



Agenda Date: 2/11/15
Agenda Item: 2L

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE MERGER OF)
EXELON CORPORATION AND)
PEPCO HOLDINGS, INC.)
)
) ORDER APPROVING
STIPULATION OF
SETTLEMENT
)
) DOCKET NO. EM14060581

Parties of Record:

Colleen A. Foley, Esq., Saul Ewing LLP, on behalf of the Joint Petitioners
Darryl M. Bradford, Esq., on behalf of Exelon Corporation, Purple Acquisition Corp., Exelon Energy Delivery Company, LLC and New Special Purpose Entity
Kevin C. Fitzgerald, Esq., on behalf of Pepco Holdings, Inc. and Atlantic City Electric Company
Thomas P. Gadsden, Esq., Morgan, Lewis & Bockius, LLP, on behalf of the Joint Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
James H. Laskey, Esq., Norris McLaughlin & Marcus, P.A., on behalf of the Independent Energy Producers of New Jersey
Joseph F. Accardo, Jr., Esq., on behalf of Public Service Electric and Gas Company, PSEG Power LLC, and PSEG Energy Resources & Trade LLC
Bradford M. Stern, Esq., Law Offices of Bradford M. Stern, LLC, on behalf of the Mid-Atlantic Renewable Energy Coalition
Jeffrey W. Mayes, Esq., on behalf of Monitoring Analytics, LLC
Abraham Silverman, Esq., on behalf of NRG Energy, Inc.
James C. Meyer, Esq., Riker, Danzig, Schere Hyland & Perretti, LLP, on behalf of Rockland Electric Company
Ernest Logan Welde, Esq., on behalf of the Clean Air Council

BY THE BOARD:

This Order addresses a Stipulation of Settlement ("Settlement") entered into by Pepco Holdings, Inc. ("PHI"), Atlantic City Electric Company ("ACE"), Exelon Corporation ("Exelon"), Purple Acquisition Corp. ("Merger Sub"), Exelon Energy Delivery Company, LLC ("EEDC"), and New Special Purpose Entity, LLC ("New SPE") (collectively, the "Joint Petitioners"), the Staff of the New Jersey Board of Public Utilities ("Board Staff"), and the Independent Energy Producers of New Jersey ("IEPNJ") (collectively, the "Stipulating Parties") and the Stipulating Parties statements' presented at the hearing on January 14, 2015. In addition, this Order will address the positions of and statements made on the record at hearing by the New Jersey Division of Rate Counsel ("Rate Counsel"), the Mid Atlantic Renewable Energy Coalition ("MAREC"), the Clean Air Council ("CAC"), and Monitoring Analytics, LLC ("Monitoring Analytics") and the

position of and statement submitted post hearing by the NRG Companies ("NRG") (collectively, the "Non-Stipulating Parties"), as well as the testimony filed during the proceeding.

JOINT PETITION

On June 18, 2014, Joint Petitioners filed a Verified Joint Petition with the New Jersey Board of Public Utilities ("Board") seeking all necessary approvals, pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-10, N.J.S.A. 48:3-7.1 and N.J.A.C. 14:1-5.14(c) and related regulations, to effectuate a change of control of ACE.

Exelon is a utility services holding company that is incorporated in Pennsylvania, maintains its corporate headquarters in Chicago, Illinois, and operates through its principal indirect subsidiaries: Exelon Generation Company, LLC ("Exelon Generation"), Baltimore Gas and Electric Company ("BGE"), Commonwealth Edison Company ("ComEd") and PECO Energy Company ("PECO"). Exelon was formed in 2000 by the merger of PECO and Unicom Corporation, the parent of ComEd. In 2012, Exelon acquired Constellation Energy Group, Inc. ("Constellation"), which added BGE to Exelon's family of energy distribution utilities. Exelon, through its subsidiaries, both generates electricity and delivers electricity and natural gas to customers. Its energy delivery companies serve approximately 7.8 million customers in central Maryland, northern Illinois and southeastern Pennsylvania.

EEDC is the Exelon subsidiary that directly owns 100 percent of the common stock of PECO and ComEd. EEDC also indirectly owns 100 percent of the common stock of BGE through EEDC's subsidiary RF Holdco, LLC. RFD Holdco, LLC is a bankruptcy-remote special purpose entity created specifically to "ring-fence" BGE.

PECO provides electric delivery service to approximately 1.6 million customers throughout an area of approximately 2,100 square miles in and around the City of Philadelphia. It supplies natural gas service to more than 500,000 customers outside the City of Philadelphia. ComEd provides electric distribution service to more than 3.8 million customers in northern Illinois, and has a service area of approximately 11,400 square miles that includes the City of Chicago. BGE provides electric delivery service to over 1.2 million customers and gas service to over 655,000 customers in a 2,300 square mile territory that encompasses Baltimore City and all or part of ten central Maryland counties.

Exelon's generation business includes its generation fleet, wholesale energy marketing operations and a competitive retail sales business. Exelon Generation is a wholly-owned subsidiary of Exelon Ventures Company, LLC. Exelon Generation is also a retail competitive energy provider through subsidiaries such as Constellation New Energy, Inc. and Constellation Energy Gas Choice, Inc., licensed retail electricity and natural gas suppliers in New Jersey.

New SPE is a special purpose entity being created to "ring-fence" PHI and PHI's three energy distribution utilities, including ACE. Merger Sub is a Delaware corporation and a wholly owned subsidiary of Exelon that was formed for the sole purpose of effecting the Merger. Upon completion of the Merger, Merger Sub will be merged into PHI and cease to exist as a separate legal entity.

PHI is a public utility holding company incorporated in Delaware and headquartered in Washington, D.C. PHI was created in 2002 as a new holding company to effect the merger of Potomac Electric Power Company ("Pepco") and the predecessor of PHI, Conectiv, LLC ("Conectiv"). Conectiv owns 100 percent of the common stock of ACE and Delmarva Power & Light Company ("Delmarva Power"). As a result of that transaction, PHI owns directly or

indirectly three public utility subsidiaries operating in three states and the District of Columbia: ACE (New Jersey); Delmarva Power (Delaware and Maryland); and Pepco (Maryland and the District of Columbia) (collectively, the "PHI Utilities").¹ In addition, PHI, through Pepco Energy Services, Inc. and its subsidiaries (collectively, "Pepco Energy Services"), provides energy efficiency and other energy-related services. PHI also owns Potomac Capital Investment Corporation and PHI Services Company.

PHI's energy delivery business is conducted through its three regulated utilities. ACE, a New Jersey corporation, presently serves approximately 544,000 electric customers in a 2,700 square-mile area of southern New Jersey. Delmarva Power provides electric utility service to approximately 506,000 electric customers in an area encompassing about 6,000 square miles in Delaware and the Eastern Shore of Maryland. Delmarva Power also provides natural gas service to approximately 126,000 customers in a 275 square-mile service area that encompasses a major portion of New Castle County, Delaware. Pepco, a District of Columbia and Virginia corporation with its headquarters in the District of Columbia, distributes electricity to approximately 801,000 customers in the District of Columbia and Montgomery and Prince George's Counties in Maryland. Pepco's service area covers approximately 640 square miles.

Pepco Energy Service ("PES") is an energy services company with a focus on energy savings performance contracting, underground transmission and distribution services and integrated power and thermal projects. PES is a licensed retail electricity and natural gas supplier in New Jersey. As of the date of the Joint Petition, PES did not have any active retail accounts because it discontinued all of its retail electric and gas marketing activities in 2009. According to the Joint Petitioners, as of June 2013 and November 2013 respectively, PES fulfilled all of its contractual service obligations to New Jersey electric and gas customers. On May 29, 2014, PES filed a notice with the Board that it was withdrawing its existing licenses. Thus, PES no longer is licensed as a retail electricity and natural gas supplier in New Jersey.

Joint Petitioners state that the proposed change of control is to be accomplished by the merger of PHI with Merger Sub, a wholly-owned subsidiary of Exelon (the "Merger"), pursuant to an Agreement and Plan of Merger dated April 29, 2014 ("Merger Agreement").² Pursuant to the terms of the proposed Merger Agreement, Exelon will acquire PHI in an all-cash transaction for approximately \$6.8 billion. Upon consummation of the proposed Merger, each PHI shareholder will be entitled to receive \$27.25 in cash for each outstanding share of PHI common stock not held by PHI, Exelon, Merger Sub, a PHI or Exelon affiliate, or a dissenting PHI stockholder properly asserting appraisal rights. PHI's stock will no longer be publicly traded. The common stock of Exelon will be unaffected by the Merger, with each issued and outstanding share thereof remaining outstanding following the Merger. There will be no change in the outstanding debt of ACE or PHI as a result of the Merger. To effectuate the Merger, the Joint Petitioners have also sought regulatory approvals from the Delaware Public Service Commission, the Public Service Commission of the District of Columbia, the Maryland Public Service Commission, the Virginia State Corporation Commission ("VSCC"), the Federal Energy Regulatory Commission ("FERC") and the Federal Communications Commission ("FCC"). Joint Petitioners indicate that approvals of the Merger from the VSCC and FERC have already been received.³

¹ Exhibit JP-2, Verified Joint Petition, Paragraph 9, fn 3, noting that Conectiv owns 100 percent of the common stock of ACE and Delmarva Power.

² Exhibit JP-2, Verified Joint Petition, dated June 18, 2014, at Exhibit A.

³ Exhibit JP-20, Rebuttal Testimony of Julie R. Solomon, at Exhibit JSR-2 (FERC Order Authorizing Proposed Merger, issued November 20, 2014), and Joint Petition of Pepco Holdings, Inc. et al., Case No. PUE-2014-00048, Order Granting Approval (dated October 7, 2014).

In addition to the change of control, the Joint Petitioners requested that the Board: (1.) approve participation by ACE and PHI in Exelon's General Services Agreement; (2.) relieve ACE of certain restrictions previously imposed on its participation in PHI's money pool; (3.) determine a consolidated income tax adjustment shall not be applied to ACE in future base rate proceedings, and (4.) approve the relocation of ACE's books and records from Wilmington, Delaware to PHI's headquarters in Washington, D.C pursuant to N.J.S.A. 48:3-7.8.

The June 18, 2014 filing included direct testimony of Christopher M. Crane, President and Chief Executive Officer of Exelon; Joseph M. Rigby, President and Chief Executive Officer of PHI; Denis P. O'Brien, Senior Executive Vice President of Exelon and Chief Executive Officer of Exelon Utilities; Mark F. Alden, Vice President of Utility Oversight and Integration for Exelon; Charles R. Dickerson, Vice President, Performance Management and Support Services of PHI; Carim V. Khouzami, Senior Vice President and Exelon's Chief Integration Officer of the Merger; Susan F. Tierney, Ph.D., a Senior Advisor with the Analysis Group, and Calvin G. Butler, Jr., BGE's Chief Executive Officer.

In their filing, the Joint Petitioners propose measures to address the merger's potential impact on competition, employees, rates and reliability. Specifically, the Joint Petitioners proposed certain reliability guarantees accompanied by financial penalties and stated that the Merger would maintain and enhance reliability, as Exelon would share its utility operating experience, and best practices with ACE. The Joint Petition asserted that the Merger would strengthen emergency response capabilities and lead to operational and infrastructure improvements.

The Joint Petitioners also proposed the creation of a customer investment fund of \$29 million, commitment of employment levels for at least two years, and commitment of continued local presence and local charitable giving in New Jersey, and the creation of ring-fencing measures to protect ACE and the PHI utilities from the any risk of Exelon's generation portfolio.⁴ The Joint Petitioners also asserted that the proposed Merger would not have an adverse impact on competition.⁵

PROCEDURAL HISTORY

By Order dated July 23, 2014, the Board retained this matter for hearing, designated Commissioner Joseph Fiordaliso to act as presiding officer, and required that motions to intervene or participate be filed by August 15, 2014. On August 13, 2014, Commissioner Fiordaliso issued a Pre-Hearing Order setting a procedural schedule. The Procedural Schedule was subsequently amended by Orders dated September 5, 2014 and October 30, 2014.

Timely filed Motions to Intervene were filed by the Independent Energy Producers of New Jersey ("IEPNJ"), Public Service Electric and Gas Company, PSEG Power LLC and PSEG Energy Resources & Trade LLC ("PS Companies"); the Mid-Atlantic Renewable Energy Coalition ("MAREC"), Monitoring Analytics, and NRG Energy, Inc. ("NRG"). A timely filed Motion to Participate was filed by Rockland Electric Company ("Rockland"). The motions were unopposed, and Commissioner Fiordaliso granted the motions in an Order dated September 5, 2014. On September 24, 2014, the Clean Air Council ("CAC") filed a motion to intervene, which was opposed by the Joint Petitioners as untimely. By Order dated November 5, 2014, Commissioner Fiordaliso denied the Motion to Intervene, but granted participant status to CAC.

