Montgomery County filed a Petition to Intervene in Case No. 9361 on September 10, 2014, which was granted by the Commission;

WHEREAS, Prince George's County filed a Petition to Intervene in Case No. 9361 on September 15, 2014, which was granted by the Commission (together, Montgomery County and Prince George's County are referred to as the "Counties");

WHEREAS, the Mid-Atlantic Off-Road Enthusiasts, Trail Riders of Today, Inc., Potomac Bridle and Hiking Trail Association, Inc., Equestrian Partners in Conservation, Inc., Potomac Appalachian Trail Club, Inc., Montgomery County Road Runners Association, Inc., the International Mountain Bicycling Association, Inc., the Maryland Horse Council, Inc., and the American Hiking Society (collectively, "MORE") filed a Petition to Intervene in Case No. 9361 on September 12, 2014, which was granted by the Commission;

WHEREAS, the National Consumer Law Center, National Housing Trust, Maryland Affordable Housing Coalition, and the Housing Association of Nonprofit Developers (collectively, "NCLC") filed a Petition to Intervene in Case No. 9361 on September 17, 2014, which was granted by the Commission;

WHEREAS, the Counties and other parties and intervenors took substantial discovery in this matter from the Joint Applicants, including thousands of written discovery requests and two depositions of proposed witnesses for the Joint Applicants, and the Joint Applicants have produced thousands of documents;

WHEREAS, the Joint Applicants, the Counties, MORE, and NCLC and other parties and intervenors submitted pre-filed testimony and testified live before the Commission over the course of twelve days of evidentiary hearings;

WHEREAS, subject to the approval of the Commission, the Joint Applicants have agreed to binding commitments above and beyond those contained in the Application and as enhanced

in the Joint Applicants' Initial Brief in an effort to address the issues the Counties, MORE, and NCLC raised;

WHEREAS, the Joint Applicants, the Counties, MORE, and NCLC (together, the "Settling Parties"), have agreed to terms that they believe establish that the Merger is in the public interest, convenience and necessity, including benefits to consumers and no harm as required by Md. Code, Public Utilities Article, § 6-105;

WHEREAS, the Settling Parties have, subject to approval by the Commission, agreed on settlement terms, with those terms encompassed herein;

WHEREAS, the Joint Applicants stipulate to further conditions as set forth in the Exhibits to this settlement agreement (the terms and conditions in this settlement agreement, together with Exhibits A and B, collectively is the "Settlement Agreement"), and the Counties, MORE, and NCLC stipulate to and endorse those conditions; and

NOW, THEREFORE, as of March 16, 2015, the following terms and conditions are agreed to by the Settling Parties to this Settlement Agreement:

Recommendation of Approval of the Merger

1. Subject to the provisions set forth in this Settlement Agreement, the Settling Parties agree that the statutory criteria for approval of an application under Md. Code, Public Utilities Article, § 6-105 have been satisfied. More particularly, the Settling Parties agree that the record in Case No. 9361, coupled with the conditions set forth in this Settlement Agreement, support findings and conclusions by the Commission that the Merger is in the public interest, convenience and necessity, including benefits to consumers and no harm.

2. Subject to the provisions set forth in this Settlement Agreement, the Settling Parties agree that the Joint Applicants should be authorized to take those actions necessary in order for the Merger to lawfully be consummated.

Customer Investment Fund -- Rate Credits and Energy-Efficiency Program Support

3. After consummation of the Merger, Exelon will fund a Customer Investment Fund ("CIF") of $94.4 million for the benefit of Delmarva Power and Pepco customers in each of the utilities' service territory in the State of Maryland (equivalent to approximately $128 per Maryland distribution customer, calculated based on the actual customer count at 12/31/13 of 737,526 distribution customers in Maryland – 536,682 for Pepco and 200,844 for Delmarva Power). Pepco and Delmarva Power will not seek recovery in utility rates for the CIF. The Joint Applicants represent that this funding level is equivalent (prorated on a per-customer basis) to the rate-credit and energy-efficiency program funding that Exelon will provide under the settlements it has entered into in the Merger-review proceedings before the New Jersey Board of Public Utilities and the

Delaware Public Service Commission. The CIF shall be distributed in the following manner:

a. Pepco will provide $26.8 million in direct rate credits, in an amount of approximately $50 per electric distribution customer, within 60 days after Merger closing; and Delmarva Power will provide $10 million in direct rate credits, in an amount of approximately $50 per electric distribution customer, within 60 days after Merger closing; and

b. Exelon will provide $42 million in funding for energy-efficiency program support, including for low-income customers, in the Pepco service territory (derived from prorating on a per customer basis of $17.6 million for Prince George's County and $24.4 million for Montgomery County) for programs to be directed and administered by Montgomery County and Prince George's County as set forth in Paragraphs 5 and 6 below.

c. Exelon will provide $15.6 million in funding for energy-efficiency program support, including programs benefitting low-income customers, as directed by the Commission. While the Commission has discretion as to how these funds will be deployed, the Parties anticipate that these programs will be available to benefit customers in the Delmarva Power Maryland service territory.

Reliability

4. Pepco and Delmarva Power commit to improve system reliability in their Maryland service territories and specifically to achieve the following minimum annual reliability performance levels as measured using the Commission's current methodology for calculating SAIFI and SAIDI, with exclusion of major event days:

Annual Commitment		2016	2017	2018	2019	2020
Pepco	SAIFI	1.05	0.99	0.95	0.92	0.90
	SAIDI	124	116	101	96	91
Delmarva Power	SAIFI	1.41	1.36	1.31	1.17	1.12
	SAIDI	151	145	139	105	97

These reliability performance levels will supersede the currently-proposed RM 43[1] performance levels submitted by Pepco and Delmarva for years 2016-2020 that are under consideration by the Commission. In addition, failure to meet these reliability performance levels will result in the following compliance measures: If Pepco or Delmarva Power fails to meet the reliability-performance levels set out above in any of the years 2016-2020, then the Commission's RM 43 mitigation and penalty provisions

[1] Service Quality and Reliability Standards COMAR 20.50.12.00 *et seq*.

will apply; in particular, if the performance level is not met the company will file a corrective action plan including an explanation as to why the target was missed, and the Commission can assess penalties as provided under RM 43. In addition, if either of the SAIFI or SAIDI reliability-performance levels set out above are not met in any of the years 2018, 2019 or 2020, then Pepco or Delmarva Power will automatically make a compliance payment to the Electric Reliability Remediation Fund[2] as set forth below, which payment will not be recoverable in customer rates:

		2016	2017	2018	2019	2020
Compliance Payment	**Pepco $5.5M**	-	-	$1.0M	$1.5M	$3.0M
	DPL $2.25M	-	-	$0.25M	$.50M	$1.50M

Exelon is committed to achieving the proposed reliability standards without exceeding the annual capital and O&M spending levels set forth below, absent changes in law, regulations, or extreme weather events requiring increases in reliability-related spending to restore service and facilities. Pepco and Delmarva Power understand that potential rate recovery of the annual capital and O&M spending levels set forth below must go through the regular rate-making process of the Commission, and the use of such in this Settlement Agreement does not imply or otherwise constitute an endorsement by the Counties that such spending is just and reasonable.

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[2] Md. Code, Public Utilities Article, § 7-213(j).

	Reliability Driven Capital Expenditure 2016-2020				
	2016	**2017**	**2018**	**2019**	**2020**
Pepco-MD	$129,008,730	$125,644,019	$126,050,722	$108,389,507	$111,641,192
Pepco-MD Increased Reliability	$ 9,000,000	$ 25,000,000			
Total Pepco-MD	$138,008,730	$150,644,019	$126,050,722	$108,389,507	$111,641,192
DPL-MD	$ 55,049,615	$ 53,278,113	$ 55,072,784	$ 47,848,252	$ 49,283,700
DPL-MD Corrective Action Plan	$ 18,540,000	$ 19,096,200	$ 19,669,086	$ 20,259,159	$ 20,866,933
Total DPL-MD	$ 73,589,615	$ 72,374,313	$ 74,741,870	$ 68,107,411	$ 70,150,633
	Pepco O&M Reliability 2016-2020 (DC and MD)				
	2016	**2017**	**2018**	**2019**	**2020**
System Scheduled Maint	$20,271,059	$20,879,190	$21,505,566	$22,150,733	$22,815,255
Forestry (Tree Trimming)	$23,811,463	$24,525,807	$25,261,582	$26,019,429	$26,800,012
Total	**$44,082,522**	**$45,404,998**	**$46,767,148**	**$48,170,162**	**$49,615,267**
Forestry -- Maryland Only	$21,569,463	$22,216,547	$22,883,044	$23,569,535	$24,276,621
	DPL O&M Reliability 2016-2020 (MD and DE)				
	2016	**2017**	**2018**	**2019**	**2020**
Scheduled Maint	$8,754,554	$9,017,191	$9,287,707	$9,566,338	$9,853,328
Forestry (Tree Trimming)	$12,945,668	$13,334,038	$13,734,060	$14,146,081	$14,570,464
Total	**$21,700,223**	**$22,351,229**	**$23,021,766**	**$23,712,419**	**$24,423,792**
Forestry -- Maryland Only	$8,033,483	$8,274,487	$8,522,722	$8,778,404	$9,041,756

Consequences for failure to meet budget targets for reasons other than changes in law, regulations, or extreme weather events requiring increases in reliability-related spending to restore service and facilities are set forth below:

a. If Pepco exceeds the reliability-related capital budget levels set out above in any of the years, then Pepco will automatically place into escrow a compliance payment in the amount of $65,000 for every $1 million spent in excess of the reliability-related capital budget target for the year. If Delmarva Power exceeds the reliability-related capital budget levels set out above in any of the years, then Delmarva Power will automatically place into escrow a compliance payment in the amount of $64,000 for every $1 million spent in excess of the reliability-related capital budget target for the year. By June 30, 2021, each company will 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 funds should be directed to the Electric Reliability Remediation Fund or returned to the company.

b. If Pepco or Delmarva Power fails to meet the reliability-related O&M budget levels set out above in any of the years, then the company will automatically forgo seeking recovery in customer rates of any amounts spent in excess of the reliability-related O&M budget level for the year.

Energy-Efficiency Program Support

5. Pepco will cooperate with Prince George's County on the development and implementation of energy-efficiency programs for Pepco customers within Prince George's County to be administered by Prince George's County or agencies designated by Prince George's County. Prince George's County will endeavor to direct at least 20% of the funds to benefit low- and moderate-income residents. The programs will entail:

   a. ENERGY STAR Certification & Green Leasing Program. This program is designed to provide funding to make existing commercial buildings in Prince George's County more energy efficient, enough so that the building itself can be certified by ENERGY STAR developed by the United States Environmental Protection Agency. Funds would be provided to assist commercial buildings in applying for the ENERGY STAR certification process itself. In addition, funds would be used towards various energy-efficiency, water efficiency, and retrofitting measures performed to achieve ENERGY STAR Certification. To receive funding from this program, commercial buildings must first apply to one of Pepco's applicable EmPOWER Maryland programs. Funds from this program would be used to supplement the costs of those measures. In addition, the buildings would be required to adopt various best practices in Green Leasing to align the interests of landlords and tenants so that they are both financially motivated to engage in energy efficient tactics in buildings to achieve energy savings in both decreased energy usage and cost.

   b. Transforming Neighborhoods Initiative Comprehensive Energy Audit, Retrofit and Clean-Energy Program. This program joins ongoing efforts and programs by Prince George's County to uplift six of its neighborhoods[3] that face significant economic, health, public safety and educational challenges. This program consists of providing assistance to residents in funding energy-efficiency and water efficiency measures, and installation of rooftop solar upon the successful implementation of those efficiency measures. In addition, this program provides residents of these communities with additional financial incentives, and education via an "Energy Coach" in order to combat some of the challenges facing the neighborhoods. To receive funding from this program, residents must first apply to one of Pepco's applicable EmPOWER Maryland programs. Funds from this program would be used to supplement the costs of those measures.

[3] These communities are East Riverdale/Bladensburg, Glassmanor/Oxon Hill, Hillcrest Heights/Marlow Heights, Kentland/Palmer Park, Langley Park, and Suitland/Coral Hills.

Exelon will provide, in equal installments over 3 years, a total of $17.6 million of the CIF in funding for such programs. Prince George's County will submit public program plans to the Commission before deploying the funds and will provide public reports to the Commission, annually for 3 years after Merger closing, as directed by the Commission describing how the funds provided by Exelon have been deployed in programs for the benefit of customers.

6. Pepco will cooperate with Montgomery County on the development and implementation of energy-efficiency programs for Pepco customers within Montgomery County to be administered by Montgomery County Government, Montgomery County agencies, or organizations designated by the County. Montgomery County will endeavor to direct at least 20% of the funds to benefit low- and moderate-income residents in both single- and multi-family communities. Montgomery County will work with low and affordable housing stakeholders (including NCLC and NHT and others) to develop multi-family specific programming. Montgomery County will target a minimum of 10% of incentives and financing to benefit multi-family communities; if funding cannot be effectively used it may be allocated to other sectors. The programs will entail:

    a. Montgomery County Green Bank – In addition to the Green Sustainability Fund described in Paragraphs 9 through 17 below, Montgomery County will administer and capitalize a Green Bank using CIF funds to implement a comprehensive package of programs to leverage investment in clean energy and energy-efficiency technologies (as described in the initial brief filed by Montgomery County). The Montgomery County Green Bank will be designed to complement the EmPower Maryland Programs and other state initiatives. The Montgomery County Green Bank will provide additional CIF funds at the local level to supplement the initiative described in Paragraphs 9 through 17.

    b. Energy Coach Network – Montgomery County will build an Energy Coach Network to ensure community awareness and access to energy-efficiency programs. Montgomery County's Energy Coach Network will provide customized, community-level education on the benefits of energy-efficiency, availability of programs, and opportunities for assistance. A central manager will ensure consistent messaging about the Network's mission. Coaches located at regional services centers, local green groups, or other areas of community interaction will provide direct services at the neighborhood level. The network will raise overall community awareness of program offerings from state, local, and federal programs, including existing EmPower programs. Specialized staff will work within the network to facilitate low-income consumer access to subsidies and assistance programs.

    c. Expanded Weatherization Programs – Montgomery County will reduce the energy-related expenses of low-income consumers through expanded weatherization programs. These programs would augment existing EmPower and federal funding for low-income customer retrofits to provide deeper, more extensive improvements to low-income housing stock. This could include more comprehensive remediation of the building envelope, electrical system, and

space-conditioning systems. Montgomery County anticipates this program to expand the scope of individual retrofits by remediating conditions that need to be resolved before a retrofit can proceed, and to serve additional low-income residents.

Exelon will provide, in equal installments over 3 years, a total of $24.4 million of the CIF in funding for such programs. Montgomery County will submit public program plans to the Commission before deploying the funds and will provide public reports to the Commission, annually for 3 years after Merger closing, as directed by the Commission describing how the funds provided by Exelon have been deployed in programs for the benefit of customers.

7. Exelon will, over 5 years, provide $15.6 million of the CIF to fund additional energy-efficiency programs, including programs benefitting low-income customers, as directed by the Commission. While the Commission has discretion as to how these funds will be deployed, the Parties anticipate that these programs will be available to benefit customers in the Delmarva Power service territory. Delmarva Power and Pepco will cooperate with the agencies designated by the Commission to receive such funding on the development and implementation of the energy-efficiency programs for customers; provided that the parties recommend that $3.1 million in total of the $15.6 million shall be dedicated to energy-efficiency investments in affordable multi-family housing.

8. Provision of Energy Usage Data.

    a. Energy-Performance Benchmarking: Montgomery County Bill 2-14 (Environmental Sustainability – Buildings – Benchmarking) requires building owners to benchmark building energy performance. To benchmark, building owners must have access to utility data including, where separately metered, that of tenants. Pepco actively participates in the County's working groups established to implement and refine the benchmarking program. In addition, Pepco has developed tools and processes to facilitate access to energy data by building owners, particularly in situations where the building owner may not have access to tenant data. Exelon commits that Pepco will continue its collaboration to support Montgomery County's energy-performance benchmarking efforts and that Pepco will continue to make available tools and processes to provide building owners accessible, useful and accurate energy-performance data in Prince George's County and Montgomery County.

    b. In addition, throughout Pepco's and Delmarva Power's service territories, Exelon commits that Pepco and Delmarva Power will provide building owners and managers of multi-family buildings (defined as buildings with five or more residential units) in Pepco's or Delmarva Power's service territories with timely whole-building and unit type (if available) energy usage data (at no additional cost) that will allow owners to benchmark energy usage of their buildings and set utility allowances, upon request, in a format reasonably acceptable to the parties to preserve the privacy of individual customer consumption data. Exelon commits

that representatives of Pepco and Delmarva Power with appropriate authority regarding the sharing of this data will meet with representatives of the Maryland Affordable Housing Coalition ("MAHC"), Housing Association of Non-profit Developers ("HAND"), and other interested stakeholders, to work out the necessary data sharing protocols to support development of acceptable utility allowances, with the good-faith goal of implementing agreed-upon protocols within one year of the closing of the Merger.

Green Sustainability Fund

9. Establishment of Fund; Qualifying Projects – Exelon will establish a $50 million fund (the "Fund") to stimulate public and private investment within Pepco's, Delmarva Power's and Atlantic City Electric's ("ACE") (collectively, the "PHI utilities") service territories in: solar, storage and other behind-the-meter and distributed generation; energy-efficiency and whole home solutions; utility 2.0; resiliency measures; microgrids; water conservation in buildings; clean transportation; community solar; and similar developing energy technologies ("Qualifying Projects").

10. Allocation of Fund – The Fund will be allocated across all jurisdictions in the PHI utilities service territories in the following amounts: Maryland – $19.8 million; District of Columbia – $7.1 million; Delaware – $8.5 million; and New Jersey – $14.6 million. The Fund will be allocated within each jurisdiction through a process established by the utility commission and managed by the commission or an agency designated by the commission, subject to paragraph 10(a) below in Maryland. Each jurisdiction will manage its share of the Fund through state and local "green banks" or similar state and local government agencies or government-affiliated organizations that sponsor investments in Qualifying Projects ("Sponsoring Organizations"). Exelon will advance the allocated portions of the Fund to Sponsoring Organizations within 60 days after allocations of the Fund are made to those organizations. Since Montgomery County and Prince George's County are designated through this agreement as Sponsoring Organizations, funds will be provided to the Counties within 60 days of merger closing.

    a. Maryland funds will be allocated with at least $8.4 million of the Fund to Montgomery County, and at least $6.0 million to Prince George's County, which is derived from prorating on a per customer basis, with each of the Counties being a Sponsoring Organization. The parties recommend that of the remaining $5.4 million allocated to Maryland, that approximately $1 million be dedicated to energy-efficiency investments in affordable multi-family housing.

    b. Portions of the Fund that are not allocated by a state to Sponsoring Organizations within two years after closing of the Merger will be allocated among all Sponsoring Organizations that have received allocations of the Fund as of that date (with such allocations made pro rata based on allocations received as of that date).

11. Qualified Borrowers – The Fund will be used by Sponsoring Organizations to help finance Qualifying Projects installed by or on behalf of: county, municipal and other local government organizations; universities and community colleges; 501(c)(3) organizations and similar charitable groups; low- and moderate-income residents, affordable multi-family building owners, and commercial businesses; and commercial businesses ("Qualified Borrowers"). Qualified Borrowers do not include established, credit-worthy organizations that have access to conventional financing, excepting government organizations, universities and community colleges. Determinations of Qualified Borrowers will be made by the local Sponsoring Organization.

12. Co-Investors – In order to leverage the Fund for maximum effectiveness, each Sponsoring Organization will seek to maximize use of the Fund in partnership with other public and private financing sources to arrange financing for Qualifying Projects that cannot be fully funded through conventional financing and equity sources. Sponsoring Organizations may seek to arrange co-investments with regional, community and minority banks and Treasury Certified Community Development Financial Institutions ("CDFIs"). Exelon will encourage its community and minority banking relationships and other financing sources to co-invest with Sponsoring Organizations on financing for Qualified Projects.

13. Types of Financial Support – Financial assistance from the Fund will be extended to Qualified Borrowers through Sponsoring Organizations in the form of low-interest loans, interest subsidies, purchases of participations in loans made by co-investors, subordinated loans, partial loan guarantees or similar credit enhancements, and loan-loss protection. Sponsoring Organizations will endeavor to direct at least 20% of the Fund for interest-free loans for Qualifying Projects to 501(c)(3) organizations, similar charitable organizations, and affordable multi-family housing.

14. Terms of Financial Support – Interest rates and similar charges on loans provided by the Fund (other than interest-free loans as noted above) will be determined by the local Sponsoring Organization. Interest and other charges on loans provided by the Fund will be retained by the local Sponsoring Organization to defray administrative costs or provide funding for other Qualifying Projects.

    a. The Fund will be available for 20 years after Merger closing. Loans provided by the Fund will mature in 15 years or less. Other terms and conditions of financial support will be determined by the local Sponsoring Organization and co-investors.

    b. During the 20 years that the Fund is available, payments of principal and interest and other recoveries on loans made from the Fund may be redeployed by the Sponsoring Organization into new loans to Qualified Borrowers for Qualified Projects, provided that all loans must mature no later than 20 years following closing of the Merger. After 20 years following closing of the Merger, payments of principal (and other recoveries applied to principal on loans) made from the Fund, but not interest and other charges which will be retained by the local

Sponsoring Organization, will be returned to Exelon following receipt by the Sponsoring Organization on a quarterly basis but only to the extent actually received by the Sponsoring Organization.

15. Administration – The local Sponsoring Organizations and their co-investors will be responsible for administration of the loans made from the Fund, including the application process, credit decisions, monthly statements, monitoring of collateral, if any, collection of interest and principal, reporting, and legal and regulatory compliance. The Sponsoring Organizations agree to provide the Joint Applicants with adequate financial information on the Fund status and performance, as defined by the Joint Applicants, as may be needed for financial reporting and other regulatory purposes. Sponsoring Organizations may use a portion of the Fund to pay reasonable costs of administration of the Fund and loans made from the Fund. Subject to applicable law, when using third parties for loan administration or in contracting with suppliers, Sponsoring Organizations will use their best efforts to utilize qualified community and minority banks and persons meeting the definition of a "Minority Business Enterprise" ("MBE") under the Memorandum of Understanding between the Commission and Pepco and Delmarva Power. The local Sponsoring Organizations will provide periodic reports to the utility commissions on the activity and performance of the Fund, as directed by each commission.

16. Design Flexibility – The program is intended to provide (1) flexibility for utility commissions to establish application processes and criteria for allocation of the Fund among Sponsoring Organizations located within the commission's jurisdiction and (2) flexibility for local Sponsoring Organizations to establish specific parameters for use and preservation of the Fund, determination of Qualifying Borrowers, review and approval of Qualifying Projects, selection of co-investors, and detailed terms and conditions of loans and other financial support from the Fund. At the end of the initial 20 year period following closing of the Merger, Exelon will determine whether and how to extend or expand the program and the Fund, based on loss experience, loan demand, and other measures of success of the program. Unless otherwise determined at that time, original principal of the Fund not committed to Qualified Projects within 20 years after closing of the Merger will revert to Exelon.

17. Ratepayer Protection – The Fund is in addition to the $94.4 million CIF. The PHI utilities will not seek recovery in utility rates for the establishment of the Fund or any expense or loss associated with the Fund.

Renewable Generation Development

18. Exelon and its subsidiaries will provide the following to support development of renewable generation:

    a. Exelon will, within five years after the Merger close, develop or assist in the development of 15 MWs of solar generation in Maryland – 5 MWs of which will be located in Prince George's County, 5 MWs of which will be located in Montgomery County, and 5 MWs of which will be located in the Delmarva Power

service territory. Exelon will sell the output of this solar generation under one of its standard commercial offerings in the market. Exelon will not seek to recover the costs of this commercial solar development through Pepco's or Delmarva Power's retail rates.

b. Exelon will provide $5 million of capital at market rates for the development of renewable-energy projects in Montgomery County (for the community or government buildings).

c. Pepco will coordinate with Montgomery County and Prince George's County to facilitate planning for and interconnection of renewable generation to be developed by the Counties for governmental buildings or public facilities.

Microgrid Development

19. Pepco will, within one year following Merger close, file with the Commission a proposal for pilot public-purpose microgrid projects to provide enhanced energy services to the selected areas, including during emergency events. The pilot projects will be developed in the Pepco service territory, with one project in Prince George's County and one project in Montgomery County. Pepco will coordinate with Montgomery County and Prince George's County and the Maryland Energy Administration on the selection of the pilot locations, the development of the proposal, and implementation of the projects. The county hosting the microgrid will have final approval and consent of the location. The proposal and implementation of the microgrid projects will include, but is not limited to planning, design, and construction of physical facilities and control technologies, the development of on-site distributed-generation sources, such as combined heat and power, solar photovoltaic, and fuel cells, and operation and maintenance activities. Pepco will install the microgrids within five years after receiving approval from Commission. The filing will include a proposal for funding of Pepco's costs in connection with the projects through Pepco's regulated rates.

Grid-of-the-Future Proceeding

20. Within 180 days after the Merger closing, Pepco and Delmarva Power will make a filing with the Commission requesting that the Commission initiate a proceeding to examine opportunities to transform the electric distribution grid, including the incorporation of smart-grid technology, microgrids, renewable resources, and distributed generation. As part of this filing, the companies will request formation of a collaborative stakeholder process to study relevant issues. Exelon will fund up to $500,000 for the Maryland Public Service Commission to retain a consultant to study relevant issues and/or facilitate the proceeding, and Pepco and Delmarva will not seek recovery in utility rates of this funding.

Labor, Employment and Compensation, and Workforce Development

21. Exelon reaffirms that that there will be no net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at Pepco or Delmarva Power for two years following the Merger closing.

22. Exelon reaffirms that if, and only if, the Merger closes, Exelon, Pepco and Delmarva Power will make a good-faith effort to hire a minimum of 110 bargaining-unit employees in Maryland during the twenty-four month period after the Merger closes.

23. Exelon agrees that it will assume PHI's obligations, or cause PHI to continue to meet its obligations, to Pepco and Delmarva Power employees and retirees with respect to pension and retiree health benefits.

24. Exelon, Pepco and Delmarva Power will partner with Prince George's County, Montgomery County and state and local officials in the Delmarva Power service territory to support Workforce Development programs as follows:

    a. Prince George's County:

        i. Exelon and Pepco will partner with Prince George's County to promote a Sustainable Energy Workforce Development program in Prince George's County. The Sustainable Energy Workforce Development Program will play a critical role in establishing an advanced energy industry in the County that will create quality jobs and build employment capacity in the energy sector. A sustainable energy job or career produces goods or services that benefit the environment, promote a low-carbon economy, and/or conserve natural resources by performing duties in the area of energy-efficiency and renewable energy. Examples of sustainable energy jobs or careers include but are not limited to: energy auditors, solar photovoltaic or solar water heating installers; wind energy technicians; weatherization technicians; and manufactures and distributors of energy-efficient products and services.

        ii. The Sustainable Energy Workforce Development program will be administered by a Prince George's County institution of higher learning such as Prince George's County Community College, Construction and Energy Institute with special emphasis on creating "Pathways out of Poverty" and retooling residents who lose their job. The course content will provide interdisciplinary and applied training in energy-efficiency, renewable energy, and other emerging energy techniques whereby successful completion of the curriculum leads to certification in national recognized standards such as Building Performance Institute ("BPI") and North American Board of Certified Energy Practitioners ("NACEP").

iii. Prince George's County will also partner with Exelon and Pepco on the implementation of an energy-literacy program in Prince George's County Public School System to prepare students for advanced careers in the energy sector.

iv. Exelon or Pepco will participate in Prince George's County Summer Youth Enrichment Program ("SYEP") by hiring or sponsoring at least 20 County youth annually for the next four years.

v. Exelon will provide funding of $1,240,000, derived from prorating on a per customer basis, over four years in support of these programs, and Pepco will not seek recovery of this amount in utility rates.

b. Montgomery County:

i. Montgomery County is considering organizing its workforce development programs under one entity, in order to create a comprehensive workforce development system that will unite many stakeholders under common objectives. Exelon and Pepco will partner with Montgomery County and with whatever entity is selected by the County to promote workforce development in Montgomery County, with an emphasis on promotion of training and job creation in the areas of energy-efficiency, renewable energy and Science, Technology, Engineering and Math ("STEM") fields.

ii. Exelon will provide $1,700,000, derived from prorating on a per customer basis, over four years in support of these programs, and Pepco will not seek recovery of this amount in utility rates.

c. Delmarva Power Service Territory:

i. Exelon will coordinate with state and local officials in the Delmarva Power service territory to support workforce development programs.

ii. Exelon will provide funding of $1,060,000, derived from prorating on a per customer basis, over four years in support of these programs, and Delmarva Power will not seek recovery of this amount in utility rates.

Low-Income Customer Assistance

25. To help reduce the burden of long-outstanding energy debt for low-income and other families, Pepco and Delmarva Power shall forgive all residential customer accounts receivable over three years old as of the date of the Merger closing. The costs of such forgiveness will not be recovered in Pepco's or Delmarva Power's rates. Exelon will ensure that appropriate representatives of Pepco and Delmarva engage in discussions with NCLC to consider in good faith the development of a mutually agreeable Arrearage Management Program ("AMP") for low-income 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 one 60 days after the closing of the Merger, and with the understanding that any agreement regarding the adoption of an AMP would be submitted to the Commission for its review and approval.

Charitable Contributions and Community Initiatives

26. Exelon reaffirms that, during the ten-year period following closing of the Merger, Exelon and its subsidiaries will provide at least an annual average of charitable contributions and traditional local community support in Pepco's and Delmarva Power's service territories in Maryland that exceeds the 2013 level of $623,000 from PHI. This commitment is separate from and in addition to the charitable contribution commitment in the merger between Exelon and Constellation Energy Group, Inc., MD PSC Case No. 9271 in Order No. 84698 (issued February 17, 2012), at p. 101. Additionally, beginning within 90 days after Merger close, Exelon and its subsidiaries will make a good faith effort to obtain information from the charitable organizations to which they contribute to determine whether and how much of those contributions benefit each of Prince George's County, Montgomery County and the District of Columbia. Pepco will provide information regarding the contributions that benefit Prince George's and Montgomery County to each County on an annual basis for a period of 10 years following Merger close.

Pilot Project to Provide Public Recreational Use of Pepco Utility Corridors and to Enhance Utility Access to Facilities

27. Certain parties have requested Pepco revisit its policy regarding access to its facilities and foster the development of both paved and natural surface trails open free-of-charge to non-motorized public use on its transmission corridors, including to provide for non-motorized transportation benefits. In response to these requests, and in conjunction with work it has planned and that it intends to perform on its transmission corridors, including its efforts to enhance utility access to its facilities, Pepco agrees to coordinate with the Maryland Department of Natural Resources ("DNR"), Montgomery County, Prince George's County and the Maryland - National Capital Park and Planning Commission ("M-NCPPC") to establish a pilot project in its Maryland service territory by which Pepco will grant to an appropriate governmental or private entity in both Counties a limited, non-exclusive license to access specified portions of Pepco's transmission-line property for recreational and transportation use by the public. Paths will provide increased access to Pepco to its facilities along the transmission corridor, therefore, Pepco will have access along any path to serve its facilities. Permanent paths will provide for faster access for restoration of lines damaged during storms and less impact on wetlands and streams since pathways will be built to mitigate damage to sensitive areas. Pepco agrees to work cooperatively with DNR, Montgomery County, Prince George's County and M-NCPPC to define the license terms. The first pilot project will be a combined paved and natural surface trail system along the transmission corridor from Westlake Drive near Montgomery Mall to the Soccerplex in Germantown (the "Bethesda-Dickerson Corridor"). Within four months after Merger closing, Pepco will solicit the input and work cooperatively with the DNR, Montgomery County, Prince George's

County, M-NCPPC and other interested parties on the design of an unpaved trail in the portion of the Bethesda-Dickerson Corridor between the Soccerplex and Quince Orchard Road (the "Unpaved Trail").

