



STATE OF DELAWARE

PUBLIC SERVICE COMMISSION  
861 SILVER LAKE BLVD.  
CANNON BUILDING, SUITE 100  
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500  
FAX: (302) 739-4849

To: The Commissioners

From: Mark Lawrence, Senior Hearing Examiner *ML*

Date: September 13, 2016

Re: Docket No. 14-193 (Merger Docket regarding Exelon/PHI/DPL): *Hearing Date: Sept. 20, 2016*

I attach the following six (6) *final* Proposals of the Parties as to the Allocation of Additional Benefits pursuant to the "Most Favored Nation Clause" of the Amended Settlement Agreement:

1. Joint Applicants (including a Matrix of its description of all parties' positions)
2. Commission Staff
3. Public Advocate
4. Department of Natural Resources & Environmental Control ("DNREC")
5. Professor Jeremy Firestone
6. Mid-Atlantic Renewable Energy Coalition ("MAREC")

Hard copies will follow in the Commissioners' package being sent on Thursday by Admin. If you need any additional documentation, please contact the Commission's Paralegal, Ashley Lyon.

cc Natalie White Commission Assistant (with enclosures)

September 12, 2016

Law Offices

222 Delaware Avenue  
Suite 1410  
Wilmington, DE  
19801

(302) 467-4200  
(302) 467-4201 fax  
www.drinkerbiddle.com

CALIFORNIA

DELAWARE

ILLINOIS

NEW JERSEY

NEW YORK

PENNSYLVANIA

WASHINGTON D.C.

WISCONSIN

**BY EMAIL and FIRST CLASS MAIL**

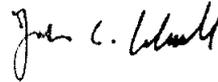
Mr. Mark Lawrence  
Senior Hearing Examiner  
Public Service Commission of Delaware  
861 Silver Lake Boulevard  
Cannon Building, Suite 100  
Dover, Delaware 19904

**Re: Joint Application of Delmarva Power & Light Company, Exelon Corporation, Pepco Holdings, Inc., Purple Acquisition Corporation, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, Delaware PSC Docket No. 14-193**

Dear Hearing Examiner Lawrence:

Enclosed for filing in the above proceeding is the Joint Applicants' Pre-Hearing Submission.

Respectfully,



Joseph C. Schoell

Enclosures

cc: All parties on service list (via email only)

86484768.1

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION )  
OF DELMARVA POWER & LIGHT )  
COMPANY, EXELON CORPORATION, )  
PEPCO HOLDINGS, INC., PURPLE )  
ACQUISITION CORPORATION, EXELON ) PSC Docket No. 14-193  
ENERGY DELIVERY COMPANY, LLC AND )  
NEW SPECIAL PURPOSE ENTITY FOR )  
APPROVALS UNDER THE PROVISIONS OF )  
26 DEL. C. §§ 215 and 1016 (Filed June 18, )  
2014) )

**JOINT APPLICANTS' PRE-HEARING SUBMISSION**

The Joint Applicants, by and through their undersigned counsel, submit this Pre-Hearing Submission in advance of the Commission's September 20, 2016, hearing, during which the Commission will consider the allocation of additional benefits in Delaware related to the merger of Pepco Holdings, Inc. ("PHI") and Exelon Corp. ("Exelon").

**A. Background**

1. On June 18, 2014, Delmarva Power & Light Company ("Delmarva Power"), Exelon, PHI, Purple Acquisition Corporation, Exelon Energy Delivery Company, LLC ("EEDC"), and Special Purpose Entity ("SPE") (collectively, the "Joint Applicants") filed an application (the "Application") seeking approvals under 26 *Del. C.* §§ 215 and 1016 for a change of control of Delmarva Power to be effected by a merger of PHI with a wholly owned subsidiary of Exelon (the "Merger").

2. On April 7, 2015, the Joint Applicants, the Delaware Public Service Commission Staff ("Staff"), the Delaware Division of the Public Advocate (the "Public Advocate"), and intervenors Delaware Department of Natural Resources and Environmental Control ("DNREC"), the Delaware Sustainable Energy Utility (the "SEU"), Mid-Atlantic Renewable Energy Coalition

(“MAREC”), and the Clean Air Council (“CAC”) (collectively, the “Settling Parties”) entered into an Amended Settlement Agreement (the “Amended Settlement Agreement”) and requested that the Commission approve the Merger and the Amended Settlement Agreement.

3. The Amended Settlement Agreement contained numerous commitments by the Joint Applicants and benefits for Delmarva Power customers and the State of Delaware, including: (i) a \$40 million direct rate credit paid to Delmarva Power residential customers; (ii) commitments related to hiring by Delmarva Power and a \$2 million workforce development initiative; (iii) \$2 million for low-income customer energy-efficiency programs; (iv) commitments related to Delmarva Power’s reliability metrics and limitations on reliability-related capital spending; (v) commitments related to renewable energy, including the procurement of long-term contracts for Renewable Energy Credits; and (vi) commitments related to continued local presence and community involvement.

4. On April 7, 2015, the Commission conducted a hearing and received extensive evidence related to the Merger and the Amended Settlement Agreement, including testimony offered by the Joint Applicants, Staff and the Public Advocate that the Merger, as modified by the Amended Settlement Agreement, was consistent with the public interest and should be approved.

5. On May 19, 2015, the Commission conducted public deliberations concerning the Merger and determined to approve the Merger, as modified by the Amended Settlement Agreement, as consistent with the requirements of 26 *Del. C.* §§ 215 and 1016.

6. On June 2, 2015, the Commission adopted Order No. 8746, approving the Merger and the Amended Settlement Agreement.

7. The Settling Parties negotiated a “most favored nation” (“MFN”) provision, included in paragraphs 103 through 105 of the Amended Settlement Agreement, pursuant to which the Joint Applicants agreed to provide additional benefits in the State of Delaware in the event that greater financial or other specified benefits are ordered or agreed to by the Joint Applicants in connection with approval of the Merger in another jurisdiction.

8. The MFN provision was intended to provide assurance that Delmarva Power’s Delaware customers and the State of Delaware would be treated as favorably as the District of Columbia, Maryland and New Jersey with respect to benefits provided as a result of the Merger.

9. On March 23, 2016, the Public Service Commission of the District of Columbia granted approval of the proposed Merger, which provided the final required regulatory approval for the Merger to proceed. On March 23, 2016, the Merger was consummated.

**B. The Parties’ Positions on the Allocation of MFN Benefits and Discussions of the Parties Related to MFN Benefits**

10. As required by the MFN provision, the Joint Applicants have conferred with Staff, the Public Advocate and other parties and provided an analysis indicating the total dollar amount of the customer fund and other value approved in each jurisdiction and a comparison of a per-distribution customer basis of the customer benefits agreed to in Delaware to the per-distribution customer benefits awarded in other jurisdictions. This analysis was filed with the Commission on July 11, 2016. Applying the MFN provision, the additional financial benefit for Delaware, in the aggregate, is \$27,132,618.00. The amount of the additional financial benefit for Delaware is uncontested.

11. On August 12, 2016, Staff, the Public Advocate, MAREC, Intervenor Jeremy Firestone and the Joint Applicants each filed a proposed allocation of MFN benefits. The Joint Applicants’ proposal summarized discussions among the parties and outlined an allocation

approach that had been discussed (but not agreed to) among various parties as of August 12, 2016.

12. Following the submission of proposed allocations, the Joint Applicants and other parties engaged in further discussions and negotiations in an attempt to narrow the issues of disagreement and develop a streamlined and efficient presentation for the Commission to consider MFN issues. The result of those discussions is embodied in a chart that summarizes the current MFN recommendations of Staff, the Public Advocate, DNREC, MAREC and Dr. Firestone. Each of these parties has confirmed that the chart reflects their current position with respect to MFN issues. A copy of the chart (which was filed with the Commission on September 8, 2016) is attached as Exhibit A.

**C. Issues for the Commission's Consideration**

13. As a result of discussions among the parties, there is agreement on several aspects of the proposed allocation of MFN financial benefits. There is general agreement that certain sums should be expended toward energy efficiency projects, including spending dedicated to energy efficiency for low income customers of Delmarva Power (although there exists some disagreement concerning the amount spent on different initiatives). The parties also agree that \$3.1 million should be applied to an arrearage management program ("AMP"), to be developed to assist Delmarva Power customers who face difficulties with arrearages on their utility bills. The parties agree that after five years funds otherwise dedicated to different purposes, but not encumbered for a specific program or project, should revert to the AMP program to assist customers with arrearages. The parties agree that the Joint Applicants should make available \$3.0 million in capital at market rates for government entities for the development of renewable energy, that the Joint Applicants should develop or assist with the development of 5 Megawatts of commercial renewable energy generation, and that the Joint Applicants will share with

interested parties in Delaware information about and lessons learned from micro-grid pilot projects that PHI utilities are pursuing in neighboring jurisdictions. The parties also have agreed to numerous other non-financial terms and commitments related to the Merger. The Joint Applicants have prepared and circulated the draft proposed order attached as Exhibit B, and understand that no party opposes the adoption of the conditions and commitments as stated in the proposed order.

14. The issues upon which the parties have not reached agreement are: (a) whether some portion of the MFN financial benefits should be allocated to energy efficiency projects for large industrial and commercial Delmarva Power customers; (b) whether any portion of the MFN financial benefits should be set aside for public interest projects, and, if funds are set aside for such projects, whether and how projects should be limited to renewable energy projects; (c) whether MFN financial benefits should be allocated to economic development initiatives; and (d) whether MFN financial benefit funds should be applied to electric vehicle charging stations, or a targeted customer rate credit proposed by Dr. Firestone. The Joint Applicants below present their positions with respect to the areas where there is disagreement among the parties.

**D. The Joint Applicants' Positions on Allocation of MFN Financial Benefits**

15. With respect to the four issues noted above, the Joint Applicants' position is summarized below.

**(1) The Joint Applicants Support the Proposal to Dedicate \$8.0 Million to Energy Efficiency Programs for Industrial and Large Commercial Customers of Delmarva Power**

16. Staff, the Public Advocate and DNREC propose that \$8.0 of the MFN financial benefits be directed toward energy efficiency projects for industrial and large commercial customers of Delmarva Power. The proposed \$8.0 million would be one part of over \$14 million (or more) that would be directed to energy efficiency projects and programming. DNREC has in

place an Energy Efficiency Investment Fund (“EEIF”). The proposal for industrial and large commercial customers is intended to allow DNREC to undertake EEIF projects on a larger scale than DNREC’s existing EEIF program.<sup>1</sup> MAREC does not object to this proposed funding. Dr. Firestone opposes such funding and argues that funds should instead be directed to low-income energy efficiency programs.

17. The Joint Applicants agree that a portion of funding should be allocated to industrial and large commercial projects and therefore join with Staff, the Public Advocate and DNREC in their proposal. There is value to supporting projects directed toward energy efficiency for large scale industrial customers and commercial customers of Delmarva Power. This is true because large customers have high energy usage, and efficiency savings and conservation for such customers may produce large scale results as compared with other customers. Energy efficiency projects directed toward industrial and large commercial customers can also have favorable economic development impacts, by assisting large Delaware employers to operate more efficiently and in a more cost-effective manner, which is consistent with the public interest.

(2) **The Joint Applicants Support Funding for Public Interest Projects**

18. Staff proposes that \$4.0 million of MFN financial benefits be directed to public interest projects that would be subject to a competitive proposal process. Dr. Firestone proposes that \$3.5 million in MFN financial benefits be directed to public interest projects, but proposes

---

<sup>1</sup> The Joint Applicants propose that the allocation of MFN funding for such programs be set aside for DNREC to administer and treated as an endowment fund. The utilization of an endowment fund avoids any suggestion that funds dedicated to DNREC’s programs would need to be paid to and administered through the State’s General Fund. *See* 29 *Del. C.* § 6102(a) (establishing general rule that funds of the State be placed in the General Fund, but excluding “any endowment fund or gift made for particular purposes”). *See also, e.g.*, Att. Gen. Op. No. 80-F009, 1980 Del. AG LEXIS 8 (Apr. 3, 1980) (funds applied to specific purpose as gift or endowment not required to be paid over to the General Fund); Att. Gen. Op. No. 84-1013, 1984 Del. AG LEXIS 11 (Apr. 11, 1984) (same).

that “public interest” projects be limited to solar and wind power and academic, research and training programs related to the same. MAREC agrees with the notion of public interest projects, but proposes that “public interest” be limited to renewable energy, energy efficiency or job training projects. The Public Advocate opposes the use of any MFN financial benefits for public interest projects, and proposes instead that the funding be directed to energy efficiency programs.

19. The Joint Applicants believe that utilizing a portion of the MFN financial benefits for public interest projects as Staff proposes is consistent with the public interest. While such an allocation is necessarily less definitive than the other proposed allocations, it provides the Commission a mechanism to potentially benefit from input and proposals from the non-profit community or governmental or educational institutions. It would also be consistent with the public interest to direct such funding to energy efficiency programs, as urged by the Public Advocate.

**(3) The Joint Applicants Support the Expenditure of Funds for Energy-Related Economic Development Initiatives**

20. Staff, the Public Advocate and DNREC each supports allocating \$6.0 million of MFN financial benefits toward economic development. Under the proposal, programs would be overseen by the Delaware Economic Development Office (“DEDO”).<sup>2</sup> For three years, funding would be targeted toward natural gas infrastructure investments within Delmarva Power’s service territory. Funding would be keyed toward new and expanding businesses seeking access to natural gas service. After three years, the proposed economic development projects could generally involve economic development opportunities for new or existing energy-related

---

<sup>2</sup> As with the funds dedicated to programs administered by DNREC, funding for economic development initiatives would be provided as an endowment fund with a dedicated purpose. See footnote 1 above.

businesses (including renewable energy or energy efficiency businesses). MAREC does not oppose economic development funding, but does oppose the preference for natural gas infrastructure projects and prefers instead that such funding be directed generally to renewable energy businesses and efficiency businesses. Dr. Firestone opposes the economic development funding.

21. The Joint Applicants support the proposed allocation of funding for economic development as proposed by Staff, the Public Advocate and DNREC, and submit that funding energy-related economic development endeavors is consistent with the public interest.

**(4) The Joint Applicants Oppose Applying MFN Funding for Electric Vehicle Charging or a Structured Rate Credit**

22. Dr. Firestone proposes that \$500,000 be provided to expand paired electric vehicle charging stations within the State, and also proposes that Delmarva Power issue a \$10 million rate credit, with \$7.0 million to the lowest income 1/5<sup>th</sup> of Delmarva Power customers, and the next \$3.0 million to the next lowest income 1/5<sup>th</sup> of Delmarva Power customers.

23. The Joint Applicants generally support the development of electric vehicles and actions to facilitate their use. However, in the Joint Applicants' view, the MFN funding they are making available here would be better allocated to the other priorities and projects that are presented for the Commission's consideration.

24. With respect to customer rate credits, the Joint Applicants believe that since the \$40 million of initial financial benefit related to the Merger was allocated under the Amended Settlement Agreement to rate credits for Delmarva Power residential customers that have now been disbursed, the additional MFN funding should be deployed to other effective uses that promote the public interest.

25. Further, if the Commission were to consider some form of rate credit, the proposed allocation by Dr. Firestone would be extraordinarily difficult (if not administratively impossible) to implement. Although the Joint Applicants appreciate Dr. Firestone's intention to direct credits to lower income customers, Delmarva Power has no readily available means to differentiate among the income levels of its customers as contemplated by Dr. Firestone's proposal. If the Commission were inclined to consider a customer rate credit for some portion of the MFN funding, the Joint Applicants request that it be structured in a manner that would allow for Delmarva Power to reasonably distribute such credit among its customers. Dr. Firestone's proposal would not do that.

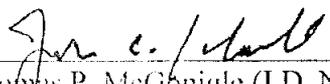
**E. The Joint Applicants' Position on Non-Financial Terms and Conditions**

26. As noted in the chart summarizing the parties' positions, the parties are in agreement concerning the adoption of certain requirements related to non-financial conditions. The Joint Applicants have circulated a proposed order in the form attached hereto as Exhibit B, and understand that the proposed form of order is not contested.

**F. Conclusion**

The Joint Applicants respectfully request that the Commission consider allocation of additional financial benefits from the Merger consistent with the positions and arguments stated above, and enter orders directing an allocation of financial MFN benefits and adopting non-financial terms and conditions.

DRINKER BIDDLE & REATH LLP

  
Thomas P. McGonigle (I.D. No. 3162)  
Joseph C. Schoell (I.D. No. 3133)  
Drinker Biddle & Reath LLP  
222 Delaware Avenue, Suite 1410  
Wilmington, Delaware 19801  
Tel: (302) 467-4200  
Thomas.McGonigle@dbr.com  
Joseph.Schoell@dbr.com

Paul R. Bonney, admitted *pro hac vice*  
Senior Vice President –  
Legal and Regulatory Strategy  
Pepco Holdings, LLC  
Edison Place  
701 Ninth Street, NW  
Suite 1100  
Washington, DC 20068

Wendy E. Stark, admitted *pro hac vice*  
Vice President & General Counsel  
Pepco Holdings, LLC  
Edison Place  
701 Ninth Street, NW  
Washington, DC 20068

*Counsel for the Joint Applicants*

September 12, 2016

86444665.5

## **EXHIBIT A**

Joint Application of Delmarva Power & Light Company, Exelon Corporation, Pepco Holdings, Inc., Purple Acquisition Corporation, Exelon Energy Delivery Company, LLC, and New Special Purpose Entity, Delaware PSC Docket No. 14-193

COMPARISON OF MOST FAVORED NATIONS BENEFIT RECOMMENDATIONS<sup>1</sup>

ALLOCATION & PURPOSE	STAFF	PUBLIC ADVOCATE	DNREC	MAREC	DR. FIRESTONE
DNREC EE Industrial & Large Commercial	\$8.0 million: EEIF Plus - Industrial & Large Commercial Delmarva customers.	\$8.0 million: EEIF Plus - Industrial & Large Commercial Delmarva customers.	\$8.0 million: EEIF Plus - Industrial & Large Commercial Delmarva customers.	\$8.0 million: EEIF Plus - Industrial & Large Commercial Delmarva customers.	Opposes funds for large commercial and industrial customers and proposes instead that funds be allocated to low income residential gas and electric households
DNREC EE Energy Efficiency Investment Fund	\$4.0 million: Existing EEIF for Delmarva customers – 30% reserved for minorities, women, veterans, service disabled veterans, and individuals with disabilities for first 3 years, with any remainder not allocated or encumbered being eligible for all EEIF eligible applicants for remaining 2 years. This funding shall be	\$8.0 million (see DPA position on public interest projects below). Existing EEIF for Delmarva customers – 30% reserved for minorities, women, veterans, service disabled veterans, and individuals with disabilities for first 3 years, with any remainder not allocated or encumbered being eligible for first 3 years, with any remainder not allocated or encumbered being eligible for all EEIF eligible applicants for remaining 2 years. This funding shall be	\$4.0 million: Existing EEIF for Delmarva customers – 30% reserved for minorities, women, veterans, service disabled veterans, and individuals with disabilities for first 3 years, with any remainder not allocated or encumbered being eligible for all EEIF eligible applicants for remaining 2 years. This funding shall be taken into consideration by the EEAC as it reviews Delmarva-proposed non-residential EE programs to	\$4.0 million: Existing EEIF for Delmarva customers – 30% reserved for minorities, women, veterans, service disabled veterans, and individuals with disabilities for first 3 years, with any remainder not allocated or encumbered being eligible for all EEIF eligible applicants for remaining 2 years. This funding shall be taken into consideration by the EEAC as it reviews Delmarva-proposed non-residential EE programs to	\$8.0 million: Existing EEIF for Delmarva customers – 30% reserved for minorities, women, veterans, service disabled veterans, and individuals with disabilities for first 3 years, with any remainder not allocated or encumbered being eligible for all EEIF eligible applicants for remaining 2 years. This funding shall be

<sup>1</sup> The application of the Most Favored Nation provisions results in Exelon's providing \$27,132,618.00 in additional financial benefit for Delaware, in the aggregate. In addition, the suggested mechanism by which funds will be allocated as described herein is that Exelon will deposit the funds into an endowment fund to be utilized for the specific purposes described herein by the designated agency or entity.

	<p>taken into consideration by the EEAC as it reviews Delmarva-proposed non-residential EE programs to ensure there is no duplication of EE programs. Additionally, any energy savings resulting from the expenditure of these funds shall be credited to the EE goals that the EEAC establishes for Delmarva.</p>	<p>eligible applicants for remaining 2 years. This funding shall be taken into consideration by the EEAC as it reviews Delmarva-proposed non-residential EE programs to ensure there is no duplication of EE programs. Additionally, any energy savings resulting from the expenditure of these funds shall be credited to the EE goals that the EEAC establishes for Delmarva.</p>	<p>into consideration by the EEAC as it reviews Delmarva-proposed non-residential EE programs to ensure there is no duplication of EE programs. Additionally, any energy savings resulting from the expenditure of these funds shall be credited to the EE goals that the EEAC establishes for Delmarva.</p>	<p>ensure there is no duplication of EE programs. Additionally, any energy savings resulting from the expenditure of these funds shall be credited to the EE goals that the EEAC establishes for Delmarva.</p>	<p>taken into consideration by the EEAC as it reviews Delmarva-proposed non-residential EE programs to ensure there is no duplication of EE programs. Additionally, any energy savings resulting from the expenditure of these funds shall be credited to the EE goals that the EEAC establishes for Delmarva.</p>
<p>DNREC EE Low Income</p>	<p><u>\$2.0 million:</u> Low Income EE for Delmarva customers, with a focus on low income renters, including possible collaboration with DSHA and other housing agencies to ensure benefits accrue to low income customers.</p>	<p><u>\$2.0 million:</u> Low Income EE for Delmarva customers, with a focus on low income renters, including possible collaboration with DSHA and other housing agencies to ensure benefits accrue to low income customers.</p>	<p><u>\$2.0 million:</u> Low Income EE Delmarva customers, with a focus on low income renters, including possible collaboration with DSHA and other housing agencies to ensure benefits accrue to low income customers.</p>	<p><u>\$2.0 million:</u> Low Income EE Delmarva customers, with a focus on low income renters, including possible collaboration with DSHA and other housing agencies to ensure benefits accrue to low income customers.</p>	<p><u>\$2.0 million:</u> Low Income EE Delmarva customers.</p>
<p>DEDO Economic Development</p>	<p><u>\$6.0 million:</u> Support job creation, specifically as it relates to obstacles and opportunities in the energy area.</p>	<p><u>\$6.0 million:</u> Support job creation, specifically as it relates to obstacles and opportunities in the energy area. Funds will</p>	<p><u>\$6.0 million:</u> Support job creation, specifically as it relates to obstacles and opportunities in the energy area. Funds will</p>	<p><u>\$6.0 million:</u> Does not support the 3-year restriction for natural gas infrastructure. All funds should be allocated to economic development</p>	<p>Opposes DEDO funds and proposes instead that funds be allocated to low-income households and to the EEIF.</p>

	<p>Funds will be restricted for 3 years for natural gas infrastructure investments in Delmarva service territories necessary to foster business locations or expansions. Any funds not allocated or encumbered after 3 years may thereafter be allocated for the remaining 2 years to economic development opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories.</p>	<p>be restricted for 3 years for natural gas infrastructure investments in Delmarva service territories necessary to foster business locations or expansions. Any funds not allocated or encumbered after 3 years may thereafter be allocated for the remaining 2 years to economic development opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories.</p>	<p>be restricted for 3 years for natural gas infrastructure investments in Delmarva service territories necessary to foster business locations or expansions. Any funds not allocated or encumbered after 3 years may thereafter be allocated for the remaining 2 years to economic development opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories.</p>	<p>opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories</p>	
<p>Public Interest</p>	<p><u>\$4.0 million:</u> Grants to provide for qualifying public interest projects per a competitive RFP process.</p>	<p>DPA opposes \$4.0 public interest grants and proposes instead that funds be allocated to EEIF program per the above.</p>	<p><u>\$4.0 million:</u> Grants to provide for qualifying public interest projects per a competitive RFP process.</p>	<p><u>\$4.0 million:</u> Limit "public interest" energy projects per a competitive RFP process.</p>	<p><u>\$3.5 million: Limit "public interest"</u> projects to solar and wind power academic research or training programs at state academic institutions, with a cap on overhead at 38%, and a requirement that grant recipients provide matching</p>



	to the Arrearage Management Plan.	to the Arrearage Management Plan.	to the Arrearage Management Plan.	to the Arrearage Management Plan.
Renewable Investment	<p><u>\$3.0 million:</u> Capital at market rates for gov't agencies to develop renewables.</p> <p><u>5MW Merchant:</u> Develop or assist in development of generation, the development of which is not to be paid for by Delmarva rate payers.</p>	<p><u>\$3.0 million:</u> Capital at market rates for gov't agencies to develop renewables.</p> <p><u>5MW Merchant:</u> Develop or assist in development of generation, the development of which is not to be paid by Delmarva rate payers.</p>	<p><u>\$3.0 million:</u> At market rates for renewables – Recommend more information to further define criteria.</p> <p><u>5 Megawatts commercial:</u> renewable energy generation, the development of which is not to be paid by Delmarva rate payers. Recommend possible exclusion of Exelon related entities from participating in development and operation of generation.</p>	<p><u>\$3.0 million:</u> Capital at market rates for gov't agencies to develop renewables.</p> <p><u>5MW Merchant:</u> Develop or assist in development of generation, the development of which is not to be paid by Delmarva rate payers.</p>
Micro Grid	<p>Defer consideration until further progress is made in Maryland or DC so that the parties and the Commission can have the benefit of the analysis and work product in those docketed proceedings should they proceed. Delmarva will share with Staff, DPA or other interested parties information on the progress of and learning related to projects in other jurisdictions.</p>	<p>Defer consideration until further progress is made in Maryland or DC so that the parties and the Commission can have the benefit of the analysis and work product in those docketed proceedings should they proceed. Delmarva will share with Staff, DPA or other interested parties information on the progress of and learning related to projects in other jurisdictions.</p>	<p>Defer consideration until further progress is made in Maryland or DC so that the parties and the Commission can have the benefit of the analysis and work product in those docketed proceedings should they proceed. Delmarva will share with Staff, DPA or other interested parties information on the progress of and learning related to projects in other jurisdictions.</p>	<p>Defer consideration until further progress is made in Maryland or DC so that the parties and the Commission can have the benefit of the analysis and work product in those docketed proceedings should they proceed. Delmarva will share with Staff, DPA or other interested parties information on the progress of and learning related to projects in other jurisdictions.</p>

Misc Wording Changes	jurisdictions. Agreed to proposed order with additional MFN language changes.	Agreed to proposed order with additional MFN language changes.	Agreed to proposed order with additional MFN language changes.	Agreed to proposed order with additional MFN language changes.	jurisdictions. No objections to proposed order with additional MFN language changes.
----------------------	--	--	--	--	---

## **EXHIBIT B**

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION )  
OF DELMARVA POWER & LIGHT )  
COMPANY, EXELON CORPORATION, )  
PEPCO HOLDINGS, INC., PURPLE )  
ACQUISITION CORPORATION, EXELON ) PSC Docket No. 14-193  
ENERGY DELIVERY COMPANY, LLC AND )  
NEW SPECIAL PURPOSE ENTITY FOR )  
APPROVALS UNDER THE PROVISIONS OF )  
26 DEL. C. §§ 215 and 1016 (Filed June 18, )  
2014) )

**ORDER NO. 8XXX**

WHEREAS, on June 18, 2014, Delmarva Power & Light Company (“Delmarva Power”), Exelon Corporation (“Exelon”), Pepco Holdings, Inc. (“PHI”), Purple Acquisition Corporation, Exelon Energy Delivery Company, LLC (“EEDC”), and Special Purpose Entity (“SPE”) (collectively, the “Joint Applicants”) filed an application (the “Application”) seeking approvals under 26 *Del. C.* §§ 215 and 1016 for a change of control of Delmarva Power to be effected by a merger of PHI with a wholly owned subsidiary of Exelon (the “Merger”);

WHEREAS, on April 7, 2015, the Joint Applicants, the Delaware Public Service Commission Staff (“Staff”), the Delaware Division of the Public Advocate (the “Public Advocate”), and intervenors Delaware Department of Natural Resources and Environmental Control (“DNREC”), the Delaware Sustainable Energy Utility (the “SEU”), Mid-Atlantic Renewable Energy Coalition (“MAREC”), and the Clean Air Council (“CAC”) (collectively, the “Settling Parties”) entered into an Amended Settlement Agreement (the “Amended Settlement Agreement”) and requested that the Commission approve the Merger and the Amended Settlement Agreement;

WHEREAS, on June 2, 2015, the Commission adopted Order No. 8746, approving the Merger and the Amended Settlement Agreement;

WHEREAS, the Settling Parties negotiated a “most favored nation” (“MFN”) provision, included in paragraphs 103 through 105 of the Amended Settlement Agreement, pursuant to which the Joint Applicants have agreed to provide additional benefits in the State of Delaware if greater financial or other specified benefits have been ordered or agreed to by the Joint Applicants in connection with approval of the Merger in other jurisdictions;

WHEREAS, on March 23, 2016, the Public Service Commission of the District of Columbia granted approval of the proposed Merger, which provided the final required regulatory approval for the Merger to proceed;

WHEREAS, on March 23, 2016, the Merger was closed; and

WHEREAS, the parties (including all of the Settling Parties) have jointly proposed that, in addition to the payment and allocation of additional financial benefits to be provided in Delaware in connection with the Merger, the non-financial conditions identified below should be ordered as a modification of the Amended Settlement Agreement in order to provide comparable benefits and protections with respect to the Merger as were ordered by the District of Columbia Public Service Commission,

NOW, THEREFORE, THE COMMISSION HEREBY ORDERS AS FOLLOWS:

#### **Local Presence in Delaware**

1. Exelon will include the State of Delaware among the locations of Exelon's Board of Directors meetings and Exelon's annual stockholder meetings. This paragraph revises and supersedes paragraph 14 of the Amended Settlement Agreement.
2. The Exelon Executive Committee will include the State of Delaware among the locations of its meetings. This paragraph revises and supersedes paragraph 15 of the Amended Settlement Agreement.

#### **Employment and Workforce Reporting**

3. For at least five (5) years after Merger close, Exelon shall not permit a net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at Delmarva Power's utility operations in the Delaware. For purposes of this paragraph, "involuntary attrition" includes transfer-or-quit offers where the employee decides to quit or retire rather than being transferred to a work location outside of the Delaware. This paragraph revises and supersedes paragraph 3 of the Amended Settlement Agreement.
4. Delmarva Power shall, on an annual basis for the first five (5) years after Merger close, file a report with the Commission by April 1, beginning in 2017, regarding employment levels at Delmarva Power during the prior calendar year. The reports shall detail any job losses – including whether the attrition was involuntary or voluntary – as well as any job gains, delineated using an industry-accepted categorization method such as by SAIC code.

#### **Supplier and Workforce Diversity Reporting**

5. Delmarva Power shall continue its commitments to supplier and workforce diversity. Delmarva Power shall, on an annual basis for the first three (3) years following consummation of the Merger, file a report with the Commission by April 1, beginning in 2017, outlining its efforts to promote supplier and workforce diversity during the prior calendar year.

#### **Economic Benefits Reporting**

6. For each of the first five (5) years after Merger close, Delmarva Power will submit an annual report detailing the economic benefits of the Merger for the State of Delaware.

The report will detail the methodology used to calculate the benefits and the specific description of the benefits.

### **Development of an Arrearage Management Program**

7. Delmarva Power will work with Staff, the Public Advocate and other interested stakeholders to develop in good faith a mutually agreeable Arrearage Management Program (“AMP”) for low-income customers in arrears, which would include the provision of credits or matching payments for customers who make timely payments on their current bills, with such discussions to be initiated no later than sixty (60) days after the Commission’s approval of this condition, and with the understanding that the parties will seek to reach agreement within six (6) months after the Commission’s approval of this condition and that any agreement regarding the adoption of an AMP would be submitted to the Commission for its review and approval.

### **Integration, Cost Accounting and Synergy Savings**

8. The Joint Applicants agree that Delmarva Power shall track and account for Merger-related savings, and the cost to achieve those savings, in its first base rate case after the closing of the Merger, and if applicable, in each of its base rate cases filed within a three-year period following Merger close. Delmarva Power will flow all synergy savings allocable to Delaware customers through the normal ratemaking process. Furthermore, the Joint Applicants agree to provide the Commission an update regarding Delmarva Power integration efforts six (6) months after the consummation of the Merger and every six months thereafter for a period of two years post-Merger close. This paragraph revises and supersedes the requirements of paragraph 86 of the Amended Settlement Agreement.

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

10. In each of Delmarva Power’s base rate cases filed within five (5) years after closing of the Merger, Delmarva Power shall provide, in addition to the information otherwise required to be provided with Delmarva Power’s minimum filing requirements, the following information with respect to charges to Delmarva Power from Exelon, Exelon Business Services Company (“EBSC”) or any other affiliate that supplies service to Delmarva Power after the Merger: (a) The Cost Allocation Manual(s) in effect and used to allocate costs to Delmarva Power and Delmarva Power’s Delaware operations; (b) The service agreement(s) in effect between Delmarva Power and Exelon, EBSC, and any other affiliate that charges costs to Delmarva Power; (c) An exhibit separately stating the costs that are directly assigned or allocated to Delmarva Power and Delmarva Power’s Delaware operations for the test year and for each year post-Merger, by entity charging the costs, including: (i) Total amount of direct charged costs and total amount of allocated costs to Delmarva Power and to Delmarva Power’s State of Delaware operations; (ii) Total amount of direct charged costs and total amount of allocated

costs included in Delmarva Power's rate base and in Delmarva Power's rate base for the State of Delaware; and (iii) Total amount of direct charged costs and total amount of allocated costs included in Delmarva Power's operating and maintenance expenses and in Delmarva Power's operating and maintenance expenses for the State of Delaware.

11. Delmarva Power shall promptly notify the Commission, Staff and the Public Advocate if it receives notice that the United States Securities and Exchange Commission (the "SEC"), the Federal Energy Regulatory Commission (the "FERC"), or the state regulatory commission in any state in which an affiliate utility company operates has initiated an audit of EBSC or PHI Service Company ("PHISCo"). Delmarva Power shall provide copies of the portions of all audit reports highlighting the findings and recommendations and ordered changes to the General Service Agreement ("GSA") pertaining directly or indirectly to EBSC or PHISCo's determinations of direct billings and cost allocations to its affiliate utility companies, as well as any sections addressing Delmarva Power. If after review of such material, Staff or the Public Advocate reasonably determines that review of the remainder of such audit report is warranted, Delmarva Power shall make the complete report available for review in a Delmarva Power office in the State of Delaware or at the Commission, subject to appropriate conditions to protect confidential or proprietary information.

12. Delmarva Power shall promptly notify the Commission, Staff and the Public Advocate if it receives notice that the SEC, the FERC, or any state regulatory commission in which an affiliate utility company operates has issued a specific decision affecting EBSC or PHISCo, including a rulemaking, pertaining directly or indirectly to EBSC or PHISCo's determinations of direct billings and cost allocations to its affiliate utility companies.