⁴ Exhibit JP-2, Joint Petition, Exhibit C, Joint Petitioners' Commitments.

⁵ Exhibit JP-2, Joint Petition at Paragraphs 29-48.

After public notice, Commissioner Fiordaliso presided over two public comment hearings held in Mays Landing, New Jersey at 3:30 P.M. and 5:30 P.M. on October 15, 2014. Several members of the public appeared at each of the hearings, and spoke in favor of the proposed Merger. All comments were transcribed and made a part of the record.

In accordance with the revised procedural schedule, intervenors filed direct testimony on November 14, 2014. Direct testimony was filed on behalf of Rate Counsel by Andrea Crane, Maximilian Chang, Matthew Kahal, David Peterson, Dante Mugrace, Tyler Comings, and Paul Peterson. Michael Jacobs filed direct testimony on behalf of MAREC. Steven Gabel filed direct testimony on behalf of IEPNJ, and Joseph Bowring and Howard Haas, Ph.D., filed joint testimony on behalf of Monitoring Analytics.

On December 10, 2014, the Joint Petitioners filed the rebuttal testimony of the following: Denis P. O'Brien, Carim V. Khouzami, Mark F. Alden, Christopher Gould, Senior Vice President, Corporate Strategy & Chief Sustainability Officer for Exelon, Charles R. Dickerson, Kevin McGowan, Vice President of Regulatory Affairs of PHI, Susan F. Tierney, Ph.D., Julie R. Solomon, Managing Director of Navigant Consulting, Inc., and Ellen Lapson, founder and principal of Lapson Advisory. No other parties filed rebuttal testimony. The parties exchanged several hundred data requests. In addition, numerous settlement discussions were held beginning in October 2014, consistent with the procedural schedule, continuing through January 2015.

On January 6, 2015, the Joint Petitioners advised the parties that settlement discussions were continuing, and proposed that hearings be adjourned until January 14, 2015.⁶ The Joint Petitioners proposed that at the January 14, 2015 hearing any settlement reached among some, or all, of the parties would be entered into the record, and all parties would be provided an opportunity to comment on the terms of the settlement. The parties did not object to this proposal, and the Joint Petitioners' request was granted by Commissioner Fiordaliso.⁷

On January 14, 2015, Commissioner Fiordaliso presided over a hearing at which several of the parties to the proceeding jointly requested that all testimony and discovery be admitted as record evidence.⁸ Also at that hearing, the Joint Petitioners filed the Settlement executed by the Joint Petitioners, Board Staff, and IEPNJ.⁹ All parties were permitted to make statements regarding the Settlement at the hearing and were permitted to file written comments by January 16, 2015. The Joint Petitioners, Rate Counsel, MAREC, Monitoring Analytics, IEPNJ and CAC all commented on the Settlement. The Joint Petitioners and Rate Counsel also provided written statements at the hearing.¹⁰ Monitoring Analytics and NRG filed written comments on January 16, 2015.

⁶ Joint Petitioners also proposed that evidentiary hearings set for January 12, 13, 15 and 16 be adjourned. No party objected to this proposal, which was granted by Commissioner Fiordaliso, with January 15th reserved as an alternate date in the event of inclement weather.

⁷ MAREC initially requested the ability to present live surrebuttal testimony at the January 14th hearing, which request was granted by Commissioner Fiordaliso. MAREC later withdrew this request.

⁸ Exhibit JP-22, Joint Request for Admission of Items into the Record executed by the Joint Petitioners, Staff, Rate Counsel, IEPNJ, MAREC, and IMM. NRG later indicated it consented to the Joint Request, and no party objected. All parties who filed testimony and responded to discovery joined in the Joint Request.

⁹ Exhibit JP-23, Stipulation of Settlement.

¹⁰ Exhibit JP-25, Statement of Exelon Corporation, Pepco Hol10 Exhibit JP-25, Statement of Exelon Corporation, Pepco Holdings, Inc., Purple Acquisition Corp., Exelon Energy Delivery Company, LLC, New Special Purpose Entity, LLC and Atlantic City Electric Comp.

POSITIONS OF THE JOINT PETITIONERS

Joint Petitioners acknowledge that consummation of the proposed transaction, and related actions, requires the Joint Petitioners to obtain Board approval pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.14(c). The Joint Petitioners further state that Exelon will have a service company to provide services to its subsidiaries, including ACE, with the costs of services provided being fairly allocated to all subsidiaries. The Joint Petitioners assert that Board approval of the new service company agreement is required in accordance with N.J.S.A. 48:3-7.1. The Joint Petitioners also request that voluntary limitations regarding ACE's participation in the PHI money pool be removed, and that ACE be permitted to maintain its books and records in Washington, D.C. upon receipt of Board approval pursuant to N.J.S.A. 48:3-7.8. Joint Petitioners also request that a consolidated income tax adjustment not be made in the future base rate cases of ACE should the Merger be approved.¹¹

The Joint Petitioners submitted information and testimony describing the benefits the Joint Petitioners believe the proposed Merger would produce for the customers of ACE and the State of New Jersey. They also allege that the Merger will allow ACE to build upon the experience and expertise of the Exelon utilities in maintaining and enhancing reliability, and will offer ACE additional access to utility operating experience, sharing of best practices, and increased purchasing power to improve safety and reliability, invest in infrastructure and operational improvements, and deploy innovative technology.

The Joint Petitioners offered twelve commitments, including the creation of a Customer Investment Fund of \$29 million, specific enhanced reliability performance levels with financial penalties for failing to meet those performance levels, a commitment to maintain employment levels at ACE for at least two years, continued local presence and local charitable giving commitments, and implementation of a package of ring-fencing measures to protect ACE and the PHI utilities from the perceived risk of Exelon's generation portfolio.¹² In addition to these commitments, the Joint Petitioners also assert that the proposed Merger will not have an adverse impact on competition, rates, ACE employees or the provision of safe and adequate utility service at just and reasonable rates.¹³

With respect to the provision of safe and reliable utility service, Joint Petitioners state that the Merger will combine the expertise, experience and resources of Exelon and PHI, which will permit the sharing of best practices and thereby lead to operational and infrastructure improvements, strengthen emergency response capabilities, and facilitate the use of innovative technology to improve customer service and system reliability.¹⁴ Joint Petitioners also offered a proposal for reliability guarantees accompanied by financial penalties in the event that the promised performance levels are not achieved. Joint Petitioners argue that ACE will be even better positioned to ensure that high quality service is maintained and enhanced.

The Joint Petitioners further allege that the proposed Merger will have no adverse impact upon ACE customer rates, and that ACE's rates and terms and conditions of service in effect prior to the Merger will not change as a result of the Merger.¹⁵ Joint Petitioners argue that the creation

¹¹ Exhibit JP-23, Stipulation of Settlement, Paragraph 6 states that no further action is required given the Board's decision in I/M/O the Board's Review of the Applicability and Calculation of a Consolidated Tax Adjustment, BPU Docket No. EO12121771, Order Modifying the Board's Current Consolidated Tax Adjustment Policy, dated October 22, 2014.

¹² Exhibit JP-2, Joint Petition, Exhibit C, Joint Petitioners' Commitments.

¹³ Exhibit JP-2, Joint Petition at Paragraphs 29-48.

¹⁴ Exhibit JP-2, Joint Petition at Paragraphs 30-32.

¹⁵ Exhibit JP-2, Joint Petition at Paragraphs 33-35.

of a \$29 million Customer Investment Fund which may be used for direct rate credits to ACE customers, as well as ACE's agreement not to seek rate recovery of any acquisition premium or "goodwill" associated with the Merger or of Merger transaction costs, as further evidence demonstrating the Merger will not have a negative impact on rates.

With respect to ACE employees, Joint Petitioners state their commitment to honor all existing collective bargaining contracts following the closing of the Merger, and to ensure there is no net reduction in the employment levels at ACE due to involuntary attrition resulting from the Merger.¹⁶ The Joint Petitioners acknowledge the Merger will result in the elimination of employees performing duplicative functions. They also represent that these employee reductions will be made at the corporate or service company level — not at ACE. The Joint Petitioners also state that to the extent that these employee reductions generate cost savings, a portion of those savings may be reflected in the ACE customer rates. Consistent with the requirements of N.J.S.A. 48:3-10, Joint Petitioners state that Exelon will assume PHI's obligations, or cause PHI to continue to meet its obligations, to ACE employees with respect to pension benefits.

The Joint Petitioners also argue that the Merger will not have an adverse impact on competition in either the wholesale market or New Jersey's retail energy markets.¹⁷ Joint Petitioners state that PHI previously divested its generation facilities and purchases power only pursuant to requirements contracts to serve its default service load and must-take contracts with Qualifying Facilities entered into under the Public Utility Regulatory Policies Act of 1978.¹⁸ Moreover, Joint Petitioners state that ACE's purchases to meet its default service requirements are met through its participation in the basic generation service ("BGS") auction operated under the direct supervision and approval of the Board. They argue the proposed Merger will have no impact on ACE's participation in the BGS auction or the Board's authority over BGS. The Joint Petitioners acknowledge that, following consummation of the Merger, they will be bound by ACE's standards and procedures to prevent preferences and unauthorized information sharing. The Joint Petitioners also state that all of the PHI Utilities' transmission assets are under the operational control of PJM Interconnection, L.L.C. ("PJM") under PJM's Open Access Transmission Tariff and that the approval of the FERC is required before the Merger can be consummated.¹⁹

POSITIONS OF RATE COUNSEL AND INTERVENORS

In direct testimony, Rate Counsel, Monitoring Analytics, MAREC and IEPNJ, raised a number of concerns related to the proposed Merger's impact on competition, rates, employees and service quality and reliability. Rate Counsel, Monitoring Analytics and IEPNJ all argued that any approval of the Merger should include a number of conditions. Conditions proposed by these parties include the following:

1. Customers should receive gross synergy savings from the Merger for ten years, or alternatively receive an allocation of a portion of the after-tax benefits purportedly accruing to PHI shareholders, with customers receiving a direct rate credit of at least

¹⁶ Exhibit JP-2, Joint Petition at Paragraphs 36-38.

¹⁷ Exhibit JP-2, Joint Petition at Paragraphs 39-40.

¹⁸ Exhibit JP-2, Joint Petition at Paragraphs 39.

¹⁹ Exhibit JP-20, Rebuttal Testimony of Julie R. Solomon, at Exhibit JSR-2 (attaching FERC Order Authorizing Proposed Merger, issued November 20, 2014).

\$100 per customer. These recommendations would result in a range of financial benefits to customers of \$90.2 million to \$282 million.²⁰

2. The Joint Petitioners should be precluded from recovering the costs-to-achieve the Merger synergy savings.²¹
3. The Joint Petitioners should be precluded from filing a base rate case for ACE for a period of three years following the closing of the Merger.²²
4. The time frame for achieving the Joint Petitioners' enhanced reliability performance levels should be accelerated from 2018-2020 to 2016-2018 to dovetail with the conclusion of the existing Reliability Improvement Plan approved in BPU Docket No. ER09080664, and a financial penalty in excess of the 25 basis points proposed by the Joint Petitioners should be imposed in the event either enhanced reliability metric is not met.²³
5. The Joint Petitioners should be required to commit to attaining first quartile benchmarking performance by 2018.²⁴
6. The Joint Petitioners should be required to extend their commitments to ACE employees from the proposed two-year period to a five-year period following the closing of the Merger.²⁵
7. The Joint Petitioners should be required to comply with provisions that assure there is adequate separation between Exelon's generation business and its transmission and distribution businesses.²⁶
8. The Joint Petitioners should commit to remain in PJM indefinitely.²⁷
9. The Joint Petitioners should permit third party independent interconnection studies.²⁸
10. The Joint Petitioners should allow periodic review of transmission system element ratings and non-discriminatory access to natural gas supply.²⁹

MAREC argued that "Exelon's regular advocacy for termination of the federal tax credits for renewable energy"³⁰ and its focus on promoting its nuclear generation facilities, leads MAREC to believe "that Exelon will attempt to weaken New Jersey renewable energy policy that has been adopted by democratic process, and reduce market-based savings from competition in its pursuit of increased the profits from its nuclear fleet."³¹ MAREC argued that approval of the proposed merger could present significant harm to critically important policies of the State of New Jersey, and could raise costs to utility ratepayers.³²

JOINT PETITIONERS' RESPONSE

Joint Petitioners responded in their rebuttal testimony to the policy positions and proposed conditions raised by the other parties to the proceeding. Joint Petitioners argued that

²⁰ Exhibit RC-1, A. Crane Direct at 4, 20-27.

²¹ Ibid. 14, 24.

²² Ibid. 27-28.

²³ Exhibit RC-4, Chang Direct at 3-4, 19- 20.

²⁴ Ibid. 11-12.

²⁵ Exhibit RC-7, D. Peterson Direct at 6-10.

²⁶ Exhibit IEPNJ-1, Gabel Direct at 3.