The terms of the licenses for the pilot projects shall include, but are not limited to, the following:

a. Construction (e.g., access points and parking, standards, path material, bridges, signs);

b. Maintenance (including but not limited to responsibility for snow removal, grass cutting, debris removal);

c. Times of Use;

d. Acceptable non-motorized uses, including pedestrians, dog walkers, runners, cyclists, horseback riding;

e. Monitoring acceptable use;

f. Responsibility for handling complaints from adjoining landowners, including intake and response;

g. Liability and safety requirements;

h. Assurance that Pepco's access and use of its property and facilities located therein are not limited in any way; and

i. Pepco shall retain final approval regarding the location of the pilot project(s) and the site of any future access, based upon factors such as safety, security, and Pepco's need to continue to provide safe and reliable electric service consistent with its obligations to customers. Pepco will not forfeit or abridge its property rights in any way.

Pepco, the Counties, M-NCPPC and DNR will cooperate to gain approval of these trails and to construct them in a way that reasonably minimizes the portion deemed to be impervious surfaces in order to reduce the storm water retention requirements. Pepco will seek recovery in regulated transmission and distribution rates of the costs that it incurs in connection with the project. Pepco agrees to pay all reasonable costs associated with the pilot project if it is able to obtain such recovery in regulated rates. If Pepco is not able to obtain rate recovery of the full amount of pilot project costs, it will work with the Counties, M-NCPPC and DNR to reevaluate and appropriately limit the scope of the pilot project, pay the costs of designing the Unpaved Trail, and cooperate to seek alternate sources of funding to complete the pilot project.

Pepco further agrees, following the implementation of the pilot project, to collect lessons learned and identify criteria and conditions under which it would consider future projects to allow access to its property for non-motorized recreational and transportation use.

System Hardening to Support Washington Suburban Sanitary Commission ("WSSC") Potomac Water Treatment Plant

28. Within six months after the Merger closing, Pepco will provide to Montgomery County and to Prince George's County an analysis of transmission- or distribution-system options, and associated costs, to enhance the reliability and resiliency of electric service to the WSSC Potomac Water Treatment Plant, which serves both Montgomery and Prince George's Counties.

Pepco and BGE Cooperation with the Office of Emergency Management and Homeland Security ("OEMHS")

29. Exelon and Pepco commit that Pepco will continue Pepco's strong working relationship, coordination and communication with OEMHS and Montgomery and Prince George's Counties during storm-restoration events, including with respect to identification of priority facilities to be restored. Exelon commits that the relationship will be expanded to include BGE.

Most Favored Nation

30. Exelon will provide the Settling Parties with a copy of the final Orders and Settlement Stipulations from Delaware, the District of Columbia and New Jersey, following approval in all of those jurisdictions, along with an analysis indicating the total dollar amount of the customer investment fund ("CIF") approved in each jurisdiction (including a calculation of that amount on a per distribution customer basis) and explaining the valuation of the additional customer benefits awarded in that jurisdiction as compared to the valuation of the customer benefits awarded in Maryland (calculated in each case on a per-distribution customer basis). In recognition of the risk to Maryland of approving the transaction before the District of Columbia, the Settling Parties agree that Maryland should be protected in the event that the Joint Applicants agree or accept orders under which another jurisdiction obtains a higher amount of direct customer financial benefits than provided through the CIF (calculated on a per-distribution customer basis) or other materially better benefits in the aggregate than those contained in this Settlement Agreement:

    a. If, on a per-distribution customer basis, the benefits provided to other jurisdictions are materially more beneficial in the aggregate than the terms of this Settlement Agreement with respect to financial benefits, credits or payments to customers including the amount of the CIF specified in Paragraph 3, then Exelon will increase the financial benefits, credits or payments to Pepco's and Delmarva Power's customers including the CIF to an equivalent amount calculated on a per-distribution customer basis. In no event will the operation of this methodology cause the financial benefits, credits or payments to customers agreed to in this Settlement Agreement to be reduced.

    b. If the benefits in any other jurisdiction that do not involve financial benefits, credits or payments to customers are materially more beneficial in the aggregate

than the terms of this Settlement Agreement that do not involve financial benefits, credits or payments to customers, then Exelon will increase the benefits provided under this Settlement Agreement by the amount of any difference between the value of those benefits in the other jurisdiction and the value of those benefits under this Settlement Agreement, based on the analysis showing the valuation of those benefits in the other jurisdiction compared to the valuation of those benefits in Maryland, all determined where appropriate on a pro rata or per-distribution customer basis. The Settling Parties recognize, however, that there are differences among the states with respect to (a) employment and hiring commitments, (b) the existing level of charitable contributions, and (c) reliability performance and investment and, therefore, agree that those three elements will not be considered in the determination of whether the benefits in other jurisdictions are materially more beneficial than the terms of this Settlement Agreement, and Exelon will not be required to offer to compensate Maryland for any differences in the value of such elements.

c. If the Settling Parties find the amount or form of compensation offered by Exelon to be insufficient, then the Settling Parties may petition the Commission to require that Exelon provide increased benefits in Maryland. Exelon shall be permitted, in its sole discretion, to not consummate the Merger. Exelon agrees to supply non-privileged information which the Settling Parties may request to determine the value of any benefits. The Settling Parties agree that the purpose of this Paragraph is to assure a fair allocation of the costs and benefits associated with this transaction to Pepco's and Delmarva Power's customers.

Stipulation to Additional Commitments

31. The Settling Parties stipulate to and endorse the additional commitments set forth in Exhibits A and B to this Settlement Agreement. Exhibit A includes additional commitments by the Joint Applicants in response to requests made by parties in initial briefs filed with the Commission in Case No. 9361. Exhibit B includes commitments by the Joint Applicants in Appendix A to their initial brief filed with the Commission in Case No. 9361.

Miscellaneous

32. Each of the Settling Parties agrees to use its best efforts to ensure that this Settlement Agreement shall be submitted to the Commission for approval as soon as possible.

33. Each of the Settling Parties agrees to cooperate in good faith and take all reasonable action to effectuate the terms of this Settlement Agreement.

34. The Settling Parties agree that this Settlement Agreement represents the entirety of the agreement among the Settling Parties. This Settlement Agreement includes proposals and conditions above and beyond the terms contained in the Application and as enhanced in the Joint Applicants' Initial Brief.

35. The Settling Parties agree to support approval of the Merger upon the terms set forth in this Settlement Agreement, along with the commitments set forth in Joint Applicant's Application and Initial Brief, in any proceedings before the Commission regarding approval of the Merger and/or implementation of commitments or conditions. The Settling Parties further agree to defend this Settlement Agreement in the event of opposition to approval of the Merger from non-signatory parties before the Commission.

36. Notwithstanding anything to the contrary set forth herein, upon the occurrence of any of the following events, this Settlement Agreement shall terminate, and shall be deemed null and void and of no force or effect:

    a. if the Commission fails to adopt a Final Order approving the Merger and this Settlement Agreement or issues a decision disapproving this Settlement Agreement;

    b. if for any reason the Merger is not consummated;

    c. if the Commission issues a written order approving this Settlement Agreement subject to any condition or modification of the terms set forth herein which an adversely affected Settling Party, in its discretion, finds unacceptable. Such Settling Party shall serve notice of unacceptability on the other Settling Parties within three business days following receipt of such Commission order. Absent such notification, the Settling Parties shall be deemed to have waived their respective rights to object to the acceptability of such conditions or modifications contained in the Commission order, which shall thereupon become binding on all Settling Parties; or

    d. if Exelon declines, in its sole discretion, to accept any modification of, or addition to, terms and conditions of this Settlement Agreement ordered by the Commission.

37. The terms and conditions set forth in Paragraphs 3 through 31 (including subparts) of this Settlement Agreement shall only be binding on the Settling Parties upon approval by the Commission and upon consummation of the Merger, which are express conditions precedent.

38. Exelon, Pepco and Delmarva Power submit to the jurisdiction of the Commission for enforcement of the terms and conditions herein.

39. This Settlement Agreement is submitted to the Commission for approval as a whole. This Settlement Agreement contains terms and conditions above and beyond the terms contained in the Application and as enhanced in the Joint Applicants' Initial Brief, each of which is interdependent with the others and essential in its own right to the signing of this Settlement Agreement. Each term is vital to the Settlement Agreement as a whole, since the Settling Parties expressly and jointly state that they would not have signed the Settlement Agreement had any term been modified in any way. None of the Settling Parties shall be prohibited from or prejudiced in arguing a different policy or position

before the Commission in any other proceeding, as such agreements pertain only to this matter and to no other matter.

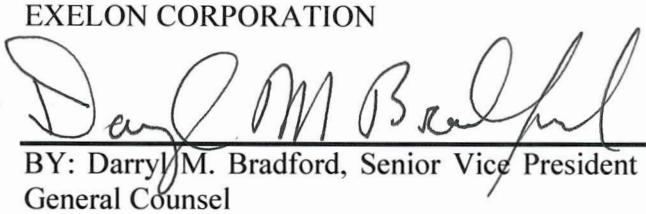
40. This Settlement Agreement represents the full scope of the agreement among the Settling Parties. This Settlement Agreement may only be modified by a further written agreement executed by all the parties to this Settlement Agreement.

41. This Settlement Agreement may be executed in as many counterparts as there are parties to this Settlement Agreement, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

42. The Joint Applicants agree that the press release announcing this Settlement Agreement shall be subject to Prince George's County's and Montgomery County's prior approval which shall not be unreasonably withheld. Any subsequent public statements or press releases about the Settlement Agreement will be consistent with the approved statements in the press release and consistent with the terms of the Settlement Agreement.

[INTENTIONALLY LEFT BLANK – SIGNATURE PAGES FOLLOW]

EXELON CORPORATION



BY: Darryl M. Bradford, Senior Vice President & General Counsel

PEPCO HOLDINGS, INC., POTOMAC ELECTRIC POWER COMPANY and DELMARVA POWER & LIGHT COMPANY

BY: Kevin C. Fitzgerald, Executive Vice President & General Counsel, Pepco Holdings, Inc.

PRINCE GEORGE'S COUNTY

BY:

MONTGOMERY COUNTY

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PRINCE GEORGE'S COUNTY

BY: Thomas Himler, Deputy Chief Administrative Officer for Budget, Finance, and Administration, Prince George's County, Maryland

MONTGOMERY COUNTY

BY: Lisa Brennan, Associate County Attorney, Montgomery County, Maryland

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MID-ATLANTIC OFF-ROAD ENTHUSIASTS, TRAIL RIDERS OF TODAY, INC., POTOMAC BRIDLE AND HIKING TRAIL ASSOCIATION, INC., EQUESTRIAN PARTNERS IN CONSERVATION, INC., POTOMAC APPALACHIAN TRAIL CLUB, INC., MONTGOMERY COUNTY ROAD RUNNERS ASSOCIATION, INC., THE INTERNATIONAL MOUNTAIN BICYCLING ASSOCIATION, INC., THE MARYLAND HORSE COUNCIL, INC., AND THE AMERICAN HIKING SOCIETY

BY: David L. Scull, Counsel for the Mid-Atlantic Off-Road Enthusiasts, Trail Riders of Today, Inc., Potomac Bridle and Hiking Trail Association, Inc., Equestrian Partners in Conservation, Inc., Potomac Appalachian Trail Club, Inc., Montgomery County Road Runners Association, Inc., the International Mountain Bicycling Association, Inc., the Maryland Horse Council, Inc., and the American Hiking Society

NATIONAL CONSUMER LAW CENTER, NATIONAL HOUSING TRUST, MARYLAND AFFORDABLE HOUSING COALITION, and THE HOUSING ASSOCIATION OF NONPROFIT DEVELOPERS

BY: Charles Harak, Senior Attorney, National Consumer Law Center

MID-ATLANTIC OFF-ROAD ENTHUSIASTS, TRAIL RIDERS OF TODAY, INC., POTOMAC BRIDLE AND HIKING TRAIL ASSOCIATION, INC., EQUESTRIAN PARTNERS IN CONSERVATION, INC., POTOMAC APPALACHIAN TRAIL CLUB, INC., MONTGOMERY COUNTY ROAD RUNNERS ASSOCIATION, INC., THE INTERNATIONAL MOUNTAIN BICYCLING ASSOCIATION, INC., THE MARYLAND HORSE COUNCIL, INC., AND THE AMERICAN HIKING SOCIETY

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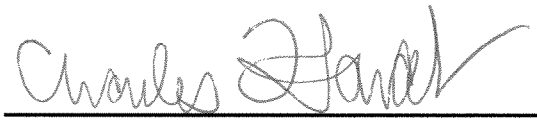

BY: Charles Harak, Senior Attorney, National Consumer Law Center

EXHIBIT A TO SETTLEMENT AGREEMENT AND STIPULATION

The Settling Parties stipulate to and endorse the following additional commitments, which are made in response to proposals made by the following parties:

I. Staff of the Public Service Commission

Commitment 22 – Enhanced Energy Efficiency Plans

[Consistent with the Public Interest – Benefit to Consumers – No Harm to Consumers]

The Joint Applicants will cooperate with Staff and other stakeholders to develop and file a distinct set of milestones as to how they will accelerate and enhance Pepco's and Delmarva Power's EmPOWER Maryland plans, including proposed penalties for failure to meet Commission-approved goals. This proposal will be filed with the Commission within six months after the close of the Merger.

Commitment 23 – Cost Allocation Comparisons For Three Years

[Consistent with the Public Interest – No Harm to Consumers]

The Joint Applicants will provide a side-by-side comparison of pre-and post-merger shared-services cost allocations to Pepco and Delmarva Power for three post-Merger years. The comparisons will be filed on an annual basis as a separate letter, and the first letter will be filed no later than the end of the second quarter in 2017.

Commitment 24 – Ratemaking – Amortization of Costs to Achieve Synergy Savings

[Consistent with the Public Interest – No Harm to Consumers]

If the Commission desires, Pepco and Delmarva Power will agree in future rate case proceedings to amortize the costs to achieve synergy savings ("CTA") over a period of time in the event that CTA exceed achieved synergy savings during the test year in question.

EXHIBIT A TO SETTLEMENT AGREEMENT AND STIPULATION

Commitment 25 – Reliability – RM43 Targets

[Consistent with the Public Interest – Benefit to Consumers]

The reliability performance levels set forth in Paragraph 4 of the Settlement Agreement exceed and supersede the currently-proposed RM43[1] performance levels submitted by Pepco and Delmarva for years 2016-2020 that are under consideration by the Commission. In the event that the Commission adopts performance levels that are more stringent than those set forth in Paragraph 4 of the Settlement Agreement, Pepco and Delmarva Power commit to meet those Commission-adopted performance levels, subject to any necessary adjustments to the budget levels set forth in Paragraph 4 of the Settlement Agreement.

Commitment 26 – Reliability – Vegetation Management Programs

[Consistent with the Public Interest – Benefit to Consumers]

Exelon will maintain Pepco's and Delmarva Power's existing or planned vegetation management programs in compliance with the standards as established in RM43.

Commitment 27 – Reliability – Resiliency Programs

[Consistent with the Public Interest – Benefit to Consumers]

Exelon will cooperate with Staff and other stakeholders to determine the funding and other resources necessary to meet future resiliency targets that may be established by the Commission.

Commitment 28 – Reliability – Customer Satisfaction Scores

[Consistent with the Public Interest – Benefit to Consumers]

Exelon will conduct an analysis of, and develop an action plan to improve, Pepco's customer-satisfaction scores. Exelon will file this analysis and action plan with the Commission

[1] Service Quality and Reliability Standards COMAR 20.50.12.00 *et seq*.

no later than six months after Merger closing.

Commitment 29 – Support for Supplier Diversity

[Consistent with the Public Interest]

Exelon shall fully support the goals of the Memorandum of Understanding ("MOU") signed by Pepco and Delmarva Power on February 6, 2009 regarding supplier diversity, including all of the terms and conditions thereof, and shall use its best efforts to assist Pepco and Delmarva Power with the implementation of the MOU and meeting its obligations pursuant to the MOU. Pepco and Delmarva Power shall meet its obligations pursuant to the MOU.

Commitment 30 – Ring Fencing – Risk Analysis

[Consistent with the Public Interest – No Harm to Consumers]

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

Commitment 31 – Ring Fencing – Equity Ratio

[Consistent with the Public Interest – No Harm to Consumers]

Pepco and Delmarva Power shall maintain an average annual equity ratio of at least 48%.

Commitment 32 – Across the Fence Comparison Reporting

[Consistent with the Public Interest – No Harm to Consumers]

If the Commission so desires, Exelon and PHI will file annual "across the fence reports" comparing the performance and status of the utilities within the Exelon family (including Pepco, Delmarva Power, and BGE) to each other and against the performance and status of other utilities inside and outside the State of Maryland. The reports will 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.

II. Public Citizen

Commitment 33 – Consumer Public Advocacy

[Consistent with the Public Interest – Benefit to Consumers – No Harm to Consumers]

In order to facilitate consumer advocacy in PJM, Exelon reaffirms a commitment it is also making to the Delaware Public Service Commission that Exelon will 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, Delmarva Power or Maryland. The cost of the contribution shall not be recovered in Pepco or Delmarva Power rates. Exelon also agrees to support reasonable proposals to have PJM members fund CAPS.

III. Clean Chesapeake Coalition

Commitment 34 – Sediment Study and Consultation

[Consistent with the Public Interest]

Exelon affirms that it previously committed to fund up to $3,500,000 for a multi-year study ("Sediment Study") that will quantify, among other things, the amount of suspended sediment concentration, associated nutrients, suspended sediment load, and nutrient load present in the major entry points to the Lower Susquehanna River Reservoir System and the upper Chesapeake Bay. The Sediment Study was jointly prepared by the Maryland Department of the Environment, the Maryland Department of Natural Resources, the University of Maryland Center for Environmental Science, the U.S. Environmental Protection Agency Chesapeake Bay Program, the

U.S. Geological Survey, the U.S. Army Corps of Engineers, and Exelon ("Study Partners"). The Study Partners anticipate that the information from the Sediment Study will supplement the Lower Susquehanna River Watershed Assessment, and enhance the suite of Chesapeake Bay Watershed and Water Quality models that will inform the 2017 Chesapeake Bay TMDL Midpoint Assessment. In recognition of the Clean Chesapeake Coalition's shared interest in restoring the health of the Chesapeake Bay, Exelon will consult with the Clean Chesapeake Coalition on an ongoing basis regarding Sediment Study field data collection and analysis, data management and reporting, modelling, and study results. At the conclusion of the Sediment Study, Exelon will present the study report's findings to the members of the Clean Chesapeake Coalition. In addition, Exelon will continue its discussions with the Maryland Department of the Environment, the Maryland Department of Natural Resources, and other stakeholders on other issues relating to the licensing of Conowingo Dam.

EXHIBIT B TO SETTLEMENT AGREEMENT AND STIPULATION

JOINT APPLICANTS' ENHANCED COMMITMENTS

Commitment 1 – Customer Investment Fund

[Consistent with the Public Interest – Benefit to Consumers]

Superseded by Paragraph 3 of the Settlement Agreement

Commitment 2 – Reliability and Quality of Service

[Consistent with the Public Interest – Benefit to Consumers]

Superseded by Paragraph 4 of the Settlement Agreement

Commitment 3 – Merger Impact on Rates

[Consistent with the Public Interest – No Harm to Consumers]

Pepco and Delmarva Power will not seek recovery in distribution or transmission rates of: (1) any acquisition premium associated with the Merger; or (2) any transaction costs incurred in connection with the Merger by Exelon, Pepco Holdings, Inc. ("PHI"), or their subsidiaries. The categories of transaction costs incurred in connection with consummation of the Merger that will not be recovered from utility customers are: (1) consultant, investment banker, legal, and regulatory support fees, (2) change in control payments, (3) costs associated with the shareholder meetings and a proxy statement related to the Merger approval by PHI shareholders, and (4) costs associated with the imposition of conditions or approval of settlement terms in other state jurisdictions. In addition, Pepco and Delmarva Power will not incur or assume any debt, including the provision of guarantees or collateral support directly related to the Merger.

Pepco and Delmarva Power will each track and account for Merger-related savings, and the cost to achieve those savings, in their next base rate case.

EXHIBIT B TO SETTLEMENT AGREEMENT AND STIPULATION

Commitment 4 – Labor, Employment and Compensation

[Consistent with the Public Interest – No Harm to Consumers]

Pepco and Delmarva Power will honor all existing collective bargaining agreements. Upon approval of the Merger and for at least the first two years following consummation of the Merger, Exelon: (1) will not permit a net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at Pepco and Delmarva Power, and (2) will provide current and former Pepco and Delmarva Power 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. PHI, Pepco and Delmarva Power will also continue their commitments to workforce diversity.

Commitment 4(a) – Hiring by Pepco and Delmarva Power

[Consistent with the Public Interest – No Harm to Consumers]

Exelon commits to make a good faith effort to hire within two years after the Merger closing date at least 110 union workers in Maryland.

Commitment 5 – Supplier Diversity

[Consistent with the Public Interest]

Superseded by Commitment 28 in Exhibit A to the Settlement Agreement

Commitment 6 – Low-Income Assistance

[Consistent with the Public Interest – Benefit to Consumers]

Pepco and Delmarva Power will maintain, enhance, and promote programs that provide assistance to low-income customers.

EXHIBIT B TO SETTLEMENT AGREEMENT AND STIPULATION

Commitment 7 – Charitable Contributions and Community Initiatives

[Consistent with the Public Interest]

Superseded by Paragraph 26 of the Settlement Agreement

Commitment 8 – Energy Efficiency

[Consistent with the Public Interest – Benefit to Consumers]

Pepco and Delmarva Power will maintain and promote existing energy efficiency and demand response programs consistent with the direction and approval of the Commission.

Commitment 9 – Exelon's Consent to Jurisdiction

[Consistent with the Public Interest – No Harm to Consumers]

Exelon submits to the jurisdiction of the Maryland Public Service Commission (the "Commission") for: (1) all matters related to the Merger and the enforcement of the commitments set forth herein to the extent relevant to operations of Pepco or Delmarva Power in Maryland; and (2) matters relating to affiliate transactions between Pepco, Delmarva Power, and Exelon or its affiliates to the extent relevant to operations of Pepco or Delmarva Power in Maryland. Exelon will also cause each of its affiliates that supplies goods or services to Pepco and Delmarva Power to submit to the jurisdiction of the Commission for matters relating to the provision or costs of such goods or services to Pepco and Delmarva Power.

Commitment 10 – Corporate Organization, Financial Integrity and Ring-Fencing

[Consistent with the Public Interest – No Harm to Consumers]

A bankruptcy-remote special purpose entity will be established as the Exelon subsidiary holding the equity interests in PHI. In addition, the following ring-fencing arrangements set forth

in Commitment Nos. 10 and 10(a) may only be changed with permission of the Commission, and the Joint Applicants may not seek such permission during the first five years after completion of the Merger to act otherwise. Exelon and PHI commit to implement the following ring-fencing arrangements: (1) Pepco and Delmarva Power will maintain their separate existence and their separate franchises and privileges; (2) Pepco and Delmarva Power will maintain separate books and records; (3) Pepco's and Delmarva Power's books and records pertaining to their operations in Maryland will be available for inspection and examination by the Commission; (4) Pepco and Delmarva Power will maintain separate debt so that they will not be responsible for the debts of affiliate companies and preferred stock, if any, and Pepco and Delmarva Power will maintain their own corporate and debt credit rating, as well as ratings for long-term debt and preferred stock; and (5) ~~Exelon commits to target an average equity level of at least 48% in Pepco and Delmarva Power for ratemaking purposes~~ [*superseded by Commitment 30 in Exhibit A to the Settlement Agreement*].

Commitment 10(a) Enhanced Ring-Fencing Protections:

[Consistent with the Public Interest – No Harm to Consumers]

As members of the Exelon Management Executive Committee, the PECO, ComEd and BGE CEOs (and the CEO of PHI after the Merger) will continue to meet with Exelon's CEO, Mr. Crane, at least monthly and have direct and frequent access to him and other members of Exelon's senior management team.

The authority and responsibility delegated to local management will be clearly delineated in two formal, written documents consisting of a statement of Corporate Governance Principles and a Delegation of Authority ("DOA"). The DOA will demarcate, among other things, levels of expenditures and defined categories of decisions that can be authorized solely by the utility's CEO or by the utility CEO with utility Board of Directors' approval.

EXHIBIT B TO SETTLEMENT AGREEMENT AND STIPULATION

Exelon proposes to form a bankruptcy-remote Special Purpose Entity ("SPE") as a direct subsidiary of Exelon Energy Delivery Company ("EEDC") for the purpose of owning 100% of the shares of PHI.

a. The SPE will have no employees and no operations other than owning the equity of PHI.

b. The SPE will have four directors, one of whom will be an independent director.

c. In addition, the SPE will issue a non-economic interest in the SPE (a "Golden Share") to a company that is in the business of safeguarding SPEs.

d. A voluntary bankruptcy petition by the SPE will require a unanimous vote by the SPE's board of directors, including the independent director, as well as the affirmative consent of the holder of the Golden Share.

e. A unanimous vote by the SPE's board of directors and the affirmative consent of the holder of the Golden Share will also be required to amend the SPE's organizational documents affecting the voting rights and the other aspects of ring fencing in the SPE governing documents.

Further SPE-related commitments – the SPE will:

a. Hold itself out as an entity separate from affiliates;

b. Conduct business in its own name;

c. Not use the name or service marks of Exelon, PHI or PHI's subsidiaries;

d. Maintain separate books and records, separate bank accounts and financial statements;

e. Not commingle its funds or other assets with those of other entities;

f. Manage its liabilities separately;

g. Not guarantee or obligate itself for any debt of other entities or pledge its assets for the benefit of any other entity or make loans;

h. Deal with all affiliates on an arms-length basis.

Other ring-fencing commitments related to the SPE and its parent EEDC:

a. Exelon will not alter EEDC's corporate character to become an operating entity providing common support services to any affiliates, unless approved by the relevant regulatory commissions.

b. Exelon will not engage in any internal corporate reorganization related to EEDC, the SPE, PHI or any PHI utility for which Commission approval is not required without giving 90 days prior written notice 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 opinion 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 but may complete the reorganization prior to the conclusion of the Commission investigation if Commission approval is not otherwise required.

c. SPE shall maintain adequate capital, provided however that EEDC and Exelon shall not be obligated to make any additional capital contributions.

d. 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.

Ring-fencing commitments related to PHI:

a. PHI's seven-member Board of Directors will include three directors from the service territories of PHI's three utility subsidiaries. At least three of the PHI directors will be independent (as defined by NYSE rules). The PHI Board of Directors will select the Boards of Directors of Pepco and Delmarva Power, and the Pepco and Delmarva Power Boards will choose, respectively, Pepco's and Delmarva Power's officers.

b. PHI will maintain arm's-length relationships with Exelon and its affiliates, including the SPE;

c. PHI's CEO and senior officers directly reporting to the CEO will hold no official positions within Exelon or other Exelon group affiliates (other than PHI and PHI's subsidiaries);

d. PHI will hold itself out as a separate entity from Exelon and SPE and conduct business in its own name, and will not use the trademarks or service marks of Exelon (except that PHI and each of its utility subsidiaries may identify themselves as affiliates of Exelon on a basis consistent with other Exelon utility subsidiaries);

e. PHI will maintain separate books and records, will hold all its property in its own name, will not assume liability for the debts and will not guarantee the debt or credit instruments of Exelon, the SPE, or any other affiliate of Exelon other than a subsidiary of PHI.

f. PHI and its subsidiaries will use pricing protocols consistent with the rules of the Commission and FERC for transfer prices of any intercompany transfers of supplies and services;

g. PHI will use reasonable efforts to maintain credit ratings for its publicly-traded securities and will use reasonable efforts and prudence to preserve an investment grade credit rating for its senior unsecured debt.

h. The PHI Service Company ("PHISCO") will remain a subsidiary of PHI to afford it the benefits and protections of the Joint Petitioners' robust ring-fencing proposal. PHISCO 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 the PHI utilities and to other current PHI subsidiaries, will be transferred to Exelon Business Services Company ("EBSC") or another Exelon affiliate in a phased transition over a period of time following the Merger closing.

Ring-fencing commitments related to Pepco and Delmarva Power – Pepco and Delmarva Power will:

a. Maintain arm's-length relationships with Exelon and its affiliates and the SPE;

b. Hold themselves out as separate entities from Exelon and the SPE and conduct business in their own name (except that Pepco and Delmarva Power may identify themselves as affiliates of Exelon on a basis consistent with other Exelon utility subsidiaries);

c. Maintain separate books and records, accounts and financial statements;

d. Maintain their own separate debt and preferred stock, if any;

e. Not assume liability for nor issue any guarantees of the debt of any other entities other than their respective subsidiaries;

f. Have appropriate controls to assure that they will not bear costs associated with the businesses of Exelon or any other Exelon affiliates other than PHI subsidiaries and have its transfer pricing protocols comply with the rules of the Commission and FERC;

g. Not participate in a money pool with Exelon or any other entities other than with the PHI utilities, PHI and PHISCO, and will not commingle funds with those of other utilities; and

h. Maintain their own debt securities and credit ratings on their debt securities.

Ring-fencing provisions to protect the stand-alone financial conditions of Pepco and Delmarva Power:

a. Pepco and Delmarva Power commit not to include in their debt or credit agreements any cross-defaults nor any financial covenants or ratings triggers relating to the securities of Exelon or any other Exelon affiliate;

b. Pepco and Delmarva Power, respectively, 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;

c. If Pepco's or Delmarva Power's board of directors declares a dividend, the utility, within 5 business days after the payment of the dividend, will file with the Commission the calculation that the board considered in determining the equity capital level before and after the dividend payment and demonstrate that the dividend will not cause the equity to fall below 48% common equity as equity levels are calculated under ratemaking precedents of the Commission;

d. Pepco and Delmarva Power, respectively, will not make any upstream dividend or distribution if its senior unsecured debt rating is rated by any of the three major credit rating agencies below investment grade;

e. Pepco and Delmarva Power will each report to the Commission promptly if it is rated below investment grade by any of the three major credit rating agencies; Pepco and Delmarva Power will use reasonable efforts and prudence to preserve an investment-grade rating; and

f. 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.

Ring-fencing provisions to maintain or enhance the Commission's regulatory supervision of Pepco and Delmarva Power and their dealings with affiliates:

a. Pepco and Delmarva Power will file with the Commission an annual compliance report regarding its ring-fencing;

b. At the time of the SPE formation and annually thereafter, an Exelon officer will file a certificate regarding its pledge to maintain the corporate separateness of Pepco and Delmarva Power; and Pepco and Delmarva Power will make all books and records available to the Commission.

Commitment 11 – Affiliate Transactions

[Consistent with the Public Interest – No Harm to Consumers]

Exelon commits to comply and cause Pepco and Delmarva Power and other Exelon affiliates to comply with the statutes and regulations applicable to Pepco and Delmarva Power regarding affiliate transactions. Exelon also commits that the Commission may examine the accounting records of Exelon's affiliates that are the basis for charges to Pepco and Delmarva Power for operations in Maryland to determine the reasonableness of allocation factors used by Exelon to assign those costs and amounts subject to allocation and direct charges.