13. Delmarva Power shall promptly file with the Commission, for informational purposes, any modifications to the GSA, including changes in methods or formulae used to allocate costs at the same time it makes a filing with the FERC. Delmarva Power's filing of modifications to the GSA shall be made at least thirty (30) days before such modifications become effective. Staff and the Public Advocate shall have the right to review the GSA and related cost allocations in Delmarva Power's future base rate cases in the State of Delaware, in conjunction with future competitive service audits, in response to any changes in the Commission's affiliate relations standards, and for other good cause shown.

14. Exelon agrees that any costs to migrate from PHI's Solution One SAP system to an Oracle-based system prior to the conclusion of the life of the asset will not be recovered in Delmarva Power's distribution customer rates. The new "SolutionOne" SAP billing system platform will be in use for its expected useful life. If, for any reason, the use of the "SolutionOne" SAP billing system platform is terminated before the end of this expected useful life, ratepayers shall not be responsible for any un-depreciated costs or lease payment obligations remaining after the date upon which use is terminated. This paragraph revises and supersedes paragraph 93 of the Amended Settlement Agreement.

#### **Tax Indemnity**

15. Although the Joint Applicants do not anticipate any adverse impact from the Merger on the utilization of Delmarva Power's net operating loss carry-forwards, Exelon will

agree to indemnify Delmarva Power for any liability for income taxes in excess of liabilities of Delmarva Power as a standalone entity. In addition, Exelon shall indemnify Delmarva Power for any liability for federal or local income taxes (including interest and penalties related thereto, if any) in excess of Delmarva Power's standalone liability for federal or local income taxes (including interest and penalties related thereto, if any) for any period during which Delmarva Power is included in a consolidated group with Exelon. Under applicable law, following the Merger, Delmarva Power will have no liability for federal or local income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which Delmarva Power was not included in a consolidated group with Exelon (*i.e.*, any period before the Merger). Exelon will take no action to cause Delmarva Power to have any liability for federal or local income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which Delmarva Power was not included in a consolidated group with Exelon for purposes of filing federal or local income tax returns. If Delmarva Power is included in a consolidated group with Exelon for purposes of filing federal or local income tax returns and the rating for Exelon's senior unsecured long-term public debt securities, without third-party credit enhancement, is downgraded to a rating that indicates "substantial risks" (below B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, the Commission may, after investigation and hearing, require Exelon to deliver to Delmarva Power collateral of the type and amount determined by the Commission pursuant to the hearing to secure Exelon's tax indemnity to Delmarva Power if the Commission finds that such collateral is necessary for the protection of Delmarva Power's interests under Exelon's tax indemnity. Delmarva Power shall be required to surrender or release such collateral security to Exelon (1) promptly after the rating of Exelon's senior unsecured long term public debt, without third-party credit enhancement, is restored to a rating above "substantial risks" (at or above B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, or (2) if and when Delmarva Power is determined by a body of competent jurisdiction no longer to be liable for federal or local income taxes as a member of a consolidated group with Exelon, other than Delmarva Power's standalone liability for federal or local income taxes (including interest and penalties related thereto, if any), or (3) upon a finding by the Commission, after investigation and hearing upon application of Exelon, that the conditions under which such collateral security was originally required no longer exist. This paragraph revises and supersedes paragraph 90 of the Amended Settlement Agreement.

### **Corporate Structure**

16. PHI will have a board of directors consisting of seven (7) or more people. A majority of the PHI board (4 directors on a board of 7) will be "independent" (as defined by New York Stock Exchange rules). Of the remaining directors, one shall be selected from among the officers or employees of PHI or a PHI subsidiary. At least three (3) PHI board members shall have a residence or principal place of business or employment in the service territory of the PHI utilities, one from Delmarva Power (Delaware), one from Atlantic City Electric Company ("ACE"), and one from Potomac Electric Power Company ("Pepco"). This paragraph revises and supersedes paragraph 11 of the Amended Settlement Agreement.

17. Exelon commits that, following the Merger closing date: (a) Delmarva Power will have a Chief Executive Officer ("CEO"), who may also be the CEO of PHI; (b) the Delmarva

Power CEO will be a member of the Exelon Executive Committee, will meet with Exelon's CEO at least monthly, and will have direct and frequent access to the Exelon CEO and other members of Exelon's senior management team; (c) the Delmarva Power CEO will attend meetings of Exelon's Board of Directors; (d) Delmarva Power's CEO will be extended an employment contract for no less than two (2) years; and (e) any officer succeeding Delmarva Power's current CEO as Delmarva Power CEO will be knowledgeable about Delmarva Power's operations in the State of Delaware. In addition, PHI will continue to have a Chief Financial Officer, Treasurer and a number of other officers, and Delmarva Power will maintain appropriate levels of senior management at its Delaware offices.

18. The Regional President of Delmarva Power will have the same capacities and similar responsibilities as he has today. Consistent with those capacities and responsibilities, the Regional President of Delmarva Power will have input into decisions related to rate-case filings and positions on regulatory and legislative issues that affect Delmarva Power. The Delmarva Power CEO will have the authority to make rate case decisions, including the revenue requirement that will be requested in Delmarva Power's rate cases in the State of Delaware, taking into consideration the input of the Regional President of Delmarva Power. The Regional President of Delmarva Power will maintain an office in the State of Delaware.

#### **Safety**

19. Exelon is committed to having all of its utilities achieve and maintain first-quartile performance in safety. Consistent therewith, Delmarva Power will file annual reports on its safety performance and safety initiatives with the Commission. Delmarva Power's reporting will include a report by Exelon on its existing safety and cybersecurity policies.

#### **Ring-Fencing Protections**

20. Delmarva Power will not incur or assume any debt, including the provision of guarantees or collateral support, related to the Merger or any future Exelon acquisition. This paragraph revises and supersedes paragraph 20 of the Amended Settlement Agreement.

21. 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. This paragraph revises and supersedes the requirements of paragraph 36 of the Amended Settlement Agreement.

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

closing. Within six (6) months of the Merger's close, Exelon will file with the Commission for informational purposes its plan to integrate PHISCo within EBSC and other entities. Exelon will not finalize the implementation of such integration plan until thirty (30) days after it has been filed with the Commission. This paragraph revises and supersedes paragraph 45 of the Amended Settlement Agreement.

23. Delmarva Power shall maintain a rolling 12-month average annual equity ratio of at least 48%. Delmarva Power will not pay dividends to its parent company if, immediately after the dividend payment, its common equity level would fall below 48%, as equity levels are calculated under the ratemaking precedents of the Commission. This paragraph revises and supersedes paragraph 50 of the Amended Settlement Agreement.

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

25. The Joint Applicants agree to implement the ring-fencing and corporate governance measures set out in the Amended Settlement Agreement within 180 days after Merger closing for the purpose of providing protections to customers. Not earlier than five (5) years after the closing of the Merger, the Joint Applicants shall have the right to review these ring-fencing provisions and to make a filing with the Commission requesting authority to modify or terminate those provisions. Notwithstanding such right, the Joint Applicants agree not to proceed with any such modification or termination without first obtaining Commission approval in a written order. In addition, the Joint Applicants recognize that the Commission at any time may initiate its own review or investigation regarding ring-fencing measures (or upon petition by any party) and order modifications that it deems to be appropriate, in the public interest and the best interest of Delmarva Power customers. This paragraph revises and supersedes paragraph 59 of the Amended Settlement Agreement.

#### **Commission Approval of PHI Non-Utility Operations**

26. PHI will not initiate or invest in new non-utility operations without first obtaining Commission approval in a written order.

#### **Commission Jurisdiction**

27. Delmarva Power will continue to operate within Delaware as an electric and gas public utility subject to the continuing jurisdiction of the Commission pursuant to Title 26 of the Delaware Code and without any reduction in the Commission's existing oversight or authority over Delmarva Power.

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

### **Exelon Utility Performance Reporting**

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

### **Standard Offer Service**

30. Delmarva Power will continue to provide Standard Offer Service (“SOS”) to its customers in Delaware consistent with the Delaware Code and Affiliate Code of Conduct. The parties acknowledge that Exelon intends to continue to participate in the SOS auction process. This paragraph revises and supersedes paragraph 94 of the Amended Settlement Agreement.

### **Development of Renewable Power Generation**

31. Exelon shall, by December 31, 2019, develop or assist in the development of five (5) MW of renewable power generation in the State of Delaware. Renewable power may be generated by any eligible energy resource as defined under 26 *Del. C.* § 352(6). Exelon shall sell the output of any renewable generation constructed in fulfillment of this commitment in the market, and shall not seek to recover the costs of this commercial development through Delmarva Power distribution or transmission rates. Exelon shall retain the renewable energy certificates and tax attributes for any renewable projects.

32. Exelon shall provide \$3.0 million of capital to creditworthy governmental entities at market rates for the development of renewable energy projects in the Delaware.

ADOPTED September \_\_, 2016.

### **BY ORDER OF THE COMMISSION:**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Comissioner

\_\_\_\_\_  
Comissioner

\_\_\_\_\_  
Comissioner

\_\_\_\_\_  
Comissioner

ATTEST:

\_\_\_\_\_  
Secretary

86344554.2

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION OF )  
DELMARVA POWER AND LIGHT COMPANY, )  
EXELON CORPORATION, PEPCO HOLDINGS, )  
INC., PURPLE ACQUISITION CORPORATION, )  
EXELON ENERGY DELIVERY COMPANY, ) PSC DOCKET NO. 14-193  
LLC AND NEW SPECIAL PURPOSE ENTITY )  
FOR APPROVALS UNDER THE PROVISIONS )  
OF 26 DEL. C. §§215 AND 1016 )  
(FILED JUNE 18, 2014) )

SECOND SUPPLEMENTAL COMMENTS OF

CONNIE S. McDOWELL

ON BEHALF OF

COMMISSION STAFF

SEPTEMBER 12, 2016

On June 2, 2015 in Commission Order No. 8746, the Commission accepted an Amended Settlement Agreement (“Settlement”) and approved the merger of Exelon Corporation and Pepco Holdings, Inc. as being in accordance with law, for a proper purpose and in the public interest. In that Order, the Commission further directed the Settling Parties and Dr. Firestone to analyze and review additional customer financial benefits or other benefits that were subject of orders in other jurisdictions and to propose such changes to the provisions of the Settlement as may be necessary, pursuant to the Most Favored Nations (“MFN”) provisions (§§103-105). These comments are provided in accordance with the Commission’s Order.

On July 11, 2016, Exelon Corporation and Pepco Holdings, Inc. (“PHI”, jointly the “Applicants”) filed notice with the Hearing Examiner of an additional \$27.1 million of funding benefit that was the result of other jurisdictional settlements and the MFN provision. Staff reviewed the filing and accepted the calculation as a reasonable interpretation based on the financial benefits obtained in other jurisdictions. Staff also reviewed the terms and conditions contained in the various settlement agreements used in PHI’s other service territories to ensure that Delaware received the benefit(s) of the most comprehensive requirements found in those agreements.

My original testimony, based on the Applicants’ original filing, expressed concern that the requirements of 26 *Del. C.* §215, (which require a merger to be in accordance with law, for a proper purpose and in the public interest) had not been sufficiently met. As a result of various testimonies, Staff and the parties continued to meet with the Applicants in an attempt to formulate a settlement that better addressed Staff’s issues and concerns.

On January 5, 2015, as a result of those on-going discussions, I filed supplemental testimony outlining the benefits that Staff would expect to see in the Applicants’ merger proposal in order for the Commission to approve the proposed transaction. That testimony highlighted the need for both customer and public interest benefits. After further discussion and several drafts, the parties crafted an Amended Settlement Agreement that undertook to better meet those objectives.

On June 2, 2015 the Amended Settlement Agreement and related merger were approved by the Commission. Staff has taken a similar position with respect to its current proposal for the allocation of the additional MFN benefits by outlining a proposal that

balances the benefits among all Delmarva Power customers and the general public. Staff met with the Applicants to discuss the level of anticipated benefits and to discuss some initial proposals. Staff then formulated a draft proposal and met with several other parties to discuss a potential allocation to provide a broader dispersion of the merger benefits. Those meetings included representatives of Governor’s office, Department of Natural Resources and Environmental Control (“DNREC”) and the Division of Public Advocate (“DPA”). While there was some agreement on a proposed allocation, not all parties could support Staff’s draft proposal. In accordance with the Hearing Examiner’s direction, Staff and other parties filed a summary of their respective proposals on August 12, 2016. Subsequent to that filing, the Applicants met with Staff and other parties on August 16, 2016 to further discuss Staff’s proposal and to identify areas of common agreement or concern. While some progress was made, there is only partial agreement on the final proposed allocation of benefits in this case.

Staff’s benefit allocation attempts to broaden the distribution of overall merger benefits to include Delmarva’s commercial and industrial customers, along with a specified amount for Delaware’s public benefit. Attachment CSM-1 reflects the prior benefit allocation (in blue) along with the proposed new allocation (in green). Of the total \$27.1 million, Staff’s proposal allocates \$12.0 million to DNREC for commercial and industrial energy efficiency programs, \$6.0 million to the Delaware Economic Development Office (“DEDO”) for gas infrastructure improvements and energy related economic development, \$4.0 million for public interest projects, \$3.1 million for an arrearage management program<sup>1</sup> and \$2.0 million additional funding for low income energy efficiency. If one were to accept Staff’s proposed allocation of financial benefits, the residential customers would receive 66.2% of the benefits, commercial and industrial customers would receive 27.3% of the financial benefits and Delaware’s “public interest” would receive 6.4% of the financial benefits.<sup>2</sup>

One of the factors that the Commission must consider in reviewing any proposed merger requires that the proposed transaction be in the public interest. *See 26 Del. C. §215.*

---

<sup>1</sup> In addition, after five years any unspent funds from the other allocations will be assigned to the arrearage management program.

<sup>2</sup> Staff recommends a Memorandum of Understanding (“MOU”) be executed by any recipient of funds prior to the receipt of any benefits pursuant to the MFN provisions. Attachments CSM-3 and CMS-4 are examples of the type of MOU that could be executed between the Commission and each agency or organization receiving funds.

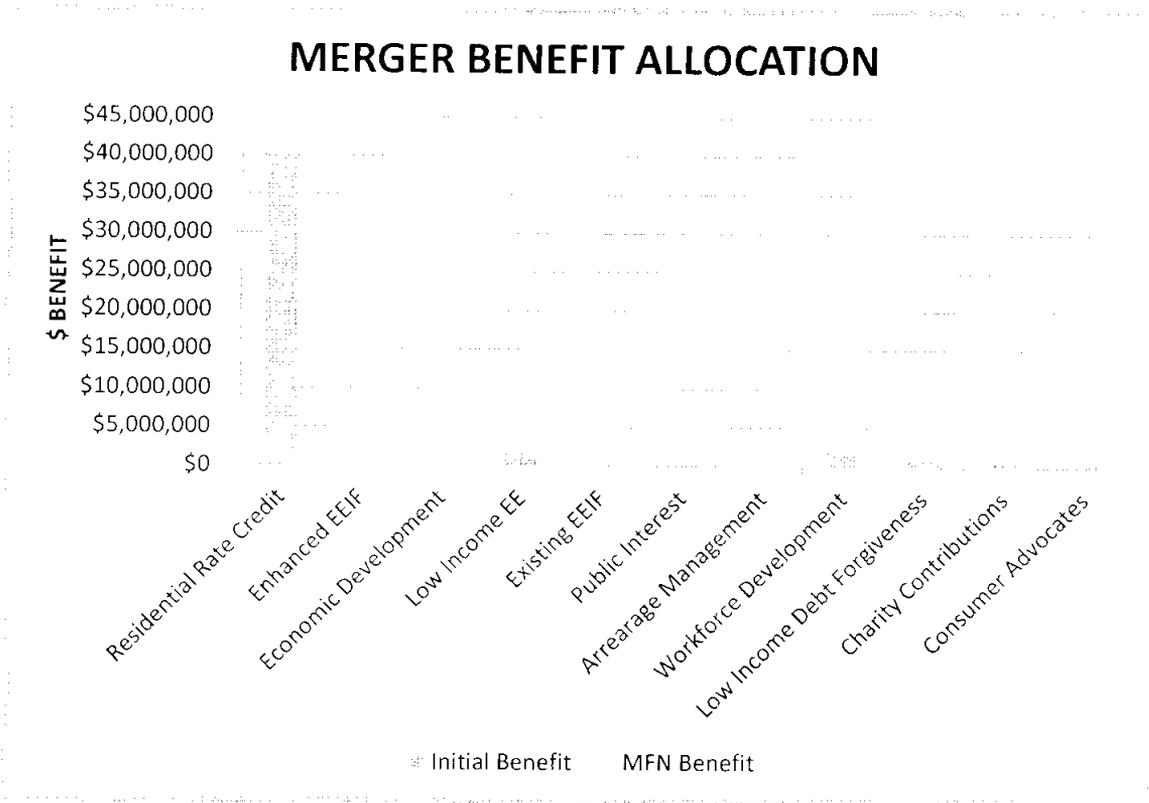
If the Legislature had wanted to reserve all proposed merger benefits to PHI's ratepayers, it could have simply stated that in the statute. However, it did not. While ratepayers are certainly members of the public, there are other factions in Delaware such as government agencies and non-profit organizations that also provide significant benefits to Delaware citizens and should, in Staff's opinion, have an opportunity to expand those benefits by way of additional grant funding.

The Commission's order specifically required the parties and Dr. Firestone to propose changes to the provisions of the Settlement as may, in their respective opinions, be necessary. As previously mentioned, Staff has reviewed the settlement language in the other jurisdictions and offers suggested new language as contained in attachment CSM-2. In addition to the financial benefits of the proposed allocation and the language changes, Staff is recommending Commission inclusion of three additional benefits granted in other jurisdictions.

- Exelon would make \$3.0 million available at capital market rates for any government agency wishing to develop renewable generation.
- Exelon would develop or assist in the development of five (5) megawatts of renewable generation.
- Exelon would plan and consider the possibility for one micro-grid project in Delaware, implementation subject to Commission approval.

Staff believes the additional financial allocations and the revised settlement language that it recommends not only provides for a more equitable sharing of merger benefits, but also provides opportunities for state agencies and non-profit organizations to help create additional benefits for Delaware and ensure that the merger continues to be in the public interest.

ATTACHMENT CSM-1



BENEFIT ITEM	Initial Benefit	MFN Benefit	DPL RES	DPL COM/IND	DELAWARE
Residential Rate Credit	\$40,000,000		\$40,000,000		
Enhanced EEIF		\$8,000,000		\$8,000,000	
Economic Development		\$6,000,000		\$6,000,000	
Low Income EE	\$2,000,000	\$2,000,000	\$4,000,000		
Existing EEIF		\$4,000,000		\$4,000,000	
Public Interest		\$4,000,000			\$4,000,000
Arrearage Management		\$3,100,000	\$3,100,000		
Workforce Development	\$2,000,000			\$2,000,000	
Low Income Debt Forgiveness	\$1,006,009		\$1,006,009		
Charity Contributions	\$699,000				\$699,000
Consumer Advocates	\$350,000		\$350,000		
<b>SUBTOTAL</b>	<b>\$46,055,009</b>	<b>\$27,100,000</b>	<b>\$48,456,009</b>	<b>\$20,000,000</b>	<b>\$4,699,000</b>
<b>TOTAL/PERCENT</b>		<b>\$73,155,009</b>	<b>66.24%</b>	<b>27.34%</b>	<b>6.42%</b>

**ATTACHMENT CSM-2**

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION	)	
OF DELMARVA POWER & LIGHT	)	
COMPANY, EXELON CORPORATION,	)	
PEPCO HOLDINGS, INC., PURPLE	)	
ACQUISITION CORPORATION, EXELON	)	PSC DOCKET NO. 14-193
ENERGY DELIVERY COMPANY, LLC	)	
AND NEW SPECIAL PURPOSE ENTITY	)	
FOR APPROVALS UNDER THE	)	
PROVISIONS OF 26 DEL. C. §§ 215 and	)	
1016 (Filed June 18, 2014)	)	

**AMENDED SETTLEMENT AGREEMENT**

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

WHEREAS, on June 18, 2014, Exelon, PHI, Delmarva Power & Light Company (“Delmarva Power”), and other related entities (collectively, the “Joint Applicants”) filed an application with the Delaware Public Service Commission (the “Commission”) seeking approval of the proposed merger of Exelon and PHI (the “Merger”) and the resulting change in control of Delmarva Power, pursuant to 26 Del. C. §§ 215 and 1016;

WHEREAS, the Delaware Division of the Public Advocate (the “Public Advocate”) filed its Statutory Notice of Intervention on July 8, 2014;

WHEREAS, the Delaware Department of Natural Resources and Environmental Control (“DNREC”), the Delaware Sustainability Energy Utility (the “SEU”), the Mid-Atlantic Renewable Energy Coalition (“MAREC”), NRG Energy, Inc. (“NRG”), Jeremy Firestone (“Firestone”), Monitoring Analytics, LLC acting as the Independent Market Monitor for PJM (the “Market Monitor”), James Black, Executive Director for the Partnership for Sustainability in Delaware (“PSD”), Chesapeake Utilities Corporation (“Chesapeake”), and the Clean Air Council (“CAC”), have all intervened in the above-captioned docket;

WHEREAS, Commission Staff (“Staff”), the Public Advocate and other intervenors took substantial discovery in this matter from the Joint Applicants, including thousands of written discovery requests and eleven depositions of proposed witnesses for the Joint Applicants and the Joint Applicants have produced thousands of documents;

SUPPLEMENTAL COMMENTS – CONNIE S. MCDOWELL

WHEREAS, Staff, the Public Advocate, the SEU, MAREC, DNREC, the Market Monitor and Firestone submitted pre-filed direct testimony on December 12, 2014, and December 19, 2014;

WHEREAS, the Joint Applicants submitted pre-filed rebuttal testimony on January 12, 2015;

WHEREAS, Staff, the Public Advocate, DNREC, the SEU, MAREC and CAC have engaged in lengthy and detailed settlement discussions with the Joint Applicants to establish appropriate and proper protections to address the concerns raised with respect to the interests of ratepayers and the public;

WHEREAS, subject to the approval of the Commission, the Joint Applicants have agreed to binding commitments above and beyond those contained in the Application in an effort to address the issues raised:

WHEREAS, the Joint Applicants, Staff, the Public Advocate, DNREC, the SEU, MAREC and CAC (the "Settling Parties"), have agreed to terms that they believe establish that the Merger is in accordance with law, for a proper purpose and is consistent with the public interest as required by 26 Del. C. § 215, insures that any successor will continue safe and reliable transmission services, and complies with all labor-related provisions of 19 Del. C. § 706 and 26 Del. C. § 1016:

WHEREAS, pursuant to 26 Del. C. § 512, the public policy of the State of Delaware encourages the resolution of matters before the Commission through voluntary settlement; and

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

AND WHEREAS, the Settling Parties have accepted the Amended Settlement Agreement as proposed by the Settling Parties on January 2, 2015;

AND WHEREAS, the Settling Parties have agreed to provide the following additional protections to ratepayers and the public, including financial benefits, to ensure that the Merger is in accordance with law, for a proper purpose and is consistent with the public interest as required by 26 Del. C. § 215:

AND WHEREAS, the Settling Parties have agreed to provide the following additional protections to ratepayers and the public, including financial benefits, to ensure that the Merger is in accordance with law, for a proper purpose and is consistent with the public interest as required by 26 Del. C. § 215:

NOW, THEREFORE, the following amended terms and conditions are agreed to by the Settling Parties to this Amended Settlement Agreement as follows:

**Recommendation of Approval of the Merger**

1. **Subject to the provisions set forth in this Settlement Agreement, the Settling Parties agree that the statutory criteria for approval of an application for a change of control for a Delaware public utility as set forth in 26 Del. C. §§ 215(b) and 1016 have been satisfied with respect to the Merger and the change in control with respect to Delmarva Power. More particularly, the Settling Parties agree that the record herein, coupled with the conditions set forth herein support findings and conclusions by the Commission that the Merger is in accordance with law, for a proper purpose and is consistent with the public interest. Further the Settling Parties agree that the Merger will ensure that Delmarva Power will continue to provide safe and reliable transmission and distribution services and that the Merger complies with the provisions concerning labor contracts and employment specifically set forth in 26 Del. C. § 1016(b).**

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

**Labor, Employment and Compensation Protections**

3. **Delmarva Power will honor all existing collective bargaining agreements. Upon consummation of the Merger and for at least the first two years following consummation of the Merger, Exelon and Delmarva Power: (a) will not permit a net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at Delmarva Power, and (b) will continue their commitments to workforce diversity.** For years three through five following the closing of the Merger, Delmarva Power will not permit a net, involuntary reduction due to the Merger integration process greater than a total of 25 Delmarva Power Delaware positions.

4. **Contingent upon consummation of the Merger, Delmarva Power will use its best efforts to hire at least 83 full-time employees in Delaware into Local 1238 and Local 1307 and will do so within two years of Merger consummation.** Those 83 bargaining-unit employees will not be among the 25 Delmarva Power positions that may be involuntarily reduced due to the Merger integration process in years three through five following the closing of the Merger.

5. Exelon agrees that it will not permit a net reduction of more than 60 PHH Service Company (“PHHSCo”) employees in Delaware, due to involuntary attrition as a result of the Merger integration process, for five years subsequent to the Merger consummation. The Joint Applicants agree that eligible employees terminated as a result of the Merger will receive severance benefits, including a cash payment which can be used for outplacement services, at the discretion of the employee.

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

7. For at least the first five years following the consummation of the Merger, Exelon will provide current and former Delmarva Power employees compensation and benefits that are at least as favorable in the aggregate as the compensation and benefits provided to those employees immediately before April 29, 2014, or to the compensation and benefits of Exelon employees in comparable positions. Consistent with the past practice of both companies, benefits provided to PHISCo's retirees will be aligned with the commitments made to the retirees of the utilities. The five-year duration of this commitment does not mean that Exelon intends to eliminate retiree benefits in five years after consummation of the Merger. Exelon, like PHI, provides health care and life insurance benefits to its own retirees and has no plans to discontinue such benefits in the foreseeable future. Both companies also have adjusted retiree benefits from time to time to ensure they are sustainable and respond to changes in the market and regulatory environments.

7.1 Exelon will submit to the Commission an annual report detailing the total (1) compensation, (2) pension, and (3) health and welfare benefits provided to all employees of Delmarva Power on a calendar year basis by April 15th of the following year. The reports shall detail on job basis, the total (1) compensation, (2) pension, and (3) health and welfare benefits, as well as any job basis data and metrics that may be used to compare such data, such as by SIC code.

7.2 Exelon is committed to having all of its utility, employee and welfare benefit programs of a comparable nature consistent therewith, Delaware will be required to provide information regarding such information with the Commission. Exelon will not be required to provide information regarding such information and cybersecurity policies.

### **Workforce Development Initiative**

8. Upon consummation of the Merger, Exelon will initiate a workforce development effort that will partner with Delaware Technical and Community College, Delaware State University, the United Way, the Boys and Girls Clubs of Delaware, and the Forum to Advance Minorities in Engineering ("FAME"). Exelon will implement and fund this program via a \$2.0 million grant over four years, with the objective of providing a pipeline of trained, "job ready" Delawareans in the areas of energy efficiency, renewable energy and Science, Technology, Engineering and Math ("STEM") related fields. Specifically, the initiative will include: (1) a career pathways program at Delaware Technical and Community College to help develop the skills required to support careers in energy efficiency for high school and college level students; (2) a career pathways program at Delaware State University to support careers in the field of renewable energy for high school and college level students; (3) scholarships for high school students participating in STEM competitions in Boys and Girls Clubs in Delaware and for FAME students; and (4) enhanced summer internship opportunities for high school students. These initiatives, where possible, will leverage and support the current statewide Success Pathways and Roads to Careers ("SPaRC") partnership between the business community, the non-profit community, the

Delaware Economic Development Office, the Department of Education and the Department of Labor and will also seek to embed opportunities for individuals with disabilities to participate.

### **Natural Gas and Onshore Wind Study**

9. In furtherance of Delaware State Senate Joint Resolution No. 7 (S.J.R. No. 7, 147<sup>th</sup> General Assembly, adopted July 31, 2014) concerning the possible extension of a natural gas pipeline in Kent and Sussex counties, and to consider the costs and benefits that may be related to additional gas fired generation in Sussex County, the Joint Applicants will conduct a study that seeks to quantify the potential demand by user type and location and, in particular, focuses on the likely/estimated number of conversions of both residential and commercial customers, as well as the likely pace of those conversions should such a pipeline be built. The study will also provide examples of programs designed to increase such conversion rates and the various metrics around such initiatives. The study should also include a list of important issues third parties (such as customers, gas pipeline owner/operators and generators) would likely consider in their analysis in terms of making the necessary investments related to converting to natural gas. Consistent with the potential for such gas availability, the study will provide a cost/benefit analysis of a gas fired generation facility in Sussex County, including the effect additional gas generation might have on consumer energy prices and service reliability. Finally, the study shall evaluate the feasibility of land based wind generation in Kent and Sussex counties. The costs of the study will not be recovered in Delmarva Power rates.

### **Local Presence Assurances**

10. **The Joint Applicants have no plans to close, move or otherwise relocate current Delmarva Power operational facilities in the State of Delaware. For at least 10 years after the consummation of the Merger, Delmarva Power will maintain its local operational headquarters near Newark, Delaware. For at least five years after the consummation of the Merger, Delmarva Power will maintain the Gas Maintenance Facility on 630 Martin Luther King Blvd., Wilmington and the Millsboro District office with related bill paying facilities and will not otherwise close, move or relocate such operational facilities without providing the Commission notice at least 90 days in advance of any such action.**

11. PHI will have a board of directors consisting of seven or more people. At least three members of the PHI board shall be “independent” (as defined by New York Stock Exchange rules). **Of the remaining directors, one shall be selected from among the officers or employees of PHI or a PHI subsidiary. The directors of the PHI board will be appointed by a new special purpose entity (the “SPE”), as described below, as the member of PHI. Three of the seven PHI board members shall have a residence or principal place of business or employment in the service territory of the PHI utilities, one from Delmarva Power (Delaware), one from Atlantic City Electric Company (“ACE”), and one from Potomac Electric Power Company (“Pepco”).**

11.1 To address concerns about whether the needs of the State of Delaware will be properly met and a legal counsel within Exelon, Exelon commits that, following the Merger, at least one Delawarean will retain a senior officer of the company as a Delawarean resident or representative (and it may also be an officer of PHI, (c) who may be a member of the Exelon's Board of Directors). Exelon will meet with Exelon's CEO at least monthly, and will keep the Board of Directors (and the Exelon CEO and other members of Exelon's senior management) apprised of all business, PHI will continue to have a Chief Financial Officer, Chief Executive Officer, and other officers, and Delmarva will maintain appropriate financial reporting procedures and controls.

11.2 The Regulator. The idea of Delmarva will have the same capacities and responsibilities as it has now, and consistent with those capacities and responsibilities, the Regulator will have input into decisions related to non-rate filings and other filings in regulatory filings that affect Delmarva. The Delmarva CEO will engage with the Regulator on rate case decisions, including the revenue requirement that will be required in Delmarva's rate case by the State of Delaware, taking into consideration the needs of the Regulator of Delaware.

12. **The PHI board of directors will conduct its board meetings within the PHI service territories, including Delaware. At least one officer of PHI or Delmarva Power shall maintain a residence or principal place of business in the State of Delaware. The Chief Executive Officer of PHI will serve on the Exelon Executive Committee, which is a committee of senior leaders for Exelon and principal subsidiaries.**

12.1 PHI's CEO, the PHI CEO, the Delmarva CEO, and the Delmarva Regulator will annually submit a report on the performance of Delmarva's operations, including its reliability, safety, and customer service performance, to the Regulator. This report will be reviewed by the Regulator to assess Delmarva's performance in the Delaware. This review will be conducted on an annual basis, and any particular Delmarva program or expansion will be reviewed as well.

13. **The Commission's Chair or designee shall have the opportunity annually to present and provide a report to the full PHI board as to the performance of Delmarva Power in Delaware and other issues of importance to the Commission.**

14. **Exelon's board of directors will include the PHI utilities' service territories among the locations of Exelon's board and stockholder meetings.**

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

16. 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

SUPPLEMENTAL COMMENTS – CONNIE S. MCDOWELL

further authorization from Exelon Corporation. The proposed delegations of authority for PHI and its utility subsidiaries are set forth on Table One. The delegations of authority for Delmarva Power adopted by PHI will not be amended to reduce authorization levels of Delmarva Power officers without prior notice to the Commission.

TABLE ONE  
PROPOSED DELEGATIONS OF AUTHORITY  
PHI AND ITS UTILITY SUBSIDIARIES

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

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

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

Note 3: Approval is not required for legally required periodic contributions to the pension and employee benefit plans.

**Demand Response and Energy Efficiency**

17. Exelon has and will continue to support demand response and energy efficiency playing a role in the energy resource mix, with demand response services being an important tool for customers to manage energy costs. While questions remain about jurisdiction over demand response, the appropriate compensation mechanisms, and how to incorporate demand response in existing markets, Exelon is of the view that any sensible energy policy should reflect the value of all resources, including demand response. To that end, **PHI and Delmarva Power** will maintain and promote energy efficiency and demand response programs consistent with the direction and approval of the Commission and the requirements of 29 Del. C. § 8059(h). In addition, Exelon will continue to advocate that demand response should be reflected in markets that serve Delaware. In the furtherance of Delaware's energy efficiency efforts, Exelon will provide \$2.0 million for a low income energy efficiency program for Delmarva Power customers that is recommended by the Energy Efficiency Advisory Council and approved by the Commission. Any low income programs funded by these funds will be considered for approval pursuant to the process established in paragraph 97 of this Settlement Agreement. The costs of the program will not be recovered in Delmarva Power rates.

**Protecting Against Risk - Corporate Organization, Financial Integrity and Ring-Fencing**

18. **Delmarva Power will maintain its separate existence as a separate corporate subsidiary and its separate franchises, obligations, and privileges.**

18.1 PH1 and Delmarva Power will continue to operate within Delaware as an electric utility and will not be subject to the jurisdiction of the Commission pursuant to 29 Del. C. § 8059(h) or any other provision of law, and will not be subject to any reduction in the Commission's existing or future jurisdiction over Delmarva Power.

19. **Delmarva Power will maintain separate books and records, and will maintain those books and records at the Delmarva Power headquarters in the State of Delaware as required by 26 Del. C. § 208(b).** The Joint Applicants also agree to notify the Commission and the Public Advocate of any material change in the administration, management or condition of Delmarva Power's books and records within five business days after the event.

20. **Delmarva Power will not incur or assume any debt, including the provision of guarantees or collateral support, related to this Merger or any future transactions.**

21. Exelon will establish a limited liability company as the SPE for the purpose of holding 100% of the equity interest in PH1.

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

23. 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.

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

25. 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.

26. 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.**

27. 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.

28. 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.

29. The SPE will maintain arm’s-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 arm’s-length relationships with Exelon and its affiliates, including the SPE.

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

31. 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).

32. 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.