²⁷ Exhibit IMM-1, Bowring/Haas Direct 3, 1 at 8. Compare Exhibit RC-6, P. Peterson Direct at 5, noting the Joint Petitioners should be required to remain in PJM for ten years.

²⁸ Ibid. 3, 8. See also Exhibit RC-6, P. Peterson Direct at 4, noting the Joint Petitioners should "appoint an independent third party to review the results of its interconnection study process."

²⁹ Ibid. 3, 8.

³⁰ Exhibit MAREC-1, Jacobs Direct at 10.

³¹ Id. at 13.

³² Ibid. at 15.

application of Board precedent would result in a synergy savings amount for customers of approximately \$45.2 million.³³ Joint Petitioners alleged that this amount was net of costs-to-achieve the synergy savings as those costs were incurred solely to generate the synergy savings.³⁴ Joint Petitioners also asserted that Board policy was to recognize cost-to-achieve when conducting a ten-year calculation of synergy savings.³⁵ Joint Petitioners disputed the use of an alternative financial sharing methodology based on the acquisition premium paid to PHI shareholders.³⁶ Joint Petitioners stated that the actual premium paid to PHI shareholders was significantly smaller than suggested and, in any event, an acquisition premium is not savings that can, or should, be shared with customers.³⁷

Joint Petitioners argued that imposition of a rate case filing moratorium would be inappropriate since ACE is allegedly earning less than its authorized rate of return, and a moratorium of any duration would further exacerbate this situation.³⁸ Additionally, Joint Petitioners contend that there are risks and adverse consequences to a rate moratorium, including undermining ACE's credit standing and endangering its access to capital markets.³⁹

With respect to reliability improvements, the Joint Petitioners asserted that it would be premature to accelerate the measurement of reliability performance to 2018 since there will not be sufficient time for ACE to fully realize reliability improvements from the implementation of the Exelon Management Model and related best practices.⁴⁰ The Joint Petitioners also maintained that such acceleration would require additional reliability-related capital and O&M investment beyond ACE's current long-range plan.⁴¹

Joint Petitioners stated that it is not practical to extend the employment commitment contained in the Joint Petition, and there were no current plans to reduce employment at ACE following the two-year commitment.⁴² Should the Merger close, Joint Petitioners commit to hire a minimum of sixty bargaining-unit employees within the twenty-four month period following the close of the Merger.⁴³

The Joint Petitioners argued that no data had been presented to indicate the Merger actually raises any valid competitive concerns, or would have any negative impact on retail markets in New Jersey.⁴⁴ Joint Petitioners also represented that Exelon does not now, and will not in the future, favor its generation business to the detriment of its utility distribution customers.⁴⁵ The Joint Petitioners also noted that Exelon has no intention of leaving PJM, has already committed to remain in PJM until at least 2022, but that Exelon also believes it is not appropriate to limit its flexibility in the event of unforeseen industry changes.⁴⁶ Joint Petitioners also argued that FERC's approval of the Merger without conditions regarding PJM demonstrates that additional conditions are not needed to protect competition.⁴⁷

³³ Exhibit JP-18, McGowan Rebuttal at 5-6.

³⁴ Exhibit JP-18, McGowan Rebuttal at 4.

³⁵ Exhibit JP-18, McGowan Rebuttal at 4-5.

³⁶ Exhibit JP-18, McGowan Rebuttal at 7-9.

³⁷ Exhibit JP-18, McGowan Rebuttal at 7-8.

³⁸ Exhibit JP-18, McGowan Rebuttal at 9-10.

³⁹ Exhibit JP-21, Lapson Rebuttal at 7-11.

⁴⁰ Exhibit JP-15, Alden Rebuttal at 12-13.

⁴¹ Exhibit JP-15, Alden Rebuttal at 13.

⁴² Exhibit JP-12, O'Brien Rebuttal at 28.

⁴³ Exhibit JP-12, O'Brien Rebuttal at 28.

⁴⁴ Exhibit JP-20, Solomon Rebuttal at 3-5.

⁴⁵ Exhibit JP-12, O'Brien Rebuttal at 14-15.

⁴⁶ Exhibit JP-12, O'Brien Rebuttal at 23. See also Exhibit JP-12, Solomon Rebuttal at 5-6.

⁴⁷ Exhibit JP-12, O'Brien Rebuttal at 23-24.

THE SETTLEMENT

As previously described, the parties engaged in a number of settlement discussions between the months of October 2014 and January 2015. As also previously stated, in January 2015 the Settlement was reached among Joint Petitioners, Board Staff and IEPNJ ("Signatory Parties"). The Settlement was simultaneously entered into evidence and filed with the Board at the January 14, 2015 hearing.

Following is a summary of the main terms of the Settlement.⁴⁸

Impact on Rates:

Exelon Corporation ("Exelon") will establish a Customer Investment Fund ("CIF") of \$62 million which is equivalent to \$114 per distribution customer, calculated based on the actual customer count at 12/31/13 of 543,989 distribution customers.

The Joint Petitioners will pay for and implement, over a five-year period following closing of the Merger, energy-efficiency programs (including energy-efficiency programs directed to benefit low-income customers) that are projected to yield a total of \$15 million in savings to ACE customers over the life of the measures. Within six months following the closing of the Merger, the Joint Petitioners will submit to Board Staff and Rate Counsel a detailed description of the energy-efficiency programs to be implemented pursuant to this commitment.

Beginning in June, 2016, and annually for the next five years, Joint Petitioners will report to the Board on the dollar value of the savings achieved. Savings generated by the energy-efficiency programs will be measured in accordance with the Mid-Atlantic Technical Reference Manual using Evaluation Measurement and Verification best practices used by regulatory jurisdictions across the country.

Joint Petitioners commit to filing a distribution base rate proceeding in the first three years following the closing of the Merger.

In the base rate proceeding ACE will not seek recovery in rates of: (a.) the acquisition premium or goodwill associated with the Merger; or (b.) the Transaction Costs, as defined in Paragraph 11 of the Settlement, incurred in connection with the Merger by Exelon, PHI, or their subsidiaries.

Any acquisition premium or goodwill shall be excluded permanently from the ratemaking capital structure. Exelon will not record any of the impacts of purchase accounting at the PHI utility companies (ACE, Delmarva Power and Pepco), thereby maintaining historical cost accounting at each of the PHI utility companies. Exelon has received confirmation of its decision on purchase accounting from the Securities and Exchange Commission; thus no goodwill or other fair value adjustments will be recorded at the PHI utility companies upon the closing of the Merger.

For the purposes of the Settlement, Transaction Costs are defined as: (a.) consultant,

⁴⁸ Although the terms of the Settlement are discussed in some detail in this Order, the full terms of the Settlement are enumerated in the document filed with the Board on January 14, 2015. Should there be any conflict between this summary and the Settlement, the terms of the Stipulation control, subject to the findings and conclusions of this Order.

investment banker, regulatory fees and legal fees associated with the Merger agreement and regulatory approvals; (b.) purchase price, change-in-control payments, retention payments, executive severance payments and the accelerated portion of SERP payments; (c.) costs associated with the shareholder meetings and proxy statement related to Merger approval by the PHI shareholders, and (d.) costs associated with the imposition of conditions or approval of settlement terms in other state jurisdictions. Board Staff and Rate Counsel shall have the right to see whether other costs incurred might fit within the "transaction costs" category and to advocate that such costs should be considered as non-recoverable transaction costs in a subsequent distribution base rate proceeding.

ACE shall file, in future base rate cases, information on two alternative capital structures. One of the alternatives will be the use of a consolidated capital structure based on the capital structure that is maintained by PHI. The second alternative will be a stand-alone ACE capital structure. The parties to future base rate cases shall be free to argue for the benefits and appropriateness of using either capital structure for ratemaking purposes or another alternative capital structure.

Impact on Employees:

ACE will maintain its local operational headquarters in Mays Landing, New Jersey.

ACE 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 will not permit a net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at ACE. For years three through five following the closing of the Merger, ACE will not permit a net, involuntary reduction due to the Merger integration process greater than a total of twenty-five (25) ACE positions.

For at least the first five years following the consummation of the Merger, Exelon will provide current and former ACE employees compensation and benefits that are at least as favorable in the aggregate as the compensation and benefits provided to those employees immediately before April 29, 2014, or to the compensation and benefits of Exelon employees in comparable positions. PHI and ACE will also continue their commitments to workforce diversity.

If the Merger of PHI and Exelon closes, ACE agrees to hire a minimum of sixty (60) bargaining-unit employees and to make a good faith effort to do so during the twenty-four (24) month period after the Merger closes. Those sixty (60) bargaining-unit employees will not be among the twenty-five (25) ACE positions that may be involuntarily reduced due to the Merger integration process in years three through five following the closing of the Merger.

Exelon will assume PHI's obligations, or cause PHI to continue to meet its obligations, to ACE employees and retirees with respect to pension and retiree health benefits.

Joint Petitioners will provide outplacement services to employees terminated as a result of the Merger. As set out in the respective severance policies of Exelon and PHI, Exelon employees will be provided with access to outplacement services, and PHI employees will receive an unrestricted cash payment (based on years of service), in addition to their severance payments, which can be used for outplacement services. Any expenses

incurred for outplacement services for executives shall be deemed a transaction cost.

Impact on Safe and Adequate Utility Service:

The Joint Petitioners aspire to achieve first-quartile SAIFI and CAIDI performance. For the purposes of this Settlement, the Signatory Parties define first-quartile performance across SAIFI and CAIDI using 2013 IEEE 2.5 beta definitions and exclusions across the Exelon peer panel of 26 utilities, which is a subset of the full IEEE annual survey panel. The 2013 reported numbers (SAIFI 0.85 interruptions, CAIDI 91 minutes) will be used for benchmarking. Within six months after the closing of the Merger, Joint Petitioners will provide a comprehensive Reliability Analysis explaining how ACE could achieve first-quartile performance. The Reliability Analysis will include detailed projects, activities, capital and O&M budget estimates. This Paragraph is merely an expression of the Signatory Parties' desire for continued reliability improvements in the ACE service territory and does not indicate authorization to include any specific assets or amounts in rate base, does not indicate authorization for any ratemaking treatment, and does not constitute pre-approval for any amounts spent by ACE to achieve first-quartile performance levels.

ACE will achieve the following reliability performance levels by 2020, based on a three-year historical average calculated over the 2018-2020 period (excluding major events as calculated consistent with the methodology currently utilized by the Board): (a.) the System Average Interruption Frequency Index ("SAIFI") will not exceed 1.05 interruptions; and (b.) the Customer Average Interruption Duration Index ("CAIDI") will not exceed 100 minutes. If this level of reliability improvement is not achieved across either SAIFI or CAIDI, the return on equity to which ACE would otherwise be entitled in its next electric distribution base rate case filed after January 1, 2021, will be reduced by fifty (50) basis points. The return on equity reduction would apply throughout the period that the rates established by that rate proceeding are in effect, and ACE would be required to initiate a new base rate proceeding and obtain an order from the Board approving new rates to end the return on equity penalty.

ACE commits to the continuation of the Reliability Improvement Plan ("RIP") (established in BPU Dkt. No. ER09080664, Order dated May 16, 2011) including its reporting requirements, 2016 performance targets, and budgeted reliability spending levels through 2015 (the previously determined reliability spending levels for 2014 and 2015 are specified in Table One below).

To meet the reliability commitments set forth above, ACE agrees to continue the programs identified in the RIP through 2021. Specifically, ACE will continue to implement the following component programs of the RIP: Vegetation Management, Priority Feeders, Load Growth, Distribution Automation, Feeder Improvement and Substation Improvement. ACE will also continue the reporting requirements of the RIP through 2021 and will continue to offer to meet quarterly with Board Staff and Rate Counsel. The forecasted budget for reliability spending for ACE from 2016 through 2019 is contained in Table One below and will be updated for 2020 and 2021 when it becomes available. During the period 2016 through 2021, ACE commits to spend at least 90% of the aggregate budget amount over those six years, adjusted to reflect actual synergy savings net of costs to achieve. ACE is free to move resources between the spending categories noted below, and between budget years, to address reliability conditions and needs as they arise. Beginning six months after the closing of the Merger, ACE commits to provide reports to Rate Counsel and Board Staff on a semi-

annual basis indicating its spending levels under this provision. Information regarding base distribution capital spending is provided for reference purposes only in Exhibit One to this Settlement.