Commitment 12 – Cost Accounting

[Consistent with the Public Interest – No Harm to Consumers]

Exelon will ensure that Merger accounting is rate-neutral for Pepco and Delmarva Power customers. Exelon shall ensure that any accounting treatments associated with Merger accounting do not affect rates charged to Pepco or Delmarva Power's customers. Exelon will not record any of the impacts of purchase accounting at the PHI utility companies (Atlantic City Electric Company ("ACE"), Delmarva Power and Pepco), thereby maintaining historical cost accounting at each of the PHI utility companies. No goodwill or other fair value adjustments will be recorded at the PHI utility companies upon consummation of the Merger.

EXHIBIT B TO SETTLEMENT AGREEMENT AND STIPULATION

Commitment 13 – Tax Indemnification

[Consistent with the Public Interest – No Harm to Consumers]

Exelon shall indemnify Pepco and Delmarva Power for any liability for federal or state income taxes (including interest and penalties related thereto, if any) in excess of Pepco's and Delmarva Power's standalone liability for federal or state income taxes (including interest and penalties related thereto, if any) for any period during which Pepco or Delmarva Power are included in a consolidated group with Exelon. Under applicable law, following the Merger Pepco and Delmarva Power will have no liability for federal or state income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which Pepco or Delmarva Power was not included in a consolidated group with Exelon (*i.e.* any period before the Merger). Exelon will take no action to cause Pepco and Delmarva Power to have any liability for federal or state income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which Pepco or Delmarva Power was not included in a consolidated group with Exelon for purposes of filing federal or state income tax returns. If Pepco or Delmarva Power is included in a consolidated group with Exelon for purposes of filing federal or state 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 or Delmarva Power collateral of the type and amount determined by the Commission pursuant to the hearing to secure Exelon's tax indemnity to Pepco or Delmarva Power if the Commission finds that such collateral is necessary for the protection of Pepco's or Delmarva Power's interests under Exelon's tax indemnity. Pepco and Delmarva Power

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 or Delmarva Power is determined by a body of competent jurisdiction no longer to be liable for federal or state income taxes as a member of a consolidated group with Exelon, other than Pepco's or Delmarva Power's standalone liability for federal or state 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.

Commitment 14 – Accumulated Deferred Income Taxes

[Consistent with the Public Interest – No Harm to Consumers]

The Joint Applicants will ensure that consummation of the Merger will not affect accounting and ratemaking treatments of Pepco's and Delmarva Power's accumulated deferred income taxes, including excess deferred income taxes, accumulated deferred tax credits and net operating losses (including net operating loss carrybacks and net operating loss carryforwards.)

Commitment 15 – Cost Allocation Comparison
[Consistent with the Public Interest – No Harm to Consumers]

Superseded by Commitment 23 in Exhibit A to the Settlement Agreement

Commitment 16 – PHI Asset Ownership
[Consistent with the Public Interest – No Harm to Consumers]

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 as a holding company for ACE and Delmarva Power; (b) Conectiv LLC may transfer its 50% ownership interest in Millennium Account Services LLC to ACE; and (c) Conectiv LLC or subsidiaries of Conectiv LLC 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 Power and ACE directly, and cease the use of Conectiv LLC as a holding company.

Commitment 17 – Interconnection and Net Metering Programs

[Consistent with the Public Interest – Benefit to Consumers]

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

Commitment 18 – Severance of Exelon-Pepco/Delmarva Power Relationship

[Consistent with the Public Interest – No Harm to Consumers]

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 and/or Delmarva Power 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 and/or Delmarva Power has failed to meet its obligations as a public utility, and (c) that divestiture is necessary to allow Pepco and/or Delmarva Power 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 or Delmarva Power, or both, 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 and/or Delmarva Power in Maryland. 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 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 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 Public Utilities Article and, despite notice and opportunity to cure such violations, have continued to commit the violations.

Commitment 19 – Resolving Accounts Receivables

[Consistent with the Public Interest – Benefit to Consumers]

Superseded by Paragraph 25 of the Settlement Agreement

Commitment 20 - Enhancements to Interconnection Process for Behind-the-Meter Distributed Renewable Generation and Storage Energy Projects in Maryland

EXHIBIT B TO SETTLEMENT AGREEMENT AND STIPULATION

[Consistent with the Public Interest – Benefit to Consumers]

PHI shall provide a transparent, efficient, and clear process for review and approval of interconnection of proposed renewable-energy projects to the PHI distribution systems in Maryland including the following:

a) Service territory maps of circuits, within ninety days of merger closing, will be uploaded to PHI's website, to be updated at least semi-annually that include the area where circuits are restricted due to PHI criteria violations and to what system size the restrictions apply. Three different maps will depict different restriction sizes. Each map will have the circuit areas on the particular map highlighted in red. One map will show circuits that are restricted for 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 January 2015, there were no "restricted" Secondary Network circuits, but if they occur, a new map or method of depiction may be necessary. A Secondary Network circuit may become restricted if the active and pending generation would cause utility system operating violations.

b) When a utility receives an interconnection request for 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. PHI shall:

    (i) Provide a report to The Alliance for Solar Choice ("TASC") within ninety days after merger closing that provides its criteria limits for distributed energy resources that apply for connection to its distribution system. This report shall include supporting studies and information that substantiate those limits. The report will describe and discuss how PHI 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. PHI shall make itself available for discussions with TASC on the report and demonstrate the modeling tools used by PHI 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 TASC upon completion of the project.

(iii) PHI has provided data to National Renewable Energy Laboratory ("NREL") as part of their 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 and TASC will consult NREL during this evaluation to gain any input from NREL that it is willing to provide including research on the inverters under controlled conditions. PHI and TASC shall collaborate on the activities in this paragraph, including sharing information, discussing approaches, evaluating interconnection criteria, working with NREL, and providing an opportunity for TASC to comment on PHI's proposed recommendations on interconnection criteria prior to public release. PHI will collaborate with TASC in good faith, but nothing in this agreement obligates PHI to accept or be bound by the recommendations of TASC. This collaborative effort will be completed within one year following merger closing.

(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 consider minimum daytime load ("MDL") 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 capacity is lower than a certain percentage of the MDL.

c) PHI shall maintain, within ninety days after merger closing, an accepted 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 PHI website and updated quarterly. PHI will review its policy for requiring the equipment list to be submitted for panels and switchgear with each application and post on its website any changes in its policy.

d) PHI will revise and implement within ninety days after merger closing its interconnection agreement to applicants seeking to interconnect behind-the-meter renewable-energy projects to include the following:

(i) PHI will schedule interconnection construction to be complete within the timeline established by the Commission (currently in Code of Maryland Regulations 20.50.09, but also as that timeline may be changed by the Commission in the future) for notification of acceptance of application and for approval to construct.

(ii) PHI will provide a procedure for email or other electronic submission of all applications (including payments if required).

(iii) PHI will provide permission to operate ("PTO") to the interconnection customer, in the form of an email, within 20 business days after the applicant's receipt of acceptable final documents (signed Interconnection Agreement, certificate of completion and the inspection certificate).

(iv) PHI will provide electronic data interface ("EDI") access to historical electric usage through the Company's Green Button capability to its customers and to customer representatives (solar energy companies and others who a customer designates to receive such information).

(v) PHI will work with TASC to review the existing application process (and timelines) and determine where an application should restart (if at all) if it's revised (*e.g.*, for spelling, grammatical, or clerical error). PHI will file a report with the Commission annually showing the number of interconnections request and performance relative to the above timelines (see item e, below). For any metric where 10% or more of the requests are greater than the suggested timeframe the annual report will also include action to be taken to improve the process to meet the stated timeframes.

e) PHI will file with the Commission annual reports of timeliness of responses to interconnection requests. Consistent with the interconnection rules, annual reports will include the following:

(i) The total number of and the nameplate capacity of the interconnection requests received and approved and denied under level 1, level 2, level 3 and level 4 reviews.

(ii) The number of and an explanation of the interconnection requests that were not processed within the established timelines. Should delays impact more than 10% of the interconnection requests in a reporting year, PHI will include its plans to address and eliminate the delays.

f) 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. PHI in conjunction with other stakeholders, through a committee process, will further study the issues regarding the coupling of solar and storage. As a result of such studies, the committee may recommend changes to this protocol to the Commission. PHI and TASC agree to a target completion date for this review of within one year of merger closing.

Commitment 21 – Competition Protections

[Consistent with the Public Interest – No Harm to Consumers]

EXHIBIT B TO SETTLEMENT AGREEMENT AND STIPULATION

Exelon agrees to the following competition protections. For purposes of this Commitment, "Affiliated Transmission Companies" are Pepco, 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 will 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 of 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 will 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 will 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 ACE, Delmarva Power, Pepco, PECO and BGE will remain as 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 ACE, Delmarva Power, Pepco, 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.

Attachment B

Darryl M. Bradford
Senior Vice President and
General Counsel

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March 16, 2015

Mr. Thomas Himler,
Deputy Chief Administrative Officer for Budget, Finance, and Administration
Prince George's County
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772-3050

Dear Mr. Himler:

This letter will record Exelon's commitments for the provision of energy for use by Prince George's County (the "County").

The commitments outlined in this letter will become effective upon the closing of the merger of Pepco Holdings, Inc. with Exelon Corporation (the "Merger").

In addition to the 5 MW of solar projects that Exelon has committed to develop on a commercial basis within the County pursuant to the merger settlement agreement, Exelon will use commercially reasonable efforts to complete the construction and bring into operation 5MW of solar generation in the State of Maryland (the "Solar Projects") within six years after Merger closing, subject to the identification and selection of Sites (as required below) and the permitting and interconnection process. For 3 MW of the 5 MW, the location or locations for the Solar Projects (collectively the "County Sites") will be reasonably selected by the County with the consent of Exelon, which consent will not be unreasonably withheld, and will include property owned or controlled by the County (the "County Solar Projects"). For the other 2 MW of the 5 MW, Exelon will develop the Solar Projects on property owned or controlled by Exelon within the State of Maryland and deliver the energy to the County via aggregated net metering. Exelon and the County will coordinate to identify, within one year after Merger closing, optimal locations for the construction of the County Solar Projects. Minimum project size for each of the County Solar Projects shall be 100 kW. Exelon and the County will jointly participate in the permitting and interconnection processes for the County Solar Projects. Each Site for a County Solar Project will be leased to Exelon by the County at no cost to Exelon for a period beginning with the commencement of construction on the Site and ending 15 years following the commencement of operation of the County Solar Project on the County Site (the "Initial Term") and will be automatically renewed for an additional 15 years unless earlier terminated by Exelon. The County will use its best efforts to enable Exelon's use of the County Sites for the County Solar Projects on the terms and conditions contemplated by this letter.

Exelon will provide the energy produced by the Solar Projects to the County under a power purchase agreement ("PPA") for a term of 30 years. For the first 15 years of each Solar Project, Exelon will provide the energy produced at the Solar Project at no cost to the County and on Exelon's standard commercial terms (as set forth in a separate agreement between the County and an Exelon affiliate utilizing Exelon's standard form agreement with only changes required by current local law). For the second 15 years the County will purchase the energy from the Solar Projects at a mutually-agreeable market price determined at least 6 month prior to the beginning of year 16.

Exelon will retain solar renewable energy credits, investment tax credits and other environmental and tax attributes related to the Solar Projects and their operation.

Separate from the solar commitment above, commencing following the Merger closing and upon the expiration of existing contracts the County may have for the purchase of retail electric energy and natural gas, and continuing for 15 years thereafter, the County and all County agencies will purchase all or substantially all of their requirements for electricity and natural gas from an affiliate of Exelon at mutually agreeable market prices under Exelon's standard commercial terms and subject to County procurement laws (as set forth in a separate agreement between the County and an Exelon affiliate utilizing Exelon's standard form agreement). Every year, the County may conduct a competitive-bidding process for contracts for retail electric energy and natural gas for a supply term of not less than one year. The County will be free to purchase its requirements for electricity and natural gas from other qualified alternative energy suppliers if and to the extent that competing bidders offer a lower price than that offered by the Exelon affiliate. In addition, the County has the right, on each anniversary of the contract, to terminate any contract for the purchase of retail and electric energy and natural gas with Exelon or its affiliates without penalty should a competing supplier offer a lower price.

Before termination becomes effective, the County will give the Exelon affiliate a reasonable opportunity to match the competing offer, in which case the County and County agencies will continue to purchase electric energy and natural gas from the Exelon affiliate. Notwithstanding anything to the contrary, the purchase of, and process to purchase, retail electric energy and natural gas is subject to county procurement laws, county Budget rules and regulations.

This letter agreement shall be binding on Exelon, its affiliates, successors, and assigns, and is enforceable against the parties in court or before the Public Service Commission. Either party who fails to comply with the provisions of this letter agreement or who breaches this agreement will indemnify the other party, make it financially whole, and hold the other party harmless from any such breach of this letter agreement, including, but not limited to, reasonable attorneys' fees. This letter agreement shall be construed and governed exclusively in accordance with the laws of the State of Maryland and each party consents to the exclusive jurisdiction in the State of Maryland.

If the commitments outlined above are acceptable to the County, please sign and return a copy of this letter. We will then proceed to develop mutually agreeable definitive agreements for the arrangement.

Very truly yours,

EXELON CORPORATION

By: Darryl Bradford

Its: Executive Vice President and General Counsel

Accepted: March 16, 2015

PRINCE GEORGE'S COUNTY

By: Thomas Himler

Its: Deputy Chief Administrative Officer for Budget, Finance, and Administration

Attachment C

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE MERGER	)	
OF EXELON CORPORATION AND	)	**Case No.: 9361**
PEPCO HOLDINGS, INC.	)	

STIPULATION

WHEREAS, on August 19, 2014, Exelon Corporation ("Exelon"), Pepco Holdings, Inc. ("PHI"), Potomac Electric Power Company ("Pepco"), and Delmarva Power & Light Company ("Delmarva Power"), Exelon Energy Delivery Company, LLC, and Special Purpose Entity, LLC (collectively, the "Joint Applicants") filed an Application requesting that the Maryland Public Service Commission ("Commission") authorize Exelon to acquire the power to exercise substantial influence over the policies and actions of Pepco and Delmarva Power pursuant to Md. Code Ann., Pub. Utils. ("PUA") § 6-105.[1]

WHEREAS, on September 22, 2014, in accordance with PUA § 6-105(g)(6), the Commission issued Order No. 86622 extending the 180-day statutory period for Commission action on the Application by 45 days until April 1, 2015.

WHEREAS, on February 12, 2015, the Joint Applicants filed a Stipulation that stipulated that the Application was deemed filed on August 26, 2014 for the purpose of extending the deadline for the Commission to issue its order as required under PUA § 6-105(g)(6) to April 8, 2015.

[1] As explained in the Application, both Exelon Energy Delivery Company, LLC and Special Purpose Entity, LLC will be corporate parents of Pepco and Delmarva Power under the planned corporate structure, although neither will have a management role.

WHEREAS, the Joint Applicants have filed a Request for Adoption of Settlement and Adjustment of Briefing Schedule, which includes a request that the Commission extend the briefing schedule in order to provide parties additional time to file responsive comments on the Joint Applicants' recent settlement agreements with The Alliance for Solar Choice, Montgomery County, Prince George's County, National Consumer Law Center, National Housing Trust, Maryland Affordable Housing Coalition, the Housing Association of Nonprofit Developers, the Mid-Atlantic Off-Road Enthusiasts, Trail Riders of Today, Inc., Potomac Bridle and Hiking Trail Association, Inc., Equestrian Partners in Conservation, Inc., Potomac Appalachian Trail Club, Inc., Montgomery County Road Runners Association, Inc., the International Mountain Bicycling Association, Inc., the Maryland Horse Council, Inc., and the American Hiking Society.

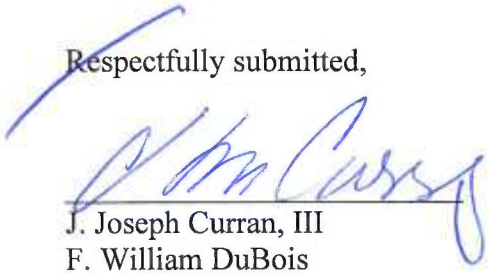
THEREFORE, the Joint Applicants stipulate as follows:

1) For the sole purpose of extending the deadline for the Commission to issue its order as required under PUA § 6-105(g)(6), the Application will be deemed filed on September 16, 2014.

2) Should the Commission issue its order on or before April 29, 2015, the Joint Applicants will not assert in any forum that the Application is approved by operation of law under PUA § 6-105(g)(6)(ii).

March 16, 2015

Respectfully submitted,



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Counsel for the Joint Applicants

enter into a reliability must run agreement, then NewCo may, at its option and in its sole discretion, accelerate the retirement date. The IMM agrees that the provisions of this Section 2(a)(iii) shall not apply to one Exelon generating unit which did not clear in the two most recent base residual auctions and which has been identified to the IMM.

iv. As expeditiously as possible after NewCo announces the decision to retire any generating unit owned by NewCo, NewCo will provide the IMM with NewCo's economic analysis supporting the retirement decision.

v. Should NewCo wish to uprate a unit, and the uprate would not materially change the operational characteristics of the unit, such uprate will be subject to the PJM Market Seller Offer Caps, as defined in Attachment DD for existing units. Should NewCo wish to uprate a unit, and the uprate would materially change the operational characteristics of the unit (e.g., uprating a simple cycle combustine turbine unit to a combined cycle unit), at least six months before offering the uprated capacity in an RPM base residual auction, NewCo will provide to the IMM NewCo's proposed offer for the amount of MW associated with the uprate. NewCo's offer will reflect NewCo's view of the future likely energy and ancillary services revenue offset, estimated actual costs, and required return on investment, of the proposed uprate. Such offer will be subject to the PJM Market Seller Offer Caps, as defined in Attachment DD.. If the IMM does not approve the offer, NewCo will have no obligation to offer the proposed uprate into a PJM capacity auction; provided, however, that NewCo will have the right to seek approval from FERC, and if FERC grants its approval, NewCo may submit the proposed offer in PJM capacity auctions notwithstanding the lack of IMM approval.

b. Energy Market Offers

i. Subject to the provisions of Section 2(b)(ii) below, for all non-nuclear units owned or controlled by NewCo, NewCo's post-merger market-based offers will be consistent with the physical capabilities of the units – e.g., actual unit minimum and maximum (no block loading), ramp rates and minimum run times.

ii. With respect to each non-nuclear unit owned or controlled by NewCo, NewCo will continue to set notification and start up times such that the total amount of time between notice and synchronization to the grid is a function only of the physical capability of each unit. NewCo will not adjust the notification and/or start-up time for any unit based on any factor other than the physical capability of the unit without prior review and approval of the IMM. NewCo also will comply with any new PJM rules applicable to unit notification and start-up time to the extent that such rules are more stringent that the provisions of this Settlement.

iii. For all peakers owned or controlled by NewCo, in addition to its obligations set forth in the previous Sections 2(b)(i) and 2(b)(ii), NewCo's maximum market-based offers as of the date of the closing of the merger and for the term of this Settlement will be developed as follows: (1) unit costs determined daily in accordance with the PJM Cost Development Guidelines as set forth in PJM Manual No. 15, plus (2) the higher of ten percent of such costs or the applicable percentage of cost permitted under the PJM Tariff to the extent a unit is a frequently mitigated unit, plus (3) an adder not to exceed $1.00/MWh.

iv. No unit or part of a unit will be offered as "Max Emergency" for more than one week except as necessary to comply with environmental restrictions or if otherwise approved by the IMM.

v. Each nuclear unit for which NewCo has the authority to determine offers will be self-scheduled/must run at Economic Maximum ("Ecomax") unless reduced in response to negative prices, physical limitations of the unit, or transmission limitations.

vi. Conowingo Generation will be scheduled by PJM.

c. Ancillary Services Offers

For regulation and synchronized reserve ancillary services from units owned by NewCo on the date of the merger, NewCo will continue to offer the same units and quantities historically offered into these markets. For the Day-Ahead Scheduling Reserves ("DASR") market, NewCo's market-based offers for nuclear units will be zero dollars, it being understood that NewCo will not forego opportunity costs as provided in the DASR market design.

d. Applicable Term

The term applicable to the behavioral commitments set forth in this Section 2 will be ten years from the date of the closing of the merger; provided that, at any time during such term, if NewCo believes that there is an extraordinary change in circumstances that calls into question whether certain of the commitments made by NewCo in Section 2 should still be required, then NewCo will work in good faith with the IMM to develop an appropriate and mutually agreeable amendment to this Settlement. Examples of such changes are elimination of the RPM capacity market or elimination of a single market clearing price energy market structure. Should NewCo and the IMM be unable to agree to such an amendment, NewCo can file with FERC in Docket No. EC11-83-000 requesting authorization to implement changes to this Settlement.

COMMISSIONERS

DOUGLAS R. M. NAZARIAN
CHAIRMAN

HAROLD D. WILLIAMS
LAWRENCE BRENNER
KELLY SPEAKES-BACKMAN
W. KEVIN HUGHES

STATE OF MARYLAND

PUBLIC SERVICE COMMISSION

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February 17, 2012
FOR IMMEDIATE RELEASE

Maryland Public Service Commission Conditionally Approves Exelon-Constellation Merger

Directs Creation of a New $113.5 Million Fund for BGE Customers, $100 Rebate and Enhanced Ratepayer Protections

Baltimore—The Maryland Public Service Commission (the Commission) today announced through Order No. 84698 the approval, with conditions, of the application to merge Exelon Corporation (Exelon), Constellation Energy Group (CEG), Baltimore Gas & Electric (BGE) and Exelon Energy Delivery Company, LLC. The Commission's approval lists 40 conditions, including requirements that the new company create a $113.5 million Customer Investment Fund to invest in energy efficiency and low-income energy assistance and provide a $100 rate credit to BGE residential customers within 90 days. The conditions also include enhanced ratepayer protections, such as the strengthening of certain aspects of BGE's existing ring-fencing conditions and safeguards against the new company's ability to increase wholesale electricity prices by exerting market power.

The Commission conducted extensive evidentiary hearings into the proposed merger, including live testimony from 37 witnesses, 75 pre-filed testimony submissions, 371 exhibits, a transcript of almost 4,000 pages and three evening public comment sessions. The Commission stated in its Order that, as filed originally on May 25, 2011,

-more-

"this Merger raised serious concerns" and that "[a]fter a comprehensive review, we can say that we could not have approved it in its original form." With appropriate conditions, the Commission determined that the proposed Merger is finally "consistent with the public interest, convenience and necessity, including benefits and no harm to ratepayers." The conditions were designed to protect ratepayers and to ensure benefits to consumers, which fulfill the requirements of Section 6-105 of the Public Utilities Article of the Annotated Code of Maryland.

Among the conditions established in the Order, most of which were contained in the Joint Settlement among Exelon, CEG, Governor O'Malley and the Maryland Energy Administration and other parties, Exelon will be required to "develop 285-300 megawatts (MW) of new generation within Maryland to protect Maryland consumers from higher rates resulting from Exelon's increased market power; … invest $113.5 million over a three-year period into a fund for the purpose of providing energy efficiency and low-income energy assistance to BGE customers; and … provide all BGE residential consumers with a $100 rate credit within ninety (90) days of consummation of the Merger." Exelon will also be required to maintain and enhance BGE's current ring-fencing protections, which will continue to limit Exelon's ability to draw dividends from BGE and to insulate BGE from financial risks flowing from Exelon's unregulated operations. Other commitment terms cover areas of credit rating, safety standards, supplier and workforce diversity and charitable giving.

The $113.5 million Customer Investment Fund redirects payments proposed for the Electric Universal Service Program ($10 million), the EmPower Maryland programs ($10 million), and low-income weatherization ($50 million) and includes half of the estimated future synergy savings ($43.5 million). The Commission will conduct proceedings in the future on this matter to determine further details of the funding mechanics and programs.

The Commission acknowledged "the enormous size of the Merger and the significant benefits and responsibilities Exelon will receive as a result" and expressed the hope that Exelon "will appreciably increase its level of charitable investment in Maryland rather than simply continue the status quo."

-more-

The utilities have 10 days from the date of the ruling to notify the Commission in writing if they reject the terms set forth and decide not to move forward with the merger. Assuming that they decide to proceed, CEG will become a subsidiary of Exelon, with no publicly traded stock. Exelon and CEG shareholders will, respectively, own 78% and 22% of the combined company. Along with BGE, Exelon will have three utility companies (including PECO Energy Company and Commonwealth Edison Company) that will be governed directly by Exelon Utilities, an unincorporated division within Exelon.

BGE headquarters shall remain in Baltimore, "…remain locally managed, and continue to serve its customers under its own name." The Commission retains the authority to "divest BGE from its parent company should certain serious calamities occur." The Order also notes that in terms of job creation, the merger will have a "net-positive effect" and is "consistent with the public interest."

The 116-page Order No. 84698 is available on the Commission's website, www.psc.state.md.us.

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NEW JERSEY
BUSINESS
A Publication of the New Jersey Business Industry Association

Exelon and Pepco Holdings File for Merger Approval with Utility Commissions in Delaware, New Jersey and Washington, D.C.

- Jun 18, 2014
- No Comments

Exelon Corporation and Pepco Holdings Inc. today filed applications seeking approval of their proposed merger with the Delaware Public Service Commission, the Public

Service Commission of the District of Columbia and the New Jersey Board of Public Utilities. The companies announced their proposed merger on April 30.

The combination of the companies will bring together Exelon's three electric and gas utilities – BGE, ComEd and PECO – and Pepco Holdings' (PHI's) three electric and gas utilities – Atlantic City Electric, Delmarva Power and Pepco – to create the leading mid-Atlantic electric and gas utility.

The filings describe the transaction's benefits to customers and the communities that the companies serve. The submission of the filings initiates the regulatory approval process in Delaware, the District of Columbia and New Jersey.

"The filings we are making today describe in detail how our proposed merger will serve the public interest," said Chris Crane, Exelon president and CEO. "We are committed to working with our PHI partners to achieve significantly enhanced reliability and service for PHI customers, to deliver immediate and ongoing financial benefits to PHI customers, and to continue PHI's record of strong community engagement."

Joseph M. Rigby, PHI chairman, president and CEO, added that being part of a family of utilities with distinguished emergency response capabilities will be of enormous value to the Pepco Holdings utilities and their customers, and Exelon's culture of giving back to communities will continue the PHI utilities' tradition of both philanthropy and volunteerism.

"I am very pleased that Exelon has pledged to maintain and enhance service, meet customers' needs reliably and efficiently, and actively engage in the civic and charitable life of our service areas," Rigby said.

Benefits to PHI utility customers and service territories described in the regulatory filings and testimony include:

- **Customer Investment Fund Commitment**. Upon closing of the merger, Exelon will provide an aggregate $100 million to be used across the PHI utilities' service territories as each public service commission deems appropriate for customer benefits, such as bill credits, assistance for low-income customers and energy-efficiency measures.
- **Charitable Contributions Commitment**. Exelon has committed to provide $50 million over 10 years to charitable organizations and programs in the communities the PHI utilities serve—exceeding PHI's 2013 funding levels.
- **Local Jobs, Local Presence and Local Leadership.** Exelon has committed to no net involuntary merger-related job losses of PHI utility employees for at least two years after the merger, and to honor all collective bargaining agreements. The company will also maintain existing operational headquarters for Atlantic City Electric in Mays Landing, N.J.; Delmarva Power in New Castle, Del.; and Pepco in Washington, D.C. In addition, Exelon and PHI announce that, upon the retirement of Joe Rigby at the close of the merger, **Dave Velazquez**, currently

executive vice president, PHI Power Delivery, will become president and chief executive officer of the PHI utilities. **Donna Cooper** (Pepco), **Vince Maione** (Atlantic City Electric) and **Gary Stockbridge** (Delmarva Power) will also remain with the company in their roles as regional presidents.

- **Enhanced Customer Service and Reliability Commitment.** Exelon has committed to build on the significant improvements to service reliability that the PHI utilities have already achieved for customers in recent years by setting new, more stringent reliability targets. This commitment is intended to result in significant reductions in the frequency and duration of power outages by 2020. Specific reliability targets for each PHI utility vary based on their current reliability metrics. Exelon has offered to be subject to financial penalties if Atlantic City Electric, Delmarva Power or Pepco do not meet their targets. The combined companies also will benefit from sharing best practices and storm restoration resources.

These proposed merger commitments are anticipated to result in substantial economic benefits for customers and communities served by the PHI utilities, as detailed in an economic modeling analysis included in the merger approval filings.

Combined with reliability improvement projects already announced by PHI and underway (including the undergrounding project in Washington, D.C.), the merger commitments will produce approximately 11,000 to 14,000 new jobs and between $1.0 billion to $1.3 billion in benefits to the economies of Delaware, Maryland, New Jersey and Washington, D.C. These results are anticipated to be achieved within six years after the merger closes.

Exelon also proposes measures to effectively insulate the PHI utilities from potential financial and credit risks of other Exelon businesses; these measures are described in detail in the filings.

The companies have already made transaction-related filings with the Federal Energy Regulatory Commission and the Virginia State Corporation Commission. The transaction is also subject to the notification and reporting requirements under the Hart-Scott-Rodino Act and other customary closing conditions.

The transaction requires the approval of the stockholders of PHI. The companies plan to file for merger approval with the Maryland Public Service Commission in August, which still allows for the completion of the merger in the anticipated timeframe of the second or third quarter of 2015.

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Mark Ewing WEEKLY UPDATE
February 24, 2015

Top Priorities of the Week

1. Draft comments on Executive Order
2. Finalize Blueprint Energy Measure performance data through December
    a. Red Building Watchlist Btu/GSF
    b. Btu regional forecast details
3. Provide Martha Benson ESPC historical and regional history
4. Formal Case No. 1119C (see attachment)
5. Coordinate Fuel Oil purchase for NCR White Oak campus
6. Review Dilley Budget for Energy Division BA61, travel, contract, training
7. Meet with HR on personnel actions
8. Issue monthly energy status report

Top 5 Priorities of the month

1. Complete required training for energy employees
2. Brief PBS leadership on 2nd Renewable contract award
3. Issue draft Utility Procurement Guide
4. Complete First Fuel FY15 audits.
5. Manage new First Fuel virtual audits for 75 new buildings
6. Execute FY15 sales of RECs via BA63
7. MARC IT project: This is the project management plan to move EUAS to a new platform and combined with other applications.