33. The SPE shall comply with generally accepted accounting principles ("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 is clearly noted therein.

34. 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.

35. 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.

36. 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 any of their publicly traded securities. PHI will not assume any obligations with respect to, in particular, PHI shall not follow or attempt to follow the practice of Exelon of raising 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.

37. **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. Notwithstanding the foregoing, Delmarva Power may guarantee the obligations of a subsidiary of Delmarva Power established for the**

**purpose of owning, operating or financing transmission or distribution facilities provided approval of the Commission is obtained prior to providing any such guarantee.**

38. **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. Notwithstanding the foregoing, Delmarva Power may pledge assets to secure the obligations of a wholly-owned subsidiary of Delmarva Power established for the purpose of financing its utility operations provided approval of the Commission is obtained prior to providing any such guarantee.**

39. **Delmarva Power will not include in any of its debt or credit agreements cross-default provisions between Delmarva Power securities and the securities of Exelon or any other Exelon affiliate other than a wholly-owned subsidiary of Delmarva Power provided approval of the Commission is obtained prior to including any such cross-default provision. Delmarva Power will not include in its debt or credit agreements any financial covenants or rating-agency triggers related to Exelon or any other Exelon affiliate other than a wholly-owned subsidiary of Delmarva Power provided approval of the Commission is obtained prior to including any such provision.**

40. **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.**

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

42. **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.**

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

44. **No entities other than PHI and its subsidiaries, including the PHI utilities and PHISCo, will participate in the PHI utilities' money pool. The PHI utilities will not participate in any money pool operated by Exelon, and there will be no commingling of**

funds with Exelon. Any deposits into or loans through the PHI money pool by PHI utilities shall be on terms no less favorable than the depositor or lender could obtain through a short-term investment of similar funds with independent parties. Any borrowings from the PHI money pool by a PHI utility shall be on terms no less favorable than the PHI utility could obtain through short-term borrowings from (including sales of commercial paper to) independent parties. Exelon will give notice to the Commission within three business 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 Commission may revoke the right of Delmarva Power to participate in the PHI money pool.

45. ~~Immediately following the Merger closing, 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, may be transferred to Exelon Business Service Company (“EBSC”) or another Exelon affiliate in a phased transition over a period of time following the Merger closing. To address concerns that there would be no service companies under the proposed Merger, Exelon will provide and maintain a service company twelve months after the Merger’s close which shall be owned by PHI, Exelon, and other entities.~~

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

47. 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.

48. 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.

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

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

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

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

53. Delmarva Power will file with the Commission an annual compliance report with respect to the ring-fencing and other requirements. Within five business days after a request or inquiry from the Commission, Staff or the Public Advocate, Delmarva Power will respond to such inquiry, and either: (a) provide the requesting party any documents related to the information requested in order to afford Staff or the Public Advocate to verify or understand the statements or compliance report, or (b) propose a time frame in which Delmarva Power proposes that it reasonably can provide full documentation in response to the inquiry.

53.1 Exelon shall conduct an analysis of its operational and financial risks, including the ring-fencing and other requirements, and file this analysis with the Commission by the end of the third quarter in 2007.

54. At the time the SPE is formed and every year thereafter, Delmarva Power shall provide the Commission 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 Delmarva Power may rely upon the separateness of PHI and Delmarva Power and would be significantly harmed in the

event separateness is not maintained and a substantive consolidation of PHI or Delmarva Power with Exelon were to occur.

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

56. Exelon shall not engage in an internal corporate reorganization relating to the SPE, PHI or Delmarva Power, or EEDC for which Commission approval is not required without 90 days prior written notification to the Commission. Such notification shall include: (a) an opinion of reputable bankruptcy counsel that the reorganization does not materially impact the effectiveness of PHI's existing ring-fencing; or (b) a letter from reputable bankruptcy counsel describing what changes to the ring-fencing would be required to ensure PHI is at least as effectively ring-fenced following the reorganization and a letter from Exelon committing to obtain a new non-consolidation opinion following the reorganization and to take any further steps necessary to obtain such an opinion. Exelon will not object if the Commission elects to open an investigation into the matter if the Commission deems it appropriate, but may complete the reorganization prior to the conclusion of the Commission's investigation if Commission approval is not otherwise required.

57. Neither Delmarva Power nor its distribution customers shall bear either (a) the initial cost of establishing the SPE, or (b) the cost of obtaining any opinion of legal counsel referred to in paragraphs 49 and 56.

58. Delmarva Power will continue to comply with all ring-fencing measures adopted by the Commission in Docket No. 09-414, Order No. 8011, paragraph 349); provided, however, that where the ring-fencing provisions above or any ring-fencing provisions that are adopted pursuant to paragraph 104(c) below specifically address an issue, the provisions adopted pursuant to this Settlement Agreement shall be controlling.

59. The Joint Applicants agree to implement the ring-fencing and corporate governance measures set out in the Amended Settlement Agreement (attached as Appendix A) for the purpose of providing additional protections to customers. Notwithstanding any other provision in this Settlement Agreement, the Joint Applicants shall have the right to request the Commission to modify or terminate the ring-fencing provisions and to make a filing with the Commission requesting that the Commission modify or terminate those provisions. Notwithstanding such right, the Commission shall not be required to modify or terminate any such provisions without first obtaining Commission approval in a written order. In addition, the Joint Applicants agree that the Commission at any time may initiate its own review or investigation of the ring-fencing provisions (or upon petition by any party) and order modification or termination of the ring-fencing provisions if the Commission determines that the public interest and the best interests of Delmarva Power require such action.

60. The Joint Applicants agree that the Joint Applicants shall not initiate or cause to be initiated any utility corporate reorganization or other corporate action without the Commission's prior approval in a written order.

60. Notwithstanding any other powers that the Commission currently possesses under existing, applicable law, the Joint Applicants agree that the Commission may, after investigation and a hearing, order Exelon to divest its interest in Delmarva Power on terms adequate to protect the interests of utility investors (including Exelon investors) and consumers and the public, if the Commission finds that: (a) one or more of the divestiture conditions described below has occurred, (b) that as a consequence Delmarva Power has failed to meet its obligations as a public utility, and (c) that divestiture is necessary to allow Delmarva Power to meet its obligations and to protect the interests of Delmarva Power customers in a financially healthy utility and in the continued receipt of reasonably adequate utility service at just and reasonable rates. Any divestiture order made pursuant to this Settlement Agreement shall be limited to the assets and operations of Delmarva Power in Delaware. The divestiture conditions covered by this Settlement Agreement are: (i) a nuclear accident or incident at an Exelon nuclear power facility involving the release or threatened release of radioactive isotopes, resulting in (x) a material disruption of operations at such facility and material loss to Exelon that is not covered by insurance or indemnity or (y) the permanent closure of a material number of Exelon nuclear plants as a result of such accident or incident; (ii) a bankruptcy filing by Exelon or any of its subsidiaries constituting 10% or more of Exelon’s consolidated assets at the end of its most recent fiscal quarter, or 10% or more of Exelon’s consolidated net income for the 12 months ended at the close of its most recent fiscal quarter; (iii) the rating for Exelon’s senior unsecured long-term public debt securities, without third-party credit enhancement, are downgraded to a rating that indicates “substantial risks” (i.e., below B3 by Moody’s or B- by S&P or Fitch) by at least two of the three major credit rating agencies, and such condition continues for more than 6 months; or (iv) Exelon and/or PHI have committed a pattern of material violations of lawful Commission orders or regulations, or applicable provisions of the Public Utilities Act and, despite notice and opportunity to cure such violations, have continued to commit the violations.

### **Affiliate Transactions Commitments**

61. Exelon commits to comply, and cause Delmarva Power and other Exelon affiliates to comply, with the Delaware statutes and regulations applicable to Delmarva Power regarding affiliate transactions, including, but not limited to, Delmarva Power’s Cost Accounting Manual on file with the Commission and Code of Conduct (approved in Commission Order No. 5469) as reviewed and updated by the Commission. Exelon also commits that Staff, Commission Counsel and the Public Advocate shall have reasonable access to the accounting records of Exelon’s affiliates that are the basis for charges to Delmarva Power to determine the reasonableness of allocation factors used by Exelon to assign those costs and amounts subject to allocation and direct charges, except for transactions otherwise subject to a competitive process supervised by an administrative or other governmental body of competent jurisdiction (such as Delmarva Power’s procurement of Standard Offer Service under the supervision of the Commission).

62. Controls and procedures will be designed to provide reasonable assurance that PHI’s subsidiaries will not bear costs associated with the business activities of any other Exelon affiliate (other than PHI or a PHI subsidiary) other than the reasonable costs of providing materials and services to PHI (or a PHI subsidiary). PHI and its subsidiaries will

maintain reasonable pricing protocols for determining transfer prices for transactions involving non-power goods and services between PHI and its subsidiaries and Exelon and any Exelon affiliate consistent with the requirements of the Commission and the Federal Energy Regulatory Commission (“FERC”).

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

64. No later than the end of the second calendar quarter of each year (“Reporting Year”), Delmarva Power will provide the Commission, Staff and the Public Advocate with the following reports:

- a. The equivalent of the FERC Form 60 Report that describes EBSC direct billings versus allocated costs for each operating utility company in the Exelon system. In addition, EBSC shall provide a further breakdown for Delmarva Power, which identifies the total amounts charged, separately stating direct and indirect charges to Delmarva Power for each service function.
- b. The cost allocation percentages and supporting work papers for the Reporting Year based on the plan factors for the Reporting Year. Such report shall compare the plan factors and cost allocation percentages for the Reporting Year to those allocation factors and percentages used in the previous year and highlight all modifications and specifically identify those that occurred during the course of the year due to significant events based on the prior year’s actual results of EBSC’s charges for each allocation factor for each Exelon affiliate. Delmarva Power shall explain any change to allocation factors to Delmarva Power that are more than five percentage points. Delmarva Power shall also make available on request any prior months’ variance reports regarding EBSC’s billings to Delmarva Power.

65. Delmarva Power shall provide copies to Staff and the Public Advocate 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 Delmarva Power. Such material shall be provided no later than 30 days after the final report is completed.

66. The Joint Applicants will use asymmetrical pricing/costs with respect to the General Service Agreement (the “GSA”), meaning EBSC will only charge Delmarva Power for services provided under the GSA at cost without any profit. The Joint Applicants will also use asymmetrical pricing/costs with respect to any cost charged to Delmarva Power from any Exelon affiliate, meaning the Exelon affiliate will only charge Delmarva Power for services at cost without any profit. EBSC will commit to review costs for the upcoming annual year with Delmarva Power prior to Delmarva Power signing the agreement and.

during this review, with the exception of corporate governance services, if Delmarva Power can procure the same services at the same level of service in the open market at a lower cost, EBSC will either match the market pricing or Delmarva Power will be able to opt out and procure the service on the open market. Delmarva Power will not object to a Commission request that Delmarva Power provide a report in the future to demonstrate that the services received by Delmarva Power from the Exelon affiliates are at lower of cost or market. Within five business days after a request or inquiry from the Commission, Staff or the Public Advocate, Delmarva Power will respond to such inquiry, and either: (a) provide the requesting party any documents related to the information requested in order to afford Staff or the Public Advocate to verify or understand the report, or (b) propose a time frame in which Delmarva Power proposes that it reasonably can provide full documentation in response to the inquiry.

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

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

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

70. Staff and the Public Advocate 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.

71. Staff and the Public Advocate shall have the right to review the GSA and related cost allocations in Delmarva Power's future base rate cases, in conjunction with future competitive service audits, in response to any changes in the Commission's affiliate relations standards, and for other good cause shown.

72. Delmarva Power agrees that the Commission under its authority pursuant to 26 Del. C. §§ 206-208 may review the allocation of costs in sufficient detail to analyze their reasonableness, the type and scope of services that EBSC provides to Delmarva Power and the basis for inclusion of new participants in EBSC's allocation formula. Delmarva Power and EBSC shall record costs and cost allocation procedures in sufficient detail to allow the Commission to analyze, evaluate, and render a determination as to their reasonableness for ratemaking purposes.

**Pushdown Accounting - Assurances for Rate Payers**

73. Exelon will not record any of the impacts of purchase accounting at the PHI utility companies (ACE, Delmarva Power, Pepco), thereby maintaining historical financial accounting at each of the 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 consummation of the Merger. Exelon agrees that the impacts of the purchase accounting will not be recorded on PHISCo's books, and if purchase accounting does impact PHISCo's books, Exelon agrees there will be no impact to the assets and costs that are directly charged and allocated to Delmarva Power from PHISCo. In addition, Exelon agrees there will be no impact to the assets and costs that are directly charged and allocated to Delmarva Power from PHI.

**Continued Charitable Contributions and Community Initiatives**

74. **In Delaware**, 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 Delmarva Power's 2013 level of \$699,000, which was the highest level of contributions over the last five years.

**Supplier Diversity**

75. Delmarva Power will honor and maintain its commitment to support programs to increase supplier diversity. Delmarva shall, on an annual calendar year basis for the first three years after the Merger, file a report with the Commission by April 15<sup>th</sup> of each year detailing its efforts to support and increase diversity.

**Pending Litigation**

76. Upon execution of this Settlement Agreement, Delmarva Power, Staff and the Public Advocate agree to move to suspend the appeal pending in the Delaware Superior Court related to Commission Dkt. No. 13-115 until such time as the Merger is closed and, upon consummation of the Merger, Delmarva Power will dismiss its appeal with prejudice and the Public Advocate will dismiss its cross appeal with prejudice.

**Resolving Outstanding Accounts Receivables**

77. To help reduce the burden of long outstanding energy debt for low income families, Delmarva Power commits to forgive all accounts receivable over three years old for qualifying low income families. For purposes of this paragraph, "low income" shall refer to families who are eligible for assistance through the Delaware Energy Assistance Program. The costs of such forgiveness will not be recovered in Delmarva Power's rates. To the extent that allocated funds are not fully used, such funds will be applied to an Arrears Agreement, if any.

**Low Income Customer Assistance**

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

**Ensuring Reliable, Quality Service at a Reasonable Cost**

79. The Settling Parties recognize the importance of a balance between the reliability improvements that can be achieved with increased investments and the impact to customers for the recovery of those costs. Delmarva Power agrees that it will maintain its 2015-2019 reliability capital budgets at a level no greater than \$225 million. Delmarva Power's original reliability budget is presented in Table 2 below, and the revised reliability budget reflecting the reduction from \$296,394,396 to \$225 million is provided in Table 3 below. The parties to this Settlement Agreement acknowledge that Delmarva Power is free to move resources between budget years to address reliability conditions and needs as they arise. The Settling Parties further acknowledge that Delmarva Power will not exceed the reliability budget absent changes in law, regulations (including without limitation changes in the reliability requirements that may be ordered in Docket 50 or a similar proceeding), or major weather events or equipment failure requiring increases in reliability-related spending to restore service and facilities.

Table 2 – DPL-DE Distribution Spending Forecast (2015-2019) – Original Merger Commitment

Categories	2015	2016	2017	2018	2019	Total
Customer Driven	\$ 13,623,671	\$ 14,133,330	\$ 14,522,787	\$ 14,281,815	\$ 15,090,941	\$ 71,652,544
Reliability -- Total	\$ 56,841,142	\$ 56,879,149	\$ 57,340,339	\$ 58,531,504	\$ 66,802,262	\$ 296,394,396
Reliability -- Planned	\$ 41,792,535	\$ 41,715,527	\$ 43,650,749	\$ 44,841,914	\$ 51,235,658	\$ 223,236,383
Reliability -- Emergency	\$ 15,048,607	\$ 15,163,622	\$ 13,689,590	\$ 13,689,590	\$ 15,566,604	\$ 73,158,013
Load	\$ 5,212,551	\$ 6,348,175	\$ 7,744,841	\$ 4,766,282	\$ 7,401,981	\$ 31,473,830
<b>Total -- Reliability &amp; Load</b>	<b>\$ 62,053,693</b>	<b>\$ 63,227,324</b>	<b>\$ 65,085,180</b>	<b>\$ 63,297,786</b>	<b>\$ 74,204,243</b>	<b>\$ 327,868,226</b>
<b>Total</b>	<b>\$ 75,677,364</b>	<b>\$ 77,360,654</b>	<b>\$ 79,607,967</b>	<b>\$ 77,579,601</b>	<b>\$ 89,295,184</b>	<b>\$ 399,520,770</b>

Table 3 – DPL-DE Distribution Spending Forecast (2015-2019)

Joint Applicants Commitment						
Five Year Plan Capital						
\$ Millions	2015	2016	2017	2018	2019	Total
Reliability Total	\$48,060,008	\$47,453,793	\$42,570,815	\$42,159,548	\$44,755,836	\$225,000,000

80. The inclusion of spending forecasts in this Settlement Agreement does not indicate authorization to include any specific assets or amounts in the rate base, does not indicate authorization for any ratemaking treatment, and does not constitute pre-approval for any amounts spent by Delmarva Power to improve reliability levels.

81. Delmarva Power agrees that it will conduct a depreciation study and will submit such study in its next base rate case.

82. Delmarva Power agrees that its System Average Interruption Duration Index (“SAIDI”) will not exceed 175 minutes by 2020, based on a three-year historical average calculated over the 2018-2020 period (excluding major weather events as calculated consistent with the methodology currently utilized by the Commission). In achieving a SAIDI level that does not exceed 175 minutes, Delmarva Power anticipates that the System Average Interruption Frequency Index (“SAIFI”) will not exceed 1.5 and the Customer Average Interruption Duration Index (“CAIDI”) will not exceed 120 minutes. This level of SAIDI reliability performance is significantly better than that afforded by the 295 minutes of SAIDI currently required by the Docket 50 standard to which Delmarva Power would otherwise be held in the absence of the Merger. If the SAIDI level of reliability improvement is not achieved, the return on equity to which Delmarva Power would otherwise be entitled in its next electric distribution base rate case filed after January 1, 2021, will be reduced by 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 Delmarva Power would be required to initiate a new base rate proceeding and obtain an order from the Commission approving new rates to end the return on equity penalty. As a result of the above-referenced reduction in Delmarva Power’s reliability related capital budgets and the SAIDI commitment above, the Joint Applicants, Staff and the Public Advocate will request that the Commission close Docket No. 13-152.

83. Delmarva Power will meet annually with Staff and the Public Advocate to review and provide documentation concerning its capital budget, including but not limited to its budget for reliability-related investments. As part of this annual review, Delmarva Power will specifically review reliability performance, actual spend and projected budget for reliability-related capital. Such review with Staff and the Public Advocate shall not be construed as approval of the particular capital expenditures by either Staff or the Public Advocate, who shall remain free to contest capital expenditures in future base rate cases.

84. Delmarva Power will file annual performance reports comprising the following information with the Commission. The reports shall address the following areas directed by the Commission and may include subject areas such as: reliability, supply, service, safety, rate and regulatory matters, interconnections, energy efficiency, demand response programs, and deployment of new technologies, including smart grid, smart grid, advanced technologies, microgrids and utility of the future. The annual reports shall only be filed under separate cover in the event that the reports otherwise submitted are not duplicative of analysis provided in a separate report required by the Commission.

### **Competitive Request for Proposals -- Renewable Portfolio Standards**

84. For the purpose of meeting the renewable portfolio standards under current law, Delmarva Power will issue a competitive request for proposals (“RFP(s)”) to purchase

wind Renewable Energy Credits (“RECs”) on commercially reasonable terms in three tranches: (1) the first for RECs from one or more renewable generating facilities with an aggregate capacity of up to 40 MW (nameplate) beginning in the compliance years 2017-2018 for a term of 10 to 15 years; (2) the second for RECs from one or more renewable generating facilities with an aggregate capacity of up to 40 MW (nameplate) beginning in the compliance years 2019-2020 for a term of 10 to 15 years; and (3) the third for RECs from one or more renewable generating facilities with an aggregate capacity of up to 40 MW (nameplate) beginning in the compliance years 2023-2024 for a term of 10 to 15 years. The Settling Parties agree that if circumstances or conditions change (including but not limited to a material change in the projected load of Delmarva Power such that fewer RECs are required, or a substantial change in the cost of RECs through the spot market such that additional spot-market purchases in lieu of long-term contract purchases would be prudent), they will work in good faith with each other and present any proposed modification to the Commission as may be warranted by those changed conditions. The primary factor under the RFP bid process will be price, and all costs associated with the REC agreement(s) will flow through the Renewable Portfolio Compliance Rate surcharge currently in place to assure complete and timely cost recovery by Delmarva Power. Delmarva Power, with the concurrence of the Renewable Energy Task Force, shall file any such RFP pursuant to this paragraph with the Commission for its review and required approval prior to issuance. Any proposed contract(s) resulting from the RFP shall also be submitted to the Commission for final review and approval before execution.

**Customer Investment Fund & Impact on Rates**

85. The Joint Applicants shall provide a customer investment fund (“CIF”) in the form of a bill credit to residential customers in an amount based on a total payment of \$40.000 million, with the bill credit distributed as a direct rate credit to Delmarva Power residential distribution customers within 60 days after the closing of the Merger.

87. As a result of the Most Favored Nation clause, Paragraph 103-105 of the Settlement Agreement, the Joint Applicants shall make an additional \$27,100 million available to provide the same additional benefits from the Merger. The fund will be allocated to the most beneficial uses for our customers in the public interest. The allocation of the fund shall be as follows:

- \* \$10 million to the Department of Natural Resources and Environmental Control (DNREC) to be an Industrial Energy Commercial grant or loan fund to promote energy efficiency for Delaware’s lower commercial and industrial customers.
- \* \$10 million to DNREC to fund the commercial and industrial Energy Efficiency Investment and CFIIC fund to re-establish programs.
- \* \$7.0 million to DNREC to provide for a Low Income Customer Energy Efficiency Program for Delmarva residential customers developed by the ELAC, and which is specifically targeted toward renters who are otherwise blocked from participating in other energy efficiency programs.

SUPPLEMENTAL COMMENTS -- CONNIE S. MCDOWELL

- \$5.0 million to the Delaware Economic Development Office ("DEDO") to provide for additional economic development grants to help create new jobs and to benefit the State's economy.
  - \$1.0 million to fund Public Interest Projects that would provide benefit to the state of Delaware and its citizens, subject to Commission review and approval.
  - \$3.1 million for extended residential customer arrearage forgiveness, to be used in a jointly developed Arrearage Management Plan for Delmarva Power gas and electric supply customers.
- The unexpended funds still available on June 30, 2020 will be used to fund the jointly developed Arrearage Management Plan.

MSB 7. As a mutual benefit, the Joint Applicants agree to work with Delaware on a new and improved Arrearage Management Plan that encourages customer bill payment in a timely and effective manner.

MSB 8. The Joint Applicants agree to make \$3.0 million of capital available to creditworthy State, County or Municipal government entities at market rates for renewable energy development projects.

MSB 9. Applicants will help assist in the development of five (5) MW of renewable energy power in the State of Delaware. Renewable power may be generated by any eligible technology as provided under Title 26, Chapter 35.(c). Power developed will be offered through a competitive bid system and then sold into the market. No rate recovery for development, except to reinvest in R&D and other activities.

MSB 10. Delmarva Power will review the potential for a microgrid pilot project in Delaware. Depending upon the review, Delmarva Power may file with the Commission a proposal for one pilot public-purpose microgrid project to provide enhanced energy services to the project area, including during emergency events. The filing may include a proposed rate of return, the rate of return proposed in connection with the project through Delmarva Power's rate of return, and a description of any federal, state, or local contribution to the development of a public-purpose project. The project of the microgrid project will include: planning, design, and construction of the microgrid; and a list of technologies, the development of onsite distributed energy resources, such as microgrid, local renewable energy, solar photovoltaic, and fuel cells, and operation of the microgrid.

86. The Joint Applicants agree that Delmarva Power shall track and account for Merger-related savings, and the cost to achieve those savings, in its next base rate case, and in applications in each of its base rate cases filed within a three-year period following Merger completion. Delmarva will show all synergy savings allocable to Delaware customers through the

new packaging projects. Furthermore, the Joint Applicants agree to provide the Commission an update regarding Delmarva Power integration efforts six months after the consummation of the Merger and every six months thereafter for a period of two years post-Merger close.

86.1 For each of the first five (5) years after Merger close, Delmarva will submit an annual report or include as part of its existing reporting requirements, data detailing the cost and benefits of the Merger for the State of Delaware. The report will detail the methodology used to calculate the benefits and the specific description of the benefits.

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

86.3 In each of Delmarva's base rate cases filed within five (5) years after closing of the Merger, Delmarva shall provide in addition to the information otherwise required to be provided with Delmarva's minimum filing requirements, the following information with respect to the merger to Delmarva from Exelon, Exelon Business Services Company (EBSO), or any other affiliate that supplies service to Delmarva after the Merger: (a) The Cost Allocation Method which is used to allocate costs to Delmarva and Delmarva's, Delmarva's share of the net positive payment (if in effect between Delmarva and Exelon, EBSO, or any other affiliate) that is paid to Delmarva; (b) An exhibit separately stating the cost allocation methodology assessed or incurred by Delmarva and Delmarva's Delaware operation for each year post-Merger, by entity, charging the costs, including (i) Total amount of direct charged costs and total amount of allocated costs to Delmarva and Delmarva's share of Delaware operation; (ii) Total amount of direct charged costs and total amount of allocated costs included in Delmarva's rate base and in Delmarva's rate base for Delaware; and (iii) Total amount of direct charged costs and total amount of allocated costs, including (a) Delmarva's operating and maintenance expenses and (b) Delmarva's operation and maintenance expenses for the State of Delaware.

87. The Joint Applicants will provide a side-by-side comparison of pre- and post-Merger shared services costs allocated to Delmarva Power. Specifically, Delmarva Power will make a filing with the Commission showing shared services costs of 2013 (the last full year before Merger activities began) versus Delmarva Power's allocated shared service costs in 2016 (the first full year after the Merger has closed). The comparison shall be provided to Staff and the Public Advocate no later than the end of the second quarter of 2017.

87.1 Delmarva shall promptly notify the Commission, Commission Staff and DPA upon receipt of notice that the SEC, the FERC, or any state regulatory commission or other utility regulatory agency has issued a specific decision affecting EBSO or

PHI or PHU, including, but not limited to, pertaining directly or indirectly to EBSC or PHU, of any and all classes of utility and installations to its affiliate utility companies.

87. If Delmarva and PHU, jointly, notify the Commission, Commission Staff and DPA, or if it is received notice from the SEC, the FERC, or the state regulatory commission in any state in which an affiliate utility company operates has initiated an audit of EBSC or PHU, or its affiliate utility company ("PHU-Co"), Delmarva shall provide copies of the portions of all annual reports highlighting the findings and recommendations and ordered changes to the General Services Agreement ("GSA") pertaining directly or indirectly to EBSC or PHU, of direct billings and cost allocations to its affiliate utility companies, as well as any other information available to Delmarva. If after review of such material, Commission Staff or DPA, jointly, deem that a review of the remainder of such audit report is warranted, Delmarva shall make the complete report available for review to Delmarva's Staff or DPA, jointly, at their discretion, subject to appropriate conditions to protect the confidentiality of any proprietary information.

88. In any proceeding with or provided Delmarva shall make any information and all the relevant information of any modifications to the GSA, including changes in the body of the GSA, and to all rate costs at the same time it makes a filing with the FERC, the SEC, the Staff and DPA shall have the right to review the GSA and related cost calculations to Delmarva's for the base rate cases in the State of Delaware, in conjunction with any other company's service to the, in response to any changes in the Commission's affiliate rate base standards, and for other good cause shown.

88. Delmarva Power will not seek recovery in distribution rates of: (a) the acquisition premium or goodwill associated with the Merger; or (b) the Transaction Costs, as defined in paragraph 89 below, incurred in connection with the Merger by Exelon, PHI or their subsidiaries. Any acquisition premium or goodwill shall be excluded from the ratemaking capital structure.

89. For the purposes of this Settlement Agreement, Transaction Costs are defined as: (a) consultant, 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. Staff and the Public Advocate shall have the right to examine whether other costs incurred might fit within the "transaction costs" category and to advocate that such costs should be identified as Transaction Costs and not allowed in a subsequent distribution base rate proceeding.

90. Although the Joint Applicants do not anticipate any adverse impact from the Merger on the utilization of Delmarva Power's net operating loss carry-forwards, Exelon will agree to indemnify Delmarva Power for any liability for income taxes in excess of liabilities of Delmarva Power as a standalone entity. In addition, Exelon shall indemnify Delmarva Power for any liability for federal or local income taxes (including interest and penalties related thereto)

Delmarva's liability for federal or local income taxes (including interest and penalties related thereto, if any) for any period during which Delmarva is included in a consolidated group with Exelon. Under applicable law, following the merger, Delmarva shall have no liability for federal or local income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which Exelon was not included in a consolidated group with Exelon. Exelon agrees to cause Delmarva to have no liability for federal or local income taxes (including interest and penalties related thereto, if any) of Exelon or any other subsidiary of Exelon for any period during which Delmarva will not be included in a consolidated group with Exelon for purposes of filing federal or local income tax returns. If Delmarva is included in a consolidated group with Exelon for purposes of filing federal or local income tax returns and the rating for Exelon's senior unsecured debt or public debt securities, without third-party credit enhancement, is downgraded to a rating of "Baa1" or "BBB" (or "BBB-" below B3 by Moody's or B+ by S&P or Fitch) by a body of independent rating agencies, the Commission may, after investigation and notice to the appropriate parties, require Delmarva to provide collateral of the type and amount described by the Commission in a previous order to the hearing to secure Exelon's tax indemnity by Delmarva if the Commission finds that such collateral is necessary for the protection of Delmarva's tax indemnity. Exelon's tax indemnity. Delmarva shall be required to surrender or replace such collateral if the rating of Exelon's senior unsecured debt or public debt securities, without third-party credit enhancement, is restored to a rating above "Baa1" or "BBB" (or "BBB-" below B3 by Moody's or B+ by S&P or Fitch) by at least two of the independent rating agencies, or (2) if and when Delmarva is determined by a body of independent jurisdiction or judge to be liable for federal or local income taxes as a member of a consolidated group with Exelon other than Delmarva's standalone liability for federal or local income taxes (including interest and penalties related thereto, if any), or (3) upon a finding by the Commission, after investigation and hearing upon application of Exelon, that the collateral under which such collateral security was originally required no longer exists.

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

92. Delmarva Power agrees to withdraw its Forward Looking Rate Plan, and request the Commission close Docket No. 13-384. Delmarva Power will withdraw the Forward Looking Rate Plan without prejudice to making a future filing with the Commission to consider alternative regulatory methodologies that could include, but not be limited to, multi-year rate plans. Delmarva Power agrees to coordinate with Staff and the Public Advocate in workshop reviews of alternative approaches to continuing rate cases and new rate structures that can capitalize on the benefits of Advanced Meter Infrastructure.

93. Exelon agrees that any costs to migrate from PHI's Solution One SAP system to an Oracle based system prior to the conclusion of the life of the asset, will not be recovered in Delmarva Power's distribution customer rates. These costs will include but not

93. Exelon agrees to un-depreciated costs or lease payment obligations remaining after the digital migration of the Solution One SAP billing system platform is terminated before the end of the contract's useful life.

### **Ensuring Competition**

94. The Joint Applicants agree to abide by Delaware regulations regarding Affiliate Relations, and the "Code of Conduct" applicable to the acquisition of Standard Offer Service (approved in Commission Order No. 5469, Docket No. 99-582 on June 20, 2000). Exelon will continue to provide SOS ("Standard Offer Service") to its customers in accordance with the Delaware Code and Affiliate Code of Conduct. The Settling Parties acknowledge that Exelon intends to continue to participate in the SOS auction program under the PJM plan.

95. Exelon agrees to the following additional competition protections. For purposes of this Settlement Agreement, "Affiliated Transmission Companies" are ACE, Delmarva Power, Pepco, PECO Energy Company ("PECO"), Baltimore Gas and Electric Company ("BGE"), Commonwealth Edison Company ("ComEd"), and any transmission owning entity that is in the future affiliated with Exelon and is a member of PJM, and "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 Facility Studies under the PJM generator interconnection process. Exelon shall provide notice and a list of such firms to the parties to this Settlement Agreement 30 days prior to submission to PJM. The Settling Parties shall have the right to provide comments to Exelon or PJM for their review with respect to such submission. The Settling 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 30 days of a request to include any such proposed firm. 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 Independent Market Monitor for PJM 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 Facility 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 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 Facility 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 95(a) 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. 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 Commission, on behalf of Exelon Generation and/or Constellation Energy Resources, LLC, on the one hand, and Delmarva Power and any Affiliated Transmission Company, on the other.

**c. PJM Advocacy**

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

**d. Commitment to Stay in PJM**

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

**e. Market Monitor Review**

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

**Exelon’s Consent to Jurisdiction**

96. Exelon submits to the jurisdiction of the Commission for: (a) the enforcement of the commitments set forth herein; and (b) matters relating to affiliate transactions between Delmarva Power and Exelon or its affiliates. Exelon will also cause each of its affiliates that supplies goods or services to Delmarva Power to submit to the jurisdiction of the Commission for matters relating to the provision or costs of such goods or services to Delmarva Power.

**Coordination with the Delaware Sustainable Energy Utility (the “SEU”)**

97. SEU and Delmarva Power Coordination

- a. As required under statute,<sup>3</sup> the Energy Efficiency Advisory Council (“Advisory Council”), in collaboration with Staff and the Public Advocate, shall recommend candidate energy efficiency and reduction, and emission-reducing fuel switching program elements that are cost effective, reliable, and feasible, including financing mechanisms. Further, the Advisory Council shall recommend three-year program portfolios and defined associated savings targets for consideration by Delmarva Power.

Consistent with the statute that requires collaboration between the SEU and the utilities on energy efficiency programs, within 30 days after the Advisory Committee issues its candidate programs and recommended three year program portfolio, Delmarva Power and the SEU shall have the first collaboration meeting.

The goal of the collaboration meeting between the SEU and Delmarva Power shall be to assure efficient and cost-effective programs; to assure that such programs help to accelerate the advancement of sustainability initiatives in Delaware; to avoid duplication of effort between the SEU and Delmarva Power; to assure the development of a competitive energy services market in Delaware; to explore use of private financing, RGGI funds, or other SEU resources to reduce implementation costs of energy efficiency programs as allowed by statute; and to determine whether the SEU can be the most cost effective provider.

As part of the collaboration meetings, Delmarva Power shall provide to the SEU its draft proposed three-year plans, schedules, and budgets to

---

<sup>3</sup> 29 Del. C. § 8059(h)(1)b.

reflect the recommended program portfolios including defined savings targets as required under statute 30 days in advance of its filing submission to the Advisory Council.<sup>4</sup> After receipt by the SEU of Delmarva Power's draft program proposal which shall include draft schedules which detail program costs as discussed above, the SEU may propose that the SEU operate such other programs. For any proposed program, the parties will in good faith attempt to reach agreement on the three-year plan including consideration of SEU operation of a program where the SEU demonstrates that it can operate the program at a lower cost. Consistent with the statute, all programs will be subject to approval of the Commission.