**Table One
Atlantic City Electric Company
Spend by Budget Category (2014-2019)**

Categories	Forecast						Note: All dollars are in millions
	2014	2015	2016	2017	2018	2019	
	Reliability Improvement Program						
Priority Feeders	7.8	5.0	10.0	10.0	10.0	5.0	
Load Growth	20.1	7.4	23.2	19.4	23.5	30.8	
Distribution Automation	3.3	3.3	10.6	8.6	8.6	6.1	
Feeder Improvement	6.7	4.7	7.5	8.0	8.5	5.5	
Substation Improvement	3.6	1.5	3.8	4.6	2.3	0.7	
Total Reliability Improvement Program Spending	41.5	21.9	55.1	50.6	52.9	48.0	
Vegetation Management							
(Operations and Maintenance Expense)							
Total	14.4	14.6	14.6	14.6	14.6	14.6	

For a period of five years following the closing of the Merger, ACE will continue to meet with Board Staff and Rate Counsel on a quarterly basis regarding customer service-related issues, and to continue the reporting requirements contained in the Customer Service Improvement Plan established in BPU Dkt. No. ER09080664, Order dated May 16, 2011. ACE agrees for the five years following the closing of the Merger, to conduct 6,500 Moment of Truth surveys annually beginning in 2015, unless Board Staff and Rate Counsel agree a fewer number of surveys can be conducted. In 2016, ACE will institute measures and devote additional resources to comply with the Board's directive to have "no more than 1,500 customer complaints per year reported to the Board by its customers."

Within six months following the closing of the Merger, ACE will provide to Board Staff and Rate Counsel an update regarding the status of its approach on how it will reduce its customer complaints. ACE will focus on its high level of customer credit complaints and determine the corrective action needed to reduce future re-occurrences. The Root Cause Analysis Overview provided in Rate Counsel Discovery Request RCR-C1-19 provides a reasonable outline of an approach to address and resolve frequently recurring customer issues such as credit related complaints. ACE will provide to Board Staff and Rate Counsel its plan to implement its Root Cause Analysis within three months from the closing of the Merger. ACE will include in a quarterly report to Board Staff and Rate Counsel, among other information, the number and cause of complaints reported to the Board by its customers each calendar quarter.

ACE will review its policies and processes for establishing deferred payment arrangements (DPAs), and will provide reasonable and accommodating policies to negotiate terms with customers on a case-by-case basis, permitting extended payment periods, and reducing initial down payment requirements. ACE will track the status of all its customers with a DPA and identify those customers whose status it currently reports as "Unknown." ACE will provide to Board Staff and Rate Counsel its plan to increase the portion of its deferred payment arrangements that are successfully repaid and to track the status of its "Unknown" DPA customers within three months following the closing of the Merger.

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

In New Jersey, Exelon and its subsidiaries shall, during the ten-year period following consummation of the Merger, provide at least an annual average of charitable contributions and traditional local community support that exceeds PHI's and ACE's 2013 level of \$709,000.

Impact on Competition:

Joint Petitioners agree to abide by New Jersey regulations regarding Affiliate Relations, N.J.A.C. 14:4-3.1 et seq., and the New Jersey regulations and Board Orders regarding provision of BGS.

Exelon agrees to the following competition protections. For purposes of this agreement, "Affiliated Transmission Companies" are ACE, Delmarva Power, Pepco, PECO, BGE and Commonwealth Edison ("ComEd"), and any transmission owning entity that is in the future affiliated with Exelon and is a member of PJM. "Exelon" refers to Exelon and its affiliates and subsidiaries.

A. Electric Generation Interconnection Studies

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. Exelon shall provide notice and a list of such firms to the Parties to this Settlement thirty days prior to submission to PJM. The Parties shall have the right to provide comments to Exelon or PJM for their review with respect to such submission. The parties or 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.

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.

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.

B. Commitment to Stay in PJM

Exelon commits that ACE, Delmarva Power, Pepco, PECO and BGE will remain as members of PJM at least 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.

C. Separate Employees To Engage in Advocacy

Exelon shall utilize separate legal and government-affairs personnel, support personnel, and separate law firms and consultants to advocate before the Board on behalf of Exelon Generation and Constellation, on the one hand, and Affiliated Transmission Companies on the other.

D. Compliance with Stipulation in ACE-PEPCO Merger Order

Exelon commits to comply with the competition-related provisions (paragraphs 1-14 set out below, modified to reflect this Merger) of the stipulation embodied in the Commission's June 2002 Order approving the merger of ACE and Pepco (219 P.U.R. 4th 235), BPU Docket No. EM02090633.

1. A[CE] shall transact business with Exelon's generation and marketing affiliates in the same manner as A[CE] transacts business with unaffiliated competitive generators and marketers, shall provide no preferences to such affiliates and

shall provide no competitive information to such affiliates that is not provided on the same basis and contemporaneously to such unaffiliated entities. Notwithstanding the above, it is understood and agreed that Exelon's service corporation, generation and trading affiliates will provide A[CE] with research and analyses concerning energy markets and pricing, energy risk management support and related services which research and analyses shall not promote Exelon's generation business or trading operations. In procuring power for A[CE]'s BGS, (i) A[CE] and Exelon shall only use designated individuals who are not purchasing or selling power, natural gas or financial instruments for their competitive affiliates, and who are employees of an organization which is separate from Exelon generation or trading affiliates, which may be A[CE], in which employees or their managers receive no compensation as the result of sales of power achieved by Exelon generation or trading affiliates, except incentives provided through overall corporate goals and not directly through sale of power except as they affect earnings per share or similar measures; (ii) that employees who purchase power for A[CE] BGS shall operate in an area that is physically distinct from the wholesale trading function (i.e., separated by floor, wing or other building); and (iii) such purchases will be made specifically on behalf of A[CE] which will have its own identified supply portfolio. Additionally, A[CE]'s utility load forecasting shall be performed by employees of the utility or the service company independent and separate from the trading function. Finally, A[CE] shall not, directly or indirectly, convey any preference regarding the purchase of energy for A[CE]'s BGS to its competitive affiliates through the merged entity's service corporation, or through Pepco or Exelon.

2. Exelon shall operate its generation, marketing and trading functions distinct from A[CE]'s transmission and distribution business as separate corporate entities with separate cost accounting, separate operating staffs below senior officer level, and locations for operating personnel that are physically separated by address, floor, wing of building, with appropriate protections in the computer system to give effect to this separation. However, individuals performing general corporate functions through Exelon's service company such as legal, regulatory, accounting, treasury,

insurance, tax, and other administrative functions (including, but not limited to, human resources, building maintenance, vehicle and janitorial services) may provide such services to A[CE] and to entities performing generation, marketing and trading functions, so long as such individuals properly assign their time and costs to the proper entity and otherwise comply with requirements for non-disclosure of information.

3. Any transfer by A[CE] of competitive information from A[CE] to any generation, marketing or trading affiliate of Exelon shall be contemporaneously made available to non-affiliated generators/suppliers, including competitive information regarding viable locations for development of generation projects, the status of internal policies on transmission and distribution issues, data and analysis of customer growth and new customers, customer transfers to other electric power suppliers, natural gas intra and inter-state pipeline issues and natural gas supply issues. Such dissemination shall be made via a public posting on a nondiscriminatory basis.

4. A[CE] shall provide no preference to Exelon generation functions in the evaluation of and contracting for transmission interconnection construction and services or any other utility service.

5. A[CE] shall provide no competitive information to generation affiliates of Exelon related to operations, output or expansion of any non-utility generation. Exelon shall assure that its energy trading groups do not receive competitively sensitive information from A[CE] regarding non-utility generators through the measures identified in numbered paragraph one above.

6. A[CE] shall implement standards and procedures consistent with the terms of this Stipulation and also consistent with [Board] policies, standards and regulations, to prevent preferences and improper flow of information between A[CE] and Exelon, including Exelon's service corporations and its generation or marketing affiliates. These principles and procedures shall also be embedded in employee operating procedures and other appropriate documents, copies of which shall be provided to the [Board] within six months of the merger closing.

Periodic compliance training of employees shall be conducted so that employees are fully informed of the commitments herein and the associated restrictions on their activities as employees.

7. A[CE] shall procure its net power supply requirements for its New Jersey BGS customers in a manner that provides no preference to Exelon or other affiliated sources of generation, to any generation addition (expansions or new generation) which Exelon affiliates may be planning, to Exelon's trading group, or its retail marketing group(s).

8. A[CE] shall provide concurrent notice to Signatory Parties to this proceeding of the filing with the Federal Energy Regulatory Commission of any power purchase agreements (or agreement renewals) between Exelon generation or trading affiliates and A[CE] for New Jersey power sales of longer than 90 days. The Signatory Parties reserve the right to argue that said purchases are subject to [Board] review.

9. The provisions of this Stipulation shall apply to any successor companies to Exelon or affiliates of Exelon in the same or similar business activities involving A[CE].

10. The provisions of this Stipulation related to preventing subsidy, improper transfer of information or preference to Exelon's competitive affiliates by A[CE] shall also apply so as to prevent Exelon's service corporation, or any other affiliate acting on behalf of A[CE], from acting as the intermediary for any such subsidy, improper transfer of information or preference.

11. A[CE], Exelon and its generation and trading affiliates are not precluded from taking any steps necessary in a time of Emergency. Emergency means (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; or (ii) a fuel shortage requiring departure from normal operating procedures in order to minimize the use of such scarce fuel; or (iii) a condition that requires implementation of emergency procedures as defined in the PJM Manuals. Any such emergency situation shall be

reported pursuant to the A[CE] FERC-approved standards of conduct, pursuant to 18 C.F.R. §37.4.

12. Disputes concerning alleged violations of these provisions shall be submitted for resolution to the [Board], which has jurisdiction over the terms of the Stipulation and which shall have authority to take such action as it deems appropriate, consistent with applicable law.

13. A[CE] shall not petition for any alteration of these provisions for four years from the date of the [Board]'s issuance of a final Order in this proceeding. After the four year period, A[CE] shall provide Signatory Parties of this Stipulation with 90-days advance notice of its intent to file a petition with the [Board] seeking such changes and engage in good faith discussions related to the proposed changes with any Signatory Party so requesting. A[CE] shall have the burden of proof to demonstrate that a change or changes in law, regulations or circumstances has occurred such that continued enforcement of these provisions is unduly burdensome or unreasonable, and that amendment or termination of these provisions will not harm the development of a competitive energy market. Unless altered by the [Board] in an interim order, the provisions set forth in paragraphs 1-13 shall remain in effect during the pendency of any [Board] proceeding seeking alteration of these conditions.

14. A[CE] shall honor existing contracts with non-affiliated, non-utility generators including future modifications that may be approved by the [Board].

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

Most Favored Nation Provision

The Settlement contains a "Most Favored Nation" ("MFN") provision for the purpose of insuring that, "in the aggregate, New Jersey will be treated as favorably as Maryland, Delaware and the District of Columbia with respect to benefits (both financial and non-financial) provided to customers."⁴⁹ The complete terms of the MFN listed in Paragraph 91 of the Settlement follow:

⁴⁹ Exhibit JP-25, Statement in Support at 10.

Exelon will provide Board Staff and Rate Counsel with a copy of the final Orders and Settlement Stipulations from Delaware, Maryland and the District of Columbia, 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 New Jersey (calculated in each case on a per-distribution customer basis). In recognition of the risks to New Jersey of approving the transaction before the other jurisdictions, the Parties agree that New Jersey should be protected in the event that the Joint Petitioners 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 Stipulation:

(1) 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 Stipulation with respect to financial benefits, credits or payments to customers including the amount of the CIF specified in Paragraph 7, then Exelon will increase the financial benefits, credits or payments to ACE 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 New Jersey's \$62 million CIF or the \$15 million in energy-efficiency savings to be reduced.

(2) 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 Stipulation that do not involve financial benefits, credits or payments to customers, then Exelon will increase the benefits provided under this Stipulation by the amount of any difference between the value of those benefits in the other jurisdiction and the value of those benefits under this Stipulation, based on the analysis showing the valuation of those benefits in the other jurisdiction

compared to the valuation of those benefits in New Jersey, all determined where appropriate on a pro rata or per-distribution customer basis. The 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 Stipulation, and Exelon will not be required to offer to compensate New Jersey for any differences in the value of such elements.

If Board Staff or Rate Counsel finds the amount or form of compensation offered by Exelon to be insufficient, then Board Staff or Rate Counsel may petition the Board to require that Exelon provide increased benefits in New Jersey. Exelon shall be permitted, in its sole discretion, to decline to accept any substitution of terms and conditions, in which case this Stipulation will be null and void. Exelon agrees to supply non-privileged information which Board Staff or Rate Counsel may request to determine the value of any benefits. The Parties agree that the purpose of this Paragraph is to assure a fair allocation of the costs and benefits associated with this transaction to ACE customers.

Provisions Addressing Other Requested Approvals

The Joint Petitioners sought additional approvals in connection with the proposed Merger: approval for ACE and PHI to participate in the Exelon General Services Agreement (a form of which was included as Exhibit D to the Joint Petition); approval for ACE to participate in the PHI money pool; and approval to move ACE's books and records to PHI's offices in Washington, D.C. The Settlement contains several provisions addressing these matters including the following:

Corporate Organization, Governance, Financial Integrity and Ring-Fencing

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

ACE will maintain separate books and records, and is authorized to maintain those books and records at the corporate headquarters of PHI in Washington, D.C. The Joint Petitioners agree to provide the Board and its Staff and Rate Counsel, upon request, access in New Jersey to ACE's original books and records as maintained in the ordinary course of business within twenty working days after such request. The Joint Petitioners also agree to notify the Board of any material change in the administration, management or condition of ACE's books and records within ten days after the event.