Outstanding Issues from Prior Weeks

1. Personnel issues
2. FOIA responses; e.,g NEPA and all communications regarding windfarm

Things I need from Frank

1. Next week – Meeting to discuss renewable contract with Frank and Mike Gelber for Solar contract on Eastern Shore of Maryland
2. Next Month – Meeting to discuss regulatory issues pursuant to local political governments ,e.,g. Dan T.
3. Information on Finance utility payments outsourcing to USDA

Notable Upcoming Meeting

1. April – Federal Utility Working Group Partnership meeting, Nashville, TN. 4/21-23/15

Planned Out-Of Office TBD

Pertinent Laws, Regulations and Orders

NEPA (42 USC 4321)

40 CFR 1500 - 1508

ADM 1095.1F

PBS P 4001.1

NATIONAL ENVIRONMENTAL POLICY ACT

HISTORY: Public Law 91-190, Jan. 1, 1970; 83 Stat. 852, 42 U.S.C. 4321; Amended by PL 94-52, July 3, 1975; PL 94-83, Aug. 9, 1975

SEC. 2 [42 U.S.C. 4321] Purpose

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

SEC. 101 [42 U.S.C. 4331]

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may--

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

SEC. 102 [42 U.S.C. 4332]

The Congress authorizes and directs that, to the fullest extent possible:

(1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and

(2) all agencies of the Federal Government shall--

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes:

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

SEC. 103 [42 U.S.C. 4333]

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

SEC. 104 [42 U.S.C. 4334]

Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency

(1) to comply with criteria or standards of environmental quality,

(2) to coordinate or consult with any other Federal or State agency, or

(3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

SEC. 105 [42 U.S.C. 4335]

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II COUNCIL ON ENVIRONMENTAL QUALITY

SEC. 201 [42 U.S.C. 4341]

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth

(1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest dryland, wetland, range, urban, suburban, and rural environment;

(2) current and forseeable trends in the quality, management and utilization of such environment and the effects of those trends on the social, economic, and other requirements of the Nation;

(3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures;

(4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and

(5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

SEC. 202 [42 U.S.C. 4342]

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

SEC. 203 [42 U.S.C. 4343]

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 3679(b) of the Revised Statutes (31 USC 665(b)), the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

SEC. 204 [42 U.S.C. 4344]

It shall be the duty and function of the Council--

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

SEC. 205 [42 U.S.C. 4345]

In exercising its powers, functions, and duties under this Act, the Council shall--

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments, and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

SEC. 206 [42 U.S.C. 4346]

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 USC 5313).

The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 USC 5315).

SEC. 207 [42 U.S.C. 4346a] Acceptance of Travel Reimbursement.

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

SEC. 208 [42 U.S.C. 4346b] Expenditures for International Travel.

The Council may make expenditures in support of its international activities, including expenditures for:

(1) international travel;

(2) activities in implementation of international agreements; and

(3) the support of international exchange programs in the United States and in foreign countries.

SEC. 209 [42 U.S.C. 4347]

There are authorized to be appropriated to carry out the provisions of this Act not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

40 CFR 1500-1508

PART 1500--PURPOSE, POLICY, AND MANDATE

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and E.O. 11514, Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55990, Nov. 28, 1978, unless otherwise noted.

Sec. 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

Sec. 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.
(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

Sec. 1500.3 Mandate.
Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

Sec. 1500.4 Reducing paperwork.
Agencies shall reduce excessive paperwork by:
(a) Reducing the length of environmental impact statements (Sec. 1502.2(c)), by means such as setting appropriate page limits (Secs. 1501.7(b)(1) and 1502.7).
(b) Preparing analytic rather than encyclopedic environmental impact statements (Sec. 1502.2(a)).
(c) Discussing only briefly issues other than significant ones (Sec. 1502.2(b)).
(d) Writing environmental impact statements in plain language (Sec. 1502.8).
(e) Following a clear format for environmental impact statements (Sec. 1502.10).
(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (Secs. 1502.14 and 1502.15) and reducing emphasis on background material (Sec. 1502.16).
(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (Sec. 1501.7).
(h) Summarizing the environmental impact statement (Sec. 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (Sec. 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (Secs. 1502.4 and 1502.20).
(j) Incorporating by reference (Sec. 1502.21).
(k) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).
(l) Requiring comments to be as specific as possible (Sec. 1503.3). (m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (Sec. 1503.4(c)).
(n) Eliminating duplication with State and local procedures, by providing for joint preparation (Sec. 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).
(o) Combining environmental documents with other documents (Sec. 1506.4).
(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (Sec. 1508.4).
(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (Sec. 1508.13).
[43 FR 55990, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1500.5 Reducing delay.
Agencies shall reduce delay by:
(a) Integrating the NEPA process into early planning (Sec. 1501.2).
(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (Sec. 1501.6).
(c) Insuring the swift and fair resolution of lead agency disputes (Sec. 1501.5).
(d) Using the scoping process for an early identification of what are and what are not the real issues (Sec. 1501.7).
(e) Establishing appropriate time limits for the environmental impact statement process (Secs. 1501.7(b)(2) and 1501.8).
(f) Preparing environmental impact statements early in the process (Sec. 1502.5).
(g) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).
(h) Eliminating duplication with State and local procedures by providing for joint preparation (Sec. 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).
(i) Combining environmental documents with other documents (Sec. 1506.4).
(j) Using accelerated procedures for proposals for legislation (Sec. 1506.8).
(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (Sec.

1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (Sec. 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

Sec. 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501--NEPA AND AGENCY PLANNING

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55992, Nov. 29, 1978, unless otherwise noted.

Sec. 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

Sec. 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by Sec. 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.
(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.
(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

1. Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.
2. The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.
3. The Federal agency commences its NEPA process at the earliest possible time.

Sec. 1501.3 When to prepare an environmental assessment.
(a) Agencies shall prepare an environmental assessment (Sec. 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in Sec. 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.
(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

Sec. 1501.4 Whether to prepare an environmental impact statement.
In determining whether to prepare an environmental impact statement the Federal agency shall:
(a) Determine under its procedures supplementing these regulations (described in Sec. 1507.3) whether the proposal is one which:

1. Normally requires an environmental impact statement, or
2. Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (Sec. 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by Sec. 1508.9(a)(1).
(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.
(d) Commence the scoping process (Sec. 1501.7), if the agency will prepare an environmental impact statement.
(e) Prepare a finding of no significant impact (Sec. 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

1. The agency shall make the finding of no significant impact available to the affected public as specified in Sec. 1506.6.

2. certain limited circumstances, which the agency may cover in its procedures under Sec. 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:
    (i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to Sec. 1507.3, or
    (ii) The nature of the proposed action is one without precedent.

Sec. 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

1. Proposes or is involved in the same action; or
2. Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (Sec. 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

1. Magnitude of agency's involvement.
2. Project approval/disapproval authority.
3. Expertise concerning the action's environmental effects.
4. Duration of agency's involvement.
5. Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency. A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

1. A precise description of the nature and extent of the proposed action.
2. A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it

which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

1. Request the participation of each cooperating agency in the NEPA process at the earliest possible time.
2. Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.
3. Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

1. Participate in the NEPA process at the earliest possible time.
2. Participate in the scoping process (described below in Sec. 1501.7).
3. Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.
4. Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.
5. Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

Sec. 1501.7 Scoping. There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (Sec. 1508.22) in the Federal Register except as provided in Sec. 1507.3(e).

(a) As part of the scoping process the lead agency shall:

1. Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under Sec. 1507.3(c). An agency may give notice in accordance with Sec. 1506.6.
2. Determine the scope (Sec. 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.
3. Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (Sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.
4. Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.
5. Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.
6. Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in Sec. 1502.25.
7. Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

1. Set page limits on environmental documents (Sec. 1502.7).
2. Set time limits (Sec. 1501.8).
3. Adopt procedures under Sec. 1507.3 to combine its environmental assessment process with its scoping process.
4. Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

Sec. 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by Sec. 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: Provided, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

1. Consider the following factors in determining time limits:
   (i) Potential for environmental harm.
   (ii) Size of the proposed action.
   (iii) State of the art of analytic techniques.
   (iv) Degree of public need for the proposed action, including the consequences of delay.
   (v) Number of persons and agencies affected.
   (vi) Degree to which relevant information is known and if not known the time required for obtaining it.
   (vii) Degree to which the action is controversial.
   (viii) Other time limits imposed on the agency by law, regulations, or executive order.
2. Set overall time limits or limits for each constituent part of the NEPA process, which may include:
   (i) Decision on whether to prepare an environmental impact statement (if not already decided).
   (ii) Determination of the scope of the environmental impact statement.
   (iii) Preparation of the draft environmental impact statement.
   (iv) Review of any comments on the draft environmental impact statement from the public and agencies.
   (v) Preparation of the final environmental impact statement.
   (vi) Review of any comments on the final environmental impact statement.
   (vii) Decision on the action based in part on the environmental impact statement.
3. Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502--ENVIRONMENTAL IMPACT STATEMENT

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

Sec. 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the

public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

Sec. 1502.2 Implementation.
To achieve the purposes set forth in Sec. 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.
(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.
(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.
(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.
(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.
(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (Sec. 1506.1).
(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

Sec. 1502.3 Statutory requirements for statements.
As required by sec. 102(2)(C) of NEPA environmental impact statements (Sec. 1508.11) are to be included in every recommendation or report.

On proposals (Sec. 1508.23).
For legislation and (Sec. 1508.17).
Other major Federal actions (Sec. 1508.18).
Significantly (Sec. 1508.27).
Affecting (Secs. 1508.3, 1508.8).
The quality of the human environment (Sec. 1508.14).

Sec. 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (Sec. 1508.25) to determine which proposal(s) shall be the subject of a particular

statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (Sec. 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

4. Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.
5. Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.
6. By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (Sec. 1501.7), tiering (Sec. 1502.20), and other methods listed in Secs. 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

Sec. 1502.5 Timing.

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (Sec. 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (Secs. 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the

impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

Sec. 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter- disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (Sec. 1501.7).

Sec. 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of Sec. 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

Sec. 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

Sec. 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in Sec. 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

3. Shall prepare supplements to either draft or final environmental impact statements if:

    (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

4. May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.
5. Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.
6. Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

Sec. 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.
(b) Summary.
(c) Table of contents.
(d) Purpose of and need for action.
(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).
(f) Affected environment.
(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).
(h) List of preparers.
(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.
(j) Index.
(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in Secs. 1502.11 through 1502.18, in any appropriate format.

Sec. 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.
(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.
(c) The name, address, and telephone number of the person at the agency who can supply further information.
(d) A designation of the statement as a draft, final, or draft or final supplement.
(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under Sec. 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

Sec. 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

Sec. 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

Sec. 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (Sec. 1502.15) and the Environmental Consequences (Sec. 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

Sec. 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

Sec. 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under Sec. 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in Sec. 1502.14. It shall include discussions of:

(a) Direct effects and their significance (Sec. 1508.8).

(b) Indirect effects and their significance (Sec. 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See Sec. 1506.2(d).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under Sec. 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under Sec. 1502.14(f)).

[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (Secs. 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

Sec. 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (Sec. 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

Sec. 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in Sec. 1502.18(d) and unchanged statements as provided in Sec. 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

Sec. 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (Sec. 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

Sec. 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

Sec. 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining

it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:

3. A statement that such information is incomplete or unavailable;
4. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
5. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and
6. the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

[51 FR 15625, Apr. 25, 1986]

Sec. 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

Sec. 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

Sec. 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered

Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503--COMMENTING

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 55997, Nov. 29, 1978, unless otherwise noted.

Sec. 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

7. Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.
8. Request the comments of:

    (i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

    (ii) Indian tribes, when the effects may be on a reservation; and

    (iii) Any agency which has requested that it receive statements on actions of the kind proposed.

    Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.
9. Request comments from the applicant, if any.
10. Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under Sec. 1506.10.

Sec. 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in Sec. 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

Sec. 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

Sec. 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

7. Modify alternatives including the proposed action.
8. Develop and evaluate alternatives not previously given serious consideration by the agency.
9. Supplement, improve, or modify its analyses.
10. Make factual corrections.
11. Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (Sec. 1502.19). The entire document with a new cover sheet shall be filed as the final statement (Sec. 1506.9).

PART 1504--PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).
Source: 43 FR 55998, Nov. 29, 1978, unless otherwise noted.

Sec. 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

Sec. 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

Sec. 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

11. Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.
12. Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.
13. Identify any essential information that is lacking and request that it be made available at the earliest possible time.
14. Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

12. A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.
13. A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

    (i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

    (ii) Identify any existing environmental requirements or policies which would be violated by the matter,

    (iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

    (iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

    (v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

    (vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

7. Address fully the issues raised in the referral.
8. Be supported by evidence.
9. Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response. (f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

3. Conclude that the process of referral and response has successfully resolved the problem.
4. Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.
5. Hold public meetings or hearings to obtain additional views and information.

6. Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.
7. Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.
8. Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).
9. When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.
(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).
[43 FR 55998, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

PART 1505--NEPA AND AGENCY DECISIONMAKING

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).
Source: 43 FR 55999, Nov. 29, 1978, unless otherwise noted.

Sec. 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (Sec. 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).
(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.
(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.
(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.
(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

Sec. 1505.2 Record of decision in cases requiring environmental impact statements.
At the time of its decision (Sec. 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and Part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

Sec. 1505.3 Implementing the decision.
Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (Sec. 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506--OTHER REQUIREMENTS OF NEPA

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.

Sec. 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

15. Have an adverse environmental impact; or

16. Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

14. Is justified independently of the program;
15. Is itself accompanied by an adequate environmental impact statement; and
16. Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

Sec. 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

10. Joint planning processes.
11. Joint environmental research and studies.
12. Joint public hearings (except where otherwise provided by statute).
13. Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

Sec. 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

Sec. 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

Sec. 1506.5 Agency responsibility.

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (Sec. 1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) Environmental impact statements. Except as provided in Secs. 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements

of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under Sec. 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

Sec. 1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

10. In all cases the agency shall mail notice to those who have requested it on an individual action.
11. In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.
12. In the case of an action with effects primarily of local concern the notice may include:

    (i) Notice to State and areawide clearinghouses pursuant to OMB Circular A- 95 (Revised).

    (ii) Notice to Indian tribes when effects may occur on reservations.

    (iii) Following the affected State's public notice procedures for comparable actions.

    (iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

    (v) Notice through other local media.

    (vi) Notice to potentially interested community organizations including small business associations.

    (vii) Publication in newsletters that may be expected to reach potentially interested persons.

    (viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

6. Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.
7. A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

Sec. 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

3. Research activities;
4. Meetings and conferences related to NEPA; and
5. Successful and innovative procedures used by agencies to implement NEPA.

Sec. 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (Sec. 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to

Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

4. There need not be a scoping process.
5. The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; Provided, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by Secs. 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

Sec. 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and Sec. 1506.10.

Sec. 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under Sec. 1505.2 by a Federal agency until the later of the following dates:

6. Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.
7. Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement. An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published.

This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see Sec. 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

[43 FR 56000, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Sec. 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section

104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the Federal Register of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507--AGENCY COMPLIANCE

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

Source: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.

Sec. 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by Sec. 1507.3 to the requirements of other applicable laws.

Sec. 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such

proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

Sec. 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the Federal Register, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the Federal Register for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

17. Those procedures required by Secs. 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.
18. Specific criteria for and identification of those typical classes of action:

    (i) Which normally do require environmental impact statements.

    (ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (Sec. 1508.4)).

    (iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with

agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.
(d) Agency procedures may provide for periods of time other than those presented in Sec. 1506.10 when necessary to comply with other specific statutory requirements.
(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by Sec. 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508--TERMINOLOGY AND INDEX

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).
Source: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

Sec. 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

Sec. 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

Sec. 1508.3 Affecting.

"Affecting" means will or may have an effect on.

Sec. 1508.4 Categorical exclusion.

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Sec. 1508.5 Cooperating agency.

"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Sec. 1508.6 Council.
"Council" means the Council on Environmental Quality established by Title II of the Act.

Sec. 1508.7 Cumulative impact.
"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Sec. 1508.8 Effects.
"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1508.9 Environmental assessment.
"Environmental assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

19. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
20. Aid an agency's compliance with the Act when no environmental impact statement is necessary.
21. Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Sec. 1508.10 Environmental document.
"Environmental document" includes the documents specified in Sec. 1508.9 (environmental assessment), Sec. 1508.11 (environmental impact statement), Sec. 1508.13 (finding of no significant impact), and Sec. 1508.22 (notice of intent).

Sec. 1508.11 Environmental impact statement.

"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

Sec. 1508.12 Federal agency.
"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

Sec. 1508.13 Finding of no significant impact.
"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

Sec. 1508.14 Human environment.
"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Sec. 1508.15 Jurisdiction by law.
"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

Sec. 1508.16 Lead agency.
"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

Sec. 1508.17 Legislation.
"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

Sec. 1508.18 Major Federal action.
"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

17. Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.
18. Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.
19. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.
20. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Sec. 1508.19 Matter.
"Matter" includes for purposes of Part 1504: (a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609). (b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

Sec. 1508.20 Mitigation.
"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
(e) Compensating for the impact by replacing or providing substitute resources or environments.

Sec. 1508.21 NEPA process.
"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

Sec. 1508.22 Notice of intent.
"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:
(a) Describe the proposed action and possible alternatives.
(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.
(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

Sec. 1508.23 Proposal.
"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

Sec. 1508.24 Referring agency.
"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

Sec. 1508.25 Scope.
Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (Secs.1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:
(a) Actions (other than unconnected single actions) which may be:
13. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:
    (i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

14. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.
15. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

8. No action alternative.
9. Other reasonable courses of actions.
10. Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Sec. 1508.26 Special expertise.
"Special expertise" means statutory responsibility, agency mission, or related program experience.

Sec. 1508.27 Significantly.
"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.
(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

6. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
7. The degree to which the proposed action affects public health or safety.
8. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
9. The degree to which the effects on the quality of the human environment are likely to be highly controversial.
10. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

11. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
12. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
13. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
14. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
15. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site- specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

ADM 1095.1F
October 19, 1999

GSA ORDER

SUBJECT: Environmental considerations in decisionmaking

1. Purpose. This order establishes policy and assigns responsibility for implementing the National Environmental Policy Act (NEPA), its implementing regulations, and related laws, executive orders, and regulations in the decisionmaking processes of the General Services Administration (GSA).

2. Cancellation. ADM 1095.1E, dated December 8, 1995, is canceled.

3. Background. The National Environmental Policy Act (NEPA) and the Government wide implementing regulations of the Council on Environmental Quality (40 CFR 1500-1508, hereinafter, the CEQ regulations) require that each Federal agency consider the impact of its actions on the human environment, and prescribes procedures to be followed in doing so. Other laws, executive orders, and regulations provide related direction. Each Federal agency is required to implement internal procedures to ensure that the requirements of NEPA are met. Existing orders are out of date and do not provide for current requirements.

4. Nature of revision. This revision reflects a thorough internal review of GSA's systems for implementing NEPA. It replaces an interim order, ADM 1095.1E, which was adopted to govern GSA's compliance with NEPA while this review took place. This revised order is issued in coordination with an explanatory desk guide to NEPA review, which together provide GSA with an efficient, up-to-date NEPA compliance system that is consistent with principles of accountability, flexibility, and environmental responsibility.

5. Policy: In all its decisionmaking, GSA will attend carefully to the National Environmental Policy set forth in Section 101 of NEPA. To the maximum extent practicable, GSA will ensure that its actions protect and where possible improve the quality of the human environment, including the built and sociocultural environments of the nation's urban areas. GSA decisionmakers will use the NEPA review process prescribed in the CEQ regulations as a practical planning tool, and integrate both the NEPA review process and the Section 101 National Environmental Policy into

decisionmaking in an efficient, cost-effective manner. The NEPA review process will be initiated at the earliest possible stage in planning any GSA action, and will be carried forward in coordination with other planning activities. Decisionmakers will ensure that they have reviewed and fully understand the environmental impacts of each decision, before making any such decision. All managers responsible for decisionmaking on GSA actions will be accountable for being knowledgeable about, and attendant to, the requirements of NEPA and the National Environmental Policy that these requirements are designed to advance.

6. Responsibilities

6.a. Commissioner, Public Buildings Service (PBS).

6.a.(1) The Commissioner acts for the Administrator, GSA, on matters relating to NEPA implementation, and oversees implementation of this order. This ADM, the NEPA Desk Guide, and related direction governs GSA compliance with NEPA and related legal authorities.

6.b. NEPA Liaison

6.b.(1) Is the principal GSA advisor on NEPA-related requirements, including but not limited to compliance with NEPA and the coordination of NEPA compliance with the requirements of the laws and regulations listed in Appendix 1 of the NEPA Desk Guide.

6.b.(2) Provides expert advise on NEPA-related matters to GSA Heads of Services, Business Lines, and Regional Administrators.

6.b.(3) Provides intra-agency and interagency liaison and coordination on NEPA-related matters on a national basis.

6.b.(4) Provides and periodically updates GSA program guidance, after consultation with the General Counsel, Heads of Services, Business Lines, and Regional Administrators.

6.b.(5) Provides education and training within GSA pertinent to implementation of NEPA and related authorities.

6.b.(6) Coordinates with GSA's Environmental Executive in maintaining a record of GSA's environmental activities, and in advancing the national environmental policy articulated in NEPA and other statutes and executive orders.

6.b.(7) Serves as GSA representative in coordination with outside groups at the national level regarding NEPA-related matters.

6.c. Regional Administrators.

6.c.(1) Are accountable for execution of GSA's responsibilities under NEPA and related authorities with respect to actions under their jurisdiction.

6.c.(2) Serve as the responsible agency official under CEQ regulations with respect to the environmental effects of actions under their jurisdiction.

6.c.(3) Maintain NEPA Regional Environmental Quality Advisors (REQA) within their staffs, augmented as necessary through interagency agreements and contracts, to ensure regional interdisciplinary competence in environmental matters.

6.c.(4) In consultation with the NEPA Liaison, ensure that all regional staff with responsibility for planning, approving, and implementing construction, repair, alteration, site and facility acquisition, real property management, maintenance, and real property disposal receive appropriate training in how to carry out GSA's responsibilities under NEPA and related authorities.

6.d. GSA Environmental Executive

6.d.(1) Serves as GSA’s Environmental Executive under Executive Order 12873.

6.d.(2) Coordinates with the NEPA Liaison to ensure agency-wide consistency in areas of shared or related responsibility, and in advancing the national environmental policy articulated in NEPA and other statutes and executive orders.

6.e. Heads of Services and Business Lines

6.e.(1) Serve as the responsible agency officials under CEQ regulations for actions subject to their approval.

6.e.(2) Ensure accountability for implementation of the policy set forth in this order.

6.e.(3) In consultation with the NEPA Liaison, ensure that staff responsible for supporting the functions of the responsible agency official under CEQ and related authorities receive appropriate training in how to carry out GSA's responsibilities.

6.f. The Office of General Counsel

6.f.(1) Is responsible for legal interpretation of NEPA and related authorities, and represents GSA in litigation under such authorities.

6.f.(2) Advises the NEPA Liaison during the development and delivery of guidance and training.

7. Administrative Guidance

7.a. The NEPA Liaison has overall program responsibility for establishing procedures, training, and professional standards, and for maintaining interagency administrative responsibilities and relationships. These functions will be carried out at the working level by a professional NEPA Liaison staff.

7.b. Heads of Services and Business Lines will assist and cooperate with the NEPA Liaison in the development and delivery of training, as well as procedural and program guidance, and act as coordinators for program needs of the Services and Business lines on a national basis.

7.c. Regional Business Lines have responsibility for ensuring that NEPA compliance responsibilities are satisfied, and the policy articulated in paragraph 5 of this order is followed, with respect to their programs and projects. In consultation with the REQA, the Business Lines will utilize interdisciplinary professional expertise in their implementation of NEPA responsibilities.

8. Implementation of NEPA and related authorities

8.a. In accordance with applicable regulations and standards, and with program guidance provided by the NEPA Liaison, the responsible agency official shall:

8.a.(1) Ensure that the applicable requirements of NEPA and related authorities are met in a timely manner during planning for any GSA action, in a manner consistent with the policy articulated in paragraph 5 of this order.

8.a.(2) Ensure that mitigation measures established through review of actions under NEPA and related authorities are carried out as part of implementing the actions.

8.a.(3) Ensure that the means by which GSA has met its responsibilities, and the costs involved in doing so, are fully documented.

8.b. All Heads of Service, Business Lines, and Regional Offices will employ the PBS NEPA Desk Guide, issued and periodically updated by the NEPA Liaison, as guidance in carrying out this order.

9. Effective Date. Every effort shall be made to implement the provisions of this order immediately.

DAVID J. BARRAM
Administrator

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405
PBS P 4000.1
June 29, 1994

GSA ORDER

SUBJECT: Excess and Surplus Real Property

The Public Buildings Service (PBS) and the Federal Property Resources Service (FPRS) recently merged. Because of the merge, this handbook identification is changed from PRM P 4000.1B to PBS P 4000.1. All references to FPRS will mean PBS. The contents of this order will remain the same. Subsequent changes will be made as needed

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CHAPTER 5. ENVIRONMENTAL, HISTORIC AND COASTAL ZONE MANAGEMENT CONSIDERATIONS

1. General. This chapter covers Federal environmental requirements related to the real property disposal program. In some instances, specific State and/or local environmental requirements, which are not covered in this chapter, may be applicable. Due to the evolving nature of the environmental field, laws, regulations and guidance are changing rapidly. To ensure site specific environmental compliance issues are being addressed appropriately, realty specialists should contact State and/or local regulators, as well as review the procedures in this handbook. If requirements are unclear, you should contact a Central Office Environmental Specialist.

2. Environmental laws and regulations. There are two major environmental laws that affect the GSA real property disposal program and apply to all GSA disposal actions. These are as follows:

a. National Environmental Policy Act of 1969, as amended (NEPA); 16 U.S.C. 470 et seq. GSA Order Environmental Considerations in Decisionmaking (ADM 1095.1D) is the implementing guidance that categorizes GSA activities into "classes of actions." This document instructs GSA officials on actions requiring preparation of an Environmental Impact Statement (EIS) or an Environmental Assessment (EA). It also provides for "categorical exclusions" that do not require an EIS or an EA. Case files must document consideration of environmental factors and compliance with ADM 1095.1D in all disposal actions. Federal agencies reporting property excess must also comply with NEPA. Each agency has its own internal guidance for NEPA implementation. If available, this information may be helpful to regional personnel in fulfilling GSA's NEPA compliance requirements for disposal.

b. Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 2601, et seq. Section 120(h)(3) of CERCLA, created by the Superfund Amendments and Reauthorization Act (SARA), requires full disclosure of all known hazardous substance activity and specifies covenants be provided in deeds for disposal of Federal property. Sections 101-47.202-2(b)(10) and 101-47.304-14 of the FPMR, and EPA regulations at 40 CFR part 373, provide details regarding ROE and disposal requirements. The Community Environmental Response Facilitation Act (CERFA), enacted on October 18, 1992, amended CERCLA by adding paragraph (4) to section 120(h) of CERCLA. This new paragraph requires Federal agencies to identify uncontaminated parcels of land prior to terminating Federal Government operations and to include specific covenants in deeds used to transfer property. The law also details a process for agencies to follow in order to accomplish this identification. It may be necessary for realty specialists to request additional information along with the SF 118 to comply with CERFA. Specific questions regarding this law should be directed to an environmental specialist in the central office.

c. In addition to the above mentioned environmental statutes, the following table includes a listing of pertinent environmental laws which may affect disposal activities. Statutes are listed by acronyms in the table. A full listing by name and citation follows the table. The table includes reference to implementing guidance and/or regulations and has a brief description of effect on the real property disposal program:

Environmental Laws and Regulations Affecting Real Property Disposal Actions

Environmental Law/Statute	**Purpose/Effect**	**Implementing Regulation &/or Guidance Document**
Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.)	Addresses disposal actions affecting the coastal zone & requires consideration of State coastal zone management plans	15 CFR part 930
Community Environmental Response Facilitation Act	Requires identification of uncontaminated property	No implementing regulation

(42 U.S.C. 9601, et seq.)		
Comprehensive Environmental Response, Compensation, and Liability Act	Addresses reporting and disclosure requirements for hazardous substances	FPMR: 101-47.202-2(b)(10) 40 CFR part 373
Endangered Species Act of 1973 (16 U.S.C. 15301, et seq.)	Requires agency consultation with DOI to ensure actions do not jeopardize endangered or threatened species	50 CFR part 402
Farmlands Protection Act of 1981 (7 U.S.C. 4201, et seq.)	Establishes criteria for identifying and considering the effects of Federal actions on the conversion of farmland to non-agricultural uses.	7 CFR 658 see also 7 CFR 657 (Prime Farmlands)
Federal Facility Compliance Act (42 U.S.C. 6901, et seq.)	Requires compliance with State and Local Environmental laws at Federal facilities	No implementing regulation
Flood Disaster Protection Act of 1973 (43 U.S.C. 4001, et seq.)	Prohibits Federal actions in areas subject to flood hazards	E.O. 11988 & 11990 FPMR: 101-47.202-2(b)(6)
National Environmental Policy Act of 1969, as amended (NEPA); (16 U.S.C. 470, et seq.)	Requires agencies to consider environmental impacts in decision making	GSA Order ADM 1095.1D, 40 CFR part 1500
National Historic Preservation Act of 196 (16 U.S.C. 470, et seq.)	Requires identification of historically significant properties	36 CFR Chap. VIII GSA Order ADM 1020.1
Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, et seq.)	Regulates hazardous and solid waste activities and USTs	40 CFR part 260-281
Safe Drinking Water Act (42 U.S.C. 300, et seq.)	Sets standards for drinking water quality and regulates activities affecting drinking water supplies	40 CFR part 141-143, 146, 149
Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601, et seq.)	Addresses reporting and disclosure requirements for hazardous substances	FPMR: 101-47.202-2(b)(10) 40 CFR part 373
Toxic Substances Control Act, as amended (15 U.S.C. 2601, et seq.)	Regulates specific chemical substances, including PCBs and Asbestos	40 CFR part 761
Wild and Scenic Rivers Act (16 U.S.C. 1271, et seq.)	Requires agencies to review their actions for potential effects on wild and scenic rivers	CEQ Memorandum, Federal Register 9/8/90 President's 1979 environmental message: directive on wild and scenic rivers

3. Reports of excess (ROE). Section 101-47.202 of the FPMR details the requirements for reports of excess. Several environmental requirements are addressed in this section; however, each ROE must also include information pertaining to the following:

a. Asbestos-containing materials (ACM). Refer to FPMR at 101-47.202-2(b)(9) and be sure to include the following:

(1) A description of the type, location and condition of ACM and a description of any asbestos control measures taken.

(2) Any available indication of costs and/or time necessary to remove all or any portion of the ACM.

b. Coastal zone. Be sure to include the following:

(1) A statement as to whether and what portion of the property would constitute an undeveloped coastal barrier as defined by the Department of Interior (DOI), Fish and Wildlife Service (FWS), for the Coastal Barrier Resources System (CBRS). This includes properties located along the Atlantic Ocean, Puerto Rico, United States Virgin Islands, Gulf of Mexico, and Great Lakes coasts.

(2) Any available information regarding State coastal zone management plans that may affect the property.

c. Endangered species. Be sure to include the following:

(1) A statement regarding the presence, or likely presence of any threatened or endangered species on the property.