- b. To avoid duplication of effort between the SEU and Delmarva Power, mitigate potential confusion in the marketplace and facilitate ease of use to all potential users of programs, whether Delmarva Power or the SEU operates a given program, Delmarva Power will coordinate with the SEU regarding the marketing and promotion of programs to provide a seamless and complementary experience for customers. While Delmarva Power will also be permitted to market and promote programs that it is responsible for executing, the SEU will serve as the centralized source for the listing of all energy efficiency and renewable energy program information (including demand response and other greenhouse gas reduction efforts) in Delaware.
- c. Delmarva Power will coordinate with the SEU to provide reasonable access, as available, to its customer-service platforms such as billing inserts, on-bill messaging, newsletters, e-newsletters, website and email notifications for marketing the SEU's energy-efficiency and renewable-energy programs. The reasonable cost of using these communication platforms will be paid for by SEU.

98. On Bill Payment for SEU Energy Efficiency and Renewable Energy Financing

- a. Delmarva Power will evaluate providing on-bill payment services, where agreed to by the customer, for the SEU to provide financing for customers' energy-efficiency or renewable-energy measures and collect its debt service through Delmarva Power monthly bills to participating customers. Such evaluation will be undertaken within the context of the law that directs the Advisory Council to recommend the adoption of an on-bill financing model, and accordingly, Delmarva Power's evaluation shall focus on identifying and assessing implementation issues. The costs of the evaluation, or any billing undertaken as a result of this evaluation, shall not be recovered in rates.

---

<sup>4</sup> See 29 Del. C. § 8059(h)(1)c.

- b. Delmarva Power will provide to the parties a report on its evaluation within 90 days of the close of the Merger in conjunction with the work of the Advisory Council. Prior to any program for on-bill payment services being implemented, the program will be submitted to the Commission for its approval.
- c. If the program is implemented, Delmarva Power will be permitted to recover appropriate implementation costs and associated rates of return on capital costs through a program service fee paid by the SEU (including IT implementation costs as well as ongoing administrative costs) or other recovery method agreed upon that does not include recovery in rates.
- d. The evaluation will include but not be limited to the following:
  - i. Adjustments to Delmarva Power's billing systems and procedures so that customer bills would show charges for enrolled customers and Delmarva Power could collect the appropriate debt service (as indicated by the SEU) from a participating customer and transfer collected funds to the SEU (or its agent);
  - ii. Allowing payment to be tied to the meter so that debt service transfers across successive property owners or tenants, or to the customer, depending on the program design adopted by the SEU;
  - iii. Support for marketing of the program;
  - iv. Adjustments to its tariff provisions to provide for this program through the SEU;
  - v. Use of standard collection procedures or other approaches agreed upon by Delmarva Power, the SEU, Staff and the Public Advocate;
  - vi. Development of a mechanism with the SEU, Staff and the Public Advocate for reasonable treatment of uncollected account balances and loan defaults such that such risk does not fall on Delmarva Power;
  - vii. Establishing the SEU as program administrator, as the SEU will use its funding sources for loans, and adopt credit review criteria and program plans and criteria (eligible customers and measures, payment levels, contractor participation pre and post auditing, etc.) at SEU's discretion.

99. Street Lighting. Delmarva Power will evaluate its street-lighting tariffs and complete its evaluation and any related study within 90 days of the close of the Merger. Delmarva Power will provide the evaluation and any related study, documents, data, and information to the SEU so that the SEU may independently review Delmarva Power's evaluation. Delmarva Power may then consider filing an amended tariff to the Commission for approval. To the extent allowed by Delmarva Power's tariff and Commission regulations, Delmarva Power shall coordinate with the SEU in its planning and program activities, and provide adequate customer service and engineering support in the event the SEU offers a financing program that allows participants to convert to LED lighting with SEU funding. The cost of evaluation of street lighting tariffs shall not be recovered in rates.

100. Assistance with Saving Analysis. After receiving required customer consent, Delmarva Power shall assist the SEU with respect to utility bill analysis and usage data in order to determine savings from energy efficiency improvements for the SEU's Energy Savings Procurement Contracting program for state agencies and school districts.

**Enhancement to Interconnection Process for  
Behind-the-Meter Distributed Renewable Generation**

101. Delmarva Power shall provide a transparent, efficient, and clear process for review and approval of interconnection of proposed renewable energy projects to the Delmarva Power distribution system by providing for the following measures:

- a. Service territory maps of circuits will be uploaded to the Delmarva Power website, to be updated at least biannually that have the following information included: the area where circuits are restricted, and to what size systems future applications are restricted to. Three different maps will depict different restriction sizes. Each map will have the circuit areas on the particular map highlighted in red. One map will show circuits that are restricted to all sizes. One map will show circuits restricted to systems less than 50kW. One map will show circuits restricted to less than 250kW.
- b. When a utility receives an interconnection request for a behind-the-meter renewable system, there are several factors, or criteria limits, to consider when it determines if upgrades are required at a specific circuit. Delmarva Power shall provide a report to the SEU within 90 days of Merger closing that provides its criteria limits for distributed energy resources that apply for connection to its distribution system (including but not limited to determining when a circuit is "closed"). This report shall include supporting studies and information that substantiate those limits. The report should consider the generation profile of renewable energy relative to load, as well as the approaches utilized in other jurisdictions that have addressed the issue of the impact of on-site renewable resources on the local grid and circuits. Delmarva Power shall make itself available for discussions with the SEU on the report.

- c. Delmarva Power shall maintain an accepted inverter equipment list for small generation projects where once an inverter is reviewed and found to be acceptable for use, it is deemed acceptable for future development. This list shall be easily accessible on the Commission, the SEU and Delmarva Power websites and updated quarterly.
- d. Delmarva Power will provide timely information and action to applicants seeking to interconnect behind-the-meter renewable energy projects to the Delmarva Power distribution system with respect to preliminary interconnection approval, replacement of existing meters with bi-directional meters, and permission to operate (“PTO”).
- e. Delmarva Power will file with the Commission annual reports of timeliness of responses to interconnection requests. Consistent with the interconnection rules, annual reports will include the following:
  - i. The total number of and the nameplate capacity of the interconnection requests received and approved and denied under level 1, level 2, level 3 and level 4 reviews.
  - ii. The number of and an explanation of the interconnection requests that were not processed within the established timelines. Should delays impact more than 10% of the interconnection requests in a reporting year, Delmarva Power will include its plans to address and eliminate the delays.
- f. With respect to the interconnection process and metering and monitoring requirements, in behind-the-meter applications where the battery and the solar system share one inverter, the maximum bandwidth of charge to discharge will be used as the capacity for determining the requirement of a Level 1 – Level 4 interconnection study. Where the system will be used for frequency regulation, there may be cases where it will result in a higher-level interconnection study based on the aggregate capacity-following frequency-regulation signals on the respective feeder and/or power transformer. Delmarva Power and the SEU, in conjunction with other stakeholders identified by Delmarva Power and the SEU, through a committee process, may elect to further study the issues regarding the coupling of solar and storage. As a result of such studies, the committee may recommend changes to this protocol to the Commission.
- g. In behind-the-meter applications where the battery never exports while in parallel with the grid and both the battery and the solar system share one inverter, no additional metering or monitoring equipment shall be required for a solar plus storage facility than would be required for a solar facility without storage technology. Delmarva Power and the SEU, in conjunction with other stakeholders identified by Delmarva Power and the SEU, through a committee

process, may elect to further study the issues regarding the coupling of solar and storage. As a result of such studies, the committee may recommend changes to this protocol to the Commission.

### **Vehicle Emission Control**

102. Delmarva Power agrees that it will adopt a “best practice” for emission controls for its utility fleet vehicles which, for purposes of this Settlement Agreement, means that Delmarva Power will utilize telematics software to actively manage its utility fleet idling. Delmarva Power will also maintain for its utility fleet vehicles a fleet-wide anti-idling policy and employee education program.

### **Most Favored Nation Provision**

103. Exelon will provide Staff and the Public Advocate a copy of the final Orders and/or Settlement Stipulations from New Jersey, Maryland and the District of Columbia, following approval in each of those jurisdictions, along with an analysis indicating the total dollar amount of any customer investment fund 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 Delaware (calculated in each case on a per-distribution customer basis). For purposes of this section, “distribution customer” for Delmarva Power includes a customer who receives electric distribution, gas distribution or both from Delmarva Power.

104. The Settling Parties agree that Delaware should be protected in the event that the Joint Applicants agree to or accept orders under which another jurisdiction obtains a higher amount of direct customer financial benefits than provided through a customer investment fund (calculated on a per-distribution customer basis) or other materially better benefits in the aggregate than those contained in this Settlement Agreement:

- a. If, on a per-distribution customer basis, the benefits provided to other jurisdictions are materially more beneficial in the aggregate than the terms of this Settlement Agreement with respect to financial benefits, credits or payments to customers including the aggregate rate credits provided for in paragraph 85, then Exelon will increase the financial benefits, credits or payments to Delmarva Power customers to an equivalent amount calculated on a per-distribution customer basis. In no event will the operation of this methodology cause Delaware’s \$40.000 million aggregate customer rate credit to be reduced. In the event that financial benefits, credits or payments to the CIF are to be increased pursuant to this subsection, the Commission shall retain the authority to allocate any such additional financial benefits, credits or payments in any manner that is consistent with and in the public interest, and the parties hereto propose that the Commission invite comment from interested parties concerning the disposition of such additional financial benefits.

- b. If the benefits in any other jurisdiction that do not involve financial benefits, credits or payments to customers are materially more beneficial in the aggregate than the terms of this Settlement Agreement that do not involve financial benefits, credits or payments to customers, then Exelon will increase the benefits provided under this Settlement Agreement by the amount of any difference between the value of those benefits in the other jurisdiction and the value of those benefits under this Settlement Agreement, based on the analysis showing the valuation of those benefits in the other jurisdiction compared to the valuation of those benefits in Delaware, all determined where appropriate on a pro rata or per-distribution customer basis. The Settling Parties recognize, however, that there are differences among the states with respect to (a) employment and hiring commitments, (b) the existing level of charitable contributions, and (c) reliability performance and investment and, therefore, agree that those three elements will not be considered in the determination of whether the benefits in other jurisdictions are materially more beneficial than the terms of this Settlement Agreement, and Exelon will not be required to offer to compensate Delaware for any differences in the value of such elements.
- c. Exelon agrees that in the event that additional ring-fencing requirements are adopted by the Maryland Public Service Commission and accepted by the Joint Applicants as a result of the proceeding in Case No. 9361, or adopted by the District of Columbia Public Service Commission as accepted by the Joint Applicants as a result of the proceeding in Formal Case No. 1119, such ring-fencing requirements will also apply to Delmarva Power in Delaware.

105. If Staff or the Public Advocate finds the amount or form of compensation offered by Exelon to be insufficient, then Staff or the Public Advocate may petition the Commission to require that Exelon provide increased benefits in Delaware. Following a determination by the Commission that the Joint Applicants are required to provide increased benefits in Delaware, Exelon shall be permitted, in its sole discretion, to decline to accept any substitution of terms and conditions, in which case this Settlement Agreement will be null and void. Exelon agrees to supply non-privileged information which Staff or the Public Advocate may request to determine the value of any benefits. The Settling Parties agree that the purpose of this paragraph is to assure a fair allocation of the costs and benefits associated with this transaction to Delmarva Power customers.

#### Miscellaneous

106. Each party agrees to use its best efforts to ensure that this Settlement Agreement shall be submitted to the Commission for approval as soon as possible.

107. The Settling Parties agree that this Settlement Agreement represents the entirety of the agreement among the Settling Parties. This Settlement Agreement includes proposals and conditions above and beyond the terms contained in the Application.

Notwithstanding statements made in the Application, testimony, discovery, materials or any information provided by the Joint Applicants, only those commitments stated in this Settlement Agreement shall apply.

108. The Settling Parties agree to support approval of the Merger upon the terms set forth in this Settlement Agreement in any proceedings before the Commission regarding approval of the Merger. The Settling Parties further agree to defend this Settlement Agreement in the event of opposition to approval of the Merger from non-signatory parties before the Commission.

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

- a. if the Commission fails to adopt a Final Order approving the Merger and this Settlement Agreement or issues a decision disapproving this Settlement Agreement;
- b. if for any reason the Merger is not consummated;
- c. if the Commission issues a written order approving this Settlement Agreement subject to any condition or modification of the terms set forth herein which an adversely affected party, in its discretion, finds unacceptable. Such party shall serve notice of unacceptability on the other Settling Parties within three business days following receipt of such Commission order. Absent such notification, the Settling Parties shall be deemed to have waived their respective rights to object to the acceptability of such conditions or modifications contained in the Commission order, which shall thereupon become binding on all Settling Parties; or
- d. if, pursuant to the operation of the terms of paragraph 105, Exelon declines to accept any modification of, or addition to, terms and conditions ordered by the Commission or requested by Staff or the Public Advocate.

110. This Settlement Agreement shall be binding on the Settling Parties upon approval by the Commission. This Settlement Agreement contains terms and conditions above and beyond the terms contained in the Application, each of which is interdependent with the others and essential in its own right to the signing of this Settlement Agreement. Each term is vital to the Settlement Agreement as a whole, since the Settling Parties expressly and jointly state that they would not have signed the Settlement Agreement had any term been modified in any way. None of the Settling Parties shall be prohibited from or prejudiced in arguing a different policy or position before the Commission in any other proceeding, as such agreements pertain only to this matter and to no other matter.

111. This Settlement Agreement represents the full scope of the agreement among the Settling Parties. This Settlement Agreement may only be modified by a further written

agreement executed by all the parties to this Settlement Agreement. In the event this Settlement Agreement is modified by the Commission pursuant to the terms of paragraph 109, then Exelon, in its sole discretion, shall have the right to decline to accept any modification of, or addition to, terms and conditions, in which case this Settlement Agreement will be null and void.

112. This Settlement Agreement is submitted to the Commission for approval as a whole. If a party is adversely affected by a modification or condition to the Settlement Agreement and provides timely notice in accordance with paragraph 109(c), then the Settlement Agreement shall be ineffective and void.

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

*[SIGNATURE PAGES FOLLOW]*

EXELON CORPORATION

By: \_\_\_\_\_  
Darryl M. Bradford  
Senior Vice President & General Counsel

PEPCO HOLDINGS, INC. and  
DELMARVA POWER & LIGHT COMPANY

By: \_\_\_\_\_  
Kevin C. Fitzgerald  
Executive Vice President & General Counsel  
Pepco Holdings, Inc.

STAFF OF THE DELAWARE PUBLIC  
SERVICE COMMISSION

By: \_\_\_\_\_  
Robert Howatt  
Executive Director

DELAWARE DIVISION OF THE PUBLIC  
ADVOCATE

By: \_\_\_\_\_  
David L. Bonar  
Public Advocate

DELAWARE DEPARTMENT OF NATURAL  
RESOURCES and ENVIRONMENTAL  
CONTROL

By: \_\_\_\_\_  
David Small  
Secretary

DELAWARE SUSTAINABLE ENERGY  
UTILITY

By: \_\_\_\_\_  
Tony DiPrima  
Executive Director

MID-ATLANTIC RENEWABLE ENERGY  
COALITION

By: \_\_\_\_\_  
Bruce H. Bureat  
Executive Director

CLEAN AIR COUNCIL

By: \_\_\_\_\_  
Joseph Otis Minott  
Executive Director

ACTIVE/79790344.1

ATTACHMENT CSM-3



STATE OF DELAWARE  
**THE PUBLIC SERVICE COMMISSION**  
861 SILVER LAKE BOULEVARD, SUITE 100  
CANNON BUILDING  
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500  
FAX: (302) 739-4849

**Memorandum of Understanding**

**WHEREAS**, the Delaware Public Service Commission (“Commission”) and the Delaware Economic Development Office (“DEDO”), together as participating parties (“Partners”), have each agreed that further energy related economic development in Delaware can offer significant benefit to the citizens of Delaware; and

**WHEREAS**, the merger of Exelon Corporation and Pepco Holdings, Inc. has provided an opportunity for grant funding under the Amended Settlement Agreement (“Settlement”), Paragraphs 103 through 105. Most Favored Nation Provision as approved by the Commission on June 2, 2015; and

**WHEREAS**, the Partners have come together to collaborate and agree on an appropriate use of public benefit funds that may be granted to enhance economic development; and

**WHEREAS**, the Partners herein agree that the services and uses to be provided will be consistent with 26 *Del. C.* §215(d), made in accordance with law, for a proper purpose and consistent with the public interest; and

**WHEREAS**, the Partners herein desire to enter into a Memorandum of Understanding (“Memorandum”) setting forth the services and uses to be provided by the collaborative funding as approved by the Commission,

**NOW, THEREFORE**, the following terms and conditions are agreed to by the Partners to this Memorandum as follows:

## **I) Description of Partner Agencies**

The Delaware Public Service Commission, an Executive Agency of the Department of State, chartered by the State of Delaware to regulate Investor Owned Utilities, has the legal authority and responsibility to investigate proposed utility mergers and to approve such mergers when found to be in accordance with law, for a proper purpose and in the public interest. The Commission has made such finding in the joint application for merger of Exelon Corporation and Pepco Holdings, Inc. As a result of that finding and the adoption of the Settlement, certain funds have been made available both initially and as follow-up with respect to the Settlement terms. As an initial agreement, the Commission approved a customer investment fund of \$40 million for a residential bill credit, \$2 million for DNREC to conduct a low income energy efficiency program, and various other commitments including the potential for additional benefit depending on other jurisdictional agreements. On July 11, 2016 Exelon Corporation and Pepco Holdings, Inc. filed notice with the Commission of an additional \$27.1 million of funding benefit as a result of other jurisdictional settlements. This Memo of Understanding addresses an agreement on how the Partners will allocate and use a portion of those additional funds.

The Delaware Economic Development Office (“DEDO” or “Office”) is an Executive Agency serving as the Governor’s staff agency in all general and economic development matters. The Office provides advice, coordinates economic development efforts and implements development programs. The Office renders assistance to all units of government and to private enterprise to insure that all public development activities are carried out in conformity with State law. The agency manages various funds designed to encourage economic development and may accept and receive funds, grants and services from private sources in the furtherance of its functions (29 *Del. C.* § 5006(6)).

## **II) History of Relationship**

As Executive Agencies for the State of Delaware, the Partners are well aware of the responsibilities assigned to each agency. While the Commission has primary responsibility for the regulation of investor owned utilities, there is always concern for the economic environment that is created by their regulatory actions with respect to the cost and quality of utility services. Conversely, DEDO must work to educate industry and others on the quality of the Delaware economic environment and the value it provides for business and family life. Economic development helps keep utility rates lower and lower rates help create economic development.

This Memorandum of Understanding, consistent with 29 *Del. C.* §5006(6) will be the first occurrence whereby the Commission authorizes Exelon Corporation and Pepco Holdings, Inc. to provide a grant to DEDO in support of continued energy related economic development. The grant is for \$6.0 million dollars to provide for additional economic development, to help create new jobs and to benefit the State’s economy.

It is the desire of the Partners to collaborate on the long term economic development in Delaware that will benefit the Citizens of Delaware. New industry and jobs help contain

utility cost increases, provide opportunity for growth and development and typically enhances the wellbeing and opportunities for all Delaware citizens.

### **III) Development of Application**

In anticipation of an additional Exelon Corporation and Pepco Holdings, Inc. benefit filing, the Partners have met together with other executive agencies and had discussions on the potential application of grants to ensure the maximum benefit to Delaware and its citizens. Each Partner has had opportunity to either participate in or review those discussions and have reached agreement in principle.

This Memorandum of Understanding assumes the approval of the Commission for the recommended grant as agreed to by the Partners. Should the Commission approve a public benefit that is different than that incorporated in this Memorandum, the Partners will meet to determine if modification or change to the Memorandum is appropriate.

This Memorandum further delineates the roles and responsibilities of the Partners. Each Partner has had opportunity to review the Memorandum and make changes and the document as now approved includes all the requirements of the Partners.

### **IV) Roles and Responsibilities**

It is hereby agreed by and between the partners as follows:

The Commission, subject to its independent review and approval, will authorize Exelon Corporation and Pepco Holdings, Inc. to provide grant funding to DEDO for their use in:

- Developing new or expanded renewable energy businesses, new or expanded energy efficiency businesses, new energy related innovative startups, or energy infrastructure investments.
- Supporting the growth of new energy related technologies and businesses and sustaining existing businesses and jobs.
- Providing grants, loans, tax credit relief, or local property tax relief in support of economic development efforts.

DEDO shall be responsible for the timely and effective utilization of the grant to support Delaware's economic development and to increase the number of energy related jobs and businesses within the State of Delaware. DEDO shall be responsible for:

- Establishing appropriate guidelines that support the timely and effective use of the economic development grant, by no later than March 31, 2017.
- Administering the programs according to existing policy and pertinent regulations with supervisory oversight (program administrative costs limited to \$200 thousand).

- Providing a quarterly report (May 1, August 1, November 1 and February 1, summarizing the previous quarter) to the Commission on the status of economic development efforts, the use of funds within the program (including administrative costs), the status of remaining grant funds, the new business, industry and jobs, and the businesses or industry receiving any grants
- Utilizing the grant funding for the timely development of new and expanded energy related businesses, using all grant funds within five (5) years of initial grant, with any remaining grant funds reverting to the State General Fund.
- Providing a final report upon expenditure of all funds which should summarize the benefits received in Delaware from the energy related economic development programs as provided by DEDO.

#### **V) Timeline**

The roles and responsibilities described above are contingent on the Commission approving and DEDO receiving the grant funds for the economic development efforts described in this Memorandum. The responsibilities under this Memorandum of Understanding would coincide with the timeframe of the various efforts funded by this Memorandum, but in no event concluded in five (5) years from the start of the program. This Memorandum shall be dissolved and of no further consequence when all funds provided hereunder have been effectively used for the benefit of program participants or reverted to the General Fund and a final summary report been provided to the Commission.

#### **VI) Commitment to Partnership**

- 1) Each of the Partners is committed to continue the efforts to increase economic development efforts in Delaware. If for any reason the program must be discontinued or DEDO has not timely and effectively used the resource funding, the Partners agree to revisit this Memorandum and to jointly determine an approach to use the remaining funds to the benefit of Delaware citizens.
- 2) The partners agree to continue their collaboration with respect to the program funded by this grant and established by this Memorandum. Attached is a copy of the updated Settlement and Commission Order under which the Commission grants Exelon Corporation and Pepco Holdings, Inc. the authority to provide a grant to fund DEDO for the economic development effort contained in this document.
- 3) We, the undersigned have read and agree with this MOU. Further, we have reviewed the proposed funding of \$6.0 million for economic development programs and agree to work with DEDO in establishing appropriate programs as may be necessary.

SUPPLEMENTAL COMMENTS – CONNIE S. MCDOWELL

BY: \_\_\_\_\_

Dallas Winslow, Chairman  
Delaware Public Service Commission

BY: \_\_\_\_\_

Bernice Whaley, Secretary  
Delaware Economic  
Development Office

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**ATTACHMENT CSM-4**



STATE OF DELAWARE  
**THE PUBLIC SERVICE COMMISSION**  
861 SILVER LAKE BOULEVARD, SUITE 100  
CANNON BUILDING  
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500  
FAX: (302) 739-4849

**Memorandum of Understanding**

**WHEREAS**, the Delaware Public Service Commission (“Commission”) and the Delaware Department of Natural Resources and Environmental Control (“DNREC”), together as participating parties (“Partners”), have each participated in the Merger Application of Exelon Corporation and Pepco Holdings, Inc. as filed on June 18, 2014; and

**WHEREAS**, the Partners have come together to collaborate and agree on the appropriate use of public benefit funds that will be provided according to the Amended Settlement Agreement (“Settlement”), Paragraphs 103 through 105, Most Favored Nation Provision as approved by the Commission on June 2, 2015; and

**WHEREAS**, the Partners herein agree that the services and uses to be provided will be consistent with 26 *Del. C.* §215(d), made in accordance with law, for a proper purpose and consistent with the public interest; and

**WHEREAS**, the Partners herein desire to enter into a Memorandum of Understanding (“Memorandum”) setting forth the services and uses to be provided by the collaborative funding as approved by the Commission,

**NOW, THEREFORE**, the following terms and conditions are agreed to by the Partners to this Memorandum as follows:

**I) Description of Partner Agencies**

The Delaware Public Service Commission, an Executive Agency of the Department of State, chartered by the State of Delaware to regulate Investor Owned Utilities, has the legal

authority and responsibility to investigate proposed utility mergers and to approve such mergers when found to be in accordance with law, for a proper purpose and in the public interest. The Commission has made such finding in the joint application for merger of Exelon Corporation and Pepco Holdings, Inc. As a result of that finding and the adoption of the Settlement, certain funds have been made available both initially and as follow-up with respect to the Settlement terms. As an initial agreement, the Commission approved a customer investment fund of \$40 million for a residential bill credit, \$2 million for DNREC to conduct a low income energy efficiency program, and various other commitments including the potential for additional benefit depending on other jurisdictional agreements. On July 11, 2016 Exelon Corporation and Pepco Holdings, Inc. filed notice with the Commission of an additional \$27.1 million of funding benefit as a result of other jurisdictional settlements. This Memo of Understanding addresses an agreement on how the Partners will allocate and use a portion of those additional funds.

The Delaware Department of Natural Resources and Environmental Control is an Executive Agency charged with protecting and managing the state's vital natural resources, protecting public health and safety, providing quality outdoor recreation and serving and educating the citizens of the First State about the wise use, conservation and enhancement of Delaware's Environment. As part of that charge, the Division of Energy and Climate is responsible for strategic energy planning and policy. The Division manages and oversees policies and programs for energy efficiency, low-income weatherization, renewable energy, greenhouse gas emission reduction, and climate adaptation and mitigation, including the oversight of federal and state grants for those activities.

## **II) History of Relationship**

As Executive Agencies for the State of Delaware, the Partners have interfaced on many utility regulatory issues where State energy policy requires or may benefit from utility processes or programs. DNREC has intervened and been a party to multiple regulatory cases and closely coordinates their programs and efforts with the Commission. Conversely, the Commission Staff has participated in several DNREC environmental regulatory efforts, including coordination on the Energy Efficiency Advisory Council efforts, Regional Greenhouse Gas Initiative and related regulations.

This Memorandum of Understanding, consistent with 29 Del. C. §8003(14) will be the first occurrence whereby the Commission authorizes Exelon Corporation and Pepco Holdings, Inc. to provide a funding grant to DNREC for three (3) specific energy efficiency programs to benefit Delaware. Those are:

- \$8.0 million for an industrial/large commercial grant fund to promote energy efficiency for large Delmarva Power customers.
- \$4.0 million to fund DNREC's Energy Efficiency Investment Fund ("EEIF") to re-establish the energy efficiency program for any Delmarva Power Delaware industrial and commercial enterprise.

- \$2.0 million additional funding to support DNREC’s low income customer energy efficiency program, increasing the total grant to \$4.0 million which includes a previous Settlement grant of \$2.0 million.

It is the desire of the Partners to collaborate on the long term energy and environmental interests of the State of Delaware that will benefit Delaware Citizens. The increased development of energy efficiency reduces the need for energy generation, particularly carbon fueled energy and contributes to a cleaner environment within the State. In addition, lower energy use contributes to lower energy costs which benefit all Delaware citizens.

### **III) Development of Application**

In anticipation of an additional Exelon Corporation and Pepco Holdings, Inc. benefit filing, the Partners have met together with other executive agencies and had discussions on the potential application of grants to ensure the maximum benefit to Delaware and its citizens. Each Partner has had opportunity to either participate in or review those discussions and have reached agreement in principle.

This Memorandum of Understanding assumes the approval of the Commission for the recommended grants as agreed to by the Partners. Should the Commission approve a public benefit that is different than that incorporated in this Memorandum, the Partners will meet to determine if modification or change to the Memorandum is appropriate.

This Memorandum further delineates the roles and responsibilities of the Partners. Each Partner has had opportunity to review the Memorandum and make changes and the document as now approved includes all the requirements of the Partners.

### **IV) Roles and Responsibilities**

It is hereby agreed by and between the partners as follows:

The Commission, subject to its independent review and approval, will authorize Exelon Corporation and Pepco Holdings, Inc. to provide grant funding to DNREC for their use in:

- A new large industrial/commercial energy efficiency grant program for the benefit of Delmarva Power Delaware customers; and
- The re-establishment of DNREC’s Energy Efficiency Investment Fund for the benefit of any Delmarva Power Delaware industrial or commercial enterprise; and
- Additional grant funds for DNREC’s low income customer energy efficiency program.

DNREC shall be responsible for the timely and effective utilization of the grants to support the identified programs and to increase the levels of energy efficiency within the State of Delaware. DNREC shall be responsible for:

- Establishing or re-establishing the energy efficiency programs related to the grant provided in this Memorandum in a timely and effective manner, by no later than March 31, 2017.
- Administering the programs according to existing policy and pertinent regulations with supervisory oversight (consolidated program administrative costs limited to \$500 thousand in total).
- Providing a quarterly report (May 1, August 1, November 1 and February 1, summarizing the previous quarter) to the Commission on the status of such programs, the use of funds within the program (including administrative costs), the status of remaining grant funds, the energy efficiency achieved, and the customers receiving any grants
- Utilizing the grant funding for the timely implementation of cost effective energy efficiency programs, using all grant funds within five (5) years of initial grant, with any remaining grant funds reverting to the State General Fund.
- Providing a final report upon expenditure of all funds which should summarize the benefits received in Delaware from the energy efficiency programs as provided by DNREC.

#### **V) Timeline**

The roles and responsibilities described above are contingent on the Commission approving and DNREC receiving the grant funds for the energy efficiency projects described in this Memorandum. The responsibilities under this Memorandum of Understanding would coincide with the timeframe of the various programs funded by this Memorandum, but in no event concluded in five (5) years from the start of the program. This Memorandum shall be dissolved and of no further consequence when all funds provided hereunder have been effectively used for the benefit of program participants or reverted to the General Fund and a final summary report been provided to the Commission.

#### ***VI) Commitment to Partnership***

- 1) Each of the Partners is committed to continue the efforts to increase energy efficiency efforts in Delaware. If for any reason the programs must be discontinued or DNREC has not timely and effectively used the resource funding, the Partners agree to revisit this Memorandum and to jointly determine an approach to use the remaining funds to the benefit of Delaware citizens.
- 2) The partners agree to continue their collaboration with respect to the programs funded by this grant and established by this Memorandum. Attached is a copy of the updated Settlement and Commission Order under which the Commission grants Exelon Corporation and Pepco Holdings, Inc. the authority to provide a grant to fund for the Energy Efficiency Programs contained in this document.

SUPPLEMENTAL COMMENTS – CONNIE S. MCDOWELL

3) We, the undersigned have read and agree with this MOU. Further, we have reviewed the proposed funding and the programs to be conducted and approve them.

BY: \_\_\_\_\_

Dallas Winslow, Chairman  
Delaware Public Service Commission

BY: \_\_\_\_\_

David Small, Secretary  
Delaware Dept. of Natural Resources  
and Environmental Control

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION )  
OF DELMARVA POWER & LIGHT COMPANY, )  
EXELON CORORPATION, PEPSCO HOLDINGS, ) PSC DOCKET NO. 14-193  
INC., PURPLE ACQUISITION CORPORATION, )  
EXELON ENERGY DELIVERY COMPANY, LLC )  
AND SPECIAL PURPOSE ENTITY, LLC )  
FOR APPROVALS UNDER THE PROVISIONS )  
OF 26 *Del. C.* §§ 215 AND 1016 )  
(FILED JUNE 18, 2014) )

---

**COMMENTS OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE  
REGARDING THE PROPOSED DISTRIBUTION OF THE ADDITIONAL FUNDS DUE  
TO DELAWARE AS A RESULT OF THE TRIGGERING OF THE “MOST FAVORED  
NATIONS” PROVISION OF THE AMENDED SETTLEMENT AGREEMENT**

Pursuant to the Second Amended Scheduling Order dated June 21, 2016, the Delaware Division of the Public Advocate (“DPA”) hereby submits the following comments regarding the proposed distribution of the additional funds due to Delaware as a result of the triggering of the “most favored nations” (“MFN”) provision of the Amended Settlement Agreement that the Delaware Public Service Commission (the “Commission”) approved in Order No. 8746 dated June 2, 2016.

**BACKGROUND**

On April 29, 2014, Exelon and PHI (the “Joint Applicants”) announced that they had entered into an agreement for Exelon to purchase PHI (the “Merger”). The Joint Applicants filed an application pursuant to 26 *Del. C.* §§215 and 1016 seeking Commission approval of the Merger. The Commission opened this docket to consider the Joint Applicants’ application.

On December 15, 2016, the Commission Staff, the DPA and others submitted prefiled testimony opposing the Merger. Staff witness Connie McDowell testified that the Merger

commitments and the estimated value of its public interest benefits were insufficient for the Commission to conclude that the Merger was in the public interest. Exh. S-1 at 12. Staff defined the “public interest” (which is not defined in the Delaware Code) as:

... the welfare or well-being of the general public ... “the welfare of the general public (in contrast to the selfish interest of a person, group or firm) in which the whole society has a stake and which warrants recognition, promotion and protection by the government and its agencies. It is approximated by comparing the expected gains and potential costs or losses associated with a decision, policy, program, or project.” In considering whether this merger is in the public interest, the general public could entail the ratepayers, [Delmarva] (the utility itself and its current and former employees), the Commission, stakeholders, other government regulators, Delaware labor unions, Governor and State Administration, Legislators, protectors of the environment, businesses, the general population of the State of Delaware, etc.

*Id.* at 8 (citations omitted).

On January 5, 2014, the Commission Staff submitted prefiled supplemental testimony from Ms. McDowell. She stated that she was submitting this supplemental testimony “to provide all parties with Staff’s draft assessment of the requirements needed to ensure the merger is in the public interest.” Exh. S-2 at 1. One of the “essential requirements” for Staff to “ensure the Joint Applicants’ merger request [wa]s in the public interest” was a very specific requirement: Exelon’s charitable grant of \$500,000 per year for three years to secure a site for “Exelon’s Delaware Special Needs Children’s Camp.” *Id.* at 1 and Exh. CSM-1. In rebuttal testimony, Exelon Chief Executive Officer Christopher Crane called that contention “unfounded.” Exh. JA-13 at 20.