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

Exelon will establish a limited liability company as a special purpose entity ("SPE") for the purpose of holding 100% of the equity interest in PHI.

The SPE will be a direct subsidiary of Exelon Energy Delivery Company LLC ("EEDC").

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

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

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

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

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

PHI will have a board of directors consisting of seven or more people. At least three members of the PHI board must be "independent" (as defined by New York Stock Exchange rules). Of the four remaining directors, at least one shall be selected from among the officers or employees of PHI or a PHI subsidiary.

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

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

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

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

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

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

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

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

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

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

The SPE shall not pledge its assets for the benefit of any other entity or make loans to, or purchase or hold any indebtedness of, any other entity. The PHI utilities will not

pledge or use as collateral, or grant a mortgage or other lien on any asset or cash flow, or otherwise pledge such assets or cash flow as security for repayment of the principal or interest of any loan or credit instrument of, or otherwise for the benefit of, Exelon, PHI or any other Exelon affiliate including the SPE.

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

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

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

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

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

No entities other than PHI and its subsidiaries, including the PHI utilities and PHI Service Company ("PHISCo"), will participate in the PHI utilities' money pool. The PHI utilities will not participate in any money pool operated by Exelon, and there will be no commingling of the PHI money pool funds with Exelon. Any deposits into or loans through the PHI money pool by PHI utilities shall be on terms no less favorable than the depositor or lender could obtain through a short-term investment of similar funds with independent parties. Any borrowings from the PHI money pool by a PHI utility shall be on terms neither less favorable nor less cost effective than the PHI utility could obtain through short-term borrowings from (including sales of commercial paper to) independent parties. Exelon will give notice to the Board within seven days in the event that any participant in the PHI money pool is rated below investment grade by any of the three major credit rating agencies. The documents and instruments creating the PHI money pool (and any modification thereof) will be subject to approval by the Board which may revoke the right of ACE to participate in the PHI money pool or require a modification in order for ACE's continued full or partial participation.

PHISCo will remain as a subsidiary of PHI and will continue to perform functions and to maintain related assets currently involved in providing services exclusively to the PHI utilities. Other functions that are currently provided by PHISCo, including those that are provided to PHI utilities and to other current PHI subsidiaries, will be transferred to Exelon Business Services Company ("EBSC") or another Exelon affiliate in a phased transition over a period of time following the Merger closing.

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 PHI may retain ownership of Conectiv LLC ("Conectiv") as a holding company for ACE and Delmarva Power; and Conectiv or subsidiaries of Conectiv may retain ownership of real estate and other assets that are used in whole or in part in the business of the PHI utilities. Post-Merger, PHI will not initiate or invest in new non-utility operations without first obtaining Board approval in a written order. Following the closing of the Merger, ACE may, without further approval of the Board, become a direct subsidiary of PHI, rather than remain a direct subsidiary of Conectiv. If ACE does not become a direct subsidiary of PHI, ACE will, in its first post-merger base rate case, justify and support that it is in the public interest for it to remain as a direct subsidiary of Conectiv rather than a direct subsidiary of PHI. Notwithstanding the requirements of this Paragraph or the requirements of Paragraphs 48, 49 and 50, ACE may continue existing arrangements related to the obligations of Atlantic City Electric Transition Funding LLC.

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

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

Within 180 days following completion of the Merger, Exelon will obtain a legal opinion in customary form and substance and reasonably satisfactory to the Board, 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.

ACE 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 Board.

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

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

ACE will file with the Board an annual compliance report with respect to the ring-fencing and other requirements.

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

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

Exelon shall not engage in an internal corporate reorganization relating to the SPE, PHI or ACE, or EEDC for which Board approval is not required without 90 days prior written notification to the Board. 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 Board elects to open an investigation into the matter if the Board deems it appropriate. Notwithstanding the above language in this Paragraph, the Joint Petitioners shall not materially alter the ring-fencing plan described in this stipulation agreement without first obtaining approval in a written order from the Board.

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

Exelon's Board of Directors will include the PHI utilities service territories among the locations of Exelon's board and shareholder meetings.

Exelon's Executive Committee will include the PHI utilities service territories among the locations of Executive Committee meetings.

Upon the effective date of the proposed Merger, PHI and its utility subsidiaries will adopt delegations of authority setting forth the authorizations of officers of PHI and its utility subsidiaries to act on behalf of PHI and its utility subsidiaries without further authorization from Exelon Corporation. The proposed delegations of authority for PHI and its utility subsidiaries are set forth on Table Two of the Settlement.⁵⁰ The delegations of authority for ACE adopted by PHI will not be amended to reduce authorization levels of ACE officers without prior notice to the Board of Public Utilities.

⁵⁰ Table Two has not been reproduced in this Order. Please see page 24 of the Settlement for Table Two.

The Joint Petitioners agree to implement the ring-fencing and corporate governance measures set out above within 180 days of merger closing for the purpose of providing protections to customers. Five years after the closing of the Merger, the Joint Petitioners shall have the right to review the provisions contained in Paragraphs 28 through 72 of the Settlement, and to make a filing with the Board requesting authority to modify or terminate those provisions. Notwithstanding such right, Joint Petitioners agree not to proceed with any such modification or termination without first obtaining Board approval in a written order. In addition, the Parties recognize that the Board at any time may initiate its own review or investigation regarding ring-fencing measures (or upon petition by any party) and order modifications that it deems to be appropriate, in the public interest and the best interest of ACE customers.

Affiliate Transactions

Exelon commits to comply, and cause ACE and other Exelon affiliates to comply, with the New Jersey statutes and regulations applicable to ACE regarding affiliate transactions. Exelon also commits that Board Staff and Rate Counsel shall have reasonable access to the accounting records of Exelon's affiliates that are the basis for charges to ACE to determine the reasonableness of allocation factors used by Exelon to assign those costs and amounts subject to allocation and direct charges.

The Parties agree that PHI and its subsidiaries, including ACE, will execute the General Services Agreement ("GSA") filed with the Joint Petition as Exhibit D. Joint Petitioners agree to allocate costs to ACE in a manner that either substantially complies with the current PHI GSA, or results in a lower allocation of costs in the aggregate. The Joint Petitioners agree to demonstrate this in the first base rate case filing occurring after the closing of the Merger as compared to ACE's allocated costs pre-Merger. The Parties shall work together to determine the format of an annual filing of EBSC costs charged to ACE that will be substantially in the same format as ACE's current, annual filing. The filing will be made by June 30th of each subsequent year and will include a copy of EBSC's FERC Form 60 as well as detail on the actual EBSC allocations and costs charged to ACE during the prior year. ACE shall also make an ongoing commitment to explain any change to allocation factors to ACE that are more than five percentage points versus the previous year. ACE shall also make available on request any prior months' variance reports regarding EBSC's billings to ACE.

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

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

ACE shall also provide copies to Board Staff and Rate Counsel of the portions of any external audit reports performed for EBSC pertaining directly or indirectly to Exelon's

determinations of direct billings and cost allocations to ACE no later than 30 days after the final report is completed.

ACE shall promptly notify the Board, Board Staff and Rate Counsel when it has received notice that the SEC, the FERC, or the state regulatory commission in any state in which an affiliate utility company operates has initiated an audit of EBSC. ACE shall provide copies of the portions of all audits highlighting the findings and recommendations and ordered changes to the GSA pertaining directly or indirectly to EBSC's determinations of direct billings and cost allocations to its affiliate utility companies, as well as any sections addressing ACE. If after review of such material, Board Staff or Rate Counsel reasonably determines that review of the remainder of such audit report is warranted, ACE shall make the complete report available for review in ACE's New Jersey office or at the Board, subject to appropriate conditions to protect confidential or proprietary information.

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

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

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

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

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

ACE shall file petitions for approval of any modifications to the GSA, including changes in methods or formulae used to allocate costs, with the Board at the same time it makes a filing with the FERC.

Board Staff and Rate Counsel shall have the right to review the GSA and related cost allocations in ACE's future base rate cases, in conjunction with future competitive service audits, in response to any changes in the Board's affiliate relations standards, and for other good cause shown.

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

ACE agrees that the Board under its authority pursuant to the Electric Discount and Energy Competition Act may review the allocation of costs in sufficient detail to analyze their reasonableness, the type and scope of services that EBSC provides to ACE and the basis for inclusion of new participants in EBSC's allocation formula. ACE and EBSC shall record costs and cost allocation procedures in sufficient detail to allow the Board to analyze, evaluate, and render a determination as to their reasonableness for ratemaking purposes.

Board Staff and Rate Counsel shall be assured reasonable and convenient access to the books and records of EBSC and other Exelon companies that transact business with ACE, and supporting documentation thereof, but only to the extent relevant to transactions with ACE but excluding competitive processes or transactions supervised by an administrative or other governmental body of competent jurisdiction (such as ACE's procurement of Basic Generation Service under the supervision of the Board of Public Utilities).

PHI Money Pool Participation

The Settlement contains provisions limiting participation in the PHI money pool to PHI utilities and PHI Service Company, with no commingling of the PHI money pool funds with Exelon. Additionally, the Settlement requires Exelon to give notice to the Board within seven days in the event that any participant in the PHI money pool is rated below investment grade by any of the three major credit rating agencies.

Relocation of Books & Records

Joint Petitioners will, upon request, provide the Board, Board Staff and Rate Counsel "access in new Jersey to ACE's original books and records as maintained in the ordinary course of business within twenty working days after such request."⁵¹

OTHER PARTIES' POSITIONS ON THE SETTLEMENT

At the hearing on January 14, 2015, and in subsequent written filings, a number of the parties entered positions on the Settlement. Following is a summary of those positions.

Rate Counsel

It is Rate Counsel's position that the terms of Stipulation of Settlement do not satisfy the statutory requirements and do not sufficiently provide that ACE customers will be better off with the consummation of the merger.⁵²

⁵¹ Exhibit JP-23, Settlement at Paragraph 29.

⁵² T refers to the transcript of the hearing held on January 14, 2015.

Rate Counsel argued that the stipulated synergy savings of \$62 million is fleeting given that the Settlement does not include any limitations of post-merger transition costs that ACE may seek later and does not include a stay out provision that would prevent ACE from requesting a future rate increase.⁵³ Rate Counsel further states that the Joint Petitioner's agreement to pay for and implement energy efficiency programs will result in minimal tangible benefits to ratepayers.⁵⁴

Rate Counsel stated that ACE has already achieved or would have achieved the CAIDI and SAIFI merger reliability commitments that are outlined in the Settlement, questioning the additional reliability benefits resulting from the merger.⁵⁵ Rate Counsel referred to ACE's commitment in its 2009 base rate case. Due to concerns raised about ACE's reliability performance in Atlantic's 2009 base rate case, ACE agreed to implement the Reliability Investment Program ("RIP"). RIP was designed to improve the reliability of the distribution system across Atlantic's operating area by reducing the frequency and duration of customer outages. Rate Counsel argued that the RIP has fulfilled its intended CAIDI goal and has exceeded it, not only meeting the RIP commitment but also reaching the level that the Company is now proposing to meet in the merger. Rate Counsel continued by stating that although SAIFI performance has improved since the inception of RIP but not to the level agreed to in the merger, it was anticipated that SAIFI improvements due to RIP would have improved to level in the merger by the end of RIP in 2016. The 50 basis point penalty for ACE not meeting these reliability improvements is not significant enough and will not deter non-compliance. Rate Counsel also challenged the ability of ACE to quantify the 90% capital spending commitment for Vegetation Management and continuing RIP through the year 2021 because it fails to address the Company's anticipated entire overall capital spending in 2019 of \$130.8 million for reliability. Rate Counsel argued that there is no commitment by the Joint Petitioners to maintain any level of overall reliability spending already agreed to in other proceedings. Thus the merger agreement could result in less spending overall for reliability. Depending how frequently ACE files for a base rate case, it may be difficult to monitor capital spending. Rate Counsel stated its concern that ACE could easily re-categorize base spending as RIP spending thereby fulfilling the merger commitment but in actuality decreasing overall reliability spending already agreed to in other proceedings.⁵⁶

Rate Counsel further criticized the second reliability commitment in the settlement stating that it is not a firm commitment but rather an aspirational goal for the Joint Petitioners and if not reached in the first quartile, there are no consequences or penalties assessed.⁵⁷

Rate Counsel asserted that that the "most favored nation clause" lacks substance. Rate Counsel argued that the customer investment fund is allocated per customer (\$62 million/543,989 customers) with \$114 per customer. However, it is not clear how this will be compared to other states and that it should be clear that the full \$62 million will be returned to customer regardless of whether the number of customers changes. Additionally, Rate Counsel argued that the "most favored nation clause" in the Settlement is vague.⁵⁸

⁵³ T 43-44.