(2) Obtain any available information regarding consideration of, or adverse effect(s) to, these species for documentation as part of the real property case file. Any available information on candidate species should also be documented.

d. Hazardous substance activity. Refer to FPMR at 101-47.202-2(b)(10) and be sure to include the following:

(1) A statement indicating whether any hazardous substance activity (as defined by EPA regulations at 40 CFR Part 373) took place on the property. If no such activity took place, disregard items (2) and (3).
(2) If such activity took place, include information on the type and quantity of such hazardous substance and the time at which storage, release or disposal took place.
(3) A statement warranting that all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date the property was reported excess.
(4) A covenant warranting that any additional remedial action found to be necessary (which was caused by and/or during ownership by the United States) after the date of transfer shall be conducted by the United States (reporting agency).
e. Historical significance. Refer to FPMR at 101-47.202-2(b)(8) and be sure to include the following:
(1) A statement regarding any historic significance of the property.
(2) A statement indicating whether the property is listed, is eligible for, or has been nominated for listing in the National Register of Historic places or is in proximity to any such property.
f. Lead-based paint. Be sure to include the following:
(1) A statement by the reporting agency that the property contains no improvements thought, or known to have been, constructed and/or renovated prior to 1978, or
(2) A listing of the portions of the property constructed and/or renovated prior to 1978 and an indication of the probable presence of lead-based paint in such structures, along with any available information regarding the use of lead-based paint or test data indicating the presence or absence of lead-based paint.
g. National Priority List of Superfund Sites (NPL). Be sure to include a statement indicating whether this property, or any portion thereof, is on the proposed or final National Priority List (NPL) of Superfund Sites.
h. Polychlorinated biphenyls (PCB). Refer to FPMR 101-47.202-2(c)(3) and be sure to include the following:
(1) A certification by a responsible party stating whether the property does or does not contain PCB transformers or other equipment regulated by EPA under 40 CFR part 761.
(2) If any such PCB articles are present, an assurance statement that they are currently, and will continue to be, maintained (by the reporting agency) in a state of compliance until disposal of the property.
i. Underground storage tanks (UST). Be sure to include the following:
(1) A statement regarding the presence of UST on the property and, if any UST are present, a completed EPA Form 7530-1 (Notification of UST) or form containing this information.
(2) A statement indicating that the reporting/sponsoring agency is in compliance with the EPA UST provisions codified at 40 CFR Part 280.
j. Unexploded ordnance. Refer to FPMR 101-47.202-7 and be sure to include the following:
(1) A statement by the reporting agency regarding the presence, or likely presence, of unexploded ordnance on or associated with the property, and, if thought or known to be present,
(2) A listing of activities that are restricted on such property and plans to remediate the hazardous condition prior to disposal.
k. Wetlands and floodplains. Refer to FPMR 101-47.202-2(b)(6) and be sure to include the following:
(1) Detailed information regarding any known flood hazards or flooding of the property;
(2) If located in a floodplain or wetlands, a listing of, and citations to, those uses that are restricted under identified Federal, State, or local regulations as required by Executive Orders 11988 and 11990.
4. Disposal requirements. As stated previously, compliance with NEPA and CERCLA is a requirement of all disposal actions. NEPA compliance shall be in accordance with GSA ADM 1095.1D and shall be documented in each real property case file. Compliance with CERCLA requires providing deed covenants as specified in the FPMR. Full disclosure of all known environmental concerns is mandatory. This includes, but is not limited to, consideration and discussion of the following environmental issues/concerns:
a. Asbestos-containing materials (ACM). Provide full disclosure of all known information regarding asbestos-containing materials and the required "Notice" in any disposal instruments. Refer to FPMR 101-47.304-13.
b. Coastal zone.
(1) Properties included in the Coastal Barrier Resources System (CBRS) are those located along the Atlantic Ocean, Puerto Rico, United States Virgin Islands, Gulf of Mexico, and Great Lakes coasts. For these properties, realty specialists must provide Federal agency screening notice and property maps to the Fish and Wildlife Service (FWS) for determination as to whether and what portion of the property would constitute an undeveloped coastal barrier.
(2) If FWS makes a negative determination (i.e., determines property is not part of an undeveloped coastal barrier), GSA may proceed with normal disposal process. If a positive determination is rendered, GSA must provide notice in any conveyance document that property has been included in the CBRS and initiate further consultation with FWS.

(3) Uses that are restricted, and how they are restricted under State and coastal zone management plans must also be included in conveyance documents for properties on which a positive determination was rendered.
c. Endangered species.
(1) Review disposal action(s) for effects on threatened or endangered species, and where disposal actions might affect such species, contact the regional office of the Fish and Wildlife Service (FWS) to obtain additional information.
(2) Where contact with FWS indicates a potential impact on an endangered or threatened species or a designated critical habitat, initiate informal or formal consultation process in accordance with FWS guidance.
d. Hazardous substance activity.
(1) Provide all known information on the type and quantity of any hazardous substance stored released, or disposed of on the property.
(2) Provide a statement warranting that "all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken" before the date the property was transferred.
(3) If no such activity took place, provide a statement, in accordance with 40 CFR part 373, that there is no evidence to indicate that hazardous substance activity took place on the property during the time the property was owned by the United States.
(4) Provide a covenant warranting that any additional remedial action found to be necessary (which was caused by and/or during ownership by the United States) after the date of transfer shall be conducted by the United States.
(5) Include a statement providing for a right of entry for the United States in the event that remedial action is found to be necessary after the date of transfer.
e. Historical significance. Provide a statement detailing any, and all, restrictions or requirements imposed on potential purchasers as a result of the historical significance of the property.
f. Lead-based paint. Provide a statement regarding the likely presence or absence of lead-based paint on the property, and, if present, provide a notice, in accordance with the Department of Housing and Urban Development (HUD) regulations, in any disposal instruments.
g. Polychlorinated biphenyls (PCB).
(1) Provide a statement that the property does or does not contain any PCB equipment. (2) If present, provide a listing of the PCB equipment which was identified by the reporting agency in the ROE, and, (3) Provide a statement that any such equipment has been maintained, and is currently, in a state of compliance as of the date of transfer.
h. Underground storage tanks (UST). Provide all known information regarding the presence of UST on the property and a statement that the UST have been maintained, and is currently, in a state of compliance as of the date of transfer.
i. Unexploded ordnance. Provide a statement regarding the presence, or likely presence, of unexploded ordnance and include restrictions as identified by the reporting agency in any disposal instruments.
j. Wetlands and floodplains.
(1) Identify uses that are restricted, and how they are restricted under State and local floodplain and wetland regulations; and (2) Provide a statement which restricts these uses by the grantees or purchasers and any successors.
5. Miscellaneous. This section covers environmental requirements associated with the real property disposal program which were not addressed in the ROE or disposal sections of the chapter. Realty specialists should consider these issues where applicable.
a. Reverted properties. Generally, reverted properties are to be treated similar to reports of excess with regard to disclosure of any environmental considerations. Each property must be reviewed case-by-case with the sponsoring agency and a site inspection must be performed prior to revesting with the Government. Sponsoring agencies should be advised that GSA will not accept property which is environmentally impacted until all remedial action necessary has been taken.
b. On-site inspections. During property inspections, regional personnel should spot check any, and all, known environmental hazards or issues which were previously identified in the ROE and be alert to other environmental hazards/issues. In addition, safety precautions should be taken to prohibit contact with environmental hazards which might result in a threat to human health or the environment.
c. Interim use. All parties accessing the property for interim uses must be advised of any, and all environmental hazards known to be present on the property prior to their occupancy. In addition appropriate restrictions and prohibitions must be made a part of their interim use agreement to prevent any threat to human health or the environment.

d. Unique situations. Due to the sensitive and controversial nature of many environmental issues, regional personnel must advise and consult with a central office environmental specialist prior to taking actions that would be considered precedent setting.

e. Defense Environmental Restoration Program (DERP). The U.S. Army Corps of Engineers (COE) executes the portion of the DERP responsible for environmental restoration at active and formerly used Department of Defense (DOD) sites. Properties currently or formerly utilized by DOD, on which issues related to environmental contamination, unexploded ordnance, building demolition and/or debris removal arise, should be reported to the COE for their evaluation. Questions pertaining to the DERP should be discussed with a Central Office environmental specialist.

NEPA Time Frames		
GSA Activity	**Timing or Time Limit**	**Reference**
Notice of Intent • File in Federal Register	GSA can choose how long to accept comments on the scope of a forthcoming EIS; usually no shorter than 30 days, often 45 or 90, depending on the project scope	40 CFR 1508.22
Public hearing or meeting • Notice in local newspaper, other media	Usually 15 or more days from notification to meeting; often longer, depending on the scope of the project	40 CFR 1506.6
Development of EIS • Decision on whether to prepare an EIS • Determination of the scope • Preparation of the DEIS • Preparation of the FEIS • Decision on the final action	• GSA can set time limits for each phase of the NEPA process for any specific action, and must do so if requested by an applicant, consistent with the purposes of NEPA and other essential considerations of national policy (see discussion in Chapter 2) • Public review of a DEIS must be at least 45 days; this time limit can be extended by the agency	40 CFR 1501.8 40 CFR 1506.10
Public review of FONSI • If action similar to one that normally requires EIS • If action is without precedent	30 days	40 CFR 1501.4
GSA decision on an action subject to an EIS	Minimum of 30 days after publication of FEIS, 90 days after publication of DEIS	40 CFR 1506.10
Lead Agency determination	• 45 days to select a lead agency • 20 days for CEQ to review request for determination	40 CFR 1501.5

NEPA Time Frames		
GSA Activity	**Timing or Time Limit**	**Reference**
Referrals to CEQ • Prior to Record of Decision • EPA review under §309 of the Clean Air Act results in a grade of "Environmentally unsatisfactory" OR if any Federal agency so requests	• The referring agency must request CEQ review within 25 days of FEIS publication • The lead agency has 25 days to respond • The CEQ has 25 days to take action; the CEQ has 60 days to complete its action	40 CFR 1504.3
Notice that other compliance processes have their own timelines, which must be integrated with NEPA.	For example: • Endangered Species Act • National Historic Preservation Act • CERCLA	• 50 CFR 402 • 36 CFR 800 • 40 CFR 373

NEPA-Related Legal Requirements and Their Implications		
ENVIRONMENTAL LAW / EXECUTIVE ORDER	**FORMAL REQUIREMENTS**	**NEPA IMPLICATIONS, REGULATIONS**
American Indian Religious Freedom Act (AIRFA)	Requires agencies to respect the practice of traditional American Indian religions, including access to religious sites and use of ceremonial items.	Identify potentially concerned tribes, consult with them during NEPA analyses.
Archeological and Historical Preservation Act (AHPA)	Requires Federal agencies to identify and recover data from archeological sites threatened by their actions.	Conduct surveys, identify archeological sites, consult with specialists and others during NEPA analyses, fund data recovery as mitigation.
Archeological Resources Protection Act (ARPA)	Requires permits, and provides for civil and criminal penalties for persons disturbing archeological resources on Federal and tribal land without a permit.	Archeologists performing NEPA-related work on Federal or Indian land must meet permit requirements. (43 CFR 7; see also 36 CFR 79, and 43 CFR 3)
Architectural Barriers Act	Requires public buildings to be accessible to persons with disabilities.	Consider accessibility issues, and the environmental impact of accessibility solutions, during NEPA review. See Uniform Federal Accessibility Standards (UFAS).
Clean Air Act (CAA)	Requires agencies to comply with State air quality standards set in State Implementation Plans (SIPs).	Review SIP, measure current air quality, project potential changes, seek alternatives that meet standards in NEPA analyses. (40 CFR 50)
Clean Water Act (CWA)	Requires a permit from the U.S. Army Corps of Engineers for any actions affecting “waters of the United States”.	Identify potentially affected waters, consult with Corps during NEPA analyses, explore alternatives to minimize filling. (33 CFR 320-330; 40 CFR 35, 116, 117, 122, 124, 125,131,133, 220, 401, 403)
Coastal Zone Management Act of 1972 (CZMA)	Addresses property actions affecting coastal zone, and requires that Federal actions be consistent with State coastal zone management plans.	Review State coastal zone management plan, pursue alternatives that are consistent with it. (15 CFR 930)
Community Environmental Response Facilitation Act	Requires identification of uncontaminated property.	Phase I and sometimes Phase II remediation studies.
Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)	Requires reporting of releases and clean up of hazardous substances.	Phase I and sometimes Phase II remediation studies. (40 CFR 373; 41 CFR 101-47)

NEPA-Related Legal Requirements and Their Implications		
ENVIRONMENTAL LAW / EXECUTIVE ORDER	**FORMAL REQUIREMENTS**	**NEPA IMPLICATIONS, REGULATIONS**
Endangered Species Act (ESA)	Requires consultation with U.S. Fish and Wildlife Service to ensure actions do not jeopardize threatened or endangered species, or their critical habitat.	Analyze impacts on fish, wildlife, plants, habitats. Ecosystem analysis. Consult with Fish and Wildlife Service where potential effect. (50 CFR 402)
Environmental Quality Improvement Act	Declares a national policy for enhancement of environmental quality, assigns primary responsibility to State and local governments, and mandates that agencies' conducting or supporting public works activities implement existing environmental protection and enhancement policies.	Underscores the need for quality NEPA studies and environmentally sensitive decisions, consults with state and local governments.
Farmlands Protection Policy Act	Establishes criteria for identifying and considering the effects of Federal actions on the conversion of farmland to non-agricultural uses.	Identify potentially affected prime farmland (including lands subject to indirect or cumulative effect), explore alternatives to minimize impacts. (7 CFR 658; see also 7 CFR 657 [Prime Farmlands]).
Federal Facility Compliance Act	Requires Federal facilities to comply with State and local environmental laws as well as Federal environmental laws.	Ascertain applicable state and local laws, apply in NEPA analyses and alternative selection.
Federal Property and Administrative Services Act	Gives GSA responsibility for acquiring and using Federally owned and leased office buildings and space.	Conduct NEPA review on real estate transactions. (41 CFR 101)
Federal Records Act	Controls maintenance and disposal of government documents with historical value.	Identify potentially affected documents (e.g., in buildings being disposed of) and address in NEPA review per applicable regulations. (36 CFR 1222, 1228, 1230, 1232, 1234, 1236, and 1238).
Fish and Wildlife Coordination Act	Requires consultation with Fish and Wildlife Service on actions affecting stream modifications.	Study potential impacts on streams, consult as needed.
Flood Disaster Protection Act	Prohibits Federal actions in areas subject to flood hazards.	Delineate floodplain, seek alternatives that do not promote floodplain development. (See EO 11988 and EO 11990).

NEPA-Related Legal Requirements and Their Implications		
ENVIRONMENTAL LAW / EXECUTIVE ORDER	**FORMAL REQUIREMENTS**	**NEPA IMPLICATIONS, REGULATIONS**
Historic Monuments Preservation Act	Authorizes GSA to convey to local public bodies at no cost National Register of Historic Places' properties deemed appropriate by the Secretary of the Interior for historic monument purposes.	Such transfers can be useful mitigation measures.
Historic Sites Act	Establishes National Historic Landmark (NHL) program and declares a national policy to preserve sites, buildings and objects significant in American history.	Consider impacts on NHLs (Note: GSA manages many NHL buildings). (36 CFR 65)
National Environmental Policy Act of 1969 (NEPA)	Requires agencies to consider and document environmental impacts during project planning.	Consider impacts on the quality of the human environment, be guided by national policy. (40 CFR 1500-1508)
National Historic Preservation Act (NHPA)	Requires agencies to identify historic properties subject to effect by their actions, and to consult with State Historic Preservation Officer and others about alternatives and mitigation.	Conduct surveys, etc., to identify historic properties, determine potential effects. Consult, execute and implement agreements, document in NEPA documents. (36 CFR 800.; see also 36 CFR 60, 61, 65, 68)
Native American Graves Protection and Repatriation Act (NAGPRA)	Requires consultation with Indian tribes and Native Hawaiian groups; repatriation of human remains, associated cultural items, certain other items. Requires development and implementation of a Plan of Action for the treatment of such items, or 30-day work stoppage and consultation with Tribes if cultural items are found during a project on Federal or tribal land.	Identify culturally affiliated Tribes or groups, consult with them, seek to develop plans of action, report in NEPA documents and implement as mitigation. (43 CFR 10)
Public Buildings Act	Provides GSA mandate to acquire and manage lands and buildings.	Actions under the Act require NEPA review.
Public Buildings Amendments of 1972	Permits GSA to enter into purchase contracts to acquire space.	Actions under the Amendments require NEPA review.
Public Buildings Cooperative Use Act	Requires GSA to give priority to the use of historic buildings to meet government space needs.	Actions under the Act require NEPA review. Identify historic buildings and consider uses.

NEPA-Related Legal Requirements and Their Implications		
ENVIRONMENTAL LAW / EXECUTIVE ORDER	**FORMAL REQUIREMENTS**	**NEPA IMPLICATIONS, REGULATIONS**
Resource Conservation and Recovery Act (RCRA)	Regulates hazardous and solid waste activities and underground storage tanks (USTs).	Phase I and possible Phase II remediation studies. (40 CFR 260-281).
Rural Development Act	Directs Federal Agencies to site their facilities in such a way as to support appropriate rural development.	Consider requirements when identifying alternatives.
Safe Drinking Water Act	Sets standards for drinking water quality and regulates activities affecting drinking water supplies.	Analyze existing water quality and potential impacts on it. (40 CFR 141)
Superfund Amendments and Reauthorization Act (SARA)	Requires plans for clean up of contaminated sites, and disclosure to public of hazardous materials and processes.	Phase I and possible Phase II remediation studies. (40 CFR 373)
Toxic Substances Control Act (TSCA)	Regulates specific chemical substances, including PCBs and asbestos.	Address in NEPA review. (40 CFR 761)
Treasure Trove	GSA may enter into contracts for recovery and distribution of “treasure” in which the United States has an interest.	Contracts are subject to NEPA review.
Wild and Scenic Rivers Act	Requires agencies to review actions for possible impacts of wild and scenic rivers.	Consider impacts on wild and scenic rivers in NEPA analyses. (See President’s 1979 environmental message: directive on wild and scenic rivers)
EO 11514 Protection and Enhancement of Environmental Quality	Requires agencies to monitor, evaluate, and control activities so as to protect and enhance the quality of the environment.	Underscores the need for quality NEPA analyses, monitoring of mitigation measures.
EO 11593 Protection and Enhancement of the Cultural Environment	Requires agencies to identify, evaluate and protect historic properties under their ownership or control.	Same requirements as National Historic Preservation Act.
EO 11988 Floodplain Management	Requires agencies to evaluate the potential effects of any action it takes in a floodplain, and consider alternatives to avoid adverse effects.	Delineate floodplain, project impacts on floodplain values, potential development of floodplain. Consider alternatives. Specific 8-step review process set forth in guidelines maintained by Federal Emergency Management Agency (FEMA).

NEPA-Related Legal Requirements and Their Implications		
ENVIRONMENTAL LAW / EXECUTIVE ORDER	**FORMAL REQUIREMENTS**	**NEPA IMPLICATIONS, REGULATIONS**
EO 11990 Protection of Wetlands	Requires agencies to minimize destruction, loss or degradation of wetlands.	Delineate wetlands, pursue alternatives and mitigation to minimize loss.
EO 12088 Federal Compliance with Pollution Control Standards	Requires an agency to prevent, control and abate environmental pollution with respect to Federal facilities and activities under its control.	Phase I, possible Phase II remediation studies.
EO 12072 Federal Space Management	Requires GSA to meet certain criteria, including consideration of socio-economic, environmental, and cultural criteria (for meeting space needs in urban areas).	Consider socioeconomic, cultural effects as well as effects on natural and built environment in NEPA analysis of urban real estate transactions.
EO 12372 Intergovernmental Review of Federal Programs	Requires Federal agencies to provide for review of its actions by State and local elected officials.	Consult State and local governments during NEPA review.
EO 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	Requires Federal agencies to identify and address any disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.	Conduct social impact analyses, identify potentially affected populations, involve them in NEPA review, make adjustments in public involvement to accommodate them, seek alternatives that avoid disproportionately high and adverse effects.
EO 13006 Locating Federal Facilities on Historic Properties in our Nations Central Cities	Requires Federal agencies to give priority to the use of historic buildings in historic districts in central business areas.	Identify historic buildings in central business areas, analyze their use potential, consider as priority alternatives in NEPA review.
EO 13007 Indian sacred sites	Requires Federal agencies to avoid where possible impeding access to, or physically damaging, Indian sacred sites.	Consult with Indian Tribes during NEPA analysis to identify possible impacts. Respect confideniality of information on sacred sites.

If no implementing regulations are listed, none existed at the time this manual was written.

Pertinent Agencies

Natural Resources

1. U.S. Environmental Protection Agency, National and Regional Office
2. National Park Service (U.S. Department of the Interior)
3. National Biological Service (U.S. Department of Interior)
4. State Departments of Natural Resources
5. State and Local Parks and Recreation Departments
6. Indian Tribal National Resource Departments
7. National, State and Local Environmental Advocacy Groups

Land/Climate Characteristics

1. United States Geological Survey (U.S. Department of the Interior)
2. Climate Monitoring and Diagnostic Laboratory, National Oceanic and Atmospheric Administration (U.S. Department of Commerce)
3. State Land Use Board/Commission/Department
4. Farmland Preservation Agencies
5. Local land use and/or zoning departments

Soils

1. Natural Resource Conservation Service (U.S. Department of Agriculture)
2. Local Soil Conservation Services

Minerals and Energy Resources

1. U.S. Department of Energy

Coastal Zones

1. Office of Ocean and Coastal Resource Management
   National Oceanic and Atmospheric Administration
   (U.S. Department of Commerce)
2. State Coastal Zone Management Departments

Water Resources (Water Quality, Floodplains, Wetlands)

1. U.S. Army Corp of Engineers, National and Regional Offices
2. Federal Emergency Management Agency, National and Regional Offices
3. State and Local Water Boards

Air Quality

1. Office of Air Quality Planning and Standards
   (U.S. Environmental Protection Agency)
2. State and/or Local Air Quality Boards

Wildlife and Fish

1. U.S. Fish and Wildlife Service, National and Regional Offices
   (U.S. Department of the Interior)
2. State and Tribal Fish and Wildlife Agencies
3. National, State, and Local Wildlife Conservation Groups

Prime Farm Land, Timber, and Rangelands

1. Bureau of Land Management (U.S. Department of the Interior)
2. U.S. Forest Service (U.S. Department of Agriculture)
3. Natural Resource Conservation Service (U.S. Department of Agriculture)
4. State and Tribal Range, Forestry, and other Departments

Infrastructure

1. U.S. Department of Transportation
2. Federal Highway Administration (U.S. Department of Transportation)
3. State Departments of Transportation
4. County Planning Commissions
5. Fire/Police Departments
6. Utility Companies

Economic Characteristics

1. Deputy Assistant Secretary for Environmental Affairs (U.S. Department of Commerce)
2. Department of Housing and Urban Development
3. U.S. Census Bureau (U.S. Department of Commerce)
4. U. S. Small Business Administration
5. Community Development Agencies

Sociocultural Characteristics

1. Office of Environmental Affairs (Department of Health and Human Services)
2. National Environmental Justice Advisory Council (U.S. Environmental Protection Agency)
3. U. S. Department of Justice
4. Advisory Council on Historic Preservation
5. State Historic Preservation Officer
6. State Folklorist
7. Representatives of Low Income and Minority Groups
8. Tribal Historic Preservation or Cultural Resource Committees
9. Local Historic Preservation or Design Review Bodies
10. Civic and Neighborhood Organizations
11. Academic Departments of Anthropology and Sociology

Miscellaneous

1. Office of Environmental Policy (U.S. Army Corp of Engineers)
2. Public Works Committees of Congress
3. Office of Management and Budget
4. U.S. Senators of States affected
5. U.S. Representatives of district(s) affected
6. Governor of the affected State(s)
7. Elected Officials of the local jurisdictions

Index to PBS NEPA Desk Guide

Subject	Section
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Lariza Sepulveda - PMAA <lariza.sepulveda@gsa.gov>

Wash Post article

1 message

Dunne, Matthew S CIV USARMY HQDA CALS (US) <matthew.s.dunne.civ@mail.mil>
To: Lariza Sepulveda - PMAA <lariza.sepulveda@gsa.gov>

Wed, Dec 2, 2015 at 12:34 PM

https://www.washingtonpost.com/local/dc-politics/federal-agency-halts-effort-to-save-us-taxpayers-money-on-utility-merger/2015/12/02/9f7c105e-97e2-11e5-94f0-9eeaff906ef3_story.html?hpid=hp_regional-hp-cards_no-name%3Ahomepage%2Fcard

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Exhibit SG-2

Interconnection Improvements to PECO's Distribution System

The benefits to on-site renewable energy are wide-ranging and substantial. The rate design proposals of PECO should be adjusted so that the Pennsylvania and its ratepayers can realize these benefits. TASC recommends the following improvements to the interconnection process:

1. PECO should be required to provide PTO to the interconnection customer, in the form of an email, within 10 business days from the applicant's notification to PECO that it has successfully commission-tested the generator.

2. Reporting requirements for interconnection processing timelines should be submitted to the PUC quarterly instead of the annual reporting requirement in place today, providing the PUC better visibility into potential issues in the process and the opportunity to remedy so that any problems do not compound as interconnection requests increase.

3. In the event that PECO misses an interconnection review deadline, PTO or other deadline, PECO should provide a response to the applicant within two business days of all interconnection status update requests. The response should include a reason for the missed deadline and an update on when PECO will complete its required task. If delays impact more than 10% of interconnection requests over a 3-month period, PECO should provide the PUC with a report detailing the reasons for interconnection delays and its plan to address the delays.

4. PECO should have a central address for a Generator Interconnection Customer to submit an application and the application should be internally routed by PECO to the appropriate NBS.

5. With respect to solar-plus-storage interconnection applications, PECO should not differentiate between solar-only and solar and battery installations. In the cases where the solar and the battery share inverter(s), only the collective nameplate of the shared inverter(s) and the type of distribution network should be used for determining the requirement of a Level 1 – Level 4 interconnection study. In addition, no additional metering or monitoring equipment should be required then would be required for a solar without storage application.

6. PECO should review its criteria used to determine if upgrades to the distribution system are required when interconnecting solar distributed generation including consideration of NREL studies. This review should be conducted with the Commission and interested stakeholders.

   PECO should support, as it did in Maryland under the Exelon-Pepco merger, the immediate adoption of FERC Order 792 and findings that allow for interconnection of distributed generation so 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.

   As part of this effort PECO and the PUC should review any statutory issues around the establishment of such criteria.

7. PECO should make available service territory maps of circuits that have the following information included: 1) circuits with limited capacity (orange coded) with the specific capacity that remains available on a given circuit before it will be considered closed; 2) closed (red coded); and 3) circuits where capacity makes small generator interconnection more desirable from a distribution utility perspective (green coded). This would send the appropriate signals to developers

as to where they should pursue new development as well as areas they should avoid and will be a useful tool to the public and in the stakeholder study of the issue for establishing criteria for circuit limits. PECO should update these maps at least every three months.

Exhibit SG-3

Estimated economic and merit order benefits from solar energy generation in Pennsylvania

A) Economic and jobs benefits

I used the United States National Renewable Energy Laboratory's (NREL) Jobs and Economic Development Impact Model (JEDI), release PV3_24.14-1 to estimate the economic and jobs benefits from solar energy development in Pennsylvania. This is an economic input/output model developed by NREL specifically to analyze the jobs and economic impact of state-specific solar development. The JEDI model uses economic multipliers derived from the industry-leading Minnesota IMPLAN group's IMPLAN Version 3 software. These multipliers support the model's calculations of net economic benefits specific to Pennsylvania's economy and the industries impacted by the construction and operation of solar installations in the state.

The JEDI model is used by federal agencies (including USDOE), state agencies, industry groups, universities, utilities, transmission owners, energy consultants and others to evaluate the jobs and economic impact of both fossil fuel powered and renewable energy generation policies and project development.

I analyzed several scenarios where solar generation provides a percentage of Pennsylvania's electric energy load ranging from 0.5% to 4.0%. Based on solar production estimates provided by NREL's PVWatts calculator, this results in an estimated 650 megawatts (MW) to 5,200 MW of total solar capacity required. In all cases, I assumed that total solar installations at the end of 2015 would total 225 MW (based on 214 MW currently reported in PJM GATS plus an additional 11 MW constructed between May and December, 2015). In the 0.5% and 1.0% solar cases, I assumed that the additional solar construction would take place during 2016-2021. In

the 4.0% case, I assumed that solar construction would continue through 2025 to achieve this higher RPS goal.

To reflect current market conditions, I updated the model input assumptions, lowering the overall installation cost from $6.56 per Watt (the JEDI default data) to $4.50 per Watt for the overall average of all solar installed to-date.

For installs from 2016 through 2021 in the 0.5% case, I assumed that average install costs would be $3.00 per Watt. In the 1.0% case, I assumed that install costs would decline from $2.80 per Watt in 2016 to $2.50 per Watt in 2021. For the 4.0% case, I assumed that install prices would decline from $2.80 per Watt in 2016 to $2.09 per Watt in 2025, reflecting aggressive economies of scale resulting from the increased solar development activity. Thus, the conservative projected economic benefit may be underestimated.

Other basic assumptions include a 2.5% annual inflation rate and an 8.0% discount rate used in net present value ("NPV") calculations.

In the 4% solar case, the construction of 4,975 MW of solar over 11 years would require more than $1.1 billion per year ($11.4 billion in total) in solar development costs. There is an economic multiplier effect for in-state spending that increases the net economic impact (*i.e.*, new workers on location with wages that would buy construction supplies, gas, lunch, etc.). Some spending occurs out of state (i.e., solar panels and inverters that are not made in Pennsylvania) which does not add to Pennsylvania's economy. All of these variables are considered in the JEDI model.

This level of solar development would add an average of 9,379 jobs per year to the Pennsylvania economy during these 11 years of construction, including direct (solar engineering/construction/installation workers), indirect (construction supply chain, electrical supply, solar materials distribution), and induced (lunch, gas, etc.). After the

assumed eleven-year construction period, the operation and maintenance for the 5,200 MW of installed solar would support 2,045 jobs per year, which also includes direct, indirect and induced workers.

Over a 20 year period, this economic activity would add $5.1 billion of worker earnings in NPV and $10.1 billion NPV in total economic output to Pennsylvania's economy. As with the jobs analysis, this includes direct, indirect and induced economic activity.

A) Merit order benefits of solar energy in Pennsylvania

I analyzed several scenarios where solar generation provides a percentage of Pennsylvania's electric energy load ranging from 0.25% to 4.0%. To analyze the Merit Order Effect, I utilized the AURORAxmp Power Market Model (AURORA). AURORA is an industry-leading software and data package that simulates the fundamentals-based dispatch of generation to serve hourly utility load. AURORA recognizes fundamental system inputs such as transmission limits, individual generator operational characteristics and generation costs, monthly fuel costs, and other critical data elements required to simulate the operation of the North American electric grid.

The Merit Order Effect is a recognized and demonstrated price impact of renewable energy generation additions. In essence, solar generation reduces the need for expensive, fossil fuel-based generation. This reduces wholesale power prices and total system cost for all ratepayers. To measure this effect, I conducted AURORA simulations using the 0.25% to 4.0% range of solar generation and compared these scenarios to a base-case which included 0% solar.

In the 4% case, the Merit Order Effect provides ratepayers with approximately $24.7 million in annual benefits in 2015 (0.4 percent of energy rates), increasing to $534.9 million in 2034 (3.8% of electric energy rates). This results in more than $2 billion NPV of savings over 20 years.