In April 2015 the Joint Applicants, Staff, the DPA and others submitted an Amended Settlement Agreement (“ASA”) to the Commission for its consideration. The Commission approved the ASA in Order No. 8746 dated June 2, 2015. In the ASA, the Joint Applicants committed to certain labor, employment and compensation protections; to provide \$2 million to

implement and fund a workforce development initiative; to conduct a study to quantify the potential demand by user type and location for natural gas in Kent and Sussex Counties; to maintain Delmarva Power & Light Company's ("Delmarva") local operational headquarters in Newark, Delaware for at least 10 years after the Merger and to maintain Delmarva's gas maintenance facility in Wilmington, Delaware and its Millsboro District office in Millsboro for at least five years after the Merger; to maintain a certain composition of the Exelon Board of Directors that included officers and/or employees of a PHI subsidiary; to provide \$2 million for a low income energy efficiency program for Delmarva customers; to implement certain ring-fencing measures; to comply with existing affiliate transaction commitments and provide related reports to the Commission and the DPA; forego any attempt to include goodwill or fair value adjustments on its books or recover such in rates; provide at least an annual average of charitable contributions and local community support that exceeds Delmarva's 2013 level of \$699,000 for at least the next 10 years; maintain supplier diversity; forgive all accounts receivable over three years old for qualifying low-income Delmarva customers; maintain, enhance and promote programs that provide assistance to low-income customers; maintain its reliability spending at certain levels and achieve certain performance metrics; issue a Request for Proposals ("RFP") to purchase wind RECs in three tranches; provide \$40 million in bill credits to residential customers; track and account for Merger-related savings and the cost incurred to achieve those savings in Delmarva's next base rate case; forego rate recovery of the acquisition premium and Merger transaction costs; to withdraw its Forward-Looking Rate Plan; to abide by Delmarva's Code of Conduct regarding affiliated transactions; to take certain actions with respect to electric generation interconnection studies; to donate \$350,000 to fund the Consumer Advocates of PJM States; to remain in PJM until at least January 1, 2025; to coordinate with the Sustainable Energy

Utility regarding certain energy efficiency initiatives and enhancements to the interconnection process for distributed renewable generation; and adopt “best practices” for vehicle emission controls for its utility fleet vehicles. Exh. JA-50.

The ASA also contained a MFN provision providing that in the event that the Joint Applicants agreed to or accepted orders in other jurisdictions that provided that jurisdiction a higher amount of direct customer financial benefits or other materially better benefits than those provided in the ASA, the Joint Applicants would increase the benefits to Delmarva’s customers by an equivalent amount calculated on a per-distribution customer basis. *Id.* at ¶104a.

Subsequent to the Commission’s approval of the ASA, the public service commissions in Maryland and the District of Columbia approved the Merger. Pursuant to the ASA’s MFN provisions, the Joint Applicants provided the parties in this case with their calculation of the additional financial benefits due to Delmarva customers calculated on a per-distribution customer basis. The Joint Applicants’ calculation demonstrated that as a result of the provisions of the orders in Maryland and the District of Columbia, an additional \$27.1 million was due to Delmarva customers. Exh. JA-53. None of the parties to this proceeding has challenged the Joint Applicants’ calculation of the additional financial benefits due.

The parties met to determine whether they could agree to an allocation of the \$27.1 million, and filed comments setting forth their positions on August 12, 2016. At the conclusion of the second in-person meeting, most of the parties reached agreement on the allocation of most of the \$27.1 million. The chart attached hereto shows the parties’ current positions.

As can be seen from the attached chart, the primary difference between the DPA’s position and those of the Commission Staff, the Joint Applicants, and the Department of Natural Resources and Environmental Control (“DNREC”) is that the latter entities propose to allocate

\$4 million for unidentified “public interest” projects, which the Commission will select after a competitive RFP process.<sup>1</sup> Important to the DPA’s argument, the Commission Staff originally proposed this particular allocation. The DPA objects to providing any funding for such unidentified “public interest” projects for several reasons, which we discuss below. The DPA urges the Commission to allocate that \$4 million to DNREC’s Energy Efficiency Investment Fund (“EEIF”), which already identifies who is eligible and has established eligibility criteria.<sup>2</sup>

## **ARGUMENT**

### **A. The Commission Should Not Approve \$4 Million for “Public Interest” Projects.**

The DPA does not object to allocating \$4 million to “public interest” projects because the DPA believes that the public interest is unworthy of support (although based on Staff’s broad definition of the “public interest” in its prefiled testimony, the non-ratepayer “public interest” has already received, and will receive, many millions of dollars as a result of this Merger). The DPA objects because the DPA does not believe that this Commission has the authority to conduct RFPs to give away money; even if the Commission does have the authority, it should not be in the business of conducting RFPs to give away money; because there are no details regarding how deserving entities will be evaluated and selected; because there are real concerns about whether personal interests may influence the selection of winning bidder(s); and because renewable energy already receives generous funding from other sources.

---

<sup>1</sup> The Mid-Atlantic Renewable Energy Coalition (“MAREC”) proposes to limit the projects that would be eligible for this \$4 million to renewable energy projects selected through a competitive RFP process. Dr. Firestone proposes to allocate \$3.5 million to solar and wind power academic research or training programs at state academic institutions, with a 38% cap on overhead, and a requirement that grant recipients provide matching funds of at least 20%; the projects would also be selected through a competitive RFP administered through Dr. Firestone’s employer, the University of Delaware, if the University agrees to do so.

<sup>2</sup> <http://www.dnrec.delaware.gov/energy/Documents/EEIF/Guidelines.pdf>

**1. The Commission Has No Statutory Authority to Conduct an RFP Process and Select Public Interest Projects to Which It Will Distribute Funds.**

The DPA respectfully submits that doling out money to “public interest” projects is not within this Commission’s jurisdiction and authority. The Commission only has the authority that the General Assembly has given it.<sup>3</sup> Section 201 of the Public Utilities Act provides the Commission with “exclusive original supervision and regulation of all public utilities and over their rates, property rights, equipment, facilities, service territories and franchises so far as may be necessary for the purposes of carrying out” its regulatory duties,<sup>4</sup> and Sections 215(a) and (d) give the Commission authority to approve a proposed merger if the Commission finds that it “is in accordance with law, for a proper purpose and consistent with the public interest.”<sup>5</sup> The General Assembly did not give the Commission any authority in Section 201(a) to collect funds and distribute them to public interest projects, and there is no other statutory authority that would permit the Commission to do so. The General Assembly has given other agencies authority to make grants and distribute funds to entities and matters that it deems to be in the public interest,<sup>6</sup> so it is clear that the General Assembly knew how to do so. If it had wanted the Commission to have that authority, it could have done so. It did not. And while it is true that an express legislative grant of power or authority to an agency includes the grant of power to do whatever is reasonably necessary to implement such power or authority,<sup>7</sup> the Commission does not reasonably need the power to conduct an RFP process to satisfy its duty of ensuring that a proposed merger complies with the requirements of Section 215(d) when there is no statutory

---

<sup>3</sup> *Diamond State Liquors, Inc. v. Delaware Liquor Commission*, 75 A.2d 248, 253 (Del. Gen. Sess. 1950); *Retail Liquor Dealers Association of Delaware v. Delaware Alcoholic Beverage Control Commission*, 1980 WL 273545 at \*3 (Del.Ch. 1980).

<sup>4</sup> 26 Del. C. §201(a).

<sup>5</sup> 26 Del. C. §§215(a), (d).

<sup>6</sup> See 29 Del. C. §8030(b) (DNREC EEIF); 29 Del. C. §§5054(e)(6), 5055(a) (Delaware Economic Development Authority).

<sup>7</sup> *Atlantis Condominium Assoc. v. Bryson*, 403 A.2d 711, 713 (Del. 1979); *Retail Liquor Dealers Association*, *supra* at \*3 (Del.Ch. 1980).

requirement that parties to a proposed merger agree to provide millions of dollars to anyone, even ratepayers, as a condition of obtaining approval for the merger.

Moreover, even if Sections 201(a) and 215(d) could be read so broadly as to give the Commission authority to conduct an RFP process and distribute funds to selected entities in connection with approving a merger, the DPA cannot remember a time when this Commission has ever required this as a condition of merger approval, nor has it ever been asked to do so. In any event, the Commission has already approved the Merger, and because it did so without requiring this particular condition, it apparently did not believe that this proposal was necessary for the Merger to be consistent with the public interest.

The Commission does not have the statutory authority to conduct an RFP process to distribute funds to public interest projects. Even if it did have such authority, it has never done so before, and the DPA respectfully submits that this is not the time to start. The “public interest” is well represented in the money that has already been distributed pursuant to the ASA, and that will be distributed pursuant to the ASA’s MFN provision. The DPA respectfully requests that the Commission reject this proposal and allocate the \$4 million to the EEIF.

**2. Even If the Commission Had Authority to Conduct an RFP Process and Select Public Interest Projects to Which It Will Distribute Funds, the Proposal Is Too Vague to Be Approved.**

Even if the Commission had authority to conduct an RFP process and select public interest projects to which it will distribute funds, there is no detail whatsoever regarding this proposal. What “public interests” will be eligible to submit a bid? How will the bids be evaluated? What criteria will be used to evaluate the bids? Will the Commissioners themselves review each bid submitted, or will they designate that task to a subordinate? If so, to whom will they delegate that task? How will the Commission be sure that the subordinate to whom it

delegates the task has the requisite experience to evaluate the bids received and make a recommendation to the Commission? As far as the DPA is aware, there is no one on the Commission's Staff that has such expertise. If an independent evaluator is selected, who will select the independent evaluator? How will the Commission be sure that the person evaluating the bids and making recommendations has no bias in favor of a particular project or bidder? Will unsuccessful bidders have a right to challenge the awards that the Commission makes? These are important questions on which the proposal is utterly silent. The proposal should be rejected on this basis alone.

**3. Even If the Commission Had Authority to Conduct an RFP Process and Select Public Interest Projects to Which It Will Distribute Funds, the DPA Is Concerned About Potential Bias That May Influence the Selection of Projects or Recipients.**

The DPA's concern about potential bias in the evaluation and selection process is not unfounded. Commission Staff submitted testimony, which it adopted under oath in a hearing, that the public interest required Exelon to donate \$1.5 million to "secure a site for "Exelon's Delaware Special Needs Children's Camp." (Exh. S-2 at 1 and Exh. CSM-1). The Joint Applicants specifically objected to that "public interest requirement" in their rebuttal testimony. (Exh. JA-13 at 20); other parties made it clear that they did not agree that this was a requirement, and the ASA includes no such provision. Staff's insistence that \$4 million be set aside to be allocated for "public interest" projects, with no more than \$2.0 million allocated to any one project, appears to be a way to allocate money to this particular project through the back door, and the concern is even greater if Staff members, or an Independent Evaluator selected by Staff, are appointed to evaluate bids and recommend winners. The DPA is not suggesting that this project is not worthy of support, but the DPA is concerned that it already has a foot in the door. Similarly, Dr. Firestone suggests that his employer, the University of Delaware, evaluate the

RFPs for the solar and wind power academic research of training that he recommends, and the University would apparently be one of the state academic institutions that would be eligible to apply for a grant. This would seem to create a conflict of interest. The potential for bias to affect the evaluation and selection of bids is another reason to reject the proposal.

**4. Renewable Energy Interests Are Already Well-Funded.**

Both MAREC and Dr. Firestone have proposed that a certain amount of money be allocated to renewable energy projects or studies. The DPA disagrees with both of these proposals. Renewable energy already receives generous funding from ratepayers' payment of the costs that Delmarva incurs to comply with the Renewable Energy Portfolio Standards Act and from ratepayers' contributions to the Green Energy Fund. If this \$4 million is to go anywhere, it should be allocated to DNREC's EEIF, where it will serve to reduce the amount of money that may eventually be recovered from Delmarva ratepayers to pay for the energy efficiency projects that the General Assembly has mandated in the Delaware Energy Act.<sup>8</sup>

**CONCLUSION**

Based on the foregoing argument and authorities, the DPA respectfully requests the Commission to reject the proposal to allocate \$4 million to "public interest" projects through an RFP process administered by the Commission, and instead to direct that \$4 million to the EEIF.

Dated: September 12, 2016

/s/ Regina A. Iorii  
Regina A. Iorii (De. Bar No. 2600)  
Deputy Attorney General  
Delaware Department of Justice  
820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 577-8159  
[regina.iorii@state.de.us](mailto:regina.iorii@state.de.us)

Counsel for the Delaware Division  
of the Public Advocate

---

<sup>8</sup> 29 Del. C. §§8051 *et seq.*

Joint Application of Delmarva Power & Light Company, Exelon Corporation, Pepco Holdings, Inc., Purple Acquisition Corporation, Exelon Energy Delivery Company, LLC, and New Special Purpose Entity, Delaware PSC Docket No. 14-193

COMPARISON OF MOST FAVORED NATIONS BENEFIT RECOMMENDATIONS<sup>1</sup>

ALLOCATION & PURPOSE	STAFF	PUBLIC ADVOCATE	DNREC	MAREC	DR. FIRESTONE
DNREC EE Industrial & Large Commercial	<u>\$8.0 million:</u> EEIF Plus - Industrial & Large Commercial Delmarva customers.	<u>\$8.0 million:</u> EEIF Plus - Industrial & Large Commercial Delmarva customers.	<u>\$8.0 million:</u> EEIF Plus - Industrial & Large Commercial Delmarva customers.	<u>\$8.0 million:</u> EEIF Plus - Industrial & Large Commercial Delmarva customers.	Opposes funds for large commercial and industrial customers and proposes instead that funds be allocated to low income residential gas and electric households
DNREC EE Energy Efficiency Investment Fund	<u>\$4.0 million:</u> Existing EEIF for Delmarva customers – 30% reserved for minorities, women, veterans, service disabled veterans, and individuals with disabilities for first 3 years, with any remainder not allocated or encumbered being eligible for all EEIF eligible applicants for remaining 2 years. This funding shall be	<u>\$8.0 million (see DPA position on public interest projects below):</u> Existing EEIF for Delmarva customers – 30% reserved for minorities, women, veterans, service disabled veterans, and individuals with disabilities for first 3 years, with any remainder not allocated or encumbered being eligible for first 3 years, with any remainder not allocated or encumbered being eligible for all EEIF eligible applicants for remaining 2 years. This funding shall be	<u>\$4.0 million:</u> Existing EEIF for Delmarva customers – 30% reserved for minorities, women, veterans, service disabled veterans, and individuals with disabilities for first 3 years, with any remainder not allocated or encumbered being eligible for all EEIF eligible applicants for remaining 2 years. This funding shall be	<u>\$4.0 million:</u> Existing EEIF for Delmarva customers – 30% reserved for minorities, women, veterans, service disabled veterans, and individuals with disabilities for first 3 years, with any remainder not allocated or encumbered being eligible for all EEIF eligible applicants for remaining 2 years. This funding shall be	<u>\$8.0 million:</u> Existing EEIF for Delmarva customers – 30% reserved for minorities, women, veterans, service disabled veterans, and individuals with disabilities for first 3 years, with any remainder not allocated or encumbered being eligible for all EEIF eligible applicants for remaining 2 years. This funding shall be

<sup>1</sup> The application of the Most Favored Nation provisions results in Exelon’s providing \$27,132,618.00 in additional financial benefit for Delaware, in the aggregate. In addition, the suggested mechanism by which funds will be allocated as described herein is that Exelon will deposit the funds into an endowment fund to be utilized for the specific purposes described herein by the designated agency or entity.

	<p>taken into consideration by the EEAC as it reviews Delmarva-proposed non-residential EE programs to ensure there is no duplication of EE programs. Additionally, any energy savings resulting from the expenditure of these funds shall be credited to the EE goals that the EEAC establishes for Delmarva.</p>	<p>eligible applicants for remaining 2 years. This funding shall be taken into consideration by the EEAC as it reviews Delmarva-proposed non-residential EE programs to ensure there is no duplication of EE programs. Additionally, any energy savings resulting from the expenditure of these funds shall be credited to the EE goals that the EEAC establishes for Delmarva.</p>	<p>into consideration by the EEAC as it reviews Delmarva-proposed non-residential EE programs to ensure there is no duplication of EE programs. Additionally, any energy savings resulting from the expenditure of these funds shall be credited to the EE goals that the EEAC establishes for Delmarva.</p>	<p>ensure there is no duplication of EE programs. Additionally, any energy savings resulting from the expenditure of these funds shall be credited to the EE goals that the EEAC establishes for Delmarva.</p>	<p>taken into consideration by the EEAC as it reviews Delmarva-proposed non-residential EE programs to ensure there is no duplication of EE programs. Additionally, any energy savings resulting from the expenditure of these funds shall be credited to the EE goals that the EEAC establishes for Delmarva.</p>
<p>DNREC EE Low Income</p>	<p><u>\$2.0 million:</u> Low Income EE for Delmarva customers, with a focus on low income renters, including possible collaboration with DSHA and other housing agencies to ensure benefits accrue to low income customers.</p>	<p><u>\$2.0 million:</u> Low Income EE for Delmarva customers, with a focus on low income renters, including possible collaboration with DSHA and other housing agencies to ensure benefits accrue to low income customers.</p>	<p><u>\$2.0 million:</u> Low Income EE Delmarva customers, with a focus on low income renters, including possible collaboration with DSHA and other housing agencies to ensure benefits accrue to low income customers.</p>	<p><u>\$2.0 million:</u> Low Income EE Delmarva customers, with a focus on low income renters, including possible collaboration with DSHA and other housing agencies to ensure benefits accrue to low income customers.</p>	<p><u>\$2.0 million:</u> Low Income EE Delmarva customers.</p>
<p>DEDO Economic Development</p>	<p><u>\$6.0 million:</u> Support job creation, specifically as it relates to obstacles and opportunities in the energy area.</p>	<p><u>\$6.0 million:</u> Support job creation, specifically as it relates to obstacles and opportunities in the energy area. Funds will</p>	<p><u>\$6.0 million:</u> Support job creation, specifically as it relates to obstacles and opportunities in the energy area. Funds will</p>	<p><u>\$6.0 million:</u> Does not support the 3-year restriction for natural gas infrastructure. All funds should be allocated to economic development</p>	<p>Opposes DEDO funds and proposes instead that funds be allocated to low-income households and to the EEIF.</p>

<p>Funds will be restricted for 3 years for natural gas infrastructure investments in Delmarva service territories necessary to foster business locations or expansions. Any funds not allocated or encumbered after 3 years may thereafter be allocated for the remaining 2 years to economic development opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories.</p>	<p>be restricted for 3 years for natural gas infrastructure investments in Delmarva service territories necessary to foster business locations or expansions. Any funds not allocated or encumbered after 3 years may thereafter be allocated for the remaining 2 years to economic development opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories.</p>	<p>opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories</p>	<p><u>\$4.0 million:</u> Grants to provide for qualifying public interest projects per a competitive RFP process.</p>
<p>Funds will be restricted for 3 years for natural gas infrastructure investments in Delmarva service territories necessary to foster business locations or expansions. Any funds not allocated or encumbered after 3 years may thereafter be allocated for the remaining 2 years to economic development opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories.</p>	<p>be restricted for 3 years for natural gas infrastructure investments in Delmarva service territories necessary to foster business locations or expansions. Any funds not allocated or encumbered after 3 years may thereafter be allocated for the remaining 2 years to economic development opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories.</p>	<p>opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories</p>	<p><u>\$4.0 million:</u> Limit "public interest" energy projects per a competitive RFP process.</p>
<p>Funds will be restricted for 3 years for natural gas infrastructure investments in Delmarva service territories necessary to foster business locations or expansions. Any funds not allocated or encumbered after 3 years may thereafter be allocated for the remaining 2 years to economic development opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories.</p>	<p>be restricted for 3 years for natural gas infrastructure investments in Delmarva service territories necessary to foster business locations or expansions. Any funds not allocated or encumbered after 3 years may thereafter be allocated for the remaining 2 years to economic development opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories.</p>	<p>opportunities for new or existing renewable energy or energy efficiency businesses located or planning to locate in Delmarva territories</p>	<p><u>\$3.5 million:</u> Limit "public interest" projects to solar and wind power academic research or training programs at state academic institutions, with a cap on overhead at 38%, and a requirement that grant recipients provide matching</p>
<p>Public Interest</p>			



Renewable Investment	to the Arrearage Management Plan. \$3.0 million: Capital at market rates for gov't agencies to develop renewables.	to the Arrearage Management Plan. \$3.0 million: Capital at market rates for gov't agencies to develop renewables.	to the Arrearage Management Plan. \$3.0 million: At market rates for renewables – Recommend more information to further define criteria.	to the Arrearage Management Plan. \$3.0 million: Capital at market rates for gov't agencies to develop renewables.
5 Megawatts commercial renewable energy generation	5MW Merchant: Develop or assist in development of generation, the development of which is not to be paid for by Delmarva rate payers.	5MW Merchant: Develop or assist in development of generation, the development of which is not to be paid by Delmarva rate payers.	5 Megawatts commercial: renewable energy generation, the development of which is not to be paid by Delmarva rate payers. Recommend possible exclusion of Exelon related entities from participating in development and operation of generation.	5MW Merchant: Develop or assist in development of generation, the development of which is not to be paid by Delmarva rate payers.
Micro Grid	Defer consideration until further progress is made in Maryland or DC so that the parties and the Commission can have the benefit of the analysis and work product in those docketed proceedings should they proceed. Delmarva will share with Staff, DPA or other interested parties information on the progress of and learning related to projects in other	Defer consideration until further progress is made in Maryland or DC so that the parties and the Commission can have the benefit of the analysis and work product in those docketed proceedings should they proceed. Delmarva will share with Staff, DPA or other interested parties information on the progress of and learning related to projects in other jurisdictions.	Defer consideration until further progress is made in Maryland or DC so that the parties and the Commission can have the benefit of the analysis and work product in those docketed proceedings should they proceed. Delmarva will share with Staff, DPA or other interested parties information on the progress of and learning related to projects in other jurisdictions.	Defer consideration until further progress is made in Maryland or DC so that the parties and the Commission can have the benefit of the analysis and work product in those docketed proceedings should they proceed. Delmarva will share with Staff, DPA or other interested parties information on the progress of and learning related to projects in other

Misc Wording Changes	jurisdictions. Agreed to proposed order with additional MFN language changes.	Agreed to proposed order with additional MFN language changes.	Agreed to proposed order with additional MFN language changes.	Agreed to proposed order with additional MFN language changes.	jurisdictions. No objections to proposed order with additional MFN language changes.
----------------------	--	--	--	--	---

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION )  
OF DELMARVA POWER & LIGHT COMPANY, )  
EXELON CORORPATION, PEPCO HOLDINGS, ) PSC DOCKET NO. 14-193  
INC., PURPLE ACQUISITION CORPORATION, )  
EXELON ENERGY DELIVERY COMPANY, LLC )  
AND SPECIAL PURPOSE ENTITY, LLC )  
FOR APPROVALS UNDER THE PROVISIONS )  
OF 26 *Del. C.* §§ 215 AND 1016 )  
(FILED JUNE 18, 2014) )

---

**CERTIFICATE OF SERVICE**

I hereby certify that on September 12, 2016, I caused a copy of the **COMMENTS OF THE DELAWARE DIVISION OF THE PUBLIC ADVOCATE REGARDING THE PROPOSED DISTRIBUTION OF THE ADDITIONAL FUNDS DUE TO DELAWARE AS A RESULT OF THE TRIGGERING OF THE “MOST FAVORED NATIONS” PROVISION OF THE AMENDED SETTLEMENT AGREEMENT** to be filed with the Public Service Commission using Delafile and to be served electronically on the following persons:

Mark Lawrence	<a href="mailto:mark.lawrence@state.de.us">mark.lawrence@state.de.us</a>
Ara Azad	<a href="mailto:aazad@AZPConsulting.com">aazad@AZPConsulting.com</a>
David L. Bonar	<a href="mailto:david.bonar@state.de.us">david.bonar@state.de.us</a>
Paul Bonney, Esq.	<a href="mailto:paul.bonney@exeloncorp.com">paul.bonney@exeloncorp.com</a>
Peter Bradford	<a href="mailto:perubrad@aol.com">perubrad@aol.com</a>
Darryl Bradford, Esq.	<a href="mailto:Darryl.Bradford@exeloncorp.com">Darryl.Bradford@exeloncorp.com</a>
Bruce Bureat, Esq.	<a href="mailto:hbureat@marec.us">hbureat@marec.us</a>
Gary Cohen	<a href="mailto:garybcohen@aol.com">garybcohen@aol.com</a>
Anthony DePrima	<a href="mailto:tony.deprima@deseu.com">tony.deprima@deseu.com</a>
John Farber	<a href="mailto:john.farber@state.de.us">john.farber@state.de.us</a>
Jeremy Firestone	<a href="mailto:jf@udel.edu">jf@udel.edu</a>
Kevin Fitzgerald	<a href="mailto:kcfitzgerald@pepchholdings.com">kcfitzgerald@pepchholdings.com</a>
Pam Frank	<a href="mailto:pam.frank@gabelassociates.com">pam.frank@gabelassociates.com</a>
Steve Gabel	<a href="mailto:steve@gabelassociates.com">steve@gabelassociates.com</a>
Patricia Gannon	<a href="mailto:patricia.gannon@state.de.us">patricia.gannon@state.de.us</a>
James Geddes, Esq.	<a href="mailto:jamesgeddes@mac.com">jamesgeddes@mac.com</a>
Todd Goodman, Esq.	<a href="mailto:todd.goodman@pepcoholdings.com">todd.goodman@pepcoholdings.com</a>
Heather Hall	<a href="mailto:heather.hall@pepcoholdings.com">heather.hall@pepcoholdings.com</a>
Matthew Hartigan	<a href="mailto:matthew.hartigan@state.de.us">matthew.hartigan@state.de.us</a>
Robert Howatt	<a href="mailto:Robert.howatt@state.de.us">Robert.howatt@state.de.us</a>
Melinda Jack	<a href="mailto:mjack@overlandconsulting.com">mjack@overlandconsulting.com</a>
Pamela Long	<a href="mailto:pamela.long@pepcoholdings.com">pamela.long@pepcoholdings.com</a>
Howard Lubow	<a href="mailto:hlubow@overlandconsulting.com">hlubow@overlandconsulting.com</a>

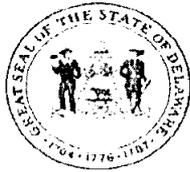
Cortney Madea	<a href="mailto:Cortney.madea@nrgenergy.com">Cortney.madea@nrgenergy.com</a>
Andrea Maucher	<a href="mailto:andrea.maucher@state.de.us">andrea.maucher@state.de.us</a>
Connie McDowell	<a href="mailto:connie.mcdowell@state.de.us">connie.mcdowell@state.de.us</a>
Thomas McGonigle, Esq.	<a href="mailto:thomas.mcgonigle@dbr.com">thomas.mcgonigle@dbr.com</a>
Thomas Noyes	<a href="mailto:thomas.noyes@state.de.us">thomas.noyes@state.de.us</a>
Lindsay Orr, Esq.	<a href="mailto:Lindsay.orr@dbr.com">Lindsay.orr@dbr.com</a>
David C. Parcell	<a href="mailto:parcelld@tai-econ.com">parcelld@tai-econ.com</a>
Ryan Pfaff	<a href="mailto:rpfafe@AZPCconsulting.com">rpfafe@AZPCconsulting.com</a>
Ruth Ann Price	<a href="mailto:ruth.price@state.de.us">ruth.price@state.de.us</a>
Richard Preiss	<a href="mailto:rich.preiss@gabelassociates.com">rich.preiss@gabelassociates.com</a>
Mike Rafferty	<a href="mailto:mike.rafferty@gabelassociates.com">mike.rafferty@gabelassociates.com</a>
Joseph Schoell, Esq.	<a href="mailto:joseph.schoell@dbr.com">joseph.schoell@dbr.com</a>
Devera Scott, Esq.	<a href="mailto:devera.scott@state.de.us">devera.scott@state.de.us</a>
Wendy Stark, Esq.	<a href="mailto:westark@pepcoholdings.com">westark@pepcoholdings.com</a>
Glenn Watkins	<a href="mailto:watkinsg@tai-econ.com">watkinsg@tai-econ.com</a>
Robert Welchin	<a href="mailto:rwelchin@overlandconsulting.com">rwelchin@overlandconsulting.com</a>
Logan Welde, Esq.	<a href="mailto:lwelde@cleanair.org">lwelde@cleanair.org</a>
Frank DiPalma	<a href="mailto:frank.dipalma@jacobs.com">frank.dipalma@jacobs.com</a>
J. Robert Malko	<a href="mailto:jrmalko@comcast.net">jrmalko@comcast.net</a>
Douglas Canter, Esq.	<a href="mailto:dcanter@postschell.com">dcanter@postschell.com</a>
Michael Gang, Esq.	<a href="mailto:mgang@postschell.com">mgang@postschell.com</a>
Francis Murphy, Esq.	<a href="mailto:fmurphy@msslaw.com">fmurphy@msslaw.com</a>
James Black	<a href="mailto:jim.black@consultant.com">jim.black@consultant.com</a>
Abraham Silverman, Esq.	<a href="mailto:abraham.silverman@nrgenergy.com">abraham.silverman@nrgenergy.com</a>
Grace Kurdian, Esq.	<a href="mailto:grace.kurdian@nrgenergy.com">grace.kurdian@nrgenergy.com</a>
John G. Harris, Esq.	<a href="mailto:jharris@bergerharris.com">jharris@bergerharris.com</a>
Suzanne Holly, Esq.	<a href="mailto:sholly@bergerharris.com">sholly@bergerharris.com</a>
Jeffrey Mayes, Esq.	<a href="mailto:jeffrey.mayes@monitoringanalytics.com">jeffrey.mayes@monitoringanalytics.com</a>
Maeve Tibbetts, Esq.	<a href="mailto:maeve.tibbetts@monitoringanalytics.com">maeve.tibbetts@monitoringanalytics.com</a>
David Felice, Esq.	<a href="mailto:dfelice@baileyglasser.com">dfelice@baileyglasser.com</a>

/s/ Regina A. Iorii

Regina A. Iorii (#2600)  
Deputy Attorney General  
Delaware Department of Justice  
820 N. French Street, 6<sup>th</sup> Floor  
Wilmington, DE 19801  
(302) 577-8159  
[regina.iorii@state.de.us](mailto:regina.iorii@state.de.us)

Counsel for the Delaware Division  
of the Public Advocate

Dated: September 12, 2016



**Matthew P. Denn**  
ATTORNEY GENERAL

**DEPARTMENT OF JUSTICE**  
KENT COUNTY  
102 WEST WATER STREET  
DOVER, DELAWARE 19904

CIVIL DIVISION (302) 739-7641  
FAX: (302) 739-7652  
CRIMINAL DIVISION (302) 739-4211

Reply to: Civil Division – Kent County  
Direct Dial: (302)257-3218  
Email: Devera.Scott@state.de.us

PLEASE REPLY TO: (302) 257-3218

September 12, 2016

Mr. Mark Lawrence  
Senior Hearing Examiner  
Public Service Commission  
861 Silver Lake Blvd.  
Cannon Building, Suite 100  
Dover, DE 19904

**RE: PSC Docket No. 14-193 (Proposed Exelon & PHI Merger Docket)**

Dear Hearing Examiner Lawrence:

According to the June 20, 2016 Second Amended Scheduling Order, I enclose DNREC's comments on the proposed allocation of additional benefits provided under the Most Favored Nations provision of the Amended Settlement Agreement, which was approved by the Public Service Commission on June 2, 2015.

Respectfully,

*/s/ Devera B. Scott*

Devera B. Scott  
Deputy Attorney General

Attachment  
DBS/hs  
cc: Service List (via email)

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION )  
OF DELMARVA POWER AND LIGHT )  
COMPANY, EXELON CORPORATION, )  
PEPCO HOLDINGS, INC., PURPLE )  
ACQUISITION CORPORATION, EXELON ) PSC DOCKET NO. 14-193  
ENERGY DELIVERY COMPANY, LLC AND )  
NEW SPECIAL PURPOSE ENTITY FOR )  
APPROVALS UNDER THE PROVISION OF )  
26 *DEL. C.* §§ 215 AND 1016 )  
(FILED JUNE 18, 2014) )

**COMMENTS OF THE DNREC DIVISION OF ENERGY & CLIMATE ON THE  
PROPOSED REVISIONS TO THE AMENDED SETTLEMENT AGREEMENT**

The DNREC Division of Energy & Climate supports the following proposed allocations of Most Favored Nations benefits as summarized by the Joint Applicants in its filing titled “Comparison of Most Favored Nations Benefit Recommendations” dated September 9, 2016.

**Proposed Allocation of Additional Financial Benefits**

***Energy Efficiency Programs as Directed by DNREC***

DNREC supports the proposal to provide an additional \$14 million of Most Favored Nations (MFN) funds to provide investments in energy efficiency. These investments are designed to provide cost-effective energy efficiency investments for large and small customers. The proposal includes \$8 million for a new Energy Efficiency Investment Fund (EEIF) program for large commercial and industrial customers, \$4 million for the existing EEIF program, and \$2 million for energy efficiency (EE) programs targeting low income customers who would not otherwise be able to afford the investments needed to make their homes more efficient.

***EEIF Plus (\$8 million)***

This new program is designed to fund high impact EE programs for large industrial and commercial Delmarva customers. This class of customers (load equal to or greater than 10,000 MWh/year) provides opportunity for large-scale energy efficiency savings. These investments will make Delaware’s largest utility customers more efficient and competitive, to the benefit of Delaware’s economy, and provide large-scale energy

savings, estimated to be 6,800 MWh per year, with a Total Resource Cost (TRC) ratio of 3.4 over three years.

*Energy Efficiency Investment Fund or EEIF (\$4 million)*

The Energy Efficiency Investment Fund (EEIF), a successful program for commercial and industrial customers, has not been funded by the General Assembly in the last two budgets. In Fiscal Years 2015 and 2016, EEIF disbursed \$3,459,405 in grants for projects creating 1,542 MWh in annual energy savings. The proposed allocation will help fund the program through FY 2017.

30 percent of this allocation would be reserved for businesses owned by minorities, women, veterans, service disabled veterans, and individuals with disabilities for the first 3 years, with any remainder not allocated or encumbered being eligible for all EEIF eligible applicants for the remaining 2 years. This funding shall be taken into consideration by the Energy Efficiency Advisory Council (EEAC) as it reviews Delmarva-proposed non-residential EE programs to ensure there is no duplication of EE programs. A copy of our most recent EEIF program guidelines is attached. (Ex. A).

*Low Income Energy Efficiency (\$2 million)*

This provision would add another \$2 million to the \$2 million already provided for in the Amended Settlement Agreement to help provide energy efficiency programs to low income ratepayers as recommended by the EEAC. These funds will focus on low income renters, including possible collaboration with the Delaware State Housing Authority (DSHA) and other housing agencies to ensure that the benefits accrue to low income customers.

Low income customers pay a disproportional percentage of their income for energy and would not otherwise be able to afford the investments needed to make their homes more efficient. The EEAC has convened a Low Income Working Group to engage stakeholders and design programs to meet the needs of these of customers. Attached is a copy of a presentation by Optimal Energy, dated July 13, 2016 to the Low Income Working Group that provides an overview of the demographics and available housing services available in Delaware. (Ex. B).

DNREC believes that the use of MFN funds for energy efficiency is in the public interest because it empowers customers to reduce their energy costs, reduces overall energy costs, and reduces emissions of CO<sub>2</sub>, NO<sub>x</sub> and SO<sub>2</sub> from marginal energy generation.

DNREC submitted testimony in 2014 that it is in the public interest to use merger proceeds to promote energy efficiency. Use of MFN proceeds to promote energy efficiency will empower large and small customers to protect themselves against changes in wholesale market by giving them greater control over their energy demand. EE investments benefit all energy users by reducing overall demand and thus reducing prices. EE investments that also reduce peak demand deliver additional price benefits for all customers.