⁵⁴ T 45.

⁵⁵ T 46.

⁵⁶ T 46-50.

⁵⁷ Ibid.

⁵⁸ T 51-54.

Monitoring Analytics

Monitoring Analytics does not support the Settlement because it believes that it does not go far enough to protect competition. According to Monitoring Analytics, the merger between PHI and Exelon is significant because it would (1) combine the transmission and distribution networks, and fuel supply network, of two major transmission providers in PJM; (2) affect the most congested regions of the PJM grid; (3) return an independent transmission company to vertically owned utility status, removing the incentives to behave independently; and (4) be the first major consolidation of ownership of the PJM transmission grid since the FERC's issuance of Order No. 1000 initiated a policy promoting competition in expanding the transmission grid.⁵⁹

Monitoring Analytics recommended that New Jersey take the opportunity in this proceeding to obtain commitments from the Joint Petitioners that will protect New Jersey ratepayers from the potential exercise of vertical market power or the delayed growth of competitive transmission development. Monitoring Analytics argued that these commitments recommended by the Monitoring Analytics would not result in any additional costs on the Joint Petitioners.⁶⁰

Monitoring Analytics recommended conditions, with implementing language, for the Settlement upon which the merger should be approved including the following:

1. The Companies' agreement to permit independent interconnection studies for new generation to be performed by third parties on reasonable terms;⁶¹
2. The Companies' commitment to remain in PJM indefinitely;⁶²

Monitoring Analytics argues that Joint Petitioner's ability to exit PJM without reasonable and defined limitations confers excessive leverage over PJM what compromises PJM's ability to behave independently. Moreover, a strong commitment to stay in PJM serves the public's interest. Stakeholders in New Jersey are making important long term investments based in part on the companies' staying in PJM. The companies should not be allowed to disrupt those expectations by removing a large part of the network from PJM without good cause.⁶³

3. An ongoing requirement for the periodic review and analysis, including review by PJM and the Market Monitor, of the ratings of all elements of the combined transmission systems;⁶⁴

Monitoring Analytics requests that the settlement include provisions to ensure accurate transmission line ratings.⁶⁵

4. The Companies' obligation to provide access to information about potential demand response customers to affiliated and non-affiliated curtailment service providers on the same terms;⁶⁶

⁵⁹ T 55-56.

⁶⁰ T 56.

⁶¹ Id.

⁶² Id. at 57.

⁶³ Id. at 58.

⁶⁴ Id. at 57.

⁶⁵ Id. at 58.

⁶⁶ Id. at 57.

5. The Companies' obligation to provide access to gas supply to affiliated and non-affiliated generating facilities on the same terms;⁶⁷
6. Requirements to increase and promote competition in the provision of transmission, including a transparent process for competitive transmission developers to interconnect with the Companies' facilities, including non-discriminatory access to property and rights-of-way.⁶⁸

Monitoring Analytics argued that Exelon and PHI will no longer be competing to develop the grid in each other's service areas. As a result of the merger, one entity, PHI with an interest in developing the grid without concern about affecting the market position of affiliated generation, will disappear.⁶⁹

CAC

CAC has concerns that the post-merger Exelon will have a tremendous amount of control in PJM and in this region. This concern stems from Exelon's position against the production tax credit and Exelon's opposition in other states to renewable portfolio standards. CAC expressed concerns that Exelon's position will now carry over into New Jersey. It is CAC's position that renewable energy and energy efficiency is the way to proceed on energy policy in general and that the best type of energy for ratepayers is energy not used.⁷⁰

CAC argued that Exelon has the capability of developing partnerships with groups such as the Clean Air Council to reduce harmful emissions. However, CAC would like to see a stronger commitment to energy efficiency and renewables. CAC does not believe that at this point the commitment is sufficient. Moreover, CAC believes that the best use of the customer investment fund is not returning the CIF monies to ratepayers but rather it be used toward energy efficiency programs.⁷¹

MAREC

MAREC noted that it was not signing the Settlement but it was not opposing the Settlement due to its side agreement with Exelon. MAREC described and introduced into the record a separate letter agreement it reached with Exelon and ACE concerning MAREC's intention to file a separate proceeding to consider long-term contracting to meet the New Jersey renewable portfolio standards.⁷²

NRG

NRG protests the Settlement on three major points: (1) the Settlement provides insufficient customer benefits, as it provides no funding for renewable generation or grid hardening as is typical for these types of acquisitions; (2) the limited customer benefits that are included in the Settlement are not structured to provide the maximum benefit to customers; and (3) the Settlement contains no limitations on the combined companies' ability to spend ratepayer

⁶⁷ Ibid.

⁶⁸ Id. at 59-60.

⁶⁹ Id. at 60.

⁷⁰ T 61-63.

⁷¹ T 63.

⁷² T 13, 15, 16 & 21. The letter agreement was entered into the record as JP-24.

dollars for services that can be more appropriately provided by the market.⁷³

Specifically, it is NRG's position that the Settlement should include Exelon's commitment to enter into long term contracts to purchase power or green attributes from socially-desirable generation facilities, such as renewables or energy-resilient microgrids.⁷⁴ NRG objects to the provision of the Settlement giving Exelon the discretion to pay for and implement energy efficiency programs to yield a total of \$15 million in savings to ACE customers over the life of the measures. NRG argued that New Jersey would have been better off if Exelon was required to put this out for competitive bid. Moreover, NRG objects to the Settlement's lack of proactive measures to address competitive issues on the distribution system.⁷⁵ NRG states the Board should not allow the Exelon-controlled ACE, or any affiliated companies, to build, own and operate new renewable energy projects including microgrid or distributed generation projects, or be the sole provider of demand side programs. NRG wants the Board to continue its policy for a competitive electric supply and level playing field as shown in the enactment of the Electric Discount and Energy Competition Act in 1999. NRG has concerns that the merged company could control these market segments which would create risk that it could exert undue influence over New Jersey's energy market, stifling potential investment from other providers and preventing residents and businesses from being able to avail themselves of the innovation, price advantages and choice that competitive markets provide.⁷⁶ Thus, the merged company should be required to use third party providers to support these goals.⁷⁷

DISCUSSION and FINDINGS:

Before analyzing the Settlement and the specific arguments of certain parties in opposition of the Settlement, it is useful to begin with a review of the applicable legal standards as set out in in N.J.S.A. 48:2-51.1 which identifies specific issues to be reviewed and evaluated by the Board when considering a request to acquire control of a New Jersey public utility and the implementing rule, N.J.A.C. 14:1-5.14.

JURISDICTION AND STANDARD OF REVIEW

The Board has jurisdiction over the proposed Merger and related transactions pursuant to N.J.S.A. 48:2-51.1, which requires Board approval prior to the indirect acquisition of ACE by means of a merger of PHI and a wholly-owned subsidiary of Exelon. N.J.S.A. 48:2-51.1 describes various specific issues to be evaluated by the Board when considering a request to acquire or seek to acquire control of a public utility, directly or indirectly. In particular, this statute requires the Board to consider the effect of the proposed acquisition on: (1.) competition; (2.) the rates of ratepayers affected by the acquisition of control; (3.) the employees of the affected public utility; and (4.) the provision of safe and adequate utility service at just and reasonable rates. N.J.S.A. 48:2-51.1 provides that:

{N}o person shall acquire or seek to acquire control of a public utility directly or indirectly through the medium of an affiliated or parent corporation or organization, or through the purchase of shares, the election of a board of directors, or through any other manner, without requesting and receiving the written approval of the Board of Public Utilities. Any agreement reached, or any

⁷³ NRG Comments at 1.

⁷⁴ Ibid.

⁷⁵ Id. at 2.

⁷⁶ Id. at 3.

⁷⁷ Id. at 4.

other action taken, in violation of this act shall be void. In considering a request for approval of an acquisition of control, the board shall evaluate the impact of the acquisition on competition, on the rates of the ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates. The board shall accompany its decision on a request for approval of an acquisition of control with a written report detailing the basis for its decision, including findings of fact and conclusions of law.

Consistent with the provisions of N.J.S.A. 48:2-51.1 and the standard of review set out in N.J.A.C. 14:1-5.14(c), the Board shall not approve a change in control "unless it is satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts" on competition, rates, the employees of the affected public utility, and on the provision of safe and adequate utility service at just and reasonable rates. Joint Petitioners have the burden of proving to the Board by a preponderance of the evidence, that the Merger meets the requirements of this section. N.J.A.C. 14:1-5.14(d).

In addition, jurisdiction arises under N.J.S.A. 48:3-10, which provides that the Board's approval is required prior to making a sale or transfer of stock to a corporation that would vest control in such corporation of a majority interest in the capital stock of a New Jersey public utility.

Impact on Rates:

As noted above, N.J.S.A. 48:2-51.1 requires that the Board evaluate the impact of the proposed acquisition on the "rates of ratepayers affected by the change of control." The Board **HEREBY FINDS** that the Settlement sufficiently demonstrates that there will be no adverse consequences to the rates of ACE's ratepayers as a result of the merger between PHI and Exelon. The Board **FURTHER FINDS** as evident in several provisions of the Settlement that the Merger will provide positive benefits to ACE customers and the State of New Jersey. As part of the Settlement, ACE's electric distribution customers will receive a direct rate credit within sixty (60) days of the closing of the merger through the Customer Investment Fund ("CIF") of \$62 million (equivalent to \$114 per distribution customer, calculated based on the actual customer count at 12/31/13 of 543,989 distribution customers). The Board is **HEREBY SATISFIED** that the distribution of the CIF will result in positive benefits to ratepayers. This finding is also premised upon other provisions of the Settlement in which the Joint Petitioners commit to pay for and implement, over a five-year period following closing of the Merger, energy-efficiency programs (including energy-efficiency programs directed to benefit low-income customers) that are projected to yield a total of \$15 million in savings to ACE customers over the life of the measures. As part of the Settlement, the Joint Petitioners agree to measure and verify the positive benefits of these energy efficiency programs by reporting to the Board the dollar value of the savings achieved.

The Board is also **FURTHER SATISFIED** that Exelon's decision to acquire PHI at a specific acquisition premium should not have any adverse impact on ratepayers. Consistent with past Board policy set forth in other merger proceedings, ACE will not seek recovery in rates of: (a.) the acquisition premium or goodwill associated with the Merger; or (b.) the Transaction Costs, as defined in Paragraph 11 of the Settlement, incurred in connection with the Merger. This is further demonstrated in the Settlement as the Joint Petitioners agree that any acquisition premium or goodwill shall be excluded from the ratemaking capital structure. Exelon will not record any of the impacts of purchase accounting at the PHI utility companies (ACE, Delmarva Power and Pepco), thereby maintaining historical cost accounting at each of the PHI utility companies. Exelon has received confirmation of its decision on purchase accounting from the

Securities and Exchange Commission; thus no goodwill or other fair value adjustments will be recorded at the PHI utility companies upon the closing of the Merger. The Settlement sufficiently reserves the rights of Board Staff and Rate Counsel to determine whether other costs incurred might fit within the "transaction costs" category and to advocate that such costs should not be allowed as non-recoverable transaction costs in a subsequent distribution base rate proceeding. The Settlement also provides that the parties in a future base rate case reserve the right to review alternative capital structures; one alternative is on a consolidated basis, and the other is on an ACE "stand-alone" basis or another alternative capital structure. The parties are free to argue the benefit and appropriateness of either alternative. Such a provision reserves the rights of the parties to take whatever positions they deem appropriate.

At the January 14, 2015 hearing, Rate Counsel asserted that the financial provisions in the Settlement were "illusory and insufficient to meet the statutory criteria."⁷⁸ Specifically, Rate Counsel argued that the failure to include limitations on the level of recoverable transition costs, or costs-to-achieve, could result in the \$62 million CIF being "offset or totally wiped out."⁷⁹ Rate Counsel also argued that the lack of a rate case stay-out provision could result in the \$114 direct customer rate credit being offset by a future rate increase.⁸⁰ Rate Counsel also asserted that the Joint Petitioners' program to provide \$15 million in energy efficiency savings to ACE customers will only benefit those customers that participate in the program and, moreover, that the cost of the program to the Joint Petitioners will be less than \$15 million.⁸¹ The Board believes that the Settlement provides the parties the opportunity to fully review rates in a future base rate case and take whatever positions they deem reasonable to ensure that the \$62 million CIF payment remains as a the benefit of ratepayers. Moreover, with respect to the commitments on energy efficiency, the Joint Petitioners are responsible to pay for the Energy Efficiency Programs, not the ratepayers, and further to demonstrate that they will provide the \$15 million in savings. Again Rate Counsel will have the opportunity to participate in any proceedings to ensure that these commitments by the Joint Petitioners are met.