Exhibit SG-4

Calculation of PECO Residential Customer Cost
($000)

Acct	Plant in Service	Accum dep	Net
369	238,869	88,043	150,826
370	212,467	41,917	170,550
377	2,706	826	1,874
			323,550

Source: PECO Exhibit ABC-3 p. 1

Account	
586	14,832
587	5,390
903	43,839
904	44,008
907-910	6,626
920-932	103,867
369 dep	5,234
370 dep	21,643
371 dep	725

Source: PECO Exhibit ABC-3 p. 9-10; 903,904,920-932 are indirect

Factor	Allocated Indirect Revenue	Direct Revenue	Total	Monthly
0.1298	26,360	98,689	125,049	8.25

PECO Proof of Revenue

Residential

Rate Year Ending December 31, 2016

Residential (R)										
			PRESENT RATES			**PECO PROPOSED RATES**			**GABEL PROPOSED RATES**	
Customer Charges		**Bills**	Rate	Revenue	Rate	Revenue	% Increase	Rate	Revenue	% Increase
Rate R		15,149,972	7.1300	108,019,300	12.00	181,799,664	68.3%	8.25	124,987,269	15.7%
Second Meter		887,952	1.7500	1,553,916	1.95	1,731,506	11.4%	1.95	1,731,506	11.4%
Total Customer Charges		**16,037,924**		**109,573,216**		**183,531,170**			**126,718,775**	
kWh-Based Rates	kWh									
Rate R		10,686,495,987	0.0580	620,167,049	0.06088	650,593,876	4.9%	0.06620	707,446,034	14.1%
Total Distribution Charges		**8,465**		**620,167,049**		**650,593,876**			**707,446,034**	
CAP Discount Non-dist				(45,048,822)		(45,048,822)			(45,048,822)	
CAP Discount Dist				(31,305,114)		(35,783,115)			(35,783,115)	
Load Reduction				(7,933,269)		(9,068,073)			(9,068,073)	
Annualization				371,392		424,517			424,517	
				(83,915,813)		**(89,475,493)**			**(89,475,493)**	
Total Distribution Revenue				**645,824,452**		**744,649,553**	15.3%		**744,689,317**	15.3%
								Gabel vs. PECO Difference		39,764

PECO Bill Impact Analysis

Residential

Rate Year Ending December 31, 2016

Residential (R)

		PRESENT RATES				PECO PROPOSED RATES					GABEL PROPOSED RATES			
Customer Size	**kWh/Yr**	**Customer Charge**	**kWh-Based Rates**	**Total**		**Customer Charge**	**kWh-Based Rates**	**Total**	**% Increase**		**Customer Charge**	**kWh-Based Rates**	**Total**	**% Increase**
Small	2400	7.1300	0.0580	**224.84**		12.0000	0.0609	**290.11**	29%		8.2500	0.0662	**257.88**	15%
Average	8465	7.1300	0.0580	**576.81**		12.0000	0.0609	**659.35**	14%		8.2500	0.0662	**659.38**	14%
Large	12000	7.1300	0.0580	**781.95**		12.0000	0.0609	**874.56**	12%		8.2500	0.0662	**893.40**	14%

PECO Proof of Revenue

General Service

Rate Year Ending December 31, 2016

General Service (GS)											
			PRESENT RATES			PECO PROPOSED RATES			GABEL PROPOSED RATES		
Customer Charges		**Bills**	Rate	Revenue		Rate	Revenue	% Increase	Rate	Revenue	% Increase
Single Phase - No Demand		356,834	13.0830	4,668,455		14.60	5,209,776	11.6%	14.60	5,209,776	11.6%
Single Phase - With Demand		1,050,274	16.3830	17,206,635		18.60	19,535,096	13.5%	18.60	19,535,096	13.5%
Poly Phase - With Demand		387,672	40.0830	15,539,076		44.50	17,251,404	11.0%	44.50	17,251,404	11.0%
GS Night Service Rider		36,180	14.3000	517,374		14.30	517,374	0.0%	14.30	517,374	0.0%
Total Customer Charges		1,830,960		37,931,540			42,513,651	12.1%		42,513,651	12.1%
kWh-Based Rates	kWh										
Single Phase - No Demand		7,883,428,733	0.0047	37,052,115		0.0000	-		0.00597	47,064,070	
Single Phase - With Demand		51667.51037									
Poly Phase - With Demand											
GS Night Service Rider											
Total Customer Charges											
Intercompany - all kWh		32,330,521	0.0263	851,310		0.0000	-		0.03339	1,079,516	
		7,915,759,254		**37,903,425**			**-**			**48,143,586**	
kW-Based Rates	kW										
GS Night Service Rider		142,140	1.0300	146,404		2.5000	355,350		1.2500	177,675	
Billed Demand kW		26,704,080	4.9600	132,452,238		7.7900	208,024,786		5.9700	159,423,358	
		14.58474243		**132,598,642**			**208,380,136**			**159,601,033**	
Total Distribution Charges				**170,502,067**			**208,380,136**			**207,744,618**	
Load Reduction				(3,249,646)			(3,971,574)			(3,249,646)	
Annualization				85,968			105,067			85,968	
				(3,163,678)			**(3,866,507)**			**(3,163,678)**	
Total Distribution Revenue				**205,269,929**			**247,027,280**	20.3%		**247,094,591**	20.4%
									Gabel vs. PECO Difference		67,311

PECO Bill Impact Analysis
General Service
Rate Year Ending December 31, 2016

General Service (GS)

			PRESENT RATES				PECO PROPOSED RATES					GABEL PROPOSED RATES				
Customer Size	kWh/Yr	Billed kW	Customer Charge	kWh-Based Rates	kW-Based Demand Rate	Total	Customer Charge	kWh-Based Rates	kW-Based Demand Rate	Total	% Increase	Customer Charge	kWh-Based Rates	kW-Based Demand Rate	Total	% Increase
Small	25834	7.0	16.3830	0.0047	4.9600	734.66	18.6000	0.0000	7.7900	877.56	19%	18.6000	0.00597	5.9700	878.91	20%
Average	51668	14.6	16.3830	0.0047	4.9600	1308.43	18.6000	0.0000	7.7900	1588.01	21%	18.6000	0.0060	5.9700	1577.60	21%
Large	77502	22.0	16.3830	0.0047	4.9600	1870.30	18.6000	0.0000	7.7900	2279.76	22%	18.6000	0.0060	5.9700	2261.97	21%

PECO Proof of Revenue

Primary Service

Rate Year Ending December 31, 2016

Primary Service

			PRESENT RATES		PECO PROPOSED RATES			GABEL PROPOSED RATES		
Customer Charges		**Bills**	Rate	Revenue	Rate	Revenue	% Increase	Rate	Revenue	% Increase
Rate PD		6,000	295.5843	1,773,506	300.00	1,800,000	1.5%	300.00	1,800,000	1%
Rate PD - NSR Fixed		1,716	11.3899	19,545	11.39	19,545	0.0%	11.39	19,545	0%
Total Customer Charges				**1,793,051**		**1,819,545**	1.5%		**1,819,545**	1%
kWh-Based Rates	**kWh**									
Rate PD		510,946,108	0.0032	**1,635,028**	0.0000	**-**		0.0044	**2,222,616**	
Rate PD - NSR Fixed		85157.68467								
		214.0866667								
kW-Based Rates	**kW**									
Rate PD		1,284,520	4.6800	6,011,554	7.2400	9,299,925		5.5100	7,077,705	
Rate PD - NSR Fixed		6,762	1.8299	12,374	2.2500	15,215		2.1600	14,606	
				6,023,928		**9,315,139**			**7,092,311**	
Total Distribution Charges										
Load Reduction				(61,694)		(75,035)			(75,035)	
Annualization				(1,859)		(2,261)			(2,261)	
				(63,553)		**(77,296)**			**(77,296)**	
Total Distribution Revenue				**9,388,454**		**11,057,389**	17.8%		**11,057,176**	17.8%
								Gabel vs. PECO Difference		(213)

PECO Bill Impact Analysis

Primary Service

Rate Year Ending December 31, 2016

Primary Service

			PRESENT RATES				PECO PROPOSED RATES					GABEL PROPOSED RATES				
Customer Size	kWh/Yr	Billed kW	Customer Charge	kWh-Based Rates	kW-Based Demand Rate	Total	Customer Charge	kWh-Based Rates	kW-Based Demand Rate	Total	% Increase	Customer Charge	kWh-Based Rates	kW-Based Demand Rate	Total	% Increase
Small	42579	107	295.5843	0.0032	4.6800	9692.39	300.0000	0.0000	7.2400	12896.16	33%	300.0000	0.00435	5.5100	10860.06	12%
Average	85158	214	295.5843	0.0032	4.6800	15837.76	300.0000	0.0000	7.2400	22192.32	40%	300.0000	0.00435	5.5100	18120.12	14%
Large	127737	321	295.5843	0.0032	4.6800	21983.13	300.0000	0.0000	7.2400	31488.48	43%	300.0000	0.00435	5.5100	25380.18	15%

PECO Proof of Revenue

High Tension

Rate Year Ending December 31, 2016

High Tension (HT)											
			PRESENT RATES			PECO PROPOSED RATES			GABEL PROPOSED RATES		
Customer Charges		**Bills**	Rate	Revenue		Rate	Revenue	% Increase	Rate	Revenue	% Increase
High Tension HT		31,260	297.9044	9,312,491		306.00	9,565,560	2.7%	306.00	9,565,560	2.7%
Rate HT - NSR Fixed		13,368	11.3900	152,262		11.39	152,262	0.0%	11.39	152,262	0.0%
Total Customer Charges				9,464,753			9,717,822	2.7%		9,717,822	2.7%
kWh-Based Rates	kWh										
High Tension HT		15,249,248,337	0.0017	25,923,722		0.0000	-		0.00205	31,260,959	
Rate HT - NSR Fixed											
Total kWh-Based Charges		**15,249,248,337**		**25,923,722**			**-**			**31,260,959**	
kW-Based Rates	kW										
Rate HT- NSR Fixed		31,637,375	3.5500	112,312,681		5.0800	160,717,865		4.0900	129,396,864	
33 kV		568,827	1.9700	1,120,589		2.1500	1,222,978		2.2700	1,291,237	
69 kV		6,221,825	-0.1400	(871,056)		-0.1628	(1,012,716)		-0.1614	(1,004,203)	
>69 kV		83,553	-0.4500	(37,599)		-0.5232	(43,714)		-0.5189	(43,356)	
33 kV - NSR		321,569	-0.4500	(144,706)		-0.5232	(168,241)		-0.5189	(166,862)	
69 kV - NSR		7,247,426	-0.1400	(1,014,640)		-0.1628	(1,179,651)		-0.1614	(1,169,735)	
>69 kV - NSR		22,200	-0.4500	(9,990)		-0.5232	(11,615)		-0.5189	(11,520)	
		817,918	-0.4500	(368,063)		-0.5232	(427,926)		-0.5189	(424,418)	
Total Demand-Based Charges				**110,987,217**			**159,096,980**	43.3%		**127,868,009**	15.2%
Total Distribution Charges				**136,910,939**			**159,096,980**			**159,128,968**	
Load Reduction				(1,841,268)			(2,139,641)			(2,139,641)	
Annualization				(55,487)			(64,478)			(64,478)	
				(1,896,755)			**(2,204,119)**			**(2,204,119)**	
Total Distribution Revenue				**144,478,937**			**166,610,683**	15.3%		**166,642,671**	15.3%
										Gabel vs. PECO Difference	(31,988)

WDEL 1150AM News Talk Radio

Wednesday, June 18, 2014 - 1:10pm

Pepco, Exelon pledge 1,500 new jobs with proposed merger

By Amy Cherry

Delmarva Power parent company, Pepco, and energy giant Exelon, stand united in touting the benefits of their proposed merger.

WDEL's Amy Cherry reports.

Delmarva Power claims the proposed merger will produce up to 1,500 new jobs in Delaware.

Exelon is promising no Delmarva Power layoffs for at least two years.

"Delmarva Power will remain operational headquarters in Newark, Delaware; we will honor all collective bargaining agreements," said Dick Webster, Vice President of Corporate Affairs for Exelon.

Webster goes on to say Exelon has negotiated contract extensions for all four utility unions.

A $17 million customer investment fund will also be established.

"To be used as the PSC deems appropriate for customer benefits that include: bill credits, assistance for low-income customers, or other measures," Webster said.

Exelon has committed to providing an annual average of charitable contributions and community support that exceeds Delmarva Power's commitment of $700,000 for a decade after the merger.

They're also pledging to turn the lights back on faster when the power goes out.

Latest News

- Bomb threat reported at the Wilmington VA
- Local vet says appointment system faulty at Wilmington VA hospital
- Three teens arrested in Wilmington fatal shooting
- Double shooting in Wilmington
- The show is over, the clean up underway at Firefly
- Man falls off Claymont roof
- Two wanted in Wilmington liquor store robbery
- Middle East conflict spurring higher gas prices
- Brandywine swinging bridge closes for renovations

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"By 2020, Delmarva Power's average outage duration in its Delaware operational area will improve 24-percent over the 2011-2013 period," Webster said.

Exelon could be subject to financial penalties if Delmarva Power doesn't meet those targets.

Both companies hope the merger, which is subject to approval from the state's Public Service Commission, will be complete next year.

"This merger will bring significant economic benefits to Delmarva Power customers and local communities in Delaware," said Gary Stockbridge, who under the merger, would remain regional President for Delmarva Power.

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June 20, 2014

Ms. Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission of the District of Columbia
1333 H Street, N.W.
2nd Floor, West Tower
Washington, D.C. 20005

Re: **Re: Formal Case No. 1119**

Dear Ms. Westbrook-Sedgwick:

Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company and Exelon Energy Delivery Company, LLC (the Joint Applicants), hereby submit an electronically filed copy of their Proposed Issue Index of the Joint Applicants in Formal Case No. 1119. This index will be updated and re-filed when the Commission determines a final set of issues to be considered in this docket.

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

Richard M. Lorenzo
Partner

Enclosure

cc: Office of the People's Counsel; all intervening parties

BEFORE THE
PUBLIC SERVICE COMMISSION FOR THE DISTRICT OF COLUMBIA

FORMAL CASE NO. 1119

PROPOSED ISSUE INDEX
OF THE JOINT APPLICANTS
June 20, 2014

PROPOSED ISSUE	DIRECT TESTIMONY AND EXHIBITS
1. What are the Joint Applicants' estimates of the costs, benefits and net savings associated with the merger?	JA (A): Crane Direct at 5:22-6:3; 17:6-18:10; 21:21-23:14; JA (BA): Rigby Direct at 7:8-8:17; 10:5-11:3; 12:17-13:4; JA (G): Tierney at 4:20-9:2; 11:4-21; 16:16-21:13; 31:6-32:22; 39:15-21 JA (F): Khouzami at 7:10-12:21; 19:22-28:20; JA (F)-2.
2. How will the costs and savings be measured, monitored and demonstrated?	JA (F): Khouzami Direct at 13:2-15:21; 19:23-27:7; JA (F)-2; JA (G): Tierney Direct at 11:13-16:13; 21:14-31:5; 33:3-39:13.
3. What are the short and long-term effects of the merger on Pepco's prices charged to District of Columbia customers?	JA (A): Crane Direct at 11:23-12:2; 12:14-13:19; 14:14-15:13; JA (F): Khouzami Direct at 5:13-23.
4. How will the merger affect employment at Pepco and PHI?	JA (A): Crane Direct at 19:6-20:12; JA (B): Rigby Direct at 11:4-20; JA (C): O'Brien Direct at 12:15-13:2; 16:16-17:13.
5. Will the Commission's ability to regulate Pepco, or its regulated and unregulated subsidiaries, be impaired by the proposed merger, including the ability to gain access to accounts and financial records?	JA (A): Crane Direct at 21:6-20; JA (B): Rigby Direct at 11:22-12:15; JA (C): O'Brien Direct at 5:17-6:5.
6. How, if at all, would the merger affect the ability or willingness of Pepco to provide standard offer or default service to customers in the District of Columbia?	JA (C): O'Brien Direct at 8:14-22; 17:16-22.
7. What effect, if any, will the merger have on the quality of customer electricity services in the District of Columbia?	JA (B): Rigby Direct at 9:3-10:3; JA (C): O'Brien Direct at 13:3-16:14; JA (D): Alden Direct at 2:15-10:21; JA (H): Butler Direct at 6:16-7:5.
8. What will be the effect, if any, of the merger on the safety and reliability of providing electricity in the District of Columbia?	JA (A): Crane Direct at 5:15-22; 6:3-7; 11:2-5; 13:20-16:15; JA (D): Alden Direct at 2:15-10:21; JA (E): Gausman Direct at 3:2-8:4; JA (H): Butler at 5:8-7:16.
9. What are the short and long-term effects of the merger on the distribution facilities of Pepco employed in serving District of Columbia customers?	JA (A): Crane Direct at 5:5-15; 11:18-23; JA (D): Alden Direct at 2:15-10:21; Gausman Direct at 3:2-8:4.
10. Are the reliability guarantees and associated penalty mechanisms proposed by the Joint Applicants reasonable, necessary and appropriate?	JA (D): Alden at 8:3-10:21; JA (F): Khouzami Direct at 27:9-28:20.

PROPOSED ISSUE	DIRECT TESTIMONY AND EXHIBITS
11. What safeguards, if any, should the Commission establish to ensure that PHI regulated subsidiaries (*i.e.* Pepco) do not subsidize unregulated subsidiaries, affiliates, or the overall corporate structure?	JA (A): Crane Direct at 18:11-19:5; JA (C): O'Brien Direct at 4:21-6:5; JA (F): Khouzami Direct at 6:1-7:8; 8:4-12:21.
12. What will be the impact of the merger on local electricity competition in the District of Columbia?	JA (C): O'Brien Direct at 18:1-15.
13. What impact, if any, will the merger of the Joint Applicants' transmission facilities operated by the PJM Interconnection LLC have on ratepayers in the District of Columbia?	JA (C): O'Brien Direct at 18:16-22.
14. What effect will the merger have on the capital structure of the District of Columbia jurisdictional operations?	JA (F): Khouzami Direct at 7:10-8:3.
15. What risks, costs and benefits associated with Exelon's nuclear operations will District of Columbia customers be required to bear as a result of the merger.	JA (A): Crane Direct at 18:11-19:5; JA (F): Khouzami Direct at 6:20-7:8; 9:4-11:21.
16. What impact, if any, will the merger have on plans to underground Pepco's distribution feeders in the District of Columbia?	JA (D): Alden Direct at 9:11-18; JA (E): Gausman Direct at 5:13-23; 7:21-8:4.

RECHARGED:
REDUCING ENERGY COSTS, RISKS, & CARBON

EXECUTIVE SUMMARY

The District of Columbia's energy infrastructure leaves the city exposed to a future with unreliable power, skyrocketing costs, and minimal clean energy generation. This document sheds light on these challenges – and then proposes a strategy that recalibrates the District's energy policies and, ultimately, reduces risks and costs.

Some of the issues are inherent with an aging grid, while others are unique to the District:

- Expensive and volatile costs. DC businesses now spend roughly $1 billion annually to power their buildings. With generation increasingly reliant on natural gas (a more volatile commodity than coal), energy users face extreme price risk.
- Reliability risk. Strains to the power system, which has struggled during recent weather extremes, will increase as numerous large plants go offline in coming years.
- Disconnected programs and regulations. Development of initiatives that meet 21st Century energy needs has been muted, from market-based incentives to regulations that enable innovation and new technology.
- Limited clean and distributed energy. The District has obvious clean energy problems, including limited solar deployment and the lack of any new large-scale distributed generation. In spite of this, the city has no strategic plan to make progress in this area.

A three-point strategic plan can leverage the city's advantages, global best practices, and innovative new approaches:

1. Modernize the grid and its regulatory constructs.

RECHARGED

1/1/15

Reshaping DC's Energy Future

An examination of the state of the District's energy infrastructure – focusing on the commercial sector – and a new strategy to move towards a more self-reliant, lower-risk energy future.

RECHARGED: EXECUTIVE SUMMARY

The District of Columbia has long worked to reduce energy costs, increase reliability, and protect the environment. Yet, periodically, the city must also assess its progress and identify options to recalibrate policies. In that spirit, this document examines the District's challenges – including the future risk of unreliable power, rising costs, and minimal clean energy generation – and then proposes a strategy to reshape its energy future.

The District's current energy infrastructure has several areas of concern. Some of these issues are inherent with an aging grid, while others are unique to the city:

- Reliability risk. Strains to the power system, apparent during recent weather extremes, will increase as numerous plants go offline in coming years.
- Expensive and volatile costs. DC businesses spend roughly $1 billion annually to power their buildings. With generation increasingly reliant on natural gas (a more volatile commodity than coal), these energy users also face increasing price risk.
- Disconnected programs and regulations. The regulatory constructs that define the District's utilities are often disconnected from opportunities made possible with 21st Century technology.
- Limited clean and distributed energy. The District has struggled to achieve scale with clean energy, including limited solar deployment and little large-scale distributed generation. The city also lacks a strategic plan to make progress in this area.

Moving forward, the District must fashion a strategy that leverages its advantages, employs global best practices, and reduces risks and costs. Three themes should define this new plan:

1. Modernize the grid and its regulatory constructs.

The District must move beyond a singular reliance on centralized energy infrastructure. A new paradigm should embrace distributed tools including onsite generation, neighborhood-scale energy systems, microgrids, combined heat and power facilities, and dynamic controls that can flatten and shape loads to create a more resilient system. This new ecosystem will also require regulatory modifications to equitably reward and incentivize key stakeholders to deploy new technologies.

2. Aggregate buying power and unleash new capital.

Billions of dollars in clean energy investments could be realized by aggregating demand, utilizing the inherent advantages of the District's deregulated market, and pursuing innovative public-private partnerships. Improved access to capital, often the 'last mile' to securing clean energy investments, could go a long way to lower costs and reduce risks for the city's energy users.

3. Transform the market with data and performance transparency.

Surfacing clean energy's submerged value must be at the foundation of the District's plan to transform its energy future. From increasing data availability, to improving mandated benchmarking, to pursuing a collaborative community-based initiative, the city could attack a major limiting factor for clean energy deployment – lack of demand. Programs that create market awareness of energy performance (and thus catalyze demand) are vital tactics to any successful strategy.

2014 POLAR VORTEX: A GLIMPSE OF FUTURE CHALLENGES

PJM, the organization that coordinates the movement of electricity in 13 states and the District of Columbia, faced near dire circumstances in January 2014. Record demand from the so-called 'Polar Vortex' (extreme cold weather), combined with a shortage of natural gas, put extraordinary stress on the power system. PJM applied for, and received, emergency approval from federal regulators to remove price caps on electricity.

The lights stayed on. Nevertheless, the crisis sent power prices to record levels, and several energy suppliers went out of business. Though conventional wisdom held that summertime was the only time of possible threats to the balance of

CHALLENGES

While the District has the building blocks of an enviable environment for clean energy – including deregulation, a highly concentrated commercial building sector, and an outstanding legislative history – the city has struggled to leverage its inherent advantages. Challenges and missed opportunities abound.

High Fees & Costs

District businesses face enormous utility-related burdens. Some examples of the costs to the commercial sector, which accounts for ~70% of the District's building energy load:

- ~$756 million on electricity[1]; ~$104 million on natural gas[2]; $132 million on water[3] (most recent annual totals)
- Commercial utility costs approach the total sum of commercial property tax collections ($1,250M in FY2013)[4]
- Businesses face enormous charges from utility-related fees enacted since 2008, including funding for the 'undergrounding' effort and the Sustainable Energy Utility (SEU)[5]

Despite these significant costs, the commercial sector often sees minimal returns on energy-related investments. The $1 billion effort to bury power lines is particularly notable. While businesses will finance the vast majority of the effort, the undergrounding project will not target any areas with a high concentration of commercial energy users.

The track record of the SEU's work in the commercial sector also raises questions. Even though businesses bear the highest burden for the entity's $20 million annual budget, the program directs a majority of its incentive programs to the residential sector. The SEU has also struggled to meet its contractual benchmarks.

Reliability Risks

"The weather events experienced [during January 2014] provided an early warning about serious issues with electric supply and reliability… This country did not just dodge a bullet – we dodged a cannon ball."

-- Nick Atkins, CEO of American Electric Power, April 2014, Congressional Testimony

Within the energy industry, concerns about reliability have become increasingly stark. In the past, electricity blackouts were sometimes perceived as simply 'freak' accidents, but the polar vortex of 2014 was a stark reminder that power shortages are not out of the question.

improve reliability is the project to bury power lines. (The genesis for this endeavor was the 'derecho' weather event in 2012 that left thousands without electricity.) Though it is undoubtedly important to alleviate problems caused by downed power lines, the District's energy infrastructure faces risks far beyond thunderstorms.

Potential imbalances between supply and demand may pose the most serious long-term threat to reliability. As the region moves to close a number of large coal-fired power plants, these strains could increase significantly in future years. Said plainly: During times of high consumption and/or when supply is constrained, there is a chance that there will not be enough power to meet demand.

The grid has been sized for what are effectively several hours of high demand each year, with large centralized power plants and associated

"Since the late 1990s, most new power generating units have been built to burn natural gas. Unlike coal or oil, gas is not usually stored on site, so generators rely on real-time deliveries from the gas pipeline network.

[During the 'Polar Vortex'] with gas consumption also hitting record levels, generators were unable to contract for sufficient volumes and arrange for delivery through an already congested pipeline network.

The increase in gas-fired

distribution systems built to accommodate those peaks. A century ago, this was a prudent strategy; indeed, it was the only system possible to meet the country's rapidly expanding energy needs.

However, two new facts define the grid in 2014. First, the previous century's system of centralized power distribution is near capacity, a problem exacerbated by the looming closures of coal-fired plants. Fortunately, however, the second feature that defines modern energy is promising: new technologies – from solar to dynamic controls – now enable cost-effective distributed generation.

Disconnected Regulatory Constructs

Many jurisdictions are now working to modernize their antiquated energy systems. Maryland has had a "Utility 2.0" effort for nearly three years, and New York's outstanding "Reinventing the Energy Vision" has brought together hundreds of stakeholders to fashion a new approach.

The District government has no such effort. Beyond a community-based working group, which has had limited engagement with the District government, the only grid-specific initiative is the undergrounding of power lines. The legislation to fund the project makes reference to "alternative" means to improve reliability, as did the Undergrounding Task Force, but there has yet to be any pursuit of such an approach.

With the current regulatory system designed to serve only centralized power distribution, the lack of work to modernize regulations – to enable and incentivize the deployment of technologies from microgrids to solar – will have an increasingly noticeable impact.

Limited Clean Energy Deployment

The Clean and Affordable Energy Act of 2008, which has been amended several times, set forth ambitious benchmarks for renewable energy. In particular, clean

energy advocates heralded its vision for solar power: ~66,000 MWh of generation by 2014, double that figure by 2018, and nearly 250,000 MWh by 2023. The goals were accompanied by a renewable energy credit (REC) policy that created historic incentives to go along with the requirements.

The desired solar market, which serves an indicator for broader clean energy deployment, has not materialized. It is likely that less than 17,000 MWh of solar was generated in the District in 2014, and it could be several years before production tops 35,000 MWh – a dramatic delta from the city's policy goals. Further, and perhaps most troubling, there has been almost no recent deployment of large-scale distributed assets such as combined heat and power (CHP) or microgrids.

No Plan

The very goals and mission of the SEU, an organization at the center of the District's work on these issues, illustrate a limited vision for the city's energy future. The SEU's current goal is to cut electricity use by just 60,994 megawatt-hours (MWh) per year – a small figure in the context of the District's annual load of more than 11 million MWh. Even if successful, the SEU now anticipates reducing the city's carbon footprint just 10% by 2032.

Yet, in line with cities around the globe, the District has also proclaimed a desire to cut consumption by 50% in that timeframe. How will the city make up this vast delta? There is currently no strategy. Even though regulations require the government to issue a comprehensive energy plan every five years – a foundational document to forge a path forward – the District has not formulated such a plan since 2003.

A NEW STRATEGY

Moving forward, a simple strategic imperative is proposed: Dramatically reduce the city's energy risks and costs. None of the missed opportunities are

catastrophic, nor the challenges too great, to create world-class energy infrastructure. To make that happen, the District must leverage its inherent advantages, follow global best practices, and encourage innovation on three fronts.

1. Modernize Grid & Regulatory Constructs

Foundationally, the city must replace the current inertia with an action plan to move towards an energy system that is more distributed, resilient, and efficient. The District, like many locales, has an infrastructure that is almost singularly designed to distribute power from far-away resources in a one-way transaction. Moving away from this arrangement will not be easy. Such a transformation will require modifications to regulatory compacts that have defined the utility model for nearly a century.

Embrace Distributed & Dynamic Power

The core of a modernized energy system is distributed power (including solar, fuel cells, microturbines, combined heat and power, electric cars, batteries, and more). This space has seen tremendous innovation in the last 15 years and, as a result, now has marginal costs that rival those for traditional generation. Further, through tools such as demand response and dynamic controls, it is now possible to flatten loads so that demand does not spike beyond reasonable levels of supply. This means that, for the first time, distributed assets can provide enough reliable energy to satisfy the needs of modern buildings.

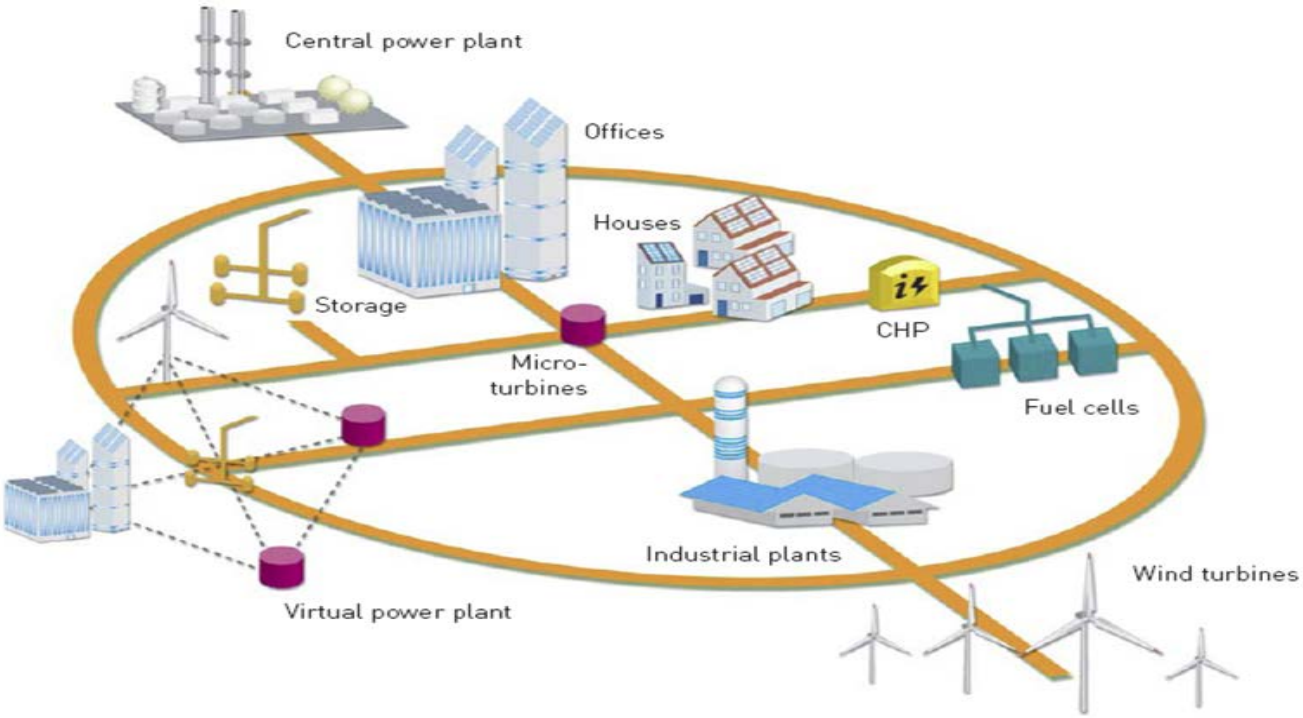
Ultimately, the grid must move from a "hub and spoke" system to a network that is increasingly nodal and multi-directional (as seen below).

Integrate Distributed Resources

The major challenge to the success of this new strategy is to effectively integrate distributed assets into the grid and to properly incentivize all stakeholders – utilities, energy companies, and customers – to scale these resources.