The use MFN funds for energy efficiency will also reduce emissions of CO<sub>2</sub>, NO<sub>x</sub> and SO<sub>2</sub> from energy generation in the PJM region. Since EE displaces marginal generation, the environmental benefits are reflected by the emission figures for marginal generation. PJM calculated the 2015 marginal on-peak emission rate for CO<sub>2</sub> to be 1,647 pound per MWh, the marginal on-peak emission rate for SO<sub>2</sub> to be 3.34 pounds per MWh, and the marginal on-peak emission rate for NO<sub>x</sub> to be 1.80 pounds per MWh. Notably, emissions from peak energy generation are much higher than for PJM system average generation:

**Emissions Rates in PJM in 2015**

	CO <sub>2</sub> (lbs/MWh)	SO <sub>2</sub> (lbs/MWh)	NO <sub>x</sub> (lbs/MWh)
<b>Marginal On-Peak</b>	<b>1,647</b>	<b>3.34</b>	<b>1.80</b>
<b>Marginal Off-Peak</b>	<b>1,541</b>	<b>3.46</b>	<b>1.46</b>
<b>PJM System Average</b>	<b>1,014</b>	<b>1.61</b>	<b>0.78</b>

(Source: <http://www.pjm.com/~media/documents/reports/20160318-2015-emissions-report.ashx>)

The proposed use of MFN funds for energy efficiency for different customer classes is part of a larger strategy of coordinating EE program development and funding through the Energy Efficiency Advisory Council (EEAC) in a way that should maximize the use of funding from sources like RGGI and minimize the use of ratepayer funds. Under no circumstance will MFN funded programs duplicate any programs that may be recommended by the EEAC or approved for rate recovery by the PSC. Additionally, any energy savings resulting from the expenditure of these funds shall be credited to the EE goals that the EEAC establishes for Delmarva Power.

MFN funds used for energy efficiency will complement and extend the effectiveness of DNREC’s Energy Efficiency Investment Fund (EEIF), help offset any rate recovery for EE programs that may be recommended by the Energy Efficiency Advisory Council, and help ensure that all customer classes have access to cost-effective energy efficiency programs. These allocations will enhance the cost-effectiveness of the overall suite of programs being developed while minimizing the need to seek cost recovery for EEAC recommended programs. Our energy efficiency programs will utilize no more than 10 percent of the allocation for administrative purpose which allows the significant majority of these funds to be used for investment in energy efficiency.

***Other Proposed Financial Benefits***

The Joint Applicants’ filing included several other financial benefits.

*Delaware Economic Development Office (\$6 million)*

This allocation would support job creation, specifically as it relates to obstacles and opportunities in the energy area. Funds will be restricted for 3 years to natural gas infrastructure investments in Delmarva service territories necessary to foster business locations or expansions. Any funds not allocated or encumbered after 3 years may thereafter be allocated for the remaining 2 years to economic development opportunities for new or existing renewable energy or energy efficiency businesses located or planning

to locate in Delmarva territories. DNREC supports this funding, which will promote economic development opportunities in the energy sector.

*Public Interest Grants (\$4.0 million)*

This allocation is proposed to fund grants to provide for qualifying public interest projects designed to benefit the State of Delaware and its citizens. Funds would be awarded through a competitive RFP process. No more than \$2.0 million would be allocated to a single project. DNREC supports this allocation.

*Arrearage Management Plan (\$3.1 million)*

This allocation of \$3,132,618 would fund expanded residential customer arrearage forgiveness through a jointly developed approach. DNREC supports this allocation of as benefitting low income customers.

*Reversion of Funds*

After five years, any funds designated above (EE, Economic Development or Public Interest Projects), which have not been allocated to or encumbered by a specific project, would revert to the Arrearage Management Plan. DNREC supports this provision to ensure that funds not used in these categories revert to a use clearly in the public interest.

***Proposed Non-Financial Commitments***

The Joint Applicant's filing includes three proposed programs of particular interest to DNREC.

*Capital for Government Entities for Renewable Energy Projects*

The Joint Applicants have proposed to provide \$3.0 million in capital at market rates to governmental entities as a means to help government entities to easily finance renewable energy projects. DNREC supports this provision as helping public agencies find the needed capital to move forward with renewable energy investments.

*5 Megawatts Commercial Renewable Energy Generation*

The Joint Applicants have proposed to develop or assist in developing 5 MW of renewable energy. The costs of this provision would not be paid by Delmarva Power ratepayers. DNREC supports this provision as a way to promote the development of renewable energy capacity in Delaware.

*Microgrid Pilot Project*

The Settling Parties discussed the development of one or more microgrid pilot projects in Delaware, a provision included in the Maryland and Washington D.C. settlement agreements. It was proposed in discussions that consideration be deferred until further

progress in this area is made in Maryland or DC so that the parties and the Commission can have the benefit of the analysis and work product in those docketed proceedings should they proceed. Delmarva will share with Staff, DPA and other interested parties information on the progress of and learning related to projects in other jurisdictions.

DNREC supports this provision to explore opportunities to develop one or more microgrid pilot projects in Delaware, as informed by the experience with such projects in other jurisdictions. DNREC looks forward to working with the other settling parties to review the experience of microgrid pilot projects in other jurisdictions and exploring opportunities here in Delaware.

### **Conclusion**

For the reasons described above, DNREC believes the use of MFN funds to make additional investments in energy efficiency to be consistent with the public interest and recommends the Commission approve the allocation as described above. It would be fair because it would support a range of programs designed to make the benefits of EE available to all customer classes. It would be reasonable because the benefits of efficiency investments are expected to be greater than the costs. It is in the public interest because it would empower customers to take more control of their energy usage, and protect them from any possible market impacts from the consolidation of ownership in electricity generation.

DNREC also supports the other funding and non-financial provisions described above as consistent with the public interest. Taken together, these provisions will provide funding and direction that will help DNREC, Delmarva and the other settling parties work together to provide cost-effective energy efficiency programs and other economic benefits for Delmarva customers. In conclusion, DNREC supports these proposed revisions to the Amended Settlement Agreement and urges the Commission adopt them as consistent with the public interest.

Respectfully submitted,

/s/ Devera B. Scott

Devera B. Scott, ID No. 4756  
Deputy Attorney General  
Delaware Department of Justice  
102 W. Water St., 3rd Floor  
Dover, DE 19904  
(302) 257-3218  
[devera.scott@state.de.us](mailto:devera.scott@state.de.us)

Counsel for the DNREC Division of Energy &  
Climate

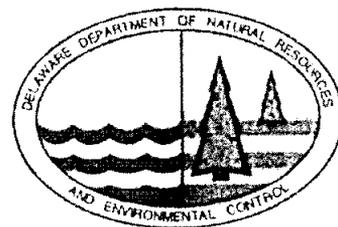
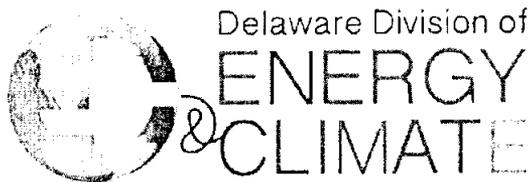
Dated: September 12, 2016

# Exhibit A

# Delaware Energy Efficiency Investment Fund

## Program Guidelines and Operational Procedures

July 2016



## Table of Contents

1.0	Purpose.....	3
2.0	Statutory Authority .....	3
3.0	Energy Efficiency Investment Fund Statute and Appropriation.....	3
4.0	Delaware Energy Efficiency Investment Fund .....	3
4.1	General Provisions .....	3
4.1.1	Program Limits .....	4
4.2	Eligibility.....	4
4.3	Permits.....	4
4.4	Installing Contractor Guidelines.....	4
4.4.1	Education and Licensure .....	4
4.4.3	Insurance Requirements.....	4
4.4.4	Statement of Reliability and Good Standing .....	5
4.4.5	Limitation of Funds.....	5
4.5	Warranty.....	5
4.6	Code Compliance .....	5
5.0	Delaware Energy Efficiency Investment Fund .....	6
5.1	Prescriptive Path Grants .....	6
5.1.1	Prescribed Grant Limits .....	6
5.1.2	Accepted Products and Equipment .....	6
5.1.3	Application Process .....	7
5.1.4	Application Requirements.....	7
5.2	Custom Path Grants.....	8
5.2.1	Grant Limits .....	8
5.2.2	Accepted Products and Equipment .....	9
5.2.3	Application Process .....	10
5.2.4	Application Requirements.....	10
5.2.5	Application Review.....	11
5.3	Energy Assessment Grants.....	12
5.3.1	Grant Limits .....	12
5.3.2	Accepted Audits.....	12
5.3.3	Application Process .....	13
6.0	Proprietary Application Information.....	14
7.0	Retirement and Disposal.....	14
8.0	Dispute Resolution.....	15
9.0	Tax Liability.....	15

## **1.0 Purpose**

The purpose of these guidelines is to prescribe procedures relating to the Energy Efficiency Investment Fund. It is the goal in establishing these guidelines to provide a streamlined procedure for administering and distributing program funds.

These guidelines provide rules of practice and procedure for grant applications and disbursement of grants for energy efficiency projects in Delaware.

## **2.0 Statutory Authority**

These guidelines are disseminated under authority of 29 Delaware Code, Section 8030.

## **3.0 Energy Efficiency Investment Fund Statute and Appropriation**

The Delaware 146th General Assembly enacted and Governor Markell signed into law Senate Bill 129 which amended Title 29, §8030 and Title 30 §5502 of the Delaware Code to establish the Energy Efficiency Investment Fund. The State shall transfer in each fiscal year the first \$5,000,000 in tax receipts received under Title 30 Chapter 55 that would otherwise be deposited to the General Fund to the Energy Efficiency Investment Fund maintained by the Department of Natural Resources and Environmental Control (DNREC) pursuant to Chapter 80 of Title 29.

The Energy Efficiency Investment Fund promotes the use of energy efficient technologies by Delaware non-residential (commercial and industrial) customers that pay the state public utility tax on their electric and/or natural gas utility bill.

According to Title 29 §8030, DNREC shall give preference to those applications proposing projects that are anticipated to produce the greatest reduction in energy consumption per Fund dollar invested, improve environmental performance, spur capital construction and facility modernization, encourage job retention and creation, and are likely to be substantially complete no later than one year following the issuance of financing from the Fund.

## **4.0 Delaware Energy Efficiency Investment Fund**

### **4.1 General Provisions**

All grants are on a first-come first-served basis. In no event shall the Fund provide grant funding for more than 30 percent of the total costs of any proposed project nor support projects already receiving support from the Green Energy Fund under this chapter or the Strategic Fund under subchapter I-B of Chapter 50, Title 29 the Delaware Code.

Equipment must be new, purchased, and installed before the grant payment can be issued. Both payment and commitment of grant are subject to availability of program funds.

#### **4.1.1 Program Limits**

The Fund will not pay more than 30 percent of the total project cost shown on the invoice and projects will not exceed \$500,000 without written approval of the Director.

Energy Assessment Grants will not fund any energy audit or feasibility study greater than 50 percent of the audit/study cost and not to exceed \$10,000 per facility.

No company or affiliated group of companies under common ownership/control can receive more than \$1,000,000 in awards within a three year period. By way of example, a parent and subsidiary (or sister entities with a common owner) would not be eligible to receive more than \$1,000,000 in total combined awards within three consecutive program years.

Within this \$1,000,000 limit there is also a cap on total lighting awards. Total lighting awards shall not exceed \$400,000 within a three year period. By way of example, a parent and subsidiary (or sister entities with a common owner) would not be eligible to receive more than \$400,000 in total combined lighting awards and would not be eligible to receive more than \$600,000 in total combined awards for all other measures within three consecutive program years.

#### **4.2 Eligibility**

The Delaware Energy Efficiency Investment Fund Program is available to non-residential, commercial, industrial, and non-profit entities that pay the Delaware Public Utility Tax on electric and/or natural gas utility bills.

All applications are subject to pre-installation and/or post-installation inspections at the discretion of DNREC.

#### **4.3 Permits**

All Energy Efficiency Investment Fund projects must obtain all relevant permits from DNREC and all other necessary state, local, regional, and federal permits to be considered for an application.

#### **4.4 Installing Contractor Guidelines**

##### **4.4.1 Education and Licensure**

Installing contractors shall maintain appropriate education and licenses, industry certificates and accreditations to ensure the program preserves the end-users' expectation of professional work. The installing contractor must be licensed in the State of Delaware.

Where industry certification programs have been promulgated, grant recipients are encouraged to use industry certified contractors.

##### **4.4.3 Insurance Requirements**

The installing contractor and anyone acting under its direction or control or on its behalf

shall at its own expense procure and maintain in full force at all times Commercial General Liability Insurance with a bodily injury and property damage combined single limit of liability of at least ONE MILLION DOLLARS (\$1,000,000) for any occurrence.

#### **4.4.4 Statement of Reliability and Good Standing**

Contractor must be reliable and in good standing with a “Satisfactory Record” (or no negative reports) with the Better Business Bureau. The contractor shall provide a copy of their Better Business Bureau report to DNREC upon request. Reports may be obtained at the following address.

BBB of Delaware  
60 Reads Way  
New Castle, DE 19720  
Phone: (302) 221-5255  
Fax: (302) 221-5265  
Web Site: [www.delaware.bbb.org](http://www.delaware.bbb.org)  
Email: [info@delaware.bbb.org](mailto:info@delaware.bbb.org)

#### **4.4.5 Limitation of Funds**

The Program funds are limited. The installing contractor shall follow program guidelines to ensure reservation of funds prior to installing a qualifying system. DNREC will provide notice if program funds are close to being exhausted for the fiscal year.

#### **4.5 Warranty**

All qualifying systems receiving an Energy Efficiency Investment Fund grant must have a full 3-year warranty against component failure, malfunction and premature output degradation. The warranty must cover all components for which the program incentive is granted and cover the full cost of repair and replacement of all components of the system. For professionally installed systems, the warranty must cover the labor to remove and replace defective components and systems.

DNREC neither expressly nor implicitly warrants the performance of installed equipment. Participants should contact their contractor for details regarding the equipment warranties.

#### **4.6 Code Compliance**

All qualifying systems must be installed in accordance with the standards and specifications of the manufacturers of the components in the system, in compliance with all federal, state, and local safety, building and environmental codes and ordinances and these guidelines. Where discrepancies, if any, exist with these guidelines and local codes, local codes shall govern.

With regard to Delaware’s building energy code, which currently references ASHRAE 90.1-2010 and the 2012 IECC, qualifying systems must exceed minimum code requirements in order to be considered for energy efficiency grant funds.

All equipment must be tested to Underwriters Laboratory (“UL”) standards and be UL listed and installed per manufacturer’s instructions.

## **5.0 Delaware Energy Efficiency Investment Fund**

There are several funding avenues available to Delaware businesses tailored to differing needs and resources. There is a prescriptive energy efficiency grant option by which a business may engage a contractor or otherwise install specified efficiency equipment and be assured a prescribed grant according to a set incentive amount. There is also the customized option geared for businesses with more unique or complex energy efficiency projects. The two-prong approach of a prescriptive and custom path provides a more direct, relatively easier prescriptive approach that allows smaller businesses a viable path to participate, while also providing a more appropriate vehicle for larger and more complicated projects to maximize energy efficiency opportunities. Additionally, there is an energy audit option for businesses needing more assistance in planning for efficiency. The three options are as described in detail below.

### **5.1 Prescriptive Path Grants**

Nonresidential customers of any size are eligible for prescribed measures. Prescribed measures contain technologies where energy savings can be predicted with reasonable accuracy across all applications. The technologies currently eligible for the program include: lighting equipment, high efficiency commercial gas heating equipment, hot water heaters, and vending misers.

The program may modify or expand the list of eligible measures under the prescriptive grant path at any time. DNREC will notify applicants of the change on the website and update any published materials.

#### **5.1.1 Prescribed Grant Limits**

Subject to availability of funds, the Efficiency Investment Fund offers grants for the following prescribed products installed by qualified contractors for a qualifying customer:

Lighting  
Heating Equipment  
Domestic Hot Water  
Vendor Miser

All projects require pre-approval and are subject to a post-installation inspection.

#### **5.1.2 Accepted Products and Equipment**

The following are not eligible for a Prescriptive grant:

- Routine maintenance procedures
- Building energy code requirements (see ASHRAE 90.1-2010 and 2012 IECC)
- Other restrictions as deemed appropriate by DNREC

The following list details the products and equipment eligible for a grant under the

Energy Efficiency Investment Fund.

**Lighting**

All products must meet the technical requirements listed on the Prescriptive Application Form for Lighting to be eligible for rebate.

All products must be UL listed and be installed according to local building codes.

All products must be installed in such a way that the lighting power allowance in either the Building Area or the Space-by-Space method of ASHRAE 90.1-2010 and the 2012 IECC is not exceeded.

**Heating Equipment**

All products must meet the technical requirements listed on the Prescriptive Application Form for Natural Gas Heating and Water Heating Equipment to be eligible for rebate.

**Water Heating Equipment**

All products must meet the technical requirements listed on the Prescriptive Application Form for Natural Gas Heating and Water Heating Equipment to be eligible for rebate.

**Vending Machine Miser**

All products must meet the technical requirements listed on the Prescriptive Application Form for Vending Miser to be eligible for rebate.

**5.1.3 Application Process**

Confirm that the proposed energy efficiency measure (EEM) qualifies for an incentive based on the program requirements. Submit a completed and signed EEIF Prescriptive Grant Application form with copies of the manufacturer's technical specification sheets (cut sheets) for each type of EEM to be purchased.

After receipt of the completed application and any required supplementary documentation, DNREC will evaluate the project for consideration of grant pre-approval. The contractor and customer are fully responsible for ensuring that all forms and documentation have been supplied and the system meets all program requirements. DNREC will review the grant application within 10 business days of receipt of the application package and all supporting documentation. If the requirements have been successfully met, a pre-approval letter will be issued by DNREC to the applicant.

After completing the project, the applicant must submit the final documents pertaining to the project. DNREC will evaluate the project and the required accompanying documents for consideration of grant approval. DNREC may conduct an inspection of the systems prior to final grant approval.

DNREC will process the grant within 60 days of receipt of the final application

package and all supporting documentation, or 30 days after a scheduled inspection if required. DNREC will ordinarily process the payment to the purchaser, however, if the purchaser so requests in writing and documentation reflects the grant value was reduced directly from the purchase price, DNREC will process the payment to the retailer or installing contractor.

#### **5.1.4 Application Requirements**

Applications must be completely and accurately submitted before incentives can be paid. Required documentation includes:

- Specification (cut) sheets for all equipment, AND
- Technical data and testing laboratory information, AND
- Quotes and estimates for all equipment and the scope of work, AND
- Twelve consecutive electric and/or natural gas utility bills, AND
- Installer's Commercial General Liability Insurance certificate, AND
- Delaware State Substitute W-9 form submitted electronically to <https://w9.accounting.delaware.gov/>, AND
- If a lighting project, a lighting schedule and a ceiling plan, AND
- After project completion, itemized invoices for all installed equipment.

Additional information may be requested upon review of initial proposal as deemed appropriate by DNREC.

## **5.2 Custom Path Grants**

The custom path grant option is designed to encourage non-standard energy-efficiency measures, including measures not listed in the prescriptive path above and prescribed measures bundled into a comprehensive full-facility upgrade that maximizes energy savings and cost effectiveness. The custom grant path allows for more comprehensive, unique and creative solutions to projects that are more complex than the prescribed program offers. The custom path is also known as the performance path.

The customized incentives are based on calculated energy and demand savings of retrofit projects, as well as cost effectiveness, and are limited by total project cost. This option allows for the greatest flexibility and creativity in design by providing an incentive on a facility wide scale or on targeted assessments that save energy. The projects qualifying under this program are generally more complex and aggressive measures that permanently raise the efficiency levels beyond that of standard equipment.

### **5.2.1 Grant Limits**

Subject to the availability of funds and the per business limit, a custom grant path must propose a project offering an annual energy savings. The grant will be paid at a rate of \$0.12 per kilowatt-hour saved and \$5/mmbtu, up to 30 percent of installed cost, whichever is less. Program funds are limited and must be reserved prior to completing the project to ensure availability.

Typically, the savings generated by these custom measures are site and end use specific and require a detailed analysis to qualify for an incentive. Recognizing

this, DNREC reserves the right to require a detailed system design and a predicted performance calculation verified by a Professional Engineer (P.E.) on 100 percent of proposed projects.

All custom applications require documentation of the energy savings information. Acceptable forms of documentation include: energy modeling by a consultant or other third party, specification sheets for ALL existing and proposed systems, and/or signature by a licensed professional engineer (P.E.). Failure to submit acceptable documentation will result in a determination of ineligibility. For example, ASHRAE 90.1-2010 Appendix G simulation may be used to demonstrate beyond-code energy performance, and ASHRAE's energy cost budget method may be used to demonstrate energy cost avoidances.

### **5.2.2 Accepted Products and Equipment**

All projects that are considered energy efficiency measures may be eligible to receive a custom path grant, as long as they exceed minimum building energy code requirements. Examples of possible improvements over baseline include:

- Building envelope
- Steam / Boiler improvements
- Process Heat recovery
- Combined Heat and Power (CHP)
- Compressed Air improvements
- Chillers
- Variable Speed Drives
- Heating Ventilation and Air Conditioning improvements
- Plug Load Controls
- Service Water Heating improvements
- Lighting Power Density improvements beyond code (using a mix of daylighting, delamping, highly reflective interior surfaces, and fixture efficiency)
- Whole Building Retrofits (using three or more energy efficiency measures to deliver a minimum of 30% energy use reduction from pre-installation baseline)

The following are not eligible for the custom path grant:

- Routine maintenance procedures
- Renewable energy generation (e.g. wind, geothermal, solar, etc.)
- Projects with less than a 6 month simple payback
- Industrial technologies not approved by nationally recognized laboratories
- Power conditioning/ power factor equipment
- Equipment studies
- Projects with less than 1.0 benefit cost ratio (using the Total Resource Cost, TRC, method)
- Projects that bring the building up to minimum code requirements
- Other restrictions as deemed appropriate by DNREC

### 5.2.3 Application Process

Applications for the custom path must receive approval from DNREC prior to beginning the project. A statement of reservation of funds and authorization to proceed will be issued by DNREC upon acceptance as a custom project. DNREC reserves the right to pre-inspect all facilities requesting a custom path grant.

After receipt of the completed application and any required supplementary documentation, DNREC will evaluate the project for consideration of grant pre-approval. The contractor and customer are fully responsible for ensuring that all forms and documentation have been supplied and the system meets all program requirements. DNREC will review the grant application within 10 business days of receipt of the application package and all supporting documentation. If the requirements have been successfully met, a pre-approval letter will be issued by DNREC to the applicant.

Funds will be reserved for 12 months on a first-come, first-served basis. The final grant claim form and supporting documents shall be submitted within the 12 months of the reservation date or funds will be forfeited. If the claim form is not received at the end of the 12-month reservation period, a milestone accomplishments report will be submitted to DNREC or the reservation will be forfeited. DNREC will determine if a reservation extension should be granted.

After completing the project, the applicant must submit the final documents pertaining to the project. DNREC will evaluate the project and the required accompanying documents for consideration of grant approval. DNREC may conduct an inspection of the systems prior to final grant approval.

DNREC will process the grant within 60 days of receipt of the final application package and all supporting documentation, or 30 days after a scheduled inspection if required. DNREC will ordinarily process the payment to the purchaser, however, if the purchaser so requests in writing and documentation reflects the grant value was reduced directly from the purchase price, DNREC will process the payment to the retailer or installing contractor

### 5.2.4 Application Requirements

Applications must be completely and accurately submitted before incentives can be paid. Required documentation includes:

- Specification (cut) sheets for all equipment, AND
- Technical data and testing laboratory information, AND
- Quotes and estimates for all equipment and the scope of work, AND
- Twelve consecutive electric and/or natural gas utility bills, AND
- Installer's Commercial General Liability Insurance certificate, AND
- Documentation of the energy savings calculations and cost estimates, AND
- Project schedule including detailed milestones, AND
- Delaware State Substitute W-9 form submitted electronically to <https://w9.accounting.delaware.gov/>, AND

- If a lighting project, a lighting schedule and a ceiling plan, AND
- After project completion, itemized invoices for all installed equipment.

Additional information may be requested upon review of initial proposal as deemed appropriate by DNREC.

### 5.2.5 Application Review

#### **Application Received:**

Contractor or applicant submits the project application to DNREC. The application and date received is logged into the tracking spreadsheet and a review is scheduled.

#### **Application review:**

DNREC reviews the application and energy calculations for completeness. If there is any missing information, or if anything is needed in order to accurately estimate the energy savings from the project, DNREC will follow up with the applicant. DNREC reserves the right to deny applications that are unreasonably incomplete or that fail to become complete after due diligence to collect the required information. The program manager may also decide the application needs additional study or metering data to be confident in the estimates, and may notify the applicant to request additional information or a site visit. Depending on the additional information required, there may be additional program funds available for these activities under the Energy Assessment grants opportunity.

#### **Pre-Installation Site Visit:**

DNREC will conduct a pre-installation site visit on approximately 10 percent of projects, in order to ensure that the installation has not yet begun and that baseline conditions were accurately described in the application. During the site visit, DNREC may also collect information to enable it to accurately calculate savings. If the application provided adequate information, the site visit may be deferred until after the pre-screening. This will ensure that DNREC does not spend time visiting a project that does not pass the Total Resource Cost (TRC) test.

#### **Project Pre-screening and Incentive calculation:**

If a project site visit is not required, the project will be pre-screened based on the actual cost of the project and the savings provided by the applicant and verified by the program manager. If the project does not pass the initial screen, the program manager will notify the applicant. The applicant may choose to modify the project or lower the cost in an attempt to move the project along. Once the modified project information is received by DNREC, pre-screening will be performed again using this updated information.

The incentive award calculation will be based on the pre-screen results.

**Pre-Qualification Grant Letter:**

If the project passes the pre-screen, the applicant will be sent a pre-qualification letter that reserves the grant amount for not more than 12 months (and not more than 24 months for CHP projects). The letter will also include a disclaimer that the grant award cannot be guaranteed if there are changes in scope or cost.

The applicant is responsible for submitting the final documents once the project is installed and completed.

**Post-Installation Site Visit**

A post-installation site visit may be necessary due to minor changes in scope as a project proceeds from design to completion and to ensure that the final savings estimates reflect the project as installed, rather than the project as designed. These site visits will be performed on a sample of project sites.

**Final Screening**

Once the final costs and project specifications are submitted to DNREC, a final screening is performed using the measure screening tool. This will ensure that the program records reflect the actual site conditions. If the scope of the project changed enough to significantly lower savings and/or make the project fail the TRC, DNREC may elect to adjust the incentive amounts.

**Grant Payment**

Once the project passes the final screening, the grant is ready to be disbursed to the applicant. DNREC will send a letter notifying the applicant of payment approval and will record the payment information in the Payment Summary sheet.

**5.3 Energy Assessment Grants**

For businesses in need of technical assistance to evaluate their facility for cost effective energy efficient upgrades, grants are available to help with the cost of the audit, feasibility study and project design. Energy Assessment grant funding is limited. Funding must be reserved prior to beginning the audit or study to ensure funding availability.

**5.3.1 Grant Limits**

The Energy Assessment grants will pay up to 50 percent of the cost of the proposed audit per facility up to \$10,000 or up to \$20,000 per organization with two or more facilities.

**5.3.2 Accepted Audits****5.3.2.1 Single Purpose or Targeted Energy Audit**

Single purpose or a targeted energy audit will provide a detailed analysis on one or more types of projects. Included but not limited to a focused analysis on lighting, energy management systems, variable speed drives, boiler/chiller replacements, thermal energy storage systems, energy generation, or a combination of these

projects.

#### **5.3.2.2 Comprehensive Audit**

A comprehensive energy audit will provide a detailed analysis of a facility and potential project. The audit will include the interactive effects of the projects and account for the energy use of all major equipment while providing detailed energy cost saving calculations and installed project cost. Comprehensive audits typically use computer models such as DOE-2, Trane/Trace or equivalent packages to simulate building and equipment operations based on weather, equipment set points and hours of operation.

Recognizing that a comprehensive audit evaluates all major energy using systems, the audit will include an implementation plan for the facility upgrades. Systems eligible for a comprehensive audit include but are not limited:

- Building envelope
- Lighting
- Domestic hot water
- HVAC and controls
- Combined heat and power

The audit must comply with ASHRAE Level II audit requirements.

#### **5.3.3 Application Process**

Applications for the Energy Assessment grant option shall submit Part 1 of the application and the winning audit proposal to DNREC and receive approval prior to beginning the project. A statement of reservation of funds and authorization to proceed will be issued by DNREC upon acceptance of Part 1 application.

Upon receipt of the completed study and all final documentation pertaining to the project, DNREC will evaluate the project for grant payment. The contractor and customer are fully responsible for ensuring that all forms and documentation have been supplied and the proposal meets all program requirements. Applications submitting only a scope of work for the proposed study will be considered incomplete and not eligible for grant award.

In addition to the requirements in Section 5.3.2, applications for Energy Assessment grants must include the following:

- 5.3.3.1 Completed Application Form Part 1 and appropriate audit proposal.
- 5.3.3.2 Copy of the customer's last 12 months of electric and natural gas bills.
- 5.3.3.3 The completed energy study, which shall include all requirements needed for the prescriptive and custom grants including the following:

1. Executive Summary
2. Technical Information and Analysis
  - a) Description of the project and proposed energy saving measures

- b) Base case information
  - c) Enhanced case information
  - d) Estimated energy and demand savings associated with the proposed project
  - e) Any applicable figures and tables
  - f) Simple payback period and/or life cycle costs
  - g) Estimated costs including design, materials, and installation
3. Conclusions and Recommendations
- a) Findings and key points summarized
  - b) Recommendations should be evaluated separately and combined in the enhanced case
4. Appendix
- a) Engineering assumptions and supporting information
  - b) Building data and plans
  - c) Cost assumptions
  - d) Publication information for each source cited in the “Technical Information” section of your report
  - e) Listing of the publication title, author, place of publication, page numbers, and date of publication

DNREC will process the grant within 60 days of receipt of the Application Package and all supporting documentation.

#### **6.0 Proprietary Application Information**

DNREC may make all applications submitted available to non-State personnel for the sole purpose of assisting in its evaluation of the applications. These individuals will be required to protect the confidentiality of any specifically identified proprietary information obtained as a result of their participation in the evaluation.

Proposals submitted may contain trade secrets and/or privileged or confidential commercial or financial information which the applicant does not want to be used or disclosed for any purpose other than evaluation of the application. The use and disclosure of such data may be restricted, provided the applicant follows DNREC’s “Request for Confidentiality” procedure contained in DNREC’s “Freedom of Information Act” or “FOIA” regulation. It is important to understand that this FOIA regulation’s confidentiality procedure is a necessary part of this regulation in that any information submitted to DNREC is subject to public review unless deemed to be confidential by the Secretary in accordance with the criteria and procedures established in the FOIA regulation.

The burden lies with the applicant asserting the claim of confidentiality to meet the criteria established in the FOIA regulation.

#### **7.0 Retirement and Disposal**

The intent of the Energy Efficiency Investment Fund is to increase energy efficiency through retirement and replacement of inefficient equipment. The customer and contractor shall appropriately retire and dispose of any product replaced as a result of an

Energy Efficiency Investment Fund grant.

The customer is responsible for the proper disposal or recycling of any waste generated as a result of the project, including the disposal of fluorescent lamps (which contain mercury) and ballasts suspected of containing PCBs. Any fluorescent ballast dated pre-1979 should be considered to contain PCBs unless otherwise labeled.

**8.0 Dispute Resolution**

Should an applicant be denied a grant and disagrees with outcome, the applicant must contact DNREC in writing. DNREC will respond within 10 days after the determination. Should DNREC deem the application eligible, the application will be processed within the next 10 business days.

**9.0 Tax Liability**

The applicant is responsible for any tax liability imposed as a result of the payment of grants. Applicants are advised to contact a tax professional for more information.