The CAC noted that while it had not yet taken a position on the Settlement, it believed the Settlement should contain a stronger commitment to energy efficiency and renewable energy.⁸² To that end, the CAC recommended that the Board use the CIF, not for direct rate credits to customers, but for energy efficiency.⁸³ MAREC noted that it did not oppose the Settlement, and discussed a separate letter agreement it had reached with Exelon and ACE concerning MAREC's intention to file a separate proceeding to consider long-term contracting to meet the New Jersey renewable portfolio standards.⁸⁴ NRG filed comments noting its disappointment that the Settlement did not include a requirement that ACE enter into long-term contracts to purchase power or green attributes from what it described as socially-desirable generation facilities.⁸⁵ NRG also argued that the Joint Petitioners should be required to put the energy efficiency programs referenced in Paragraph 8 of the Settlement out for competitive bid, asserting that companies like NRG could provide significantly better value and that ratepayers can only benefit if the Board requires competitive bids.⁸⁶ While noting that the issue arose after the Settlement, NRG also argued that ACE and its post-Merger affiliates should be precluded

⁷⁸ T 43.

⁷⁹ T 44.

⁸⁰ T 44.

⁸¹ T 45.

⁸² T 61 - 63.

⁸³ T 63.

⁸⁴ T 13 -16. The letter agreement was entered into the record as JP-24.

⁸⁵ Comments of NRG dated January 16, 2015 at 1.

⁸⁶ NRG Comments at 2-3.

from building, owning and operating new renewable energy projects, including microgrids, distributed generation, and demand-side projects.⁸⁷ Although the Board respects the positions of the CAC and those of NRG, the issues raised are not within the scope of this proceeding. This is not the venue to fully evaluate the merits behind the suggestions for entering into long term agreements to purchase power or green attributes. These are policy issues that need to be vetted in a proceeding that would be dedicated to those issues where all parties may participate and costs of such contracts could be evaluated as well as impacts to ratepayers. The Board is mandated to consider the impacts of proposed mergers on rates and evaluate whether a proposed merger will have positive benefits for ratepayers. Therefore, the Board favors the direct allocation of the CIF as a benefit to customers who are already paying for ACE's distribution costs.

Impact on Employees:

As noted above, N.J.S.A. 48:2-51.1 requires that the Board evaluate the impact of the proposed acquisition on the "employees of the affected public utility or utilities." The Board **HEREBY FINDS** that the Settlement provisions address the impact of the Merger on ACE employees and sufficiently demonstrate there will be no adverse consequences to ACE employees as a result of the Merger, and there is evidence that the Merger will provide positive benefits to ACE employees, by the Joint Petitioners agreeing to maintain ACE's local operational headquarters in Mays Landing, New Jersey and providing a measure of job security by honoring all existing collective bargaining agreements. Moreover, the Settlement ensures that the Joint Petitioners, upon approval of the Merger and for at least the first two years following consummation of the Merger, will not permit a net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at ACE. For years three through five following the closing of the Merger, ACE will not permit a net, involuntary reduction due to the Merger integration process greater than a total of twenty-five (25) ACE positions. For at least the first five years following the consummation of the Merger, Exelon will provide current and former ACE employees compensation and benefits that are at least as favorable in the aggregate as the compensation and benefits provided to those employees immediately before April 29, 2014, or to the compensation and benefits of Exelon employees in comparable positions. PHI and ACE will also continue their commitments to workforce diversity. If the Merger closes, ACE commits to hire a minimum of sixty (60) bargaining-unit employees and to make a good faith effort to do so during the twenty-four (24) month period after the Merger closes. Those sixty (60) bargaining-unit employees will not be among the twenty-five (25) ACE positions that may be involuntarily reduced due to the Merger integration process in years three through five following the closing of the Merger. These commitments provide reasonable assurance that the Merger will not negatively impact current ACE employees, and will provide the benefit of additional employment if the Merger closes. In addition, with the commitment to continue to meet obligations to ACE employees and retirees with respect to pension and retiree health benefits, the Board is satisfied that employees and retirees are reasonably protected under the Settlement. Moreover, Joint Petitioners agree to provide financial assistance for outplacement services to employees terminated as a result of the Merger. This added service will also benefit those directly affected by the merger.

Based on the foregoing and a thorough examination of the record in this proceeding with respect to the impact of the Merger on ACE employees, the Board **HEREBY FINDS** that the standards contained in N.J.S.A. 48:2-51.1 and N.J.A.C. 14: 1-5.14(c) with respect to employees are met. The Settlement represents that there will be no change in staffing levels, except for employees terminated for cause, for two years. Thereafter, there are limitations as to the

⁸⁷ NRG Comments at 3-4, fn 2.

reduction in the number of employees during years three through five post-merger. There will be no reduction in the number of bargaining unit employees, and ACE is committed to hiring an additional sixty bargaining unit employees during the 24 months following merger consummation. In addition, Exelon is committed to continue existing benefits with respect to pensions and retiree health care. With respect to employees, the two-year limitation on termination appears fair to both employees and ratepayers. Furthermore, hiring in the operations areas appears likely to more than offset job losses in other areas of the company. In summary, with respect to employees, the Board **HEREBY FINDS** a positive benefit and, at a minimum, no adverse impact.

Impact on the Provision of Safe and Adequate Service

The Joint Petitioners state that the Settlement contains significant reliability commitments including enhanced penalties for failure to meet the service level guarantees, and a continuation through 2021 of the successful RIP which was otherwise scheduled to conclude in 2016.⁸⁸ Joint Petitioners argue that imposing additional capital spending requirements beyond the 90% RIP requirement in Paragraph 16 of the Settlement is not needed.⁸⁹ Joint Petitioners note that the RIP requires regular meetings with both Board Staff and Rate Counsel, as well as annual reporting on actual reliability performance.⁹⁰ These requirements, coupled with the spending commitments in the Settlement, will, in the Joint Petitioners' view, provide the Board and Rate Counsel with a high level of confidence that ACE is making the necessary capital investments.⁹¹ Joint Petitioners also argue that ACE must be provided with sufficient flexibility in managing its budget to respond to changing conditions or to take advantage of costs savings or other efficiencies that may create opportunities for prudent spending reductions.⁹²

Based on the foregoing and a thorough examination of the record in this proceeding with respect to the impact of the Merger on service provided by ACE, the Board **HEREBY FINDS** that the standards contained in N.J.S.A. 48:2-51.1 and N.J.A.C. 14: 1-5.14(c) have been met and that the merger Settlement provides positive benefits with respect to ACE's ability to provide safe, adequate, proper and reliable customer service by continuing the commitments of the RIP.

Impact on Competition:

As noted above, N.J.S.A. 48:2-51.1 requires that the Board evaluate the impact of the proposed acquisition on competition. The Settlement provisions that address the impact of the Merger on competition, and sufficiently demonstrate there will be no adverse consequences to competition in New Jersey as a result of the Merger including the following: committing to stay in PJM, engaging separate advocacy employees, complying with the ACE-PEPCO Merger Stipulation and Order, engaging in electric generation interconnection studies and allowing the PJM Market Monitor review of Exelon's Demand-Resource bids in PJM energy, reserves and capacity markets.

For example, with respect to Electric Generation Interconnection Studies, Exelon and its Affiliated Transmission Companies will identify three independent third-party engineering consulting firms that are qualified to conduct facilities studies under the PJM generator

⁸⁸ Exhibit JP-25, Statement in Support at 8-9.

⁸⁹ Id. at 12.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Ibid.

interconnection process. In addition, parties will have the opportunity to review the choice of consulting firms and to propose other independent third party engineering consulting firms for consideration which, if approved, cannot later be removed by Exelon from the list without good cause as determined by the PJM Market Monitor or the FERC. The Settlement further provides the opportunity for a generation developer looking to interconnect to the transmission system of one of Affiliated Transmission Companies, at its own expense and discretion, to direct PJM to utilize one of the identified firms to conduct the Facilities Study for its generation project for any upgrades and interconnection facilities required on the Affiliated Transmission Company's facilities. The Board **HEREBY FINDS** that these provisions including Exelon Affiliated Transmission Company's commitment to cooperate with and, as requested, provide information to PJM and the independent engineering consulting firms as needed to complete all work within the normal scope and timing of the PJM interconnection process, and other reporting requirements and a process for dispute resolutions provide sufficient protections which mitigate concerns about any competitive advantages in this area as raised by Monitoring Analytics.

With respect to concerns about Exelon's commitment to stay in PJM, the Board **HEREBY FINDS** that the ten year period in the Settlement adequately addresses these concerns by Exelon committing 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. The Parties to this Settlement may participate in the proceeding in which FERC will review the withdrawal request and may contest before FERC the companies' assertion that there are significant changes to the structure of the industry or to PJM.

The Settlement also protects against the generation affiliates of Exelon speaking on behalf of other affiliates whose interests may not coincide with those of the generators. According to the Settlement, Exelon shall utilize separate legal and government-affairs personnel, support personnel, and separate law firms and consultants to advocate before the Board on behalf of Exelon Generation and Constellation, on the one hand, and Affiliated Transmission Companies on the other. This, as well as compliance with the Board's affiliate relations and fair competition rules, should assist in preventing the competing interests of Exelon Generation and Constellation from negatively impacting the interests of the Affiliated Transmission Companies and the utilities. The Board **HEREBY FINDS** that the separation of employees to engage in advocacy is a reasonable measure to avoid unfair competitive practices.

With respect to the compliance with the Stipulation in ACE-PEPCO Merger Order, the Settlement provides that Exelon commits to comply with the competition-related provisions (paragraphs 1-14 as set forth above, and as modified to reflect this Merger) of the stipulation embodied in the Board's June 2002 Order approving the merger of ACE and Pepco (219 P.U.R. 4th 235), BPU Docket No. EM02090633. The Board **HEREBY FINDS** these commitments will further ensure that the Settlement protects competition as well as Exelon's agreement that the PJM Market Monitor may review its Demand-Resource bids in PJM energy, reserves and capacity markets.

The Board **HEREBY FINDS** that the Settlement sufficiently addresses many aspects of Monitoring Analytics' requests for protections regarding competition. Therefore, the Board believes that the additional measures requested are not necessary.

Based on the foregoing and after a thorough examination of the entire record in this proceeding

with respect to the possible impact of the Merger on competition, the Board **HEREBY FINDS** that the standards contained in N.J.S.A. 48:2-51.1 and N.J.A.C. 14: 1-5.14(c) with respect to competition are met. At the distribution level, there is no direct impact on competition as ACE purchases any needed electric supplies through the BGS process. In the wholesale market, FERC accepted the Joint Petitioners' filing and approved the transaction without conditions after conducting its own review of potential competitive impacts. In addition, the Antitrust Division of the United States Department of Justice has completed its review and closed its investigation without imposing conditions or requiring mitigation. PHI is a holding company with subsidiaries that provide distribution and transmission while Exelon is a holding company with subsidiaries that provide distribution, transmission and generation. To the extent that transmission and generation provide competing products, competition may be reduced relative to the present PHI structure. However, the Joint Petitioners have agreed to a number of measures to assure balance with regard to interconnection and access, and the Board notes its support for Exelon's agreement to use separate employees for advocacy. In summary, with respect to competition, the Board **HEREBY FINDS** that the Merger will not have any adverse impact.

Most Favored Nation Provision

As previously noted, the Settlement contains a "Most Favored Nation" ("MFN") provision for the purpose of insuring that, "in the aggregate, New Jersey will be treated as favorably as Maryland, Delaware and the District of Columbia with respect to benefits (both financial and non-financial) provided to customers."

The Settlement provides that if there is an outcome, whether it is by settlement or by litigation, where more value is given to customers, and Exelon accepts these terms, Exelon commits to providing those financial and non-financial benefits to New Jersey. In the event Board Staff or Rate Counsel finds the amount or form of compensation offered by Exelon to be insufficient, then Board Staff or Rate Counsel may petition the Board to require that Exelon provide increased benefits in New Jersey. Exelon shall be permitted, in its sole discretion, to decline to accept any substitution of terms and conditions, in which case this Stipulation will be null and void. Exelon agrees to supply non-privileged information which Board Staff or Rate Counsel may request to determine the value of any benefits. The Parties agree that the purpose of this Paragraph is to assure a fair allocation of the costs and benefits associated with this transaction to ACE customers.

In response to a question from Commissioner Fiordaliso, at the January 14, 2015 hearing, Darryl Bradford, General Counsel of Exelon, explained the MFN provision. Mr. Bradford stated that in the event other state commissions received a better outcome than New Jersey, the MFN provision provides "if there is an outcome, whether it's by settlement or by litigation where more value is given to customers in terms of the Customer Investment Fund and Exelon accepts that, and says we're going to go forward with it, that we come back and square that in New Jersey." Mr. Bradford also noted there was a similar provision to address non-monetary provisions that might be accepted in other jurisdictions.⁹³

The Board **HEREBY FINDS** this provision provides additional assurance that the positive benefits of the Merger to the ratepayers and the State of New Jersey are not "illusory."