The electric utility is vital to this shift. Not only will the ability to transmit power from centralized plants be required for generations to come, but the utility is also uniquely positioned to provide services to this evolving and distributed system. From properly structuring markets to providing information and price signals, utilities can create a competitive environment that provides customers with optimal energy services.

The current regulatory construct, however, only rewards the utility for how much money it spends to deliver energy. This must be changed, so that the grid and



the utility's investments are properly valued for modern-day performance. In the end, this means future rate cases in which utility returns are defined by more than power lines and substations – and, instead, by the manner in which distributed assets are enabled and deployed.

Seek Participation in EPA's Process to Regulate Greenhouse Gases

The U.S. Environmental Protection Agency (EPA) has embarked on historic rulemaking to regulate greenhouse gas emissions from power plants. Under section 111(d) of the Clean Air Act, the Agency is proposing to reduce carbon emissions 30% below 2005 levels by 2030.

Because the District of Columbia does not have any electricity generation within its borders, the Agency has not explicitly involved the city in the process. It would be shortsighted, however, to assume the District has no role to play. Instead, the city could take innovative steps to participate in the process and capture value for businesses and residents.

If prudent and forward-looking actions are taken (such as those proposed in this document), the District will be on a path to exceed goals set forth under EPA's proposed rulemaking. From energy efficiency to increased clean energy generation, the District will play a critical role in reducing the carbon footprint of the regional grid.

As such, the city could partner with other jurisdictions to create a coordinated effort to satisfy EPA's mandates. For instance, the District could aggregate the results of its energy efficiency programs – which reduce the need for electricity from nearby power plants – and help a neighboring state meet its carbon reduction benchmarks. If done correctly, this approach would yield significant financial benefit for the District, and it could spur the kind of regional collaboration required for prudent long-term energy planning.

Enable Dynamic Pricing

Customers and energy service companies are also essential players in 'Utility 2.0.' Notably, energy users must play a key role to minimize the grid's strain during peak loads. While demand response has been an important tool over the past decade, new programs must be created to go further. Fortunately, the

District has already heavily invested in Advanced Metering Infrastructure (AMI, or 'smart meters') that can enable robust programs to flatten and shape loads.

One of the best ways to incentivize such behavior is to move away from monolithic one-size-fits-all pricing and towards time-of-use rates. For example, higher prices from 3-5pm could incentivize energy users to "pre-cool" their buildings (to, say, 68 degrees) at 2pm and to turn off air conditioning from 3-5pm thereby reducing the strain on the grid with virtually no impact on occupant comfort. When end-users move loads away from peak demand they become integral components of the modernized grid.

Engage the Proposed Exelon – PEPCO Merger

Exelon, one of the nation's largest energy companies, is attempting to purchase Pepco. This transaction has created a rare occasion during which myriad parties (the utility, regulators, government officials, energy companies, community leaders, customers, etc.) are naturally and meaningfully engaged in utility matters. There is no better time set priorities, align relevant stakeholders, and begin pursuit of the dynamic modernization our energy infrastructure requires.

2. Aggregate Buying Power and Unleash New Capital

The District's considerable spending on energy should be used to its advantage. By leveraging and realigning the near billion dollars that businesses spend annually on power, the District can create mechanisms through which clean energy is deployed at unprecedented levels.

Utilize Competitive Markets for Long-Term Energy Purchases

In many US markets, vertically integrated utilities mean that consumers must buy power from the same entity that distributes it. Through utility deregulation at the turn of the century, the District of Columbia took a different course, moving

towards a more competitive environment in which users can purchase energy from third parties. This structure has several inherent advantages.

One of the primary benefits is the ease with which energy users can enter into Power Purchase Agreements (PPAs). Until relatively recently, PPAs were the unique domain of utilities and wholesale buyers. However, renewable and distributed energy is now economically feasible for retail energy users – and countless entities, from the District government to Google to Dow Chemical, have begun to pursue their own PPAs. There are two key advantages to these transactions:

1. *Low rates and long-term hedge against price volatility*. While traditional retail power supply can be hedged for only several years (i.e. it is impossible to lock-in prices after five years), renewable energy purchases can be done in which rates are fixed for a period of 10, 20, and even 30 years. These contracts not only reduce prices on the first day of the contract but, critically, they provide invaluable reduction to price risk over the long term.

2. *No upfront capital requirements*. The energy buyer (e.g. business, government, institution) simply commits to purchase the energy generated, at a contracted rate, for the term of the PPA. This commitment is enough to attract third-party capital – and not the debt of the energy user – to finance construction of the generation infrastructure (e.g. solar, wind, combined-heat-and-power, etc.).

In 2014, the DC Department of General Services developed two of the largest (non-utility) renewable energy procurements in the country. With PPAs to purchase 46MW of offsite wind and 10MW of onsite solar, the city will dramatically reduce costs and risks without any impact on its debt cap. Moving forward, the District government and local energy service companies should work with the commercial sector to scope similar programs.

Pursue Aggregated Purchasing

Another advantage of the District's deregulated market is the ability of energy users to pool together to purchase power collectively. The benefit is plain: With greater loads, aggregated procurements create scale that significantly reduces costs.

Collective purchasing could be combined with aforementioned PPAs to transform the energy supply for District businesses. From offsite renewable energy power plants, to onsite generation, to the creation of district-level microgrids, the aggregation of the District's buying power is capable of leveraging third-party capital and catalyzing truly game-changing efforts.

In 2014, George Washington University (GW), American University (AU), and George Washington University Hospital (GWUH) illustrated the promise of this approach with an historic aggregated clean energy purchase. The 'Capital Partners Solar Project' involves the delivery of 52MW of low-cost solar power to GW, AU, and GWUH. In the words of Greg Wold, president of Duke Energy Renewables (the deal's supplier), this purchase "provides [the consortium] with low-cost energy at a stable price for years to come."

Unleash Capital Through Strategic Lending

While "green banks" have become an increasingly effective tool to leverage third-party capital for infrastructure projects, the District's efforts have been muted. This need not be the case. The following approaches, which could be done under the umbrella of an Infrastructure Trust, should be pursued to catalyze high-impact projects without huge burdens on taxpayers and ratepayers:

- Co-lending and credit enhancements. The city can play a crucial role when entities without outstanding credit struggle to obtain loans, or when a project's risk profile is too big to attract traditional lending support. This

can be done through a number of mechanisms, including credit enhancements (e.g. interest rate buydowns) and/or co-lending (i.e. a small portion of the entire project is recognized as debt by a newly-created infrastructure trust).

- Liquidity reserves. Even when government subsidies provide enough incentive to make a project economically viable, many projects are not completed because of basic problems with cash flow. For instance, even when possible SEU investments suggest retrofits make theoretic economic sense, many small- and medium-sized businesses cannot afford to wait months for an incentive check to arrive. In these instances, even small amounts of short-term capital can help projects materialize.

- Standardize Underwriting and Measurement & Verification (M&V) guidelines. Securitization of energy efficiency investments is thought by many to be the holy grail of clean energy finance. In other asset classes, such as solar, securitization has led to lower costs of capital, and it is likely the same thing would happen with energy efficiency. Unfortunately, underwriting standards for efficiency retrofits have been disparate and fragmented. Without normalized terms, conditions, and benchmarks for performance, it is nearly impossible to put multiple projects into a single investment vehicle. Moving forward, the District should work with other jurisdictions to standardize metrics and, ultimately, help enable aggregated financial instruments for efficiency.

3. Transform the Market with Data and Performance Transparency

Too often, government clean energy programs take an "if you build it, they will come" approach. That doesn't work. Assuring that new technologies are available to customers is a necessary step, but alone it does little to create demand for its use. A central factor in catalyzing this demand, then, is to highlight the underlying conditions that make clean energy attractive. The best

way to make this happen, from the perspective of government action, is to enable transparency of energy data and performance.

Make Smart Meter Data Available to All Energy Users

PEPCO has spent $89 million on an historic deployment of advanced meters in DC. The promise of this technology includes aforementioned time-of-use pricing, unprecedented energy data analytics, and robust programs to flatten and shape loads. If energy users do not have access to the granular and timely information collected by the new advanced meters, however, their value is somewhat limited.

PEPCO made a significant commitment to ensure the benefits of smart meter technology is widely shared when it signed on to the White House Green Button initiative. The Green Button initiative, which focuses on data availability, rests on a core assumption: energy data can transform efforts to reduce demand.

In 2012-2013, PEPCO began to meet its Green Button commitment by partnering with the District government in an extremely successful pilot for municipally-owned facilities. Most recently, PEPCO has worked on a new system to make data available to all of its customers. The city and PEPCO must now finish the job – make sure every energy user has easy access to their data.

Streamline and Improve EnergyStar Benchmarking

The District was the first jurisdiction in the country to mandate EnergyStar Benchmarking for private buildings. The process was not without its hurdles. Moving forward, building owners now deserve a sober assessment of the program's early strengths and weaknesses – and the District should amend the process to minimize unnecessary regulatory burdens and to seek more impactful market transformation.

Create a 'SmartDC Network'

While there are countless plans and white papers about "smart cities" and "big data," very few have begun the process of deploying real solutions and making substantive progress. The District could be one of the first.

By aligning utilities, government, building owners, and citizens – and empowering these stakeholders with real-time energy data– the city could create one of the world's first truly smart cities. Public touchscreens could show an aggregated 'pulse' of a neighborhood's energy use and compare it to others around the city. Building owners and tenants could have dynamic web-enabled displays of their energy use. Real-time leaderboards could foster competition to win prizes from the city. The possibilities are endless.

Through simply leveraging existing infrastructure and technology (including the aforementioned smart meters) the District could create community-wide solutions to cut energy use and better engage its citizens. These opportunities could range from aggregated demand response to cooperative energy purchasing (more below).

RECOMMENDED FIRST STEP: CREATE 'GRID 2.0' PROJECT

Some of the actions in the three-point strategy discussed above will take many years, perhaps even a generation. Yet, to navigate each of these issues, including those that are long-term, an immediate action is required: begin a process that seriously examines and develops the path to a more distributed, self-reliant, and low-risk energy future.

For too long, the District has substituted disparate tactics for strategy. However, if the city is to forge a new path, one that meaningfully reduces its carbon footprint, that must change. The effort to create this transformation could be called 'Grid 2.0.'

Define the 'pie' and options to reshape it.

At the core of this project should be a simple exercise: plot a chart of the business-as-usual scenario over the next two decades and identify the factors that can reduce that baseline by 50%. What 'slice of the pie' can we expect from combined heat-and-power, solar, fuel cells, and other clean energy options? How much can efficiency contribute? These are not simple questions, of course, but the District must make a serious attempt to answer them.

Deep study of regulatory modifications is required to enable distributed, clean energy future.

The legal and regulatory remedies required to meet the needs of cutting-edge, 21st century technology will be complex. And while some other jurisdictions are looking at this issue (e.g. NY, MD), there is no playbook, yet, about how best to move forward. The District could take a leading role to help create this new model through a penetrating study, perhaps led by a leading expert in utility regulation.

Convene all stakeholders.

As New York's "Reinventing the Energy Vision" has shown, merely convening key stakeholders can have an enormously positive impact on grid modernization

efforts. Because of understandable inertia, many key groups – from utilities to energy users to regulators – rarely even talk to each other. A comprehensive Grid 2.0 process, one that pulls together all relevant parties, will fix that immediately.

Develop More Robust Accountability

The business adage, 'you can't manage what you don't measure,' holds true in the energy space. And, in 2015, measuring things once every few years is insufficient; backward-facing assessments of energy performance, even on an annual basis, are antiquated and lack resonance.

To infuse Grid 2.0 with urgency and to create a new rhythm of accountability, the city should develop a state-of-the-art system of data feedback. This needn't be difficult: By simply leveraging its smart meters and capturing data that's already available, the District could create an almost real-time window into its performance. With a 'pulse' of the community's carbon footprint, the city could drive ever-increasing standards of excellence.

NOTES

[1] DC Public Service Commission (PSC) website indicates 6,166,127 MWh of electricity consumed by commercial customers for the period December 2013 – November 2014; the US Energy Information Administration (EIA) indicates average retail cost for commercial during this period of $123/MWh [6,166,127 (MWh) *123 ($/MWh) = $754,254,819]

[2] PSC indicates 114,590,253 therms of natural gas used by commercial customers for the period November 2013 – October 2014; 114,590,253 therms equals 11,456,289 Mcf; EIA indicates average price of natural gas (commercial) during this period of $9.08/Mcf; 11,456,289 * 9.08 ($/Mcf) = $104,023,112

[3] DC Water indicates $131,533,000 in anticipated revenue from commercial customers for the period October 2014 – September 2015 (p6, FY2015 annual budget adopted December 5, 2013). indicates 2013 revenues of for commercial ratepayers

[4] DC' s FY2015 Budget indicates Class 2 (commercial) tax collections account for 67% of total real property tax collections ($1,886,854M net in FY2013) [$1,886,854,000 * 67% = $1,264,192,000]

[5] SEU fees are $1.5/MWh for electricity and $.014/therm; AOBA testimony in front of the DC Council Committee on Government Operations on October 21, 2013 (p2) indicated "over $70 million" in annual costs related to undergrounding.

Tuesday, September 29, 2015 5:13 PM ET Exclusive

Exelon, Pepco deal could be revived with settlement agreement, new application

By Amy Poszywak

With Exelon Corp. and Pepco Holdings Inc. having officially filed a request that District of Columbia regulators reconsider their order rejecting their proposed merger, and the possibility of an entirely new merger application now in the mix, industry observers have proposed a number of new possible outcomes for the deal.

In their joint filing, the companies argue that the commission's rejection order contains "various errors of law and fact which, if corrected, would cause the commission to conclude that approval of the proposed merger is unquestionably in the best interests of Pepco's customers and in the best interests of the District of Columbia and, therefore, is in the public interest."

The filing points out 54 specific instances of what Exelon and Pepco said are errors on the part of the commission including interpretation of policy, application of the commission's merger standard, ignoring of "substantial record evidence" of the merger's benefits, and failure to consider additional conditions proposed by the Office of Public Counsel, the District of Columbia government and other intervening parties.

The companies also claim the commission failed to adequately explain its departure from past practice of identifying conditions that would, if accepted, make the proposed merger in the public interest, narrowing in on comments made by Commissioner Willie Phillips, who issued a partial dissent from the PSC's order.

"We remain convinced our merger offers significant benefits to customers and the District, and we continue working to complete it," President and CEO Chris Crane said in a statement. "Since the Public Service Commission explained why it didn't approve the merger last month, we've worked to learn what's most important to the District — and we are responding."

The companies confirmed Sept. 28 that they are working with the District of Columbia government to reach a settlement agreement; the office of the mayor of the District of Columbia released a statement earlier on Sept. 28 confirming that the administration is engaged in "substantive discussions" with Exelon and Pepco on a settlement agreement "that would address, in a new application, the administration's concerns." Any settlement agreement would be presented to the PSC for review, public comment and final determination.

What's next?

Industry observers thus far have mixed opinions on what appeal or the possibility of a settlement and new merger application means for the deal's fate. Following the commission's initial rejection of the companies' original merger application, general sentiment appeared to view consummation of the transaction as less likely to occur.

Regulatory Research Associates, an affiliate of SNL Energy, said Sept. 29 that the request is likely to turn out to be just a formality, "a necessary step that must be completed prior to seeking court review," which the companies would be able to do once the commission either rejects the petition for reconsideration or grants it and then completes a reconsideration proceeding.

"Regardless of how compelling Exelon/[Pepco]'s arguments might be, it appears to us unlikely that the Commission would reverse itself absent substantial additional commitments (given the PSC's reluctance to even outline possible remedies for its concerns in the initial order) and/or the filing of a unanimous settlement," RRA said. "As we have noted in the past, historically, there have been few (if any) instances where a merger has been approved, absent a settlement that was unanimous or was at least signed by all of the major parties."

It is possible, however, that a settlement be achieved during a reconsideration process, RRA added, though any parties to the case that do not agree to a settlement would again be allowed to respond, and the PSC would be required to review the agreement. Additionally, any new commitments offered to parties in D.C. could then be pulled over to parties in states that have already approved the deal — Maryland, Delaware and New Jersey — pursuant to most favored nations clauses.

In a Sept. 29 research note on Exelon, Guggenheim Securities LLC suggested the request for reconsideration could be the company's way of buying time before reaching a settlement with the District's Mayor's office and filing an entirely new merger application with the PSC. Analyst Shahriar Pourreza said if a settlement is reached, Exelon could file either file a new application or submit the settlement as part of the existing proceeding with the PSC.

"Exelon would likely require an expedited hearing to proceed without going through another prolonged PSC review and comment period," the analyst wrote.

Pourreza said Guggenheim maintains its view that the deal is likely dead in the water, but talks of a settlement agreement and a new merger application could change that outlook.

"[Exelon] is looking for the Commission to provide terms that would satisfy approval; however, the Commission has already declined to do so," the analyst wrote. "In our view, the hurdles placed on [Exelon] are unachievable, in part because of the Commission's personal beliefs. However, an agreement with key stakeholders as parties to a settlement could be enough to sway the Commission to look past their ideology — too early at this juncture to speculate."

Wells Fargo analyst Neil Kalton took a more positive spin on the settlement agreement discussions, writing a Sept. 29 research note that in light of that update, "we believe the merger between [Exelon] and [Pepco] is very much back on track with a high probability of success." Kalton said that if the settlement talks with the mayor's office are successful, and the companies reapply with the PSC, that would likely trigger a five- to seven-month process.

"We view this new information as a positive data point and supportive of our Outperform rating on [Exelon]," the analyst wrote.

The proposed merger seeks to combine Exelon's three electric and gas utilities — Baltimore Gas and Electric Co., Commonwealth Edison Co. and PECO Energy Co. — and Pepco Holdings' electric and gas utilities — Atlantic City Electric Co., Delmarva Power & Light Co. and Potomac Electric Power Co.

Summary of GSA and Pepco/Exelon Interactions
Formal Case No. 1119
Exelon/PEPCO Merger

GSA has been a party in the Pepco/Exelon case that was initiated in May of 2014. GSA took no formal position on the merger for or against. In addition, the Department of Justice did not oppose the merger on Anti-Trust grounds. GSA participated in the Commission ordered confidential settlement meetings and actively argued on behalf of Federal interests, particularly concerning distribution of any benefits to customers. GSA met with Pepco/Exelon on February 20, 2015 to discuss confidentially items important to GSA in addition to a fair distribution of any merger benefits to Federal customers. Those items of importance concerned support for: distributed generation, microgrids, existing standby rates, virtual net metering and utility energy savings contracts (UESCs). No agreements were reached. GSA made it clear that the Federal government was a large current and future customer of Exelon and that GSA and the Federal government already conducted a significant amount of business with Exelon companies including the purchase of electric distribution (Chicago, Philadelphia, Baltimore), electric and natural gas supply and energy and utility energy savings performance contracts (ESPCs/UESCs).

The Commission denied the merger on August 27, 2015. On October 5, both the City and Pepco had separate discussions with GSA and presented a settlement agreement that was ready for filing the following day. GSA was not offered to be part of the settlement agreement or to alter the terms thereof. The City (Tommy Wells) concured that there were no tangible benefits for Federal/commercial customers and no firm offers were made to include GSA in the settlement. Pepco concurred that there were no immediate benefits for Federal customers. Pepco was still interesting in discussing items of concern, but they would not be included in a binding settlement agreement. Following the submission of the signed Nonunanimous Settlement Agreement on October 6, the Commission reopened FC 1119 to obtain comments on the Settlement. The week before testimony was due on the Settlement Agreement (i.e. Nov. 17, 2015), Pepco again reached out to GSA wanting to discuss potential settlement items. GSA reiterated the same items from the Feb. 20, 2015 meeting. Pepco was clearly not terribly interested in making any serious offers to GSA and discussions broke down in short order. That was the last contact between GSA and Pepco/Exelon. GSA filed its Initial Brief on December 16, 2015 and its Reply Brief on December 23, 2015 arguing for rate protections for all DC ratepayers, the Federal government included, through a rate freeze, and asking that the microgrid provisions of the settlement be modified.

TASC STATEMENT NO. 1

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	**)**	
v.	**)**	**Docket No. 2015-2468981**
PECO Electric Utilities Corporation	**)**	

DIRECT TESTIMONY AND EXHIBITS

OF

STEVEN GABEL

ON BEHALF OF

THE ALLIANCE FOR SOLAR CHOICE (TASC)

JUNE 23, 2015

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I. INTRODUCTION

Q. Please state your name and business address.

A. My name is Steven Gabel, and my business address is 417 Denison Street, Highland Park, New Jersey 08904. I am presently employed as President of Gabel Associates, Inc., an energy, environmental, and public utility consulting firm.

Q. On whose behalf are you testifying?

A. I am testifying on behalf of The Alliance for Solar Choice ("TASC"), an Intervener in this matter.

Q. Please summarize your educational background and professional experience.

A. I am an economist who specializes in public utility economics and regulation. I have over 30 years of experience in the energy industry, working at the New Jersey Board of Public Utilities ("NJBPU") and as an energy consultant at Gabel Associates. Over the years my responsibilities have included working as an economist for the NJBPU; Bureau Chief of Electric Rates and Tariffs for the NJBPU; Director of the Electric Division at the NJBPU; and Director of the Division of Solid Waste at the New Jersey Department of Environmental Protection.

During my employment at the NJBPU, I worked extensively on various utility rate cases and developed, implemented and testified with respect to rate setting, alternative energy, demand side management, incentive regulation, cost of service and tariff design initiatives.

From 1993 to the present, I have served as the President of Gabel Associates to utilize my expertise in the field of energy. Gabel Associates is a consulting firm that assists clients in strategic energy issues, regulatory matters, project development of renewable and fossil fueled generation markets, and energy procurement in wholesale and retail energy markets. The firm currently provides energy planning, procurement and financial advice, strategic analysis and expert testimony to a wide range of public and private sector clients.

I have also testified extensively before state regulatory and legislative bodies with respect to ratemaking, cost of service, industry restructuring, energy policy, renewable energy policy and tariff design issues, including direct involvement in the development of renewable energy policy, standby rates, and net metering policy. In addition, I am involved in tariff and policy development in PJM with respect to energy, capacity, transmission and related issues. Finally, with respect to my understanding of commercial issues, I have been involved in the development of over 200 renewable energy projects and hundreds of energy transactions and power purchase agreements for energy commodities, combined heat and power, bulk power, and renewable projects.

My educational background includes a BA in Economics from the University of Pennsylvania and a MA in Economics from Rutgers University, where I studied price theory, industrial organization, and the history of economic thought.

My professional experience is also detailed on my resume, which is attached as Exhibit SG-1.

Q. How is your testimony organized?

A. This testimony is organized as follows:

- Purpose of the Testimony

- Summary of Recommendations
- Approach to Rate Design
- Energy Policy Overview and Solar Energy Benefits
- Cost of Service and Rate Design Review of the PECO Rate Proposal
  - Residential Basic Customer Charge
  - Demand/energy charges
  - Capacity Reservation Rider (CRR) Proposal
- Customer Service/Interconnection issues

II. Purpose of this Testimony

Q. Please describe the purpose of your testimony in this proceeding.

A. The purpose of this testimony is to review various tariff changes proposed by PECO with respect to their reasonableness from a ratemaking perspective and their impact on the development of renewable resources in the PECO territory, consistent with Pennsylvania energy policy.

Specifically, PECO has proposed, among other things, to (a) increase its Customer Charge for residential customers, (b) revise its commercial and industrial demand and energy charges such that all of its distribution costs not recovered in customer charges is recovered in its demand charges, with no recovery through energy charges, (c) adjust the minimum demand in its commercial general service tariffs and (d) add a capacity reservation rider (CRR) applicable to customer generators with installed renewable energy generation capacity that exceeds 100 kilowatts (kW) but is not greater than 10 megawatts (MW).

Given the substantial emphasis (and expenditures) that the petitioner has placed on upgrading and improving its distribution services, I also evaluate whether such

emphasis includes responsiveness and reasonable policy toward the interconnection of on-site renewable energy projects.

My review has been performed within the context of reasonable cost of service and ratemaking principles that incorporates the benefits associated with solar energy resources, consistent with Pennsylvania's energy policy.

III. Summary of Recommendations

Q. Can you please summarize your conclusions and recommendations?

A. Yes. Several elements of PECO's proposed rates are contrary to ratemaking principles and to Pennsylvania policy and will deter development of on-site renewable energy in its service territory. These include:

1) Several PECO rate design proposals will unreasonably and negatively impact the development of on-site solar energy in its territory, by unreasonably extending pay back periods, reducing internal rates of return to customers who make such investments and sending a negative signal to the market and investment community regarding renewable energy development.

   a. The proposed Residential Customer Charge increase from $7.13 per month to $12.00 per month is not cost based, is excessive in its customer impact and will deter energy conservation and on-site renewable energy development. Instead I recommend an increase in the Residential Customer Charge from $7.13 to $8.25 (at full rate relief).

   b. Instead of eliminating energy based distribution service charges to commercial and industrial customers, the rate increase (net of customer charges) should be assigned to both demand and energy charges.

c. The tariff provision proposed by PECO for its GS tariff that would include a minimum demand based on the prior year's maximum demand should be rejected.

d. The CRR should be rejected, as it appears to be directed toward achieving the goal of revenue stability as opposed to cost causation. Additionally, its design is not applicable to and inappropriate for solar projects. Specifically: the notification requirements in particular do not make sense for solar projects; the CRR fails to address how a customer's investment in storage+PV sytsems will be charged; and the requirement for an open ended negotiation of CRR charges would hinder customer investment in and efficient development of larger solar projects.

2) In light of the significant distribution cost recovery that PECO is requesting to maintain and improve its level of distribution service, rate relief should be conditioned on implementation of improvements to distribution services in the area of on-site renewable energy interconnection and storage development, detailed in Exhibit SG-2.

IV. Approach to Ratemaking and Rate Design

Q. Please discuss the basic ratemaking principles that apply to the development of a cost of service study and the resulting customer class tariffs.

A. Cost of service studies are a basic tool of ratemaking that quantify the costs of serving individual customer classes. Basing rates on the cost of service fulfills many goals, including:

- Assuring that customers receive the right price signal so they use energy more efficiently;

- Assuring that there is not "undue discrimination" between customers; *i.e.*, it is unfair for one customer or group of customers to be treated differently than customers who cause the same cost profile;

- Identifying and addressing subsidies between customer classes; and

- Providing financial stability to a utility as the rates and revenues collected under cost based rates track costs incurred.

These principles not only apply to the overall level of rates, but also to the rates set for classes of customers. A cost of service study is a key guideline to address these goals.

Of course there is not always agreement about how the cost of service study should be conducted, specifically (for electric utilities) with respect to: (a) how costs should be functionalized (are the costs customer, demand or energy related?); (b) how costs should be allocated among rate classes; and, (c) how the results of the cost of service study should be translated into specific tariff rates. In this matter, points (a) and (c) are of critical importance as, with respect to point (c), PECO's proposed translation from the results of the cost of service study to tariff rates is problematic.

Moreover, it should be recognized that a cost of service study is a static analysis - the allocation of costs based on a test year - and does not capture long term costs and benefits, nor recognize that a cost that is fixed in the static analysis may be variable (or avoidable) in the long run.

Q. What is your assessment of PECO's approach to cost of service ratemaking?

A. In the utility's petition to increase rates, there is a significant disconnect between PECO's cost of service study and the reasonableness of the proposed tariff design. The proposed residential customer charge is in excess of its costs, will depress investment in energy efficiency and renewable energy, and is contrary to energy conservation policy.

Additionally, PECO's recovery of its distribution costs from commercial and industrial only through its monthly demand charges is unreasonable. This premise is contrary to cost causation principles and sound energy policy. PECO's proposed commercial and industrial tariff design is based on the false premise that because distribution costs are "fixed", they should be recovered only in fixed customer charges and monthly demand charges.

Q. Are there any factors that should be considered in setting rates in addition to basing them on cost?

A. Yes. There are other factors that can reasonably come into play in designing tariffs, including: (a) consistency with social, energy, environmental or other policy goals; (b) simplicity; (c) cost to implement or administer; and (d) gradualism in ratemaking, i.e., abrupt changes can be viewed as unfair to customers.

Q. Please explain how on-site renewable energy resources, like solar energy, should be viewed within the ratemaking process.

A. On-site (or behind the meter) renewable resources should be viewed as any other activity by a customer who reduces (or increases) his or her power purchases from a utility. Customers should be charged rates that are reflective of the costs they impose on the system. In reaction to that price signal (as well as a host of other factors), customers will make decisions regarding their use of utility services. In

some cases, the signal will cause the customer to take steps to reduce consumption; for example, the purchase of an energy efficient air conditioner, heat pump, geothermal system, or the installation of a solar system on the roof of a home. From the perspective of the utility system and its cost impact, these steps all have similar impacts and should be treated in the same manner (while recognizing the individual profile and performance of each). Otherwise, the utility would be discriminating against the technology being designated for different treatment.

On the other hand, sometimes a customer will react to price signals (and other factors) and increase their purchase of utility services, for example, by buying a window air conditioner for a room where there was no unit. In that case, the customer would pay for the cost of the additional energy consumed, based, again, on the cost based tariff of the utility.

Accordingly, cost based rates can help to assure that renewable resources are treated in a non-discriminatory manner, and can promote the use of such resources by sending the appropriate price signals to customers and the investment community. My review of PECO's rate proposals is undertaken in this context, with cost based rates as a touchstone, and with consideration of Pennsylvania's policy direction.

V. Renewable Energy Policy Overview and Solar Energy Benefits

Q. Should PECO's proposed rate design be reviewed to assure its consistency with state and federal policy trends that emphasize the development of renewable energy markets?

A. Yes, it is important to assure that rates are reasonable from the perspective of sound (cost-based) ratemaking and for consistency and in furtherance of state and federal policy.

Q. What current federal policy developments should be considered in the context of this matter?

A. In June 2014, the Environmental Protection Agency ("EPA") issued a proposed rule under Section 111(d) of the Clean Air Act. Section 111(d) requires each state, with the assistance of the EPA, to develop "standards of performance" for existing stationary energy sources and an implementation plan to achieve those air quality standards related to greenhouse gas reductions. The term "standards of performance" is defined as "a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction… (taking into account the cost of achieving such reduction…)."[1]

Q. Did the EPA make specific reference to renewable energy sources as potentially contributing to the achievement of emission reductions as part of a state plan?

A. Yes, the EPA has indicated that renewable energy sources could be considered as part of a flexible compliance mechanism. Specifically, the EPA indicated that[2]:

1. States may be credited with emission rate reductions afforded by the construction of new renewable fuel sources, thus encouraging the substitution of new renewable energy sources for fossil fuel-fired generation; and

[1] See 42 U.S.C. 7411 (a) (1)
[2] 79 FR 34829, page 34837

2. Renewable energy sources and energy efficiency programs are a cost-effective way to reduce emissions, as they will reduce emissions from CO2 emitting generation resources thereby enabling compliance.

Q. How does the utility's proposal in this rate case interact with this federal policy?

A. EPA is expected to issue a final rule during the summer of 2015. Pennsylvania will need to file an implementation plan to achieve the emission targets assigned to affected emission sources in Pennsylvania. The plan will need to demonstrate compliance with the emission targets by an interim date (to be determined in the final rule) and final compliance in 2030. Given that EPA includes a flexible compliance mechanism that allows for a portfolio of solutions, any action taken that will tend to depress customer investment in energy efficiency or renewable energy will make it harder for the state develop a plan for compliance and will likely increase the cost of compliance for fossil power generators and ultimately for consumers. It would be unwise, at this time, for the Commission to approve any proposal that will tend to reduce customer access to, or investment in, energy efficiency or customer sited renewable generation.