## Exhibit B



*Integrated Energy Resources*

# Introduction to Delaware Low-Income Demographics and Available Housing Services

Low-Income Working Group

July 13, 2016

---

## Mission and Goals of this Working Group

- *Mission:* To support all Delaware low-income energy efficiency programs and initiatives by providing feedback and guidance on the development and implementation of cost-effective program offerings for all low-income Delaware households.
  - *Specific tasks:*
    - *Energy Efficiency Plans for the EEAC*
      - *General Feedback and guidance*
    - *Settlement Program Development*
      - Source and analyze the housing demographics to have clearer understanding of population
      - Cataloguing of current, or planned, initiatives that support enhancement to affordable housing and low income energy efficiency
      - Research and evaluate program options and considerations
      - Prepare and present recommendations to DE EEAC and other low income program stakeholders
    - *Weatherization Assistance Program*
      - *General feedback and guidance*

# Delaware Housing at a Glance

## Total Housing Units in Delaware

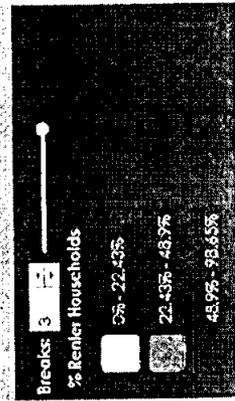
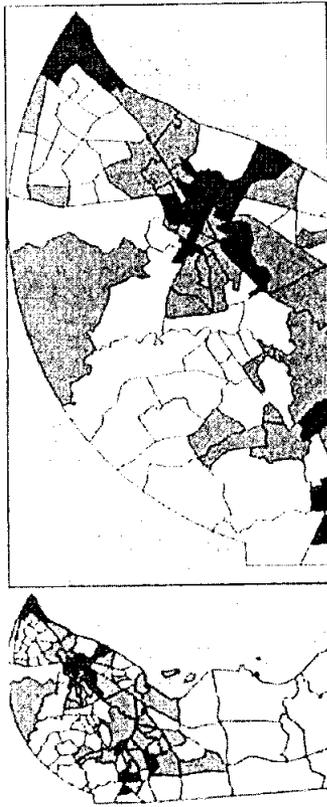
Delaware	RENTAL	OWNED	VACANT	TOTAL
Total Housing Units	87,612	243,868	70,258	401,738

## Definition of Low Income Housing Unit

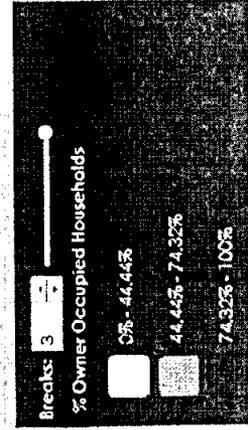
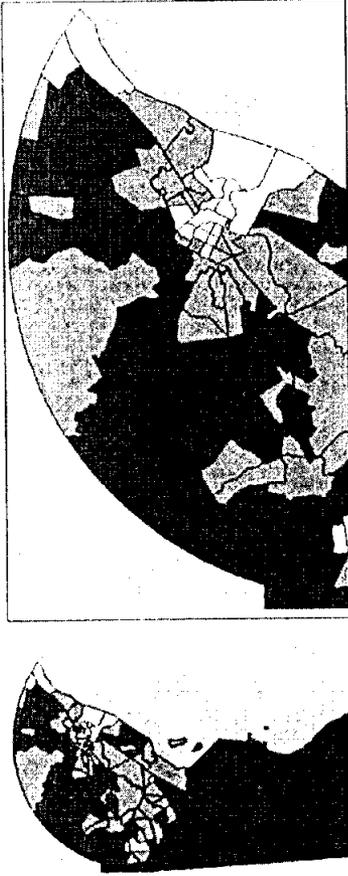
County	Median Income
New Castle	\$81,100
Kent	\$66,100
Sussex	\$66,300
County	Low (80% AMI)
New Castle	\$64,900
Kent	\$52,900
Sussex	\$50,650
County	Very Low (50% AMI)
New Castle	\$40,550
Kent	\$33,050
Sussex	\$31,650
County	Extremely Low (30% AMI)
New Castle	\$24,350
Kent	\$24,250
Sussex	\$24,250

# Renter vs Owner

Renters (%)

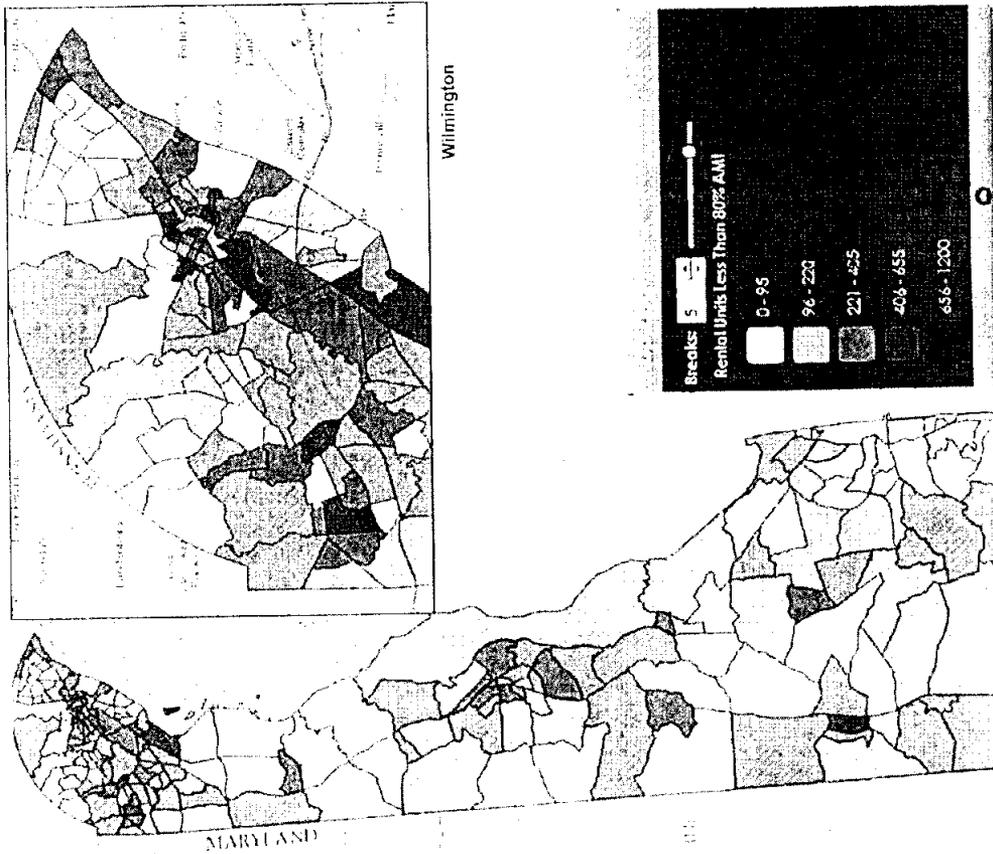


Owner Occupied (%)

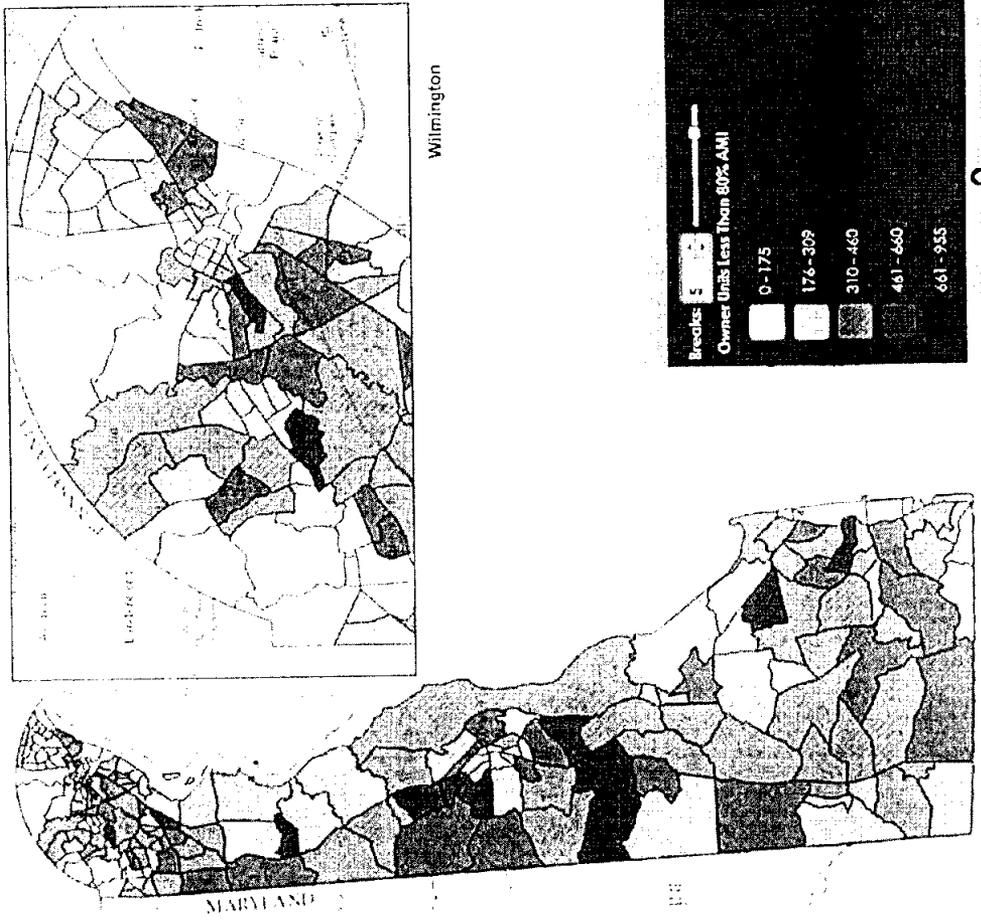


# Low Income Housing in Delaware

Rental Units Less Than 80% AMI



Owner Occupied Units Less Than 80% AMI



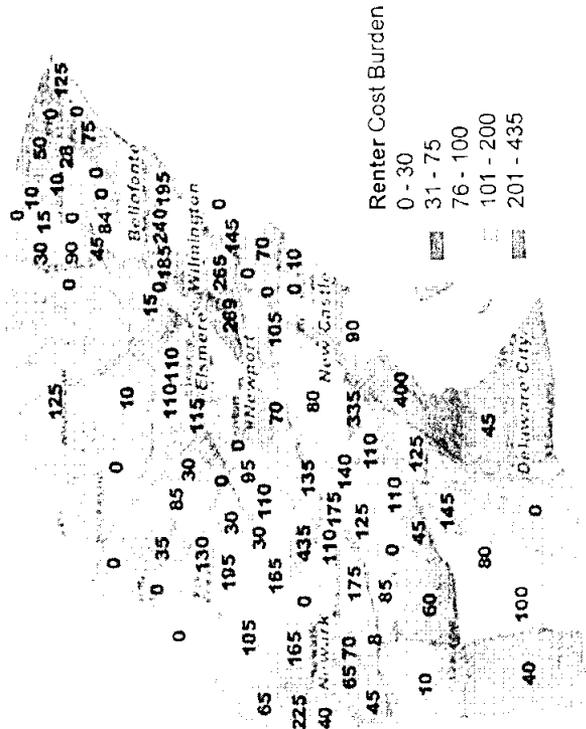
# Need: North New Castle

## Cost Burdened Renter Households by Census Tract (Under 80% Area Median Income)

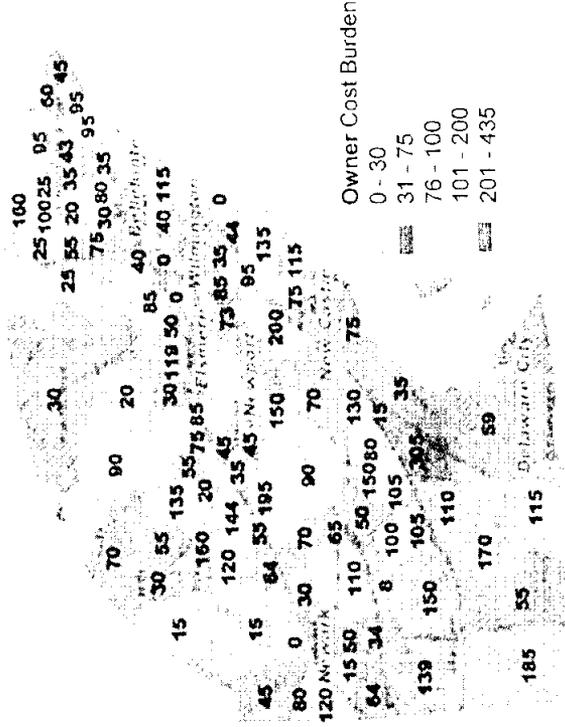
Housing Challenges			
North New Castle			
	TOTAL	% of All units	Compared to State
Cost Burdened Renters	25,750	46.4%	0.0%
Severely Cost Burdened Renters	13,216	23.2%	0.7%
Cost Burdened Owners	32,870	26.1%	-1.6%
Severely Cost Burdened Owners	13,581	9.6%	-0.7%

HUD provides estimates of households who pay a burdensome amount for housing costs and are likely to be in need of more affordable housing options. According to HUD definitions, a "cost burdened" household pays more than 30% of their income on housing; a "severely cost burdened" household pays more than 50% of their income on housing. The information is categorized by income, and by owners and renters. HUD provides the following income categories in relation to Area Median Income (AMI): Extremely Low Income (<30% AMI), Very Low Income (30% - 50% AMI), Low Income (50% - 80% AMI), Moderate Income (80% - 100% AMI), and Middle Income and higher (>100% AMI).

In numbers:



In numbers:



# Need: South New Castle

## Cost Burdened Renter Households by Census Tract (Under 80% Area Median Income)

Housing Challenges		South New Castle	
	TOTAL	% of All units	Compared to State
Cost Burdened Renters	647	43.9%	-1.6%
Severely Cost Burdened Renters	234	15.9%	-6.6%
Cost Burdened Owners	4,033	29.1%	1.8%
Severely Cost Burdened Owners	1,240	9.0%	-1.4%

HUD provides estimates of households who pay a burdensome amount for housing costs and are likely in need of more affordable housing options. According to HUD definitions, a "cost-burdened" household pays more than 30% of their income on housing; a "severely cost-burdened" household pays more than 50% of their income on housing. The information is categorized by income, and by owners and renters. HUD provides the following income categories in relation to Area Median Income (AMI): Extremely Low Income (<30% AMI), Very Low Income (30% - 50% AMI), Low Income (50% - 80% AMI), Moderate Income (80% - 100% AMI), and Middle Income and higher (> 100% AMI).

In numbers:

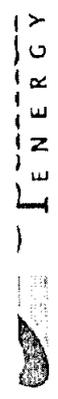
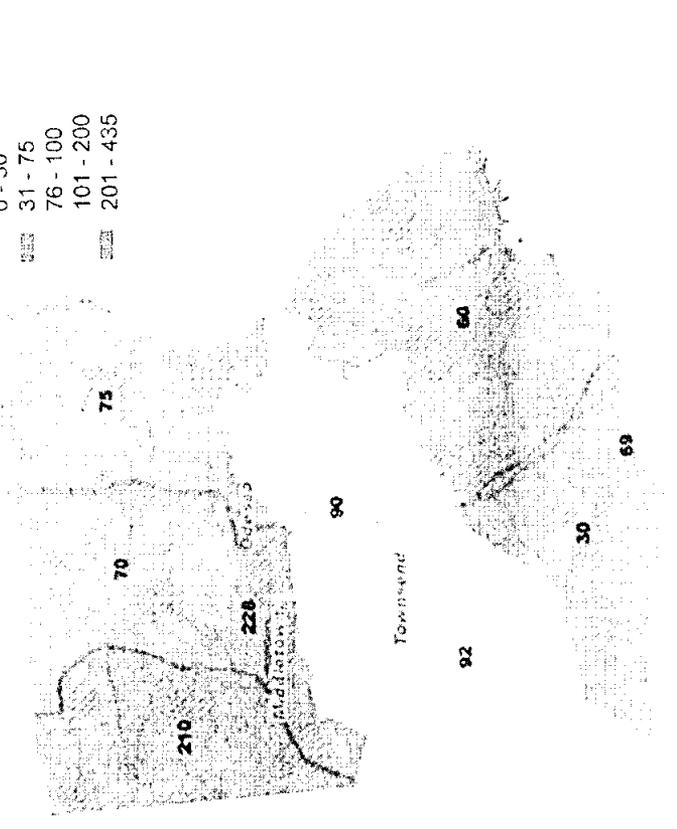
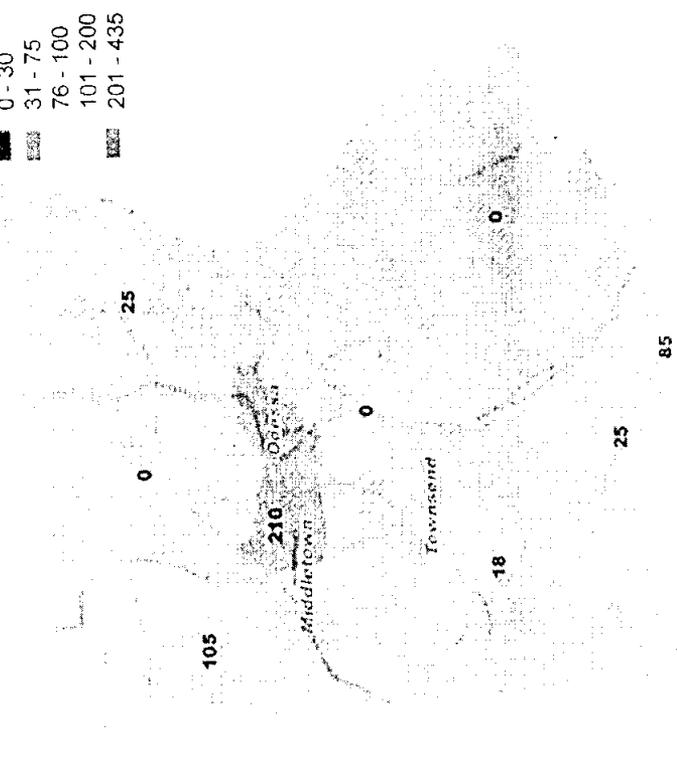
Renter Cost Burden

- 0 - 30
- 31 - 75
- 76 - 100
- 101 - 200
- 201 - 435

In numbers:

Owner Cost Burden

- 0 - 30
- 31 - 75
- 76 - 100
- 101 - 200
- 201 - 435



# Need: North Kent

## Cost Burdened Renter Households by Census Tract (Under 80% Area Median Income)

Source: Delaware Housing Needs Assessment, 2014

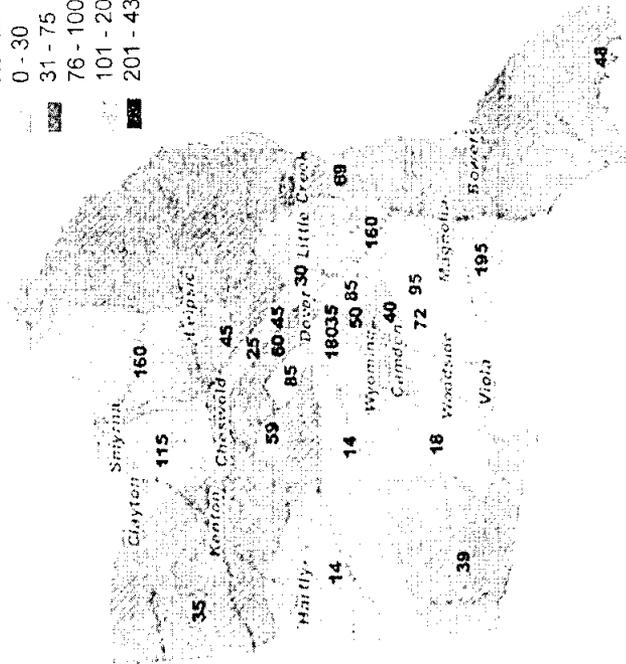
Housing Challenges			
North Kent			
	TOTAL	% of All units	Compared to State
Cost Burdened Renters	5,463	42.7%	-2.8%
Severely Cost Burdened Renters	2,907	22.7%	0.3%
Cost Burdened Owners	10,040	29.3%	2.0%
Severely Cost Burdened Owners	3,634	10.6%	0.3%

HUD provides estimates of households who pay a burdensome amount for housing costs and are likely are in need of more affordable housing options. According to HUD definitions, a "cost burdened" household pays more than 30% of their income on housing, a "severely cost burdened" household pays more than 50% of their income on housing. The information is categorized by income, and by owners and renters. HUD provides the following income categories in relation to Area Median Income (AMI): Extremely Low Income (<30% AMI), Very Low Income (30% - 50% AMI), Low Income (50% - 80% AMI), Moderate Income (80% - 100% AMI), and Middle Income and higher (>100% AMI).

In numbers:

Renter Cost Burden

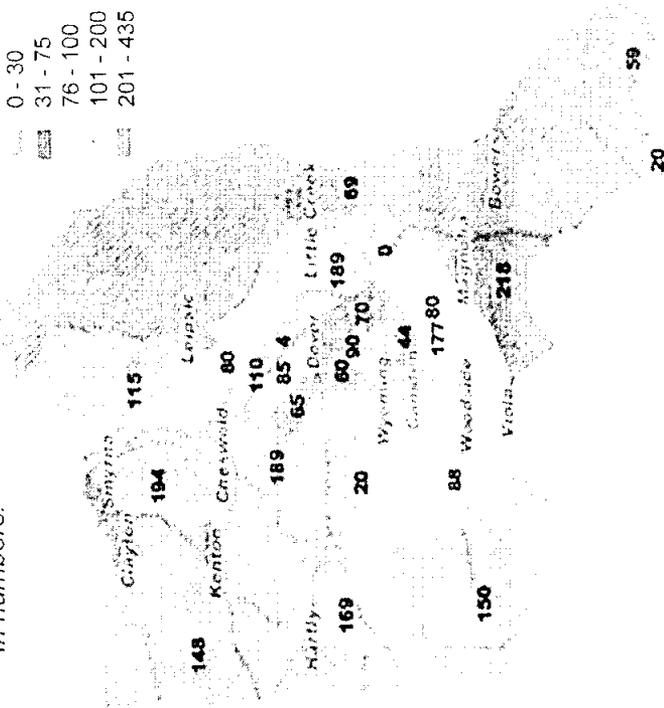
- 0 - 30
- 31 - 75
- 76 - 100
- 101 - 200
- 201 - 435



In numbers:

OWNER Cost Burden

- 0 - 30
- 31 - 75
- 76 - 100
- 101 - 200
- 201 - 435

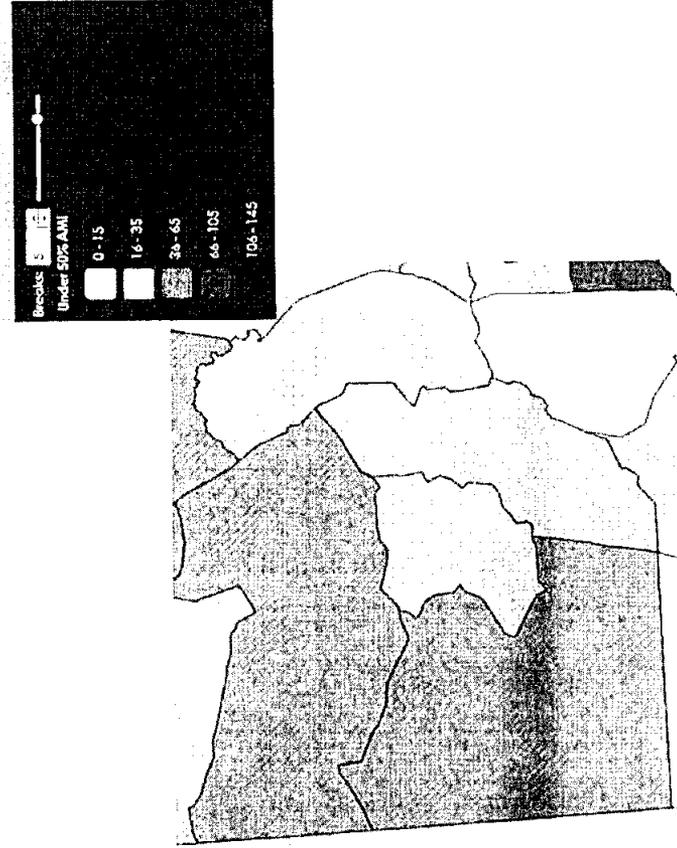
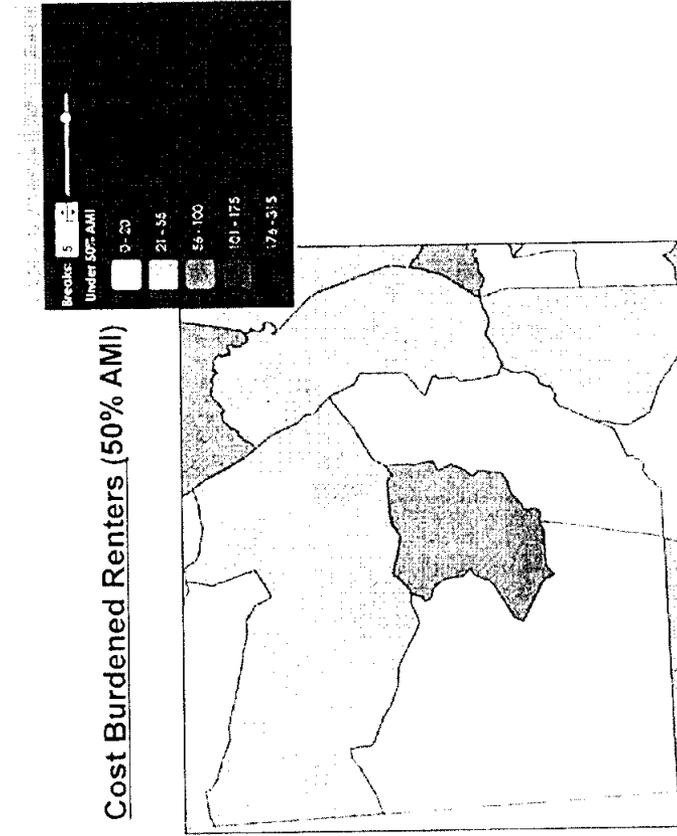


# Need: South Kent

## Cost Burdened Renter Households by Census Tract (Under 50% Area Median Income)

Housing Challenges			
South Kent			
	TOTAL	% of All units	Compared to State
Cost Burdened Renters	1,194	42.8%	-2.7%
Severely Cost Burdened Renters	593	21.3%	-1.2%
Cost Burdened Owners	2,093	27.7%	0.4%
Severely Cost Burdened Owners	906	12.0%	1.7%

HUD provides estimates of households who pay a burdensome amount for housing costs and are likely to be in need of more affordable housing options. According to HUD definitions, a "cost burdened" household pays more than 30% of their income on housing; a "severely cost burdened" household pays more than 50% of their income on housing. The information is categorized by income, and by owners and renters. HUD provides the following income categories in relation to Area Median Income (AMI): Extremely Low Income (<30% AMI), Very Low Income (30% - 50% AMI), Low Income (50% - 80% AMI), Moderate Income (80% - 100% AMI), and Middle Income and higher (>100% AMI).



Cost Burdened Renters (50% AMI)



# Need: West Sussex

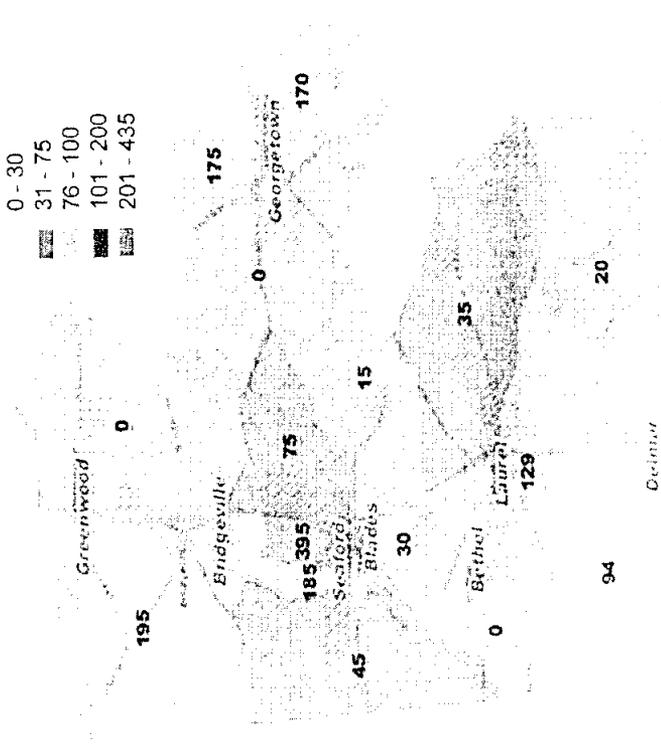
## Cost Burdened Renter Households by Census Tract (Under 80% Area Median Income)

Source: Delaware Housing Needs Assessment, 2014

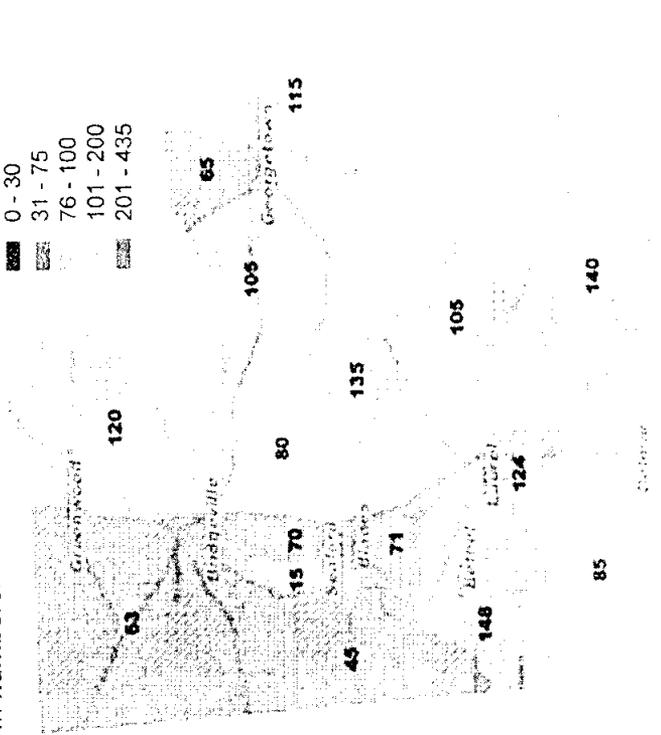
Housing Challenges			
West Sussex			
	TOTAL	% of All units	Compared to State
Cost Burdened Renters	3,017	46.7%	0.7%
Severely Cost Burdened Renters	1,344	20.5%	-2.0%
Cost Burdened Owners	5,227	28.3%	1.0%
Severely Cost Burdened Owners	2,020	11.0%	0.6%

HUD provides estimates of households who pay a burdensome amount for housing costs and are likely to be in need of more affordable housing options. According to HUD definitions, a "cost burdened" household pays more than 30% of their income on housing; a "severely cost burdened" household pays more than 50% of their income on housing. The information is categorized by income, and by owners and renters. HUD provides the following income categories in relation to Area Median Income (AMI): Extremely Low Income (<30% AMI), Very Low Income (30% - 50% AMI), Low Income (50% - 80% AMI), Moderate Income (80% - 100% AMI), and Middle Income and higher (>100% AMI).

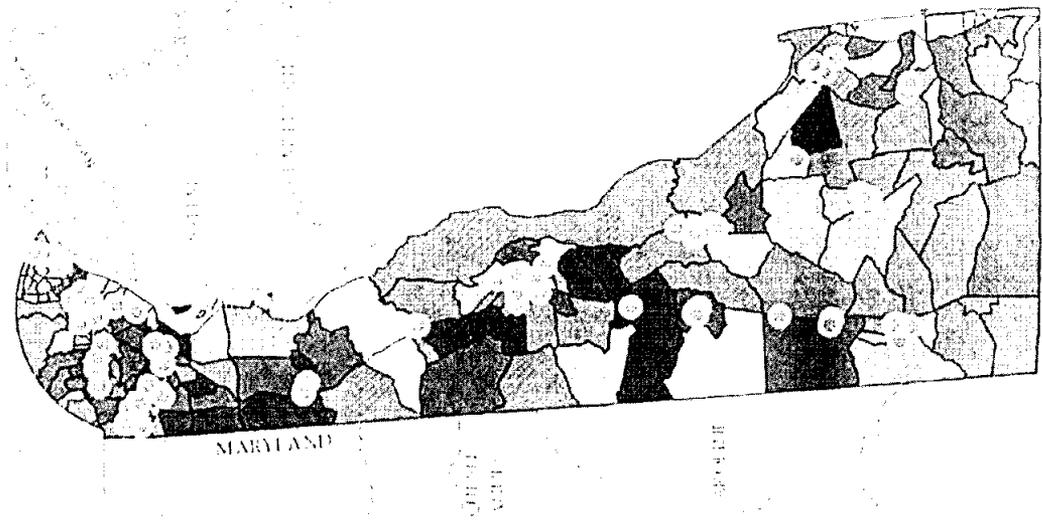
In numbers:



In numbers:



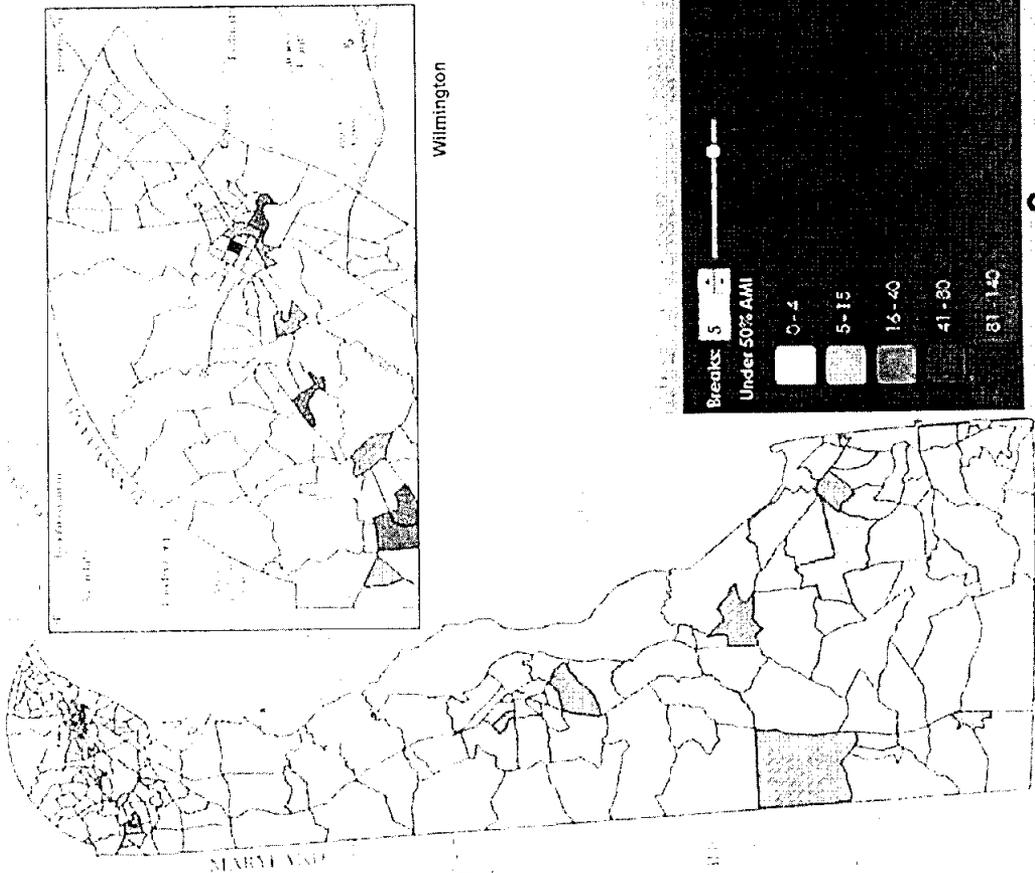
# Housing Preservation/ Affordable Housing Units



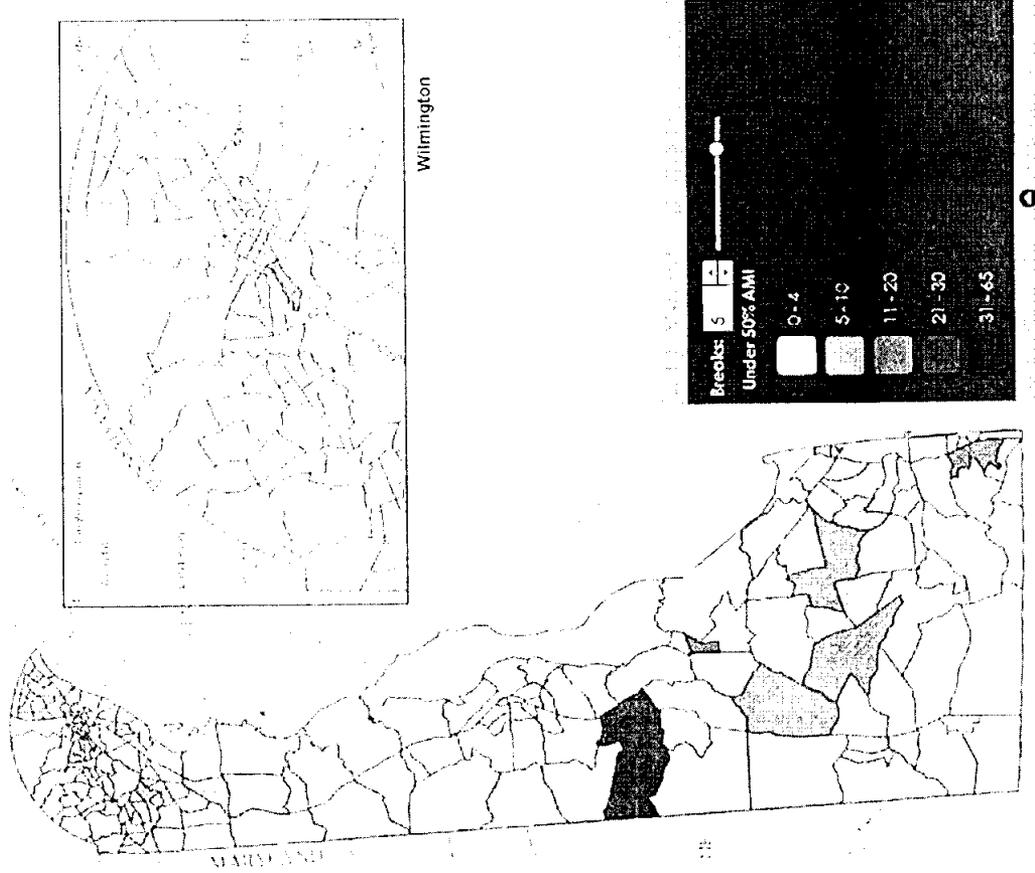
# Substandard Housing

Substandard housing is defined as homes that are vacant and abandoned; homes that are occupied but are in unlivable conditions; and homes that are occupied and in disrepair.

Substandard Rental Units Less Than 50% AMI



Substandard Owner Occupied Units Less Than 50% AMI

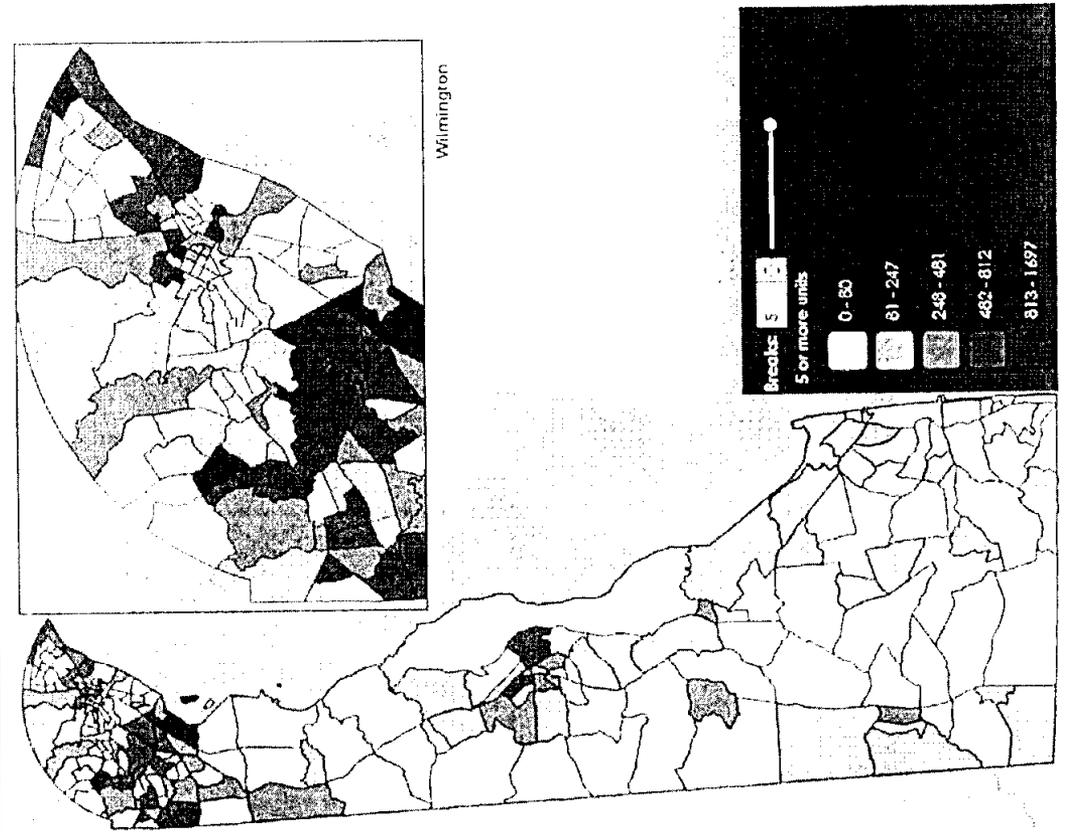


# Single vs Multi-Family

Single Family (Detached)



Multi-family (+5 Unit Buildings)



# Renters: Single Family and Multifamily

Delaware	RENTAL	OWNED	VACANT	TOTAL						
Total Housing Units	87,612	243,868	70,258	401,738						
	North New Castle	Wilmington	Newark	South New Castle	North Kent	Dover	South Kent	East Sussex	West Sussex	TOTAL
Single Family Renters (1 unit)										
Housing Units <30% AMI	5,166	2,000	923	102	1,093	815	235	460	651	7,707
Housing Units 30%-50% AMI	3,864	1,308	643	181	722	532	246	600	415	6,028
Housing Units 50%-80% AMI	4,574	1,067	688	75	931	579	176	555	507	6,818
Housing Units 80%-100% AMI	1,913	342	285	38	713	520	145	351	247	3,407
Housing Units >100% AMI	4,994	881	612	148	1,272	832	231	1,201	612	8,458
TOTAL	20,511	5,598	3,151	544	4,731	3,278	1,033	3,167	2,432	32,418
Total # of Units <80% AMI	13,604	4,375	2,254	358	2,746	1,926	657	1,615	1,573	20,553
Multi-Family Renters (2+ Units)										
Housing Units <30% AMI	8,796	3,405	1,571	173	1,860	1,389	399	782	1,109	13,119
Housing Units 30%-50% AMI	6,579	2,226	1,096	309	1,229	907	418	1,021	707	10,263
Housing Units 50%-80% AMI	7,787	1,817	1,171	129	1,585	986	299	946	862	11,608
Housing Units 80%-100% AMI	3,256	582	484	66	1,215	885	248	598	421	5,804
Housing Units >100% AMI	8,503	1,499	1,043	252	2,165	1,416	393	2,046	1,041	14,400
TOTAL	34,921	9,529	5,365	929	8,054	5,583	1,757	5,393	4,140	55,194
Total # of Units <80% AMI	23,162	7,448	3,838	611	4,674	3,282	1,116	2,749	2,678	34,990
TOTAL RENTERS										
Housing Units <30% AMI	13,962	5,405	2,494	275	2,953	2,204	634	1,242	1,760	20,826
Housing Units 30%-50% AMI	10,443	3,534	1,739	490	1,951	1,439	664	1,621	1,122	16,291
Housing Units 50%-80% AMI	12,361	2,884	1,859	204	2,516	1,565	475	1,501	1,369	18,426
Housing Units 80%-100% AMI	5,169	924	769	104	1,928	1,405	393	949	668	9,211
Housing Units >100% AMI	13,497	2,380	1,655	400	3,437	2,248	624	3,247	1,653	22,858
TOTAL	55,432	15,127	8,516	1,473	12,785	8,861	2,790	8,560	6,572	87,612
Total # of Units <80% AMI	36,766	11,823	6,092	969	7,420		1,773	4,364	4,251	55,543



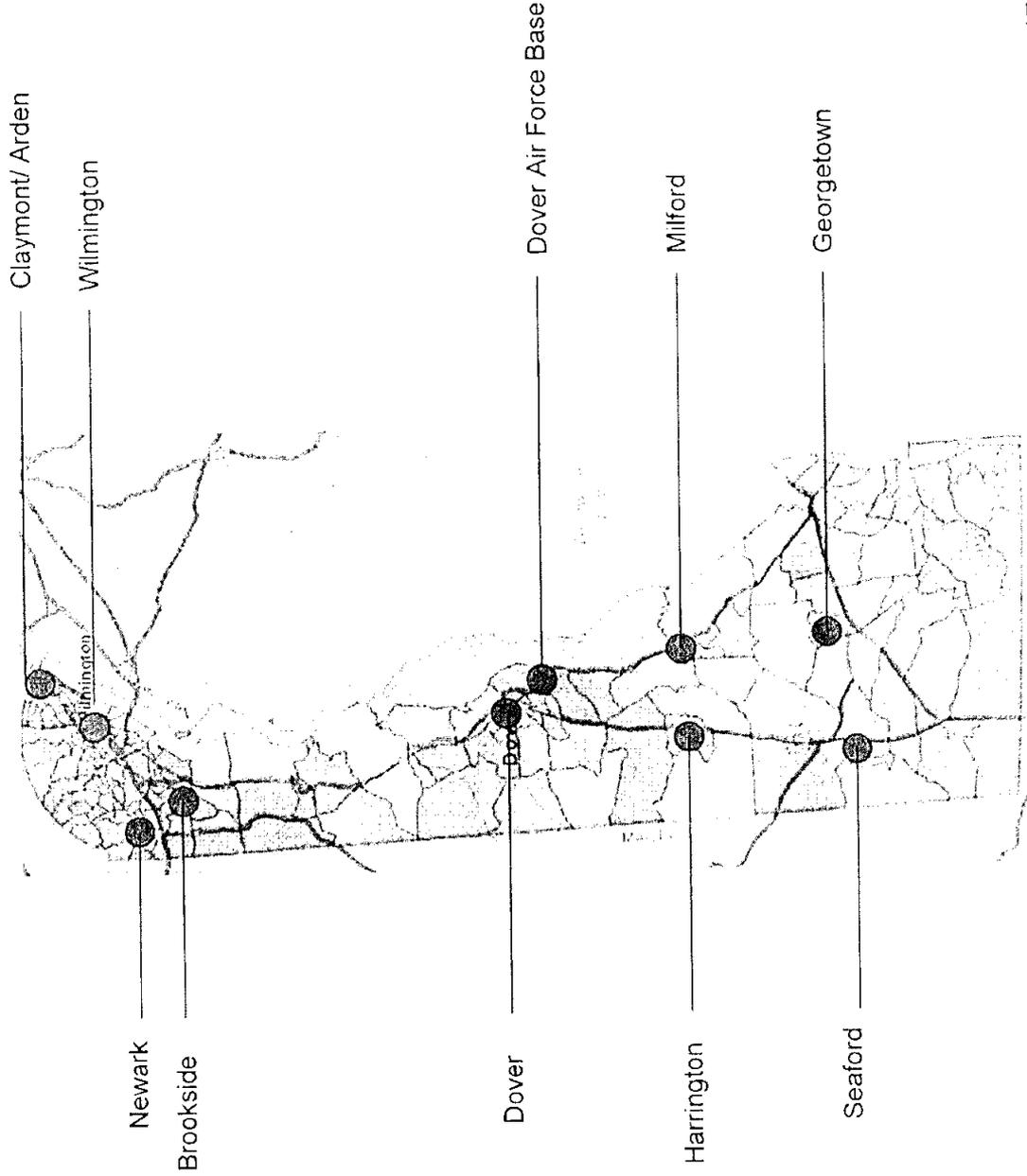
# Owners: Single Family and Multifamily

Delaware	RENTAL	OWNED	VACANT	TOTAL						TOTAL
Total Housing Units	87,612	243,868	70,258	401,738						401,738
Single Family Owner (1 unit)		Wilmington	Newark	South New	North Kent	Dover	South Kent	East Sussex	West Sussex	TOTAL
Housing Units ≤30% AMI	7,016	1,719	482	481	1,787	828	643	2,031	824	12,782
Housing Units 30%-50% AMI	8,500	1,313	806	804	2,594	1,400	494	3,317	1,502	17,211
Housing Units 50%-80% AMI	17,543	2,231	2,142	1,481	4,816	2,725	1,075	5,855	2,840	33,610
Housing Units 80%-100% AMI	12,696	1,278	1,157	1,287	3,263	1,857	998	3,705	1,664	23,613
Housing Units >100% AMI	69,132	6,314	8,987	8,402	18,410	9,520	3,587	23,053	9,769	132,353
TOTAL	114,887	12,855	13,574	12,455	30,870	16,330	6,797	37,961	16,599	219,569
Total # of Units <80% AMI	33,059	5,263	3,430	2,766	9,197	4,953	2,212	11,203	5,166	63,603
Multi-Family Centers (2+ Units)										
Housing Units ≤30% AMI	780	191	54	53	199	92	71	226	92	1,421
Housing Units 30%-50% AMI	944	146	90	89	288	156	55	369	167	1,912
Housing Units 50%-80% AMI	1,949	248	238	165	535	303	119	651	316	3,735
Housing Units 80%-100% AMI	1,411	142	129	143	263	206	111	412	185	2,525
Housing Units >100% AMI	7,681	702	999	934	2,046	1,058	399	2,561	1,085	14,706
TOTAL	12,765	1,429	1,510	1,384	3,331	1,815	755	4,219	1,845	24,299
Total # of Units <80% AMI	3,673	585	382	307	1,022	551	245	1,246	575	7,068
TOTAL Owner Occupied										
Housing Units ≤30% AMI	7,796	1,910	536	534	1,986	920	714	2,257	916	14,203
Housing Units 30%-50% AMI	9,444	1,459	896	893	2,882	1,556	549	3,686	1,669	19,123
Housing Units 50%-80% AMI	19,492	2,479	2,380	1,646	5,351	3,028	1,194	6,506	3,156	37,345
Housing Units 80%-100% AMI	14,107	1,420	1,286	1,430	3,526	2,063	1,109	4,117	1,849	26,138
Housing Units >100% AMI	76,813	7,016	9,986	9,336	20,456	10,578	3,986	25,614	10,854	147,059
GRAND TOTAL	127,652	14,284	15,084	13,839	34,201	18,145	7,552	42,180	18,444	243,868
Total # of Units <80% AMI	36,732	5,848	3,812	3,073	10,219	5,504	2,457	12,449	5,741	70,671

# Areas of Concentrated Need

## Primary Factors

- High # of Rentals
- High # <80%AMI
- Cost Burdened
- Substandard Housing



# Housing Services/ Programs: Rental Assistance

- Public Housing
  - 5 housing authorities
  - 25,000 households on waiting list
  - *Housing Choice Voucher Program (Section 8)*
    - Rental in Private Market
    - 5,059 Units Served
    - <50%AMI
  - *Public Housing Program*
    - 2,521 Units Served
    - <50%AMI
- Section 202 and Section 811
  - Section 202: supportive housing for low income seniors
  - Section 811: supportive housing for low income persons with a disability
  - Granted directly to non-profits
  - 1,068 units statewide
- USDA Rural Housing Program
  - Rental assistance and financing
  - 1,679 units statewide (mostly Sussex County)

## Housing Services/ Programs: Affordable Housing

- Low Income Tax Credits
  - 4,203 units in LIHTC portfolio
  - 50%-60% AMI
  - Tax incentive administered by the U.S. Treasury
  - Administered in DE by DSHA
  - Budget: Approximately \$2.2 million in tax credits (determined by U.S. Treasury) annually
  - 180-220 units developed annually
- Community Development Block Grant Program
  - Direct Grants (homeowner rehab)
  - Budget: \$6,639,673 annually
  - 75% of budget to Homeowner affordable housing rehab
- HOME Investment Partnership Program
  - Direct Grants (homeowner affordable housing rehab)
  - Budget: \$4,130,849
- Housing Development Fund
  - State Housing Trust Fund
  - Loans for multifamily development and rehab
  - Homeownership acquisition & rehab and new construction
  - Rehab programs serving existing homeowners

## Low Income Energy Programs

- Weatherization Assistance Program (WAP); Catholic Charities
- Pre-WAP Program; Catholic Charities; Catholic Charities
- Low-income Home Energy Assistance Program (LIHEAP); Catholic Charities
- LIHEAP Heater Repair/ Replacement and Cooling Program
- SHARING Fund ; Chesapeake Utilities
- Grants Fund; Chesapeake Utilities
- Beat the Peak; Delaware Electric Co-op
- Assisted Home Performance with ENERGY STAR

## Next Steps

- Chart out all available resources and scale of activity of identified services
- Identify low-income program service gaps and opportunities for settlement funds
  - Some preliminary considerations:
    - Statewide or place based?
    - Extremely low income or working poor?
    - Single family or multifamily?
    - Leverage with other programs?
- Collect stakeholder feedback on potential program concepts
- Draft initial recommendations and collect comments/ edits
- Draft final recommendations report

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION )  
OF DELMARVA POWER & LIGHT COMPANY, )  
EXELON CORORPATION, PEPCO HOLDINGS ) PSC DOCKET NO. 14-193  
INC., PURPLE ACQUISITION CORPORATION, )  
EXELON ENERGY DELIVERY COMPANY, LLC )  
AND SPECIAL PURPOSE ENTITY, LLC )  
FOR APPROVALS UNDER THE PROVISIONS )  
OF 26 *Del. C.* §§ 215 AND 1016 )  
(FILED JUNE 18, 2014) )

**Jeremy Firestone's Pre-Hearing Submission in Support of Proposed Allocation of MFN  
Benefits**

**September 12, 2016**

Jeremy Firestone  
130 Winslow Road  
Newark, DE 19711  
302 831-0228 (office/day)  
jlf@udel.edu  
*Pro Se*

**A. A Short Summary of Differences**

1. In exchange for agreeing to forego an appeal of the initial settlement, among other changes I won to the initial settlement, was a change to paragraph 104, which now provides that in event there are increased benefits as result of the most favored nation's (MFN) provision, the Commission, would allocate any such benefits "consistent with the public interest" after hearing from the parties. As a result of the MFN there are \$27.1 million to be allocated, along with other benefits.
2. The parties made their initial recommendations on allocation on August 12, 2016. After discussions, differences were narrowed and final recommendations formulated which are

embodied in a document entitled “Comparison of Most Favored Benefit Recommendations,” which was submitted by the Joint Applicants as a demonstrative exhibit on September 8, 2016.

3. There is general agreement among the parties on how \$9.1 million of the \$27.1 million should be allocated; that leaves the other \$18 million. I recommend that money be dedicated to low-income gas and electric customers (\$10 million); energy efficiency (\$4 million); public interest wind and solar research (\$3.5 million) and electric vehicle charging stations (\$0.5 million).

4. Some of the positions of the other parties that one would not have anticipated given their statutory mandates and prior advocacy include:

- a. The Department of Natural Resources and Environmental Control (DNREC) not supporting money going to electric vehicle charging stations;
- b. DNREC supporting \$6 million going to non-party, the Delaware Economic Development Office (DEDO) to support natural gas infrastructure.
- c. The Delaware Division of the Public Advocate (DPA) not supporting my proposal to provide rebates to low income customers but instead supporting an \$8 million to subsidize the largest corporations in this state to institute energy efficiency measures and allocating other money to DEDO (DNREC, as noted above, and Public Service Commission Staff (Staff), also support diversion of funds to DEDO).
- d. DPA supporting a second year of funding of an existing core DNREC energy efficiency program (which I join); A second year of funding which DNREC does not support.

The unusual positions being advocated by DNREC and DPA,<sup>1</sup> paired with Staff's decision to join them in their support of \$6 million being diverted to non-party DEDO for job development, creates a three-state agency coalition seeking to advance an out-of-bounds prerogative—that being DEDO. This advocacy should be summarily rejected by the Commission.

### **B. Standard of Review**

5. The Commission's findings are required to be supported by sufficient evidence, free of error of law, satisfy due process of law, and not be arbitrary or capricious. Constellation V. Public Service Commission, 825 A. 2d 872 (Del: Superior Court 2003).

### **C. Public Interest: Governing Law**

#### **6. Public v. Private Interest and Costs of Achieve Merger and Costs to Achieve**

**Savings:** The US Supreme Court has noted that there is a difference between the “public interest” and private, commercial interests. *FPC v. Sierra Pacific Power Co.*, 350 US 348 (1956).

7. As noted by the Delaware Supreme Court in Public Water Supply Co. v. DiPasquale, 735 A. 2d 378 (Del. Supreme Court 1999), the public interest is determined by reference to the interests the Commission is “designed to protect.” Those interests include “lowest reasonable costs,” environmental benefits to the citizens of this State (such as renewable resources like wind and solar power); fuel diversity, price stability, green power, grid-integrated electric vehicles, energy efficiency, renewable energy prioritization, weatherization assistance, renewable portfolio standards (RPS), environmental benefits and external costs, including health externalities. See 26 Del. Code §§ 351-364, 1007(c)(1)b, 1012(b), 1014(g-h), 1020 and IRP Rules, Title 26, 3010.

---

<sup>1</sup> As I develop below, these positions that are without support in the administrative record.

<sup>2</sup> Ex. S-1, Confidential Direct Testimony of Connie S. McDowell, 8:9-14.

8. The Constellation v. Public Service Commission, *supra* endorsed this broad conception of the “public interest.” In that case, the court was reviewing a merger settlement that in pertinent part provided that Delmarva Power would contribute money toward the promotion of renewable energy and participate in a working group whose charge was to identify and develop demand side management and conservation programs. The Constellation Court considered the question of these and other benefits and their contribution to the public interest to be so beyond reproach that it stated that it “need not belabor them here.”

9. In the present docket, the PSC Staff explained its understanding of “public interest” as requiring the advancement of the general welfare or well-being:

According to the Random House Dictionary, “public interest” is defined as the welfare or well-being of the general public and according to BusinessDictionary.com, public interest is the welfare of the general public (in contrast to the selfish interest of a person, group, or firm) in which the whole society has a stake and which warrants recognition, promotion and protection by the government and its agencies.<sup>2</sup>

**D. Jeremy Firestone’s Proposed Allocation of MFN Benefits is supported by Sufficient Evidence in the Record and is in the Public Interest**

10. Turning to the portion of the MFN benefits that were monetized (\$27.1 million), in their respective proposed allocations, the parties agree to certain allocations and disagree as to others. In brief, the parties generally agree<sup>3</sup> that:

- a. An additional \$2 million dollars should be allocated for energy efficiency to low income Delmarva customers (\$2 million also was dedicated in the initial settlement bringing the total to \$4 million);
- b. At least \$4 million dollars should be allocated to the General Assembly-created Energy Efficiency Investment Fund (EEIF) program to support energy efficiency

---

<sup>2</sup> Ex. S-1, Confidential Direct Testimony of Connie S. McDowell, 8:9-14.

<sup>3</sup> There is also agreement on other aspects such as renewable investment, 5MW of renewable energy generation (with some nuanced differences), microgrids, and wording changes. There are additional wording changes that would be useful, including in paragraph 9, which provides for natural gas on land-based wind studies but provides no dates by which such studies ought to be completed.

measures of Delmarva customers (both DPA and I support additional EEIF funds).

Thirty percent would be reserved for minorities, women, veterans, service disabled veterans, and individuals with disabilities for first three years. Importantly, the EEIF program was created by the General Assembly; and

- c. \$3.1 million should be allocated for arrearage management.

The Commission is free of course to disregard the areas of agreement and allocate the funds in any way it sees fit consistent with the public interest. Rather than focus, however, on these areas of agreement, this submission will focus on the other \$18 million, where the parties disagree.

11. I propose that those funds be allocated as follows:

- a. \$10 million to low income gas and electric customers with 70% of those benefits going to those in the lowest quintile; 30% to those in the second lowest quintile;
- b. An additional \$4 million to the EEIF;
- c. \$4 million to the “public interest” projects, with \$0.5 million going to paired electric vehicle charging stations to be deployed throughout the State; and \$3.5 million to be allocated to wind and solar academic research at Del Tech, Delaware State University (DSU), and the University of Delaware (UD), with a cap on overhead and a requirement of providing matching funds of at least 20 percent.

12. Importantly, each of these three proposals that I advocate finds support in the administrative record.<sup>4</sup> This is in contrast to the proposals of the other parties, which find none, and are best considered lawyers’ proposals. Given the lack of any support in the administrative record for those proposals (not to mention the negative evidence in the record), it would be unlawful for this Commission to adopt those other proposals as its own.

---

<sup>4</sup> I primarily rely on Ex. JF24, Firestone Second Supplemental Testimony, which is attached hereto for the convenience of the Commission, and which provides expert testimony on this and other issues discussed herein in added detail.

13. First, I advocate establishing a low-income rebate program. Relying on an analysis by the Congressional Budget Office (CBO), I noted in my expert testimony, that those with low income pay a higher percentage of their income toward energy than the others,<sup>5</sup> which raises an important equity issue. Ex. JF24, Firestone Second Supplemental Testimony, p. 5. While this Commission rightfully supports measures such the RPS, it is important to recognize that it has regressive effects. As noted, “addressing energy inequity generally, and of RGGI and RPS program is not ‘welfare’ but rather, simple fairness.” Id. Although implementing such a targeted fund might pose some difficulties for the Commission and for Exelon on its own, we can again turn to the CBO for answers, as it has analyzed various means to disburse funds including tax and payroll rebates, the earned income tax credit, and the Low Income Household Energy Assistance Program (LIHEAP). Thus, as Dr. Firestone testified, “any such fund could be conditioned on the establishment of such a program either administratively or legislatively by a date certain (say five years from a final order) after which the funds could be re-distributed.” Id. at 6.

14. As well, earlier I testified that economic theory (and the analysis by the Joint Applicants’ expert, Dr. Susan Tierney<sup>6</sup>) supports the proposition that the “economic benefits that arise from limiting the rebate to lower-income ratepayers are greater than those associated with a general rebate. This occurs because lower income ratepayers are much more likely to spend their rebate than are high-income ratepayers, and such spending has indirect economic benefits.” Ex. JF15,

---

<sup>5</sup> Congressional Budget Office (CBO) by Terry Dinan, *Offsetting a Carbon Tax’s Costs on Low Income Households* (2012), available at [https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/workingpaper/11-13LowIncomeOptions\\_0.pdf](https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/workingpaper/11-13LowIncomeOptions_0.pdf); Congressional Budget Office (CBO) by Terry Dinan, *Trade-offs in Allocating Allowances for CO<sub>2</sub> Emissions*, Economic and Budget Issue Brief, (April 25, 2007), available at [https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/04-25-cap\\_trade.pdf](https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/04-25-cap_trade.pdf).

<sup>6</sup> JA-7, Pre-Filed Direct Testimony of Dr. Susan F. Tierney, Table SFT-5, p. 35.

Firestone, Supplemental Testimony, March 6, 2015, p. 7. Thus, such a program has general benefits for Delaware.

15. Given the above, there can be little dispute that the establishment of such a low-income rebate program would be in the public interest.

16. I also propose a narrowly-tailored \$4 million public interest fund to provide greater assurance that it will deliver as promised. First, the fund I propose focuses on only two neatly-tailored objectives—(a) deployment of a paired electric vehicle charging stations located strategically across the state of Delaware; and (b) wind and solar research and training, which can be supported by a well-bounded request for proposals (RFP) evaluation process that ensures that the lion-share of the money goes toward research and training rather than proposal evaluation.<sup>7</sup> Second, research and training grants are limited to state institutions—Del Tech, DSU, and UD.

17. As I testified (Ex. JF24, Firestone Second Supplemental Testimony, pp. 6-7), the narrow proposed “focus advances state institutions to which ratepayers’ taxes are dedicated and examines the [sic] primary means of generating renewable electricity in our regional grid and does so in the limited areas of research and training.” Indeed, “newer wind turbine technology presents opportunity to extract economically viable wind resources from southern Delaware, providing Delaware with diverse fueled, price stable, and emissions-free generation that would also have the effect of suppressing prices more generally” and benefiting southern Delaware through private rents and/or royalties, economic development, taxes, and family farm maintenance. *Id.* at 9. As such, further “research into this promising technology, including spatial planning, regulatory, social and environmental considerations would be beneficial.” *Id.*

---

<sup>7</sup> If the Commission adopts this proposal I will attempt to find individuals at the University of Delaware to oversee the RFP in an effort again to minimize costs.

18. Third, dedicating these settlement proceeds as proposed will effectively enlarge the \$35 million in funds by a minimum of 20% through an explicit requirement that recipients provide at least 20% matching funds. This will add a minimum of \$700,000, and should result in fewer and more considered proposals, reducing administrative costs as well. Fourth, my proposals caps overhead costs at 38%, which is consistent with the rate the University of Delaware employs on state grants (compared to 56% on federal grants), thus ensuring that more money will go to direct costs of research.

19. The paired electric vehicle charging station proposal—deployment plus five years free charging—builds on an existing DNREC-UD partnership helping to ensure that monies will be spent in the field. As I noted in my expert testimony, Delaware is presently faced with a “Catch-22,” where large numbers of individuals are reluctant to purchase an electric vehicle until a robust network of charging stations is established given range anxiety and concerns over charging infrastructure,<sup>8</sup> while those that have private capital to otherwise invest in charging infrastructure are reluctant to invest until a critical mass of electric vehicles exists on the road. Id. at 7-8. Electric vehicle charging stations thus “present an example of the type of good that is best provided by government/public funds. Once a market for electric vehicles is established, it will be appropriate to transition to privatize charging.” Id. at 8.

20. Finally, DPA and I propose that the EEIF be funded at \$8 million rather than at \$4 million, as proposed by DNREC and Staff propose. DNREC’s decision to not support our

---

<sup>8</sup> See e.g., Franke, T. et al., 2012. Adapting to the Range of an Electric Vehicle – The Relation of Experience to Subjectively Available Mobility Resources, [https://www.researchgate.net/profile/Thomas\\_Franke/publication/257401389\\_Adapting\\_to\\_the\\_range\\_of\\_an\\_electric\\_vehicle\\_The\\_relation\\_of\\_experience\\_to\\_subjectively\\_available\\_mobility\\_resources/links/00b4952530c399ee5800000.pdf?origin=publication\\_detail](https://www.researchgate.net/profile/Thomas_Franke/publication/257401389_Adapting_to_the_range_of_an_electric_vehicle_The_relation_of_experience_to_subjectively_available_mobility_resources/links/00b4952530c399ee5800000.pdf?origin=publication_detail); Daziano, R. 2013. Conditional-logit Bayes Estimators for Consumer Valuation of Electric Vehicle Driving Range, Resource and Energy Economics, 35(3): 429-450, available at [https://www.researchgate.net/profile/Ricardo\\_Daziano/publication/261171639\\_Conditional-logit\\_Bayes\\_estimators\\_for\\_consumer\\_valuation\\_of\\_electric\\_vehicle\\_driving\\_range/links/545140d40cf2bf864c8a8f34.pdf](https://www.researchgate.net/profile/Ricardo_Daziano/publication/261171639_Conditional-logit_Bayes_estimators_for_consumer_valuation_of_electric_vehicle_driving_range/links/545140d40cf2bf864c8a8f34.pdf)

proposal cannot be based on a conclusion that these funds would not be valuable. Indeed, when the General Assembly designed the fund in 2011, the intent was to capitalize it at about \$5 million per year.<sup>9</sup> Thus, in essence DPA and I propose roughly two years of EEIF funding rather than one. We do so using an established funding mechanism and program that would not require DNREC to design it; rather the funds could be used now by recipients to advance energy efficiency.

**E. The Alternative Proposed Allocations Find Negative Support in the Administrative Record and are not in the Public Interest**

21. First, Staff, DPA, and DNREC propose to create a brand new program funded to the tune of \$8 million dollars to subsidize our state's largest commercial and industrial companies—who can easily pay their own way—in their adoption of energy efficiency measures. They provide no support in the record for the notion that Fortune 50 companies (e.g., JP Morgan Chase, Bank of America and Dow-Dupont) will only adopt energy efficiency measures if they receive large public subsidies. As I opined, given that these are sophisticated, profit-maximizing companies with deep pockets that allow them to make the initial capital outlay and with research documenting that the return on investment for energy efficiency measures at existing buildings is typically achieved within 1.1 years, with a benefit-cost ratio of 4.5,<sup>10</sup> these subsidies are unnecessary. This hand-out may “simply provide a financial benefit to the recipients’

---

<sup>9</sup> DNREC forced to suspend energy efficiency investment funding (February 19, 2016); <http://www.wgmd.com/dnrec-forced-to-suspend-energy-efficiency-investment-funding/>; See also Delaware Businesses profit from going green (July 11, 2015), <http://www.delawarebusinesstimes.com/delaware-environmentally-friendly-business/>

<sup>10</sup> Evan Mills, Lawrence Berkeley National Lab, Building Commissioning: A Golden Opportunity for Reducing Energy Costs and Greenhouse Gas Emissions (Prepared for the California Energy Commission, Public Interest Energy Research (2009), available at <http://cx.lbl.gov/2009-assessment.html>. See Executive Summary and Table 4, p. 22.

shareholders (ironically resulting in a transfer of wealth from Exelon’s shareholders to say JP Morgan Chase’s shareholders) or alternatively enhanced bonuses to corporate managers.” Firestone Second Supplemental Testimony at 4. Moreover, given the lack of a tight limitation (e.g., \$250,000) on the amount of funds that any one corporation could receive, the funds could simply go to enrich one or two corporations. In sum, this “private interest” fund clearly does not pass muster as being in the public interest.

22. Transferring \$6 million to non-Party DEDO for a jobs program also can hardly be considered to be within the confines of the public interest that this Commission is obligated and honored to uphold. Even if it were within the penumbra of the public interest, it remains a mystery—and there has been no evidence introduced into the record—how a vague proposal to advance jobs in the natural gas infrastructure sector could even be accomplished given DEDO administers very specific grant, loan, training and tax incentive programs. See <http://dedo.delaware.gov/Incentives>. Indeed, in its initial proposal, DPA, rightfully acknowledges as much, conceding that “no such DEDO program” may exist. This is clearly too thin a reed on which to base a substantial allocation of settlement dollars.

23. Further, assuming *arguendo* a DEDO program did exist into which such a jobs program could be pigeonholed and it would otherwise be in the public interest, DEDO’s champions cannot guarantee that the funds will generate even one additional job because they cannot control what the General Assembly will do. Indeed, one would expect that the General Assembly might take the opportunity to decrease the DEDO’s appropriation by an equivalent amount.

24. Two of the more esteemed “students” of Delaware public administration and policy—William Boyer and Edward Ratledge—comment on DEDO and other Delaware institutions is instructive. They observe that all too often those institutions have “allowed political and/or social

engineering factors to influence their economic and fiduciary judgment,” many times resulting in significant “failures in growing businesses and creating jobs.”<sup>11</sup> Indeed, at times, their actions have been downright “poisonous.”<sup>12</sup> Given “global competition and rapid technological change,” they contend that Delaware would be wise to “switch from choosing companies to subsidize to creating a better business climate for all, including startups.”<sup>13</sup>

25. Moreover, even a cursory review of DEDO’s electricity and natural gas sector record should give any policymaker pause. As noted in my Second Supplemental Testimony (at 10 ), DEDO has, for example, (a) sought to “subsidize costs related to a data center and large natural gas (>250MW) power plant that were proposed to be located in the center of the City of Newark while forward-looking companies such as Google and Apple are building data centers powered with renewable energy; and (b) it subsidized the natural gas-powered Bloom Energy fuel cell project, which transferred substantial costs from Bloom to Delmarva Power ratepayers, much to the chagrin of the DPA, among others, and, it created complications for the Delaware RPS as well.” For all these reasons, this Commission has no choice but to find a better use of \$6 million dollars than the proposed DEDO frolic and detour.

26. Finally, in contrast to the narrowly tailored fund (charging stations and wind/solar academic research and training at state institutions) that I propose, PSC Staff and DNREC propose to dedicate \$4.0 million toward a loosely characterized “public interest” fund (DPA opposes this fund and instead shifts these funds to DEDO). It is not clear what they have in mind this fund would accomplish, given that DNREC and the Sustainable Energy Utility (SEU