⁹³ T 32-33.

Provisions Supporting Other Requested Approvals

As noted above, the Joint Petitioners sought additional approvals in connection with the proposed Merger: approval for ACE and PHI to participate in the Exelon General Services Agreement; approval for ACE to participate in the PHI money pool, and approval to move ACE's books and records to PHI's offices in Washington, D.C. The Settlement addresses these and other matters, as stated previously within this Order, which the Board **HEREBY FINDS** may provide benefits to or, at a minimum, result in no adverse impact on customers and the State of New Jersey.

Ring Fencing and Corporate Structure

Specifically with respect to the Corporate Organization, Governance, Financial Integrity and Ring-Fencing, the Settlement calls for certain terms which will assist in ensuring that the Merger results in good corporate practices while also insulating ACE from potential financial impacts resulting from decisions by other affiliates under merged parent company. The Settlement calls for ACE to maintain its separate existence as a separate corporate subsidiary and its separate franchises, obligations and privileges. ACE will continue to maintain separate books and records at the corporate headquarters of PHI in Washington, D.C. and within twenty working days after a request, provide access to Board Staff and Rate Counsel to ACE's original books and records in New Jersey. The Settlement addresses the role of the SPE and states that ACE will not incur or assume any debt, including the provision of guarantees or collateral support, related to this Merger or any future Exelon acquisition. In addition, the Settlement should protect PHI and its utility affiliates, including ACE from a bankruptcy of Exelon and EEDC.

Moreover, the SPE shall maintain adequate capital in light of its contemplated business purpose, transactions and liabilities. In addition, PHI will have a board of directors consisting of 7 or more people with at least three members of the PHI board must be "independent". A voluntary petition for bankruptcy by the SPE will require the affirmative consent of the holder of the Golden Share, and the unanimous vote of the SPE board of directors. A voluntary petition for bankruptcy by PHI will require the affirmative consent of the holder of the Golden Share, the unanimous vote of the SPE board of directors. The SPE will maintain arms-length relationships with each of its affiliates and observe all necessary, appropriate and customary company formalities in its dealings with its affiliates. PHI and PHI's subsidiaries will maintain arms-length relationships with Exelon and its affiliates, including the SPE.

At all times, the SPE will hold itself out as an entity separate from its affiliates, will conduct business in its own name through its duly authorized directors and officers and comply with all organizational formalities to maintain its separate existence. PHI and its subsidiaries will hold themselves out as separate entities from Exelon and the SPE, conduct business in their own names. ACE will not include in any of its debt or credit agreements cross-default provisions between ACE securities and the securities of Exelon or any other Exelon affiliate. ACE will not include in its debt or credit agreements any financial covenants or rating-agency triggers related to Exelon or any other Exelon affiliate.

These and other provisions of the Settlement are significant in insulating ACE from any financial decisions that may be made on behalf of other affiliates under the merged parent company. The Board **HEREBY FINDS** that these and other provisions of the Settlement will assist in ensuring that the Merger will continue and should ensure good corporate practices and processes that lead to corporate integrity and insulate the affiliates such as ACE from financial decisions made by other affiliates or the parent company.

The Settlement also addresses Affiliate Transactions and the General Services Agreement ("GSA"). The GSA establishes controls and procedures designed to provide reasonable assurance that PHI's subsidiaries will not bear costs associated with the business activities of any other Exelon affiliate other than the reasonable costs of providing materials and services to PHI. PHI and its subsidiaries will maintain reasonable pricing protocols for determining transfer prices for transactions involving non-power goods and services between PHI and its subsidiaries and Exelon and any Exelon affiliate consistent with the requirements of the Board and FERC. PHI and its subsidiaries, including ACE, will execute the GSA filed with the Joint Petition as Exhibit D. Joint Petitioners agree to allocate costs to ACE in a manner that either substantially complies with the current PHI GSA, or results in a lower allocation of costs in the aggregate. The Parties agree they shall work together to determine the format of an annual filing of EBSC costs charged to ACE that will be substantially in the same format as ACE's current, annual filing. The filing will be made by June 30th of each subsequent year, and will include a copy of EBSC's FERC Form 60 as well as detail on the actual EBSC allocations and costs charged to ACE during the prior year. ACE shall also make an ongoing commitment to explain any change to allocation factors to ACE that are more than five percentage points versus the previous year. ACE shall also make available on request any prior months' variance reports regarding EBSC's billings to ACE.

The Settlement also calls for EBSC costs to be directly charged whenever practicable and possible. In its next base rate proceeding, ACE shall file testimony addressing EBSC charges and the bases for such charges. ACE's testimony shall also explain any changes in allocation procedures that have been adopted since its last base rate proceeding. In addition, ACE will provide notification and/or copies of external audit reports performed by EBSC and of SEC, FERC, or other state regulatory commission audits and the parties. ACE agrees that the Board under its authority pursuant to the Electric Discount and Energy Competition Act, N.J.S.A. 48:3-50 to -107, may review the allocation of costs in sufficient detail to analyze their reasonableness, the type and scope of services that EBSC provides to ACE and the basis for inclusion of new participants in EBSC's allocation formula. ACE and EBSC shall record costs and cost allocation procedures in sufficient detail to allow the Board to analyze, evaluate, and render a determination as to their reasonableness for ratemaking purposes. The Board **HEREBY FINDS** these and other provisions of the Settlement provide assurances that Exelon, ACE and other Exelon affiliates will comply with the New Jersey statutes and rules as well as insulate ACE from bearing unreasonable costs associated with business activities of any other Exelon affiliates and the allocation of costs among the affiliates under the GSA. The Board, Staff and Rate Counsel will have opportunities to review the reasonableness and prudence of ACE's cost allocation.

Based on the foregoing and a thorough examination of the record in this proceeding and the Settlement provisions with respect to Corporate Organization, Governance, Financial Integrity and Ring-Fencing, Affiliate Transactions and the GSA, the Board **HEREBY FINDS** that these provisions of the Settlement have no adverse impact on ACE's ratepayers but rather may provide benefits that will ensure the proper separation of books, financial insulation of PHI and its affiliates including ACE from business transactions of Exelon and its affiliates and other affiliates of the merged company. The Settlement provisions will ensure that costs are properly allocated under the GSA and opportunities for the parties to review such allocations in future base rate cases and other appropriate proceedings and to review annual reports to be submitted by ACE. The PHI and its subsidiaries, including ACE, will execute the GSA filed with the Joint Petition as Exhibit D. Thus, the Board **HEREBY APPROVES** the GSA and **HEREBY ORDERS** that calculations and allocations under the GSA are also subject to audit.

PHI Money Pool Participation

With respect to ACE's request to participate fully in the PHI money pool, Joint Petitioners note that the current participation limits were voluntarily agreed to by ACE in 2006. Thus, the Settlement contains provisions limiting participation in the PHI money pool to PHI utilities and PHI Service Company, with no commingling of the PHI money pool funds with Exelon. Additionally, the Settlement requires Exelon to give notice to the Board within seven days in the event that any participant in the PHI money pool is rated below investment grade by any of the three major credit rating agencies.

No entities other than PHI and its subsidiaries, including the PHI utilities and PHI Service Company ("PHISCo"), will participate in the PHI utilities' money pool. The PHI utilities will not participate in any money pool operated by Exelon, and there will be no commingling of the PHI money pool funds with Exelon. Exelon will give notice to the Board within seven days in the event that any participant in the PHI money pool is rated below investment grade by any of the three major credit rating agencies. The documents and instruments creating the PHI money pool (and any modification thereof) will be subject to approval by the Board. The Board may revoke the right of ACE to participate in the PHI money pool or require a modification in order for ACE's continued full or partial participation.

Based on the foregoing and a thorough examination of the record in this proceeding with respect to participation by ACE in the PHI money pool, the Board **HEREBY FINDS** that ACE may participate in the PHI money pool consistent with Joint Petitioners' commitment in paragraph 60 of the Settlement to obtain and submit to the Board a legal opinion within 180 days of merger closing that Petitioners have implemented various ring-fencing measures for PHI and its subsidiaries. The Board has traditionally had concerns with the operation of holding company money pools and has closely scrutinized their operation. However, the PHI money pool proposed as part of this transaction appears reasonable given that the PHI utilities including ACE will be ring-fenced from the other more risky parts of Exelon. The ring-fencing should protect the regulated entity from the business and financial of other non-regulated business within the corporate family. Provided that ring-fencing is put in place and ACE complies with all provisions of N.J.S.A. 48:3-7.1 and 48:3-7.2 and N.J.A.C. 14:4-4.1, the Board **HEREBY FINDS** that the proposed money pool arrangement is reasonable.

Relocation of Books & Records

Requests to move the authorized location of the books and records of a New Jersey public utility to an out-of-state location are reviewed pursuant to N.J.S.A. 48:3-7.8. This statute permits the Board to grant such a request provided the utility makes the books and records available upon written notice by the Board "at such time and place within this State as the board may designate." Joint Petitioners have requested authority to move the books and records of ACE from their currently authorized location in Wilmington, Delaware to PHI's headquarters in Washington, D.C. The Settlement states that the Joint Petitioners will, upon request, provide the Board, Board Staff and Rate Counsel "access in New Jersey to ACE's original books and records as maintained in the ordinary course of business within twenty working days after such request."

Based on the foregoing and a thorough examination of the record in this proceeding with respect to the relocation of the books and records of ACE, the Board **HEREBY FINDS** that the relocation of books and records is reasonable and **HEREBY APPROVES** the relocation of books and records to PHI offices in Washington, D.C.

CONCLUSION

In considering the Verified Joint Petition at issue herein, the Board as required by N.J.S.A. 48:3-10, N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c) and as set forth above, has carefully evaluated the impact of the proposed acquisition on competition, on the rates of ratepayers affected by the acquisition of control, on ACE's employees, and on ACE's provision of safe and adequate utility service at just and reasonable rates. In doing so, the Board has carefully considered the entire record in this matter, including all direct and rebuttal testimony, exhibits, discovery responses, the Settlement, comments regarding the Settlement, and submissions by Non-signatory Parties. Based on the foregoing and subject to the conditions set forth herein and in the Settlement, the Board **HEREBY CONCLUDES** that the statutory criteria set forth in N.J.S.A. 48:3-10, N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c) are satisfied and that the proposed change in control can be accomplished without adverse impact on competition, rates, employees or the provision of safe and adequate utility service at just and reasonable rates, and that on balance positive benefits will accrue to the customers of ACE and the State of New Jersey.

Accordingly, the Board **HEREBY APPROVES** the relief by the Verified Joint Petition as modified by the terms of the Settlement, **HEREBY ADOPTS** the Settlement in its entirety, and **HEREBY AUTHORIZES** the Joint Petitioners to:

- (a) take those actions necessary for the Merger to be lawfully consummated;
- (b) execute the General Service Agreement as described more fully in the Settlement;
- (c) participate in the PHI money pool under the terms and conditions described more fully in the Settlement and as qualified above;
- (d) relocate ACE's books and records from Wilmington, Delaware to the District of Columbia; and
- (e) take those actions reasonably necessary to implement the authorizations granted herein.

The Board **HEREBY ORDERS** that:

(a) This Order shall not affect nor in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition, or in any proceeding regarding the rates, franchises, services, financing, accounting, capitalization, depreciation, maintenance, operations or any other matter affecting ACE.

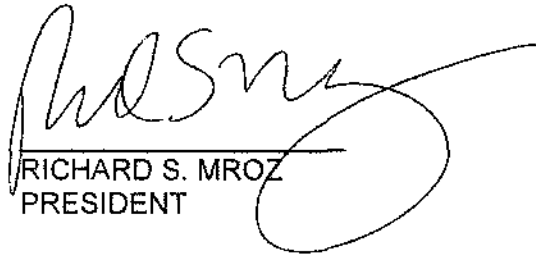
(b) This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter owned by the Joint Petitioners.

(c) Consummation of the proposed Merger must take place no later than November 1, 2015 unless otherwise extended by the Board.

This Order shall be effective on March 19, 2015.

DATED: 3/6/15

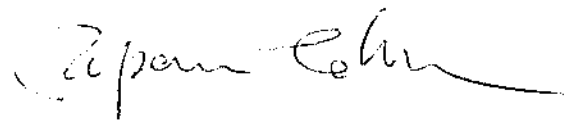
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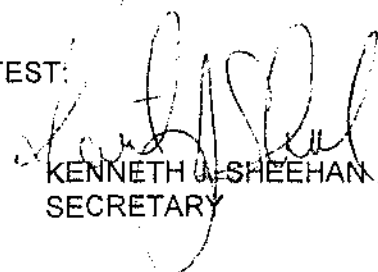

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MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:

KENNETH J. SHEEHAN
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



**IN THE MATTER OF THE MERGER OF EXELON CORPORATION
AND PEPICO HOLDINGS, INC.
DOCKET NO. EM14060581**

SERVICE LIST

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