Q. Please summarize Pennsylvania energy policy as it relates to renewable energy.

A. Pennsylvania has adopted an Alternative Energy Portfolio Standard (AEPS)[3] that incentivizes the growth of distributed generation with a set-aside for solar PV and energy efficiency. [4] It has established financing programs to facilitate renewable

[3] 66 Pa C.S. § 2806.1 (2008). PUC Order Docket No. M-2012-2289411 (Phase II Final Order).
[4] 73 P.S. § 1648.1 et seq . See also, http://programs.dsireusa.org/system/program/detail/262. On June 11, 2015 this Commission approved a tentative order for implementation of the third phase of the Act 129 Energy Efficiency and Conservation program. The tentative order proposes increasing reductions in energy consumption and peak demand for PA electric distribution companies (EDCs). Docket M-2014-2424864. http://programs.dsireusa.org/system/program/detail/4514.

energy investment.[5] Most recently, Governor Tom Wolf has proposed a 2015-2016 fiscal year budget that invests significantly in the development of renewable energy. Pennsylvania has also established net metering[6] and interconnection policies to encourage and facilitate customer investment in on-site renewable energy generation. It has also enacted multiple policies to increase investment in energy efficiency through mandated utility demand side management programs, financing,[7] requirements for efficiency in public buildings[8] (including performance contracting) and other policy measures.[9]

Q. Are PECO's rate proposals consistent with these policies?

A. No. Several of PECO's proposals (specifically the increased demand charges and reduced/energy charges for commercial and industrial customers; the residential customer charge increase; the increase in the minimum monthly demand and the Capacity Reservation Rider) are contrary to ratemaking principles, and run

[5] Sustainable Development Fund Financing Program (PECO Territory). http://programs.dsireusa.org/system/program/detail/498.

[6] In 2006 this Commission adopted net-metering rules and interconnection standards for net-metered systems and other forms of DG, pursuant to the Alternative Energy Portfolio Standards (AEPS) Act of 2004. In 2007, H.B. 1203 amended the Pennsylvania AEPS and also expanded net metering. Revised rules consistent with these amendments were adopted by this Commission effective November 29, 2008 (updated in 2012 to approve the use of third-party ownership models). http://programs.dsireusa.org/system/program/detail/65.

[7] In July 2008, Pennsylvania enacted a broad $650 million alternative energy bill designed to provide support for a variety of renewable energy and energy efficiency technologies. Included in this legislation was a provision authorizing the creation of a grant and loan program for alternative energy and clean energy production projects. http://programs.dsireusa.org/system/program/detail/3648.

[8] See, http://database.aceee.org/state/pennsylvania#sthash.G1Td1VfN.dpuf. An Executive Order of December 2004 requires the Department of General Services (DGS) to work with state agencies on effective methods to include energy efficiency into new and existing state buildings. The order also lists a range of no-cost or low-cost energy conservation measures for all Commonwealth-owned and leased buildings and directs each state agency to develop a long-range energy use and conservation plan. In June 2008, Governor Rendell directed the DGS to implement further energy efficiency measures with a goal of achieving an additional 10% reduction in energy use in state buildings by 2010. House Bill 34, passed in 2013, established a requirement for new state buildings over 20,000 square feet to meet high performance standards, including achieving an Energy Star rating of 75 or above.

[9] In 2004, Governor Ed Rendell issued an executive order that mandated energy efficiency improvements in state buildings and encouraged the usage of ESPCs. Additionally, Pennsylvania offers tax breaks to entities using ESPCs to limit the interest accrued on such projects, along with offering a number of bond options to help fund ESPC projects. The Department of General Services (Energy Management Office) administers ESPCs in the state and provides a comprehensive guide. See, http://database.aceee.org/state/pennsylvania#sthash.K0upO3b5.dpuf

counter to or would increase the cost of compliance with federal and state policy and will frustrate the development of renewable energy, energy efficiency and conservation resources in the PECO's service territory. PECO's proposed tariff changes will impede Pennsylvania energy policy and the development of customer generated solar energy sources by making it more difficult for customers to economically justify the installation of on-site solar generation sources. In regard to federal Clean Air Act requirements, the increase in residential customer charges, the increases in commercial and industrial demand charges, the new minimum demand provision in the GS tariff and the Capacity Reservation Charge proposed in this case by PECO will each tend to reduce customer access to or investment in energy efficiency or customer sited renewable generation. This is because they will increase the investment payback and internal rate of return of customer (or third party) investment in energy efficiency and on-site renewable generation, thereby lowering such investment, and resulting in: 1) higher total CO2 emissions from affected CO2 sources in Pennsylvania; and, 2) reduced access by power plant owners in Pennsylvania to low cost emission reduction credits that could be generated by these investments. These effects will increase cost of compliance for fossil generators and, ultimately, consumers in the state.

Q. Have you quantified what some of the benefits of solar energy are for Pennsylvania?

A. Yes. In order to provide the Commission with a context for the importance of assuring that the proposed tariffs do not unreasonably impede solar development in the PECO territory, I have modeled and quantified two of the benefits of solar energy in Pennsylvania related to merit order benefits and benefits to the economy, using accepted modeling approaches. These two benefits alone can provide an estimated $12.1 billion of benefits to Pennsylvania over a twenty year period. These estimates are described in Exhibit SG-3. This analysis is not a comprehensive assessment of all benefits and economic effects of solar energy

investment, but does suggest that the benefits of solar are substantial and should be a factor in any decision to change utility rate design.

VI. Review of PECO's Proposed Cost of Service and Tariff design

Q. What is PECO proposing with respect to its Residential Customer Charge?

A. PECO is proposing to increase its Residential Customer Charge from $7.13 per month to $12.00 per month, a 68% increase.

Q. Do you recommend that this proposal be adopted?

A. No. For several reasons, I recommend that an increase of this magnitude be rejected:

a) It is not based on reasonable cost of service principles;
b) It is counter to the Commonwealth's policy to promote energy efficiency and renewable energy;
c) It is counter to the principle of gradualism, specifically with respect to its impact on low usage customers; and
d) As noted above, it may increase the cost of compliance with federal CO2 controls in Pennsylvania.

Based on my review and analysis, a residential customer charge of $8.25 is recommended (assuming full rate relief).

Q. What is the impact of PECO's Residential Customer Charge proposal?

A. This proposal results in a significant increase in the Residential Basic Service Charge (68%) that would otherwise be recovered in energy charges. This shift

will result in a disproportionate rate increase for smaller usage customers and send a price signal that will discourage cost-effective energy conservation activities. By placing recovery in the customer charge, energy charges are less than they would otherwise be, and the payback on solar energy investments (and energy efficiency investments) is reduced. Lower paybacks will tend to suppress customers' investments in these technologies leading to higher costs for generation, transmission and distribution services.

Q: What is the evaluation of the cost basis for this charge?

A: I calculated PECO's residential customer charge by assigning costs directly related to serving customers to the customer cost component, based on Pennsylvania precedent. I included the rate base accounts for services and meters as well as expenses related to customer accounts and customer services. I did not include costs more distant than services, consistent with Pennsylvania PUC decisions, as these costs are not directly related to serving customers, but are more appropriately viewed as part of the distribution system delivering electricity.

This approach resulted in a monthly residential customer cost (at full rate relief) of $8.25. The calculation supporting this cost is provided in Exhibit SG-4.

Q: Why is your cost calculation less than the cost calculated of $16.91 provided by Company witness Cohn?

A: The derivation of Cohn's $16.91 is provided in PECO Exhibit ABC-6. It is a summary schedule and provides four categories (customer service investments, customer meter investments, customer accounts and customer services) and therefore there is not clarity with respect to which specific Federal Energy Regulatory Commission (FERC) accounts are in these four categories, and what level of costs from each was allocated to the customer cost.

My calculation includes meters and services, expenses related to metering, installations, and customer service as well as allocated amounts for collection, uncollectibles and administrative and general expenses.

Q. What level of residential bill increases and decreases would PECO's proposed Residential Customer Charge cause to customers?

A. In Exhibit SG-5, I have shown the intra class rate impacts upon residential customers at various monthly usage levels (the source for this information is PECO's Exhibit Regs. § 53.52 / Exhibit Regs. § 53.53, Attachment IV-C). As can be seen in Exhibit SG-5, the story is very different for the intra class rate impact than for the overall residential class impact. Depending upon monthly usage level, individual customers within the residential class will see bill increases as much as 29% (200 kWh per month) and bill increases of 12% (at 1,000 kWh per month). These proposed bill changes are excessive for residential customers with lesser usage.

Based on my cost analysis as well as these impact amounts, and considering "gradualism in ratemaking," the increase in the Residential Customer Charge should be substantially scaled back to a level of $8.25 per month (at full rate relief).

Q. Is the PECO Residential Customer Charge proposal consistent with Pennsylvania or national energy policy?

A. No. Both state and federal policies promote energy conservation and greenhouse gas emission reductions. Residential investment in these clean energy technology is significant. The loading of revenue requirements into the Residential Customer Charge will frustrate efforts to encourage residential customers to become more energy efficient. Moreover, by reducing the incentive for customers to undertake energy efficiency and renewable investments, PECO's proposed increase

customer charge will make compliance with emerging federal carbon policy more difficult or costly, as residential clean energy investment can be an important compliance resource.

Q. Please summarize your recommendations with respect to the Residential Customer Charge.

A. I recommend a reasonable cost based rate of $8.25 per month (at full rate relief). PECO's proposed 68% increase is not consistent with gradualism in ratemaking, is out of line with cost and is contrary to the Commonwealth's energy efficiency and renewable energy policies.

Q. What impact will higher fixed charges have on PECO's risk profile?

A: A substantial increase in fixed charges will secure PECO's revenue recovery to the more certain mechanism of customer charge payments, and reduce the overall risk attendant to its distribution business. While I do not recommend raising the customer charge to the extent recommended by PECO, if the Commission nevertheless does raise fixed cost recovery, it should take that into consideration in setting PECO's rate of return.

Q. Please address the issue of the proposed changes to demand and energy charges in PECO's commercial and industrial tariffs.

A. An often overlooked element of tariff design is the step of translating the results of the cost of service study (where there is much attention paid to determining the proper allocation factors) to specific tariff charges. In this petition PECO has proposed to eliminate all of its energy based distribution charges and recover all of its distribution revenues through demand and fixed monthly charges. In this exercise PECO takes all of the costs that are allocated on the basis of a customer

class's non-coincident peak demands and converts them into demand charges that are based on the monthly peak of each individual customer.

Q. Is the conversion of these costs into monthly demand charges a reasonable approach?

A. No. First, the non-coincident peak demands of a customer class do not match the monthly billed demands of customers in that class. Second, PECO's approach also does not recognize some key cost causative elements of distribution service with regard to expenditures intended to allow PECO to meet both its peak requirements and year round challenges. The nature of distribution service is increasingly to enhance the resiliency of the system to meet customer requirements throughout the year. For example, the Company is making significant expenditures to harden its system and enable service to be maintained throughout and after storm events. The beneficiaries of these efforts are distributed to users throughout the year and the allocation of these benefits is not reflected by recovering such costs through a customer's maximum billing demand in any month. It would be more appropriate to translate some of these costs into energy charges so that the cost of improvements and capital additions is spread fairly to the beneficiaries of these improvements.

Q. What types of costs confer benefits over the course of the year?

A. The clearest example of year round benefits is storm hardening which is meant to keep the system energized during and after storm conditions, reducing the possibility of system damage and provide for speedy recovery from outages and damage. The system (and individual customer classes) usually does not experience peak demands during these events.

Hardening includes things like stronger poles and structures to withstand higher winds and tree branch impacts; different types of wire configurations like spacer

cable or covered wire; raising substations above flood levels, or building walls around substations. The expenditures sometimes do not increase (or do not have a primary purpose to increase) capacity of equipment, they are done to increase the year round availability of the distribution system.

Q. Are you proposing a change in the allocation method proposed by PECO?

A. No, I am not proposing a change in the non-coincident peak method used by PECO to allocate costs, nor am I proposing any change in PECO's proposed inter-class allocation of the rate increase. I am proposing a more moderate approach to reflect the year round nature of these investments: continued recovery of distribution costs through energy charges, with a reasonable allocation of the rate increase to both energy and demand charges. Stated differently, I made adjustments to the specific design of the commercial and industrial tariffs with respect to their demand and energy charges to reflect the nature of these costs. See Exhibit SG-5 which contains my proposed redesign and summary bill impacts.

Q. Please explain the difference between your approach and the Company's approach with respect to design of demand and energy charges for the commercial and industrial rate classes.

A. While the company uses non-coincident peak allocation factors to allocate a significant amount of distribution costs to each customer class, it proposes to recover these costs (once allocated to a rate class) on the basis of billed monthly demand. These are not the same metric, and instead I recommend that recovery of these costs in the actual tariff design (once allocated to a rate class) be based on both monthly billed demand and energy use, for the reasons discussed above.

Q. Isn't it axiomatic that all fixed cost of the utility be recovered in fixed charges?

A. No. While at a superficial level this sounds reasonable, in fact, it is more common (in both utility and non-utility settings) for fixed costs to be recovered in usage based charges. This is the case in regulated utilities such as water, natural and electricity, as well as most other consumer products. Recovering some fixed costs in energy charges not only matches cost causation (as discussed above), it has the additional benefit of promoting conservation of energy resources, a priority of State and federal policy.

Q. **In light of the above considerations what do you recommend with respect to the development of demand and energy charges?**

A. Consistent with the approach described above, the recommended demand and energy charges (and sample bill impacts) are provided in Exhibit SG-5. These calculations are shown at full rate relief. If the Commission awards less than full rate relief to PECO then the reduction should be applied to demand charges.

Q: Can you summarize PECO's CRR proposal?

A: PECO's proposed Capacity Reservation Rider (CRR) is a tariff provision that assumes PECO must have its distribution system "reserved" to service load when on-site generation is not available. The charge requires the customer to pay a demand charge, based on the nameplate rating of the on-site generation. PECO has made it clear that this is not intended to be a standby service, and does not reflect the diversity of outage and load on its system.

Q. Is this proposal consistent with sound ratemaking principles?

A: The proposed CRR has the following deficiencies:

1. The proposal appears to be more concerned with revenue stability than service stability. The proposal singles out on-site generation for "make-

whole" treatment against the highest possible demand measurement, when in fact all customers have variations in demand.

2. The proposal does not consider the benefits of diverse, decentralized generation in freeing capacity, or deferring capacity additions to a distribution system.

3. Contrary to the claim in Statement 7S, the CRR will lengthen the payback on solar energy investments and discourage customers from making these investments. The analysis provided in Exhibit SAN-14 and as described in the Supplemental Testimony of Scott A. Neumann (Statement 7S) assumes that in no instance will a customer's billed demand be reduced by a solar energy project. This is not the case for solar projects, where depending on the customer's load profile, solar energy production can reduce the customer's measured demand. As a result, the imposition of the CRR can lengthen the payback of a solar energy investment. This impact is in addition to the longer payback effect of higher demand charges described above.

4. The proposed GS tariff adds an additional minimum payment provision, a ratchet that does not permit the customer's billing demand to fall below the maximum measured demand in the prior year (Original Page No 49). This provision provides strong revenue protection to PECO and strongly reduces the incentive for the customers to reduce their monthly demands through solar, solar plus battery, or energy efficiency or conservation.

5. The proposed tariff (Proposal Original Page 64) and the sample calculation of the monthly minimum (Exhibit SAN-14) are ambiguous.

   It appears that the CRR creates a situation where i) a customer with large generation units relative to its demand could pay more for its measured

demand (demand charges plus CRR charges) than it would if it has no solar generation at all; and, ii) a customer could pay a higher monthly minimum charge than it would if it had not installed a solar energy project. Both of these results are clearly unfair since a customer should not pay more to reserve the same capacity it would have used if it did not have the on-site solar generation. Informal communications with the company suggest that it does not plan to impose the charges in this way, but the language of the tariff is confusing and may tend to discourage customers who are considering an investment in on-site renewable generation. While I do not recommend that the tariff be accepted, if it is, the proposed tariff language should clarify that the demand charge and the CRR charge are never be applied to the same kw of demand.

6. Energy storage systems, an increasingly common component of a solar energy project, are not addressed by the CRR and could be penalized by the proposal. The ambiguity of the rule and the resulting discretion left to the company could discourage customer investment in solar energy and storage systems that would be beneficial to the utility grid, aid in system resiliency and recovery from storm events.

7. For on-site generation above 10MW, the proposed tariff sets up an open ended negotiation with the Company that would adversely impact the efficient development of larger solar energy facilities.

8. The notification requirements in the CRR proposal are not appropriate for a solar project given solar energy's operational characteristics. Owners of on site solar equipment cannot realistically comply with the notification requirements when output of the solar system drops during the evening or when the system is tripped off line due to problems with the distribution system.

Q. Based on the above considerations what do you recommend?

A. As the result of the above deficiencies I conclude that the proposed CRR is unreasonable in its ratemaking approach and could, contrary to the analysis in Neumann (Statement 7S), extend the payback period for solar energy investments and harm the development of renewable energy in the PECO territory. I recommend that the as-filed proposal not be accepted and that if PECO wants to propose a CRR, it be required to clarify the proposal in its next rate proceeding and to redesign it such that it addresses these deficiencies.

Q. You indicated above that PECO has proposed a tariff amendment that increases the minimum demand charge. Can you elaborate on this?

A. Yes, on the black line tariff pages submitted by PECO in the General Service tariff (Original page 49) PECO includes a new provision to its minimum demand that provides that the minimum demand charge cannot fall below the maximum measured demand in the prior year. This is in addition to the 40% minimum charge and represents a substantial change that would prevent customers from benefiting from demand reduction (from on-site renewable, storage or other demand reduction activity) for a year. In particular, storage strategies - which are the subject of increased attention and implementation around the country - could be slowed in the PECO territory as the result of this provision. This is a substantial change, which provides substantial revenue stability to PECO and corresponding damage to customers (and the utility grid) in the development of demand reduction strategies. I recommend that the Commission reject it.

Q. Do PECO's rate design proposals discourage the installation of on-site solar projects?

A. Yes. The effect of PECO's proposal to substantially increase the monthly Residential Customer Charge, to redesign the commercial and industrial

distribution rates fully to demand and customer charge (with no energy charge), to add a new minimum demand provision to the General Service Rate Schedule, and to impose an unreasonably designed CRR would be to deter the development of on-site solar energy in its service territory.

Q. Why will these rate design proposals discourage the installation of on-site solar projects?

A: The PECO rate design proposals disproportionally shift customer charges to fixed customer charges and higher demand charges rather than volumetric, energy-based charges. Compared to a more traditional rate increase whereby fixed-, demand- and energy-based charges are increased more proportionally, this reduces the value of on-site renewable energy and energy efficiency investments which will lengthen payback periods and reduce internal rates of return for these investments. This will
impede development of renewable energy and energy efficiency projects in the PECO territory.

It is worth noting that PECO recognizes the benefits of energy based cost recovery elsewhere in its tariff proposal. Specifically, in its street lighting rate proposal (Tariff Class SL-E), the Company moves to increased energy charges to induce (and reward) conservation efforts by street lighting customers who are considering higher efficiency lighting. PECO (Neumann Statement 7 page 11, lines 1-9) states that the Company increased variable energy charges to promote investments in energy efficiency. I point this out to contrast it with the PECO proposals discussed above, which have the opposite effect and will deter conservation and renewable energy efforts in the PECO territory.

Q: In light of the acceleration of energy efficiency and renewable energy activities, do you think it appropriate that PECO protect itself with tariff

provisions that unreasonably reduce paybacks on such investments to protect its revenue stream?

No. As discussed above these efforts are not only contrary to reasonable ratemaking practices, they will prevent the development of energy efficiency and renewable energy projects that are beneficial to customers, the environment and to economic growth.

Q. How would you address utility concerns that it needs to protect against revenue erosion?

A: This issue is receiving increasing attention around the country. It should not be addressed through "protectionist" tariff design provisions.

Instead, the appropriate policy approach is to address this issue through a more comprehensive review of utility ratemaking policy that integrates the advancement of new technologies (including storage, renewable energy, energy efficiency and other demand control technologies) with the need for healthy utilities to provide the foundation for this advancement.

Some of these ratemaking approaches include decoupling, minimum bills, and alternative forms of regulation. Such a review would look to construct the rate regulation process in ways that encourage the adoption of advanced technologies, renewable energy and energy efficiency that make the provision of energy services more efficient, more affordable, and more reliable.

VII. Customer Service Interconnection Issues

Q: Why is the issue of customer service and interconnection of on-site generation an appropriate issue for this rate proceeding?

A: PECO has an obligation to prove its revenue requirement by demonstrating that the costs incurred in making improvements to its distribution system are reasonable. PECO has requested substantial rate relief to invest hundreds of millions of dollars in its distribution system and enhance its customer services. As part of demonstrating the reasonableness of these costs (a fundamental element of a rate relief request) the utility should demonstrate that such costs are, at least in part, responsive to customer requests to interconnect on-site generation and make the PECO system more robust to do so. Just as it is reasonable to evaluate issues related to whether the costs that PECO is seeking to recover will enhance reliability or improve responsiveness to service calls, it is reasonable to evaluate whether the rate relief will permit PECO to be responsive to customers' desires to go renewable, consistent with State policy.

As a matter of policy, Pennsylvania has adopted an Alternative Energy Portfolio Standard (AEPS) that incentivizes the growth of distributed generation with a set-aside for solar PV. Therefore the distribution system ought to be improved in such a way that among other functions, it is able to facilitate this growth in an efficient manner.

Q: Beyond the AEP, is there additional support from the Commonwealth on the growth of distributed generation?

A: Yes. Recently, Governor Tom Wolf has proposed a 2015-2016 fiscal year budget that invests significantly in the development of renewable energy. Under the broad umbrella of improvements being sought for the distribution system in this rate case, how distributed generation is developed and adopted for the Commonwealth is an appropriate subject for this proceeding. In fact, it is especially relevant given that the ability to interconnect with PECO's distribution system is a necessary condition that enables the growth of distributed generation, which is consistent with the policy objectives of the Commonwealth.

The conditions that follow are the lessons learned from my experience with the interconnection process.

Q: What would you suggest be included in the interconnection process as a component of the primary purpose of PECO's rate request, to improve its distribution services?

A: There are several improvements that should be made to the Company's services in this area.

The first improvement to distribution services relates to Permission to Interconnect, or Permission to Operate (PTO) as it is known in the industry, which is a key step in the development of renewable energy projects. Receipt of the PTO is indication of project completion. Eligibility for tax incentives, a significant piece of the value of solar system, is tied to this milestone, as is the ability to "turn on" a solar project where revenues and savings are realized. In fact, EQ Research LLC has undertaken a study, expected to be released at the end of June 2015 using Solar Energy Industry Association data, to examine the timing in achieving this milestone in jurisdictions across the country, given its importance to the economics of a solar project.

Given the resources being requested by PECO and the importance of securing a PTO, I recommend that PECO provide a PTO to the interconnection customer, in the form of an email, within 10 business days from the applicant's notification to PECO that it has successfully commission-tested the generator. As has been successfully demonstrated in New Jersey (with approximately 6,000 interconnections per year), the time frame is both achievable by the utility and needed by the customer.

Unnecessarily lengthy delays in the PTO process create a financial burden on applicants (i.e. non-performing assets) and add unnecessary uncertainty to the

market.

Q: What is not included in the current reporting requirements that should be included?

A: The annual reporting requirements for interconnection processing timelines have been adequate for the level of market activity in energy year 2013 and 2014. The Company did not have YTD2015 available at the time of our discovery request. The reports however indicate that the process has worked reasonably well *up to a specific point in the process* for those two reporting energy years and YTD2015. However, the reporting requirements do not include a crucial step in the interconnection process.

The current reporting requirements obligate the utilities to file reports annually. Given the anticipated increase of distributed generation development, in addition to what I have seen in jurisdictions around the country, the process has the potential to bottleneck, and could considerably slow down development of solar projects. The PUC would only become aware that this was an issue after a compliance report was filed and the problem has compounded over time. Given that data is not yet available for Energy Year 2015, the time lag in the current process could present an obstacle to assuring a smooth and efficient interconnection process. Accordingly, reporting requirements for interconnection processing timelines should be submitted to the PUC quarterly instead of the annual reporting requirement in place today. This would give the PUC better visibility into potential issues in the process and the opportunity to remedy so that any problems do not compound as interconnection requests increase.

A key element of making this process work is that PECO should be required to have adequate resources in place to meet all timelines. A lack of adequate resources (staff, contractors, equipment or facilities) will lead to delays in interconnection beyond those contemplated by law, creating the type of

unreasonable restrictions and delays in the interconnection process.

In the event that PECO misses an interconnection review deadline, PTO or other deadline, PECO should provide a response to the applicant within two business days of all interconnection status update requests. The response should include a reason for the missed deadline and an update on when PECO will complete its required task. If delays impact more than 10% of interconnection requests over a 3-month period, PECO should provide the PUC with a report detailing the reasons for interconnection delays and its plan to address the delays.

Q: Are there any other improvements to the interconnection process that would make it more efficient?

A: Yes. Currently PECO requires a Generator Interconnection Customer (GIC) to submit an application to the regional New Business Services (NBS) office responsible for the GIC. It is not clear to the Generator Interconnection Customer, which NBS office covers a specific customer, and as a result the process can result in applications that are sent to the wrong NBS. PECO should have a central address for a Generator Interconnection Customer to submit an application and the application should be internally routed by PECO to the appropriate NBS.

Q: Does the interconnection process provide direction for how mixed technology installations should be treated?

A: No, it does not provide any explicit direction on how mixed technology installations are to be treated. Combining solar technology with storage technology, specifically batteries, is increasingly technically and economically viable today and creates resiliency and redundancy in the grid. In addition, the market demand for back-up power generation has grown significantly with the increase of severe weather events. Combining batteries with solar and smart

inverters provides several benefits to the end use customer: 1) the solar power generated is isolated on the customer's side of the meter during a grid outage, providing the customer with fuel free back up power; 2) the battery may be charged from the solar panels; and 3) the customer may utilize the energy stored in the battery when the solar is not available.

Further, the addition of storage can provide benefits to the grid such as peak demand reduction (batteries can time shift solar production for several hours to be coincident with peak demand) and frequency regulation. In recognition of the faster response times from batteries and several other storage technologies, PJM, as directed by FERC, has created a market specifically to incent these fast reacting technologies in PJM's frequency regulation market. Given the benefits available to the Commonwealth, the interconnection process should provide for an efficient and transparent processing of solar plus storage applications.

Q: Do you have a recommendation for the interconnection process regarding mixed technology installations, for example, solar and battery storage?

A: Yes. With respect to solar-plus-storage interconnection applications, PECO should not differentiate between solar-only and solar and battery installations. In the cases where the solar and the battery share inverter(s), only the collective nameplate of the shared inverter(s) and the type of distribution network should be used for determining the requirement of a Level 1 – Level 4 interconnection study. In addition, no additional metering or monitoring equipment should be required than would be required for a solar without storage application.

Q: What are the criteria considered when PECO determines whether upgrades will be required to its distribution system for an interconnection application for a behind the meter solar project of a specific size?

A: The criteria used to determine any constraints include, but are not limited to those

listed in 52 Pa. Code, Chapter 75 at Sections 75.34 through 75.40.

Q: Given the growing proliferation of solar distributed generation around the country have approaches for determining criteria limits for solar distribution evolved over time?

A: Yes. The formulation of the first iteration of criteria for circuit limits in jurisdictions around the country did not have the benefit of actual distributed solar generation of a significant scale in order to precisely test what those limits should be. Over the last several years, a more granular approach is being considered that takes into account, for instance, the coincidence of timing for the minimum daytime load and the output of the small generator. For example, the minimum daytime load may occur at 9:00 AM, when solar output is very low. Hourly load shape and the hourly generation of interconnected small generators should be considered as a factor to determine when a circuit is closed to further development.

Other variables that can influence the impact of solar energy to the circuit include proximity of load and the distributed generation to the circuit's substation (closer to the substation has less impact on the circuit), and the availability of battery storage in conjunction with the solar energy to improve the reliability of the circuit.

Q: Are there studies that support different criteria then are reflected in the Pennsylvania statue?

A: Yes. Pepco Holdings Inc (PHI) has provided data to the National Renewable Energy Laboratory (NREL), a part of NREL's in-depth work to review utility interconnection criteria. A report is expected to be issued by the end of 2015.

In addition, in Hawaii, where there is a large penetration of on-site solar

generation, a study was undertaken with SolarCity, NREL and the Hawaiian Electric Companies (Hawaiian Electric) to test inverters to mitigate transient load rejection overvoltage (LRO) as well as the ability of inverters to enable increased levels of distributed solar penetration on utility distribution circuits. The goal of the collaborative research was to examine existing barriers to achieve increasingly higher safe and reliable integration of distributed generation on utility distribution circuits, and provide insight into how to overcome interconnection barriers.

As a direct result of this testing, the Hawaiian Electric Companies announced earlier this year their intention to dramatically increase circuit penetration thresholds for distributed generation. Specifically, coupled with the implementation of new performance settings for inverters, Hawaiian Electric announced plans to increase circuit thresholds from their current levels of 120% of daytime minimum load (DML) to 250% of DML, more than doubling the hosting capacity of circuits to integrate solar.

Last, the Maryland Public Utility Commission, as a condition of approval of the merger of Exelon and Pepco, declared that the minimum daytime load (MDL) supplemental review screen established in FERC Order 792 as well as findings from collaborative research by stakeholders including the Pepco, shall be adopted so 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 safety and reliability screen. Exelon and Pepco agreed to this condition.

Q: In light of these new developments, should the Commonwealth revisit the methodology for how circuit limits are determined?

A: Yes. PECO should review its criteria used to determine if upgrades to the distribution system are required when interconnecting solar distributed generation including consideration of NREL studies. This review should be conducted with

the Commission and interested stakeholders. PECO should support, as it did in Maryland in the Exelon-Pepco merger proceeding, the immediate adoption of FERC Order 792 and findings that allow for interconnection of distributed generation so 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.

As part of this effort PECO and the PUC should review any statutory issues around the establishment of such criteria.

Given the additional resources being requested by PECO, and the changes in the market discussed above, this review is appropriate.

Q: Are there interim steps that should be required while this issue is being studied?

A: Yes. PECO should make available service territory maps of circuits that have the following information included: 1) circuits with limited capacity (orange coded) with the specific capacity that remains available on a given circuit before it will be considered closed; 2) closed (red coded); and 3) circuits where capacity makes small generator interconnection more desirable from a distribution utility perspective (green coded). This would send the appropriate signals to developers as to where they should pursue new development as well as areas they should avoid. This approach is already used by Atlantic City Electric Company and was recently an accepted condition of the Exelon-Pepco merger in Maryland and Delaware. PECO should update these maps at least every three months. Information that flags constrained areas will be a useful tool to the public and in the stakeholder study of the issue for establishing criteria for circuit limits.

Q: Please summarize your recommendations for improvements to the

interconnection process.

A: In light of the significant distribution cost recovery that PECO is requesting to maintain and improve its level of distribution service, rate relief should be conditioned on implementation of improvements to distribution services in the area of on-site renewable energy interconnection and storage development, detailed in Exhibit SG-2.

Q. Does this conclude your direct testimony?

A. Yes. Thank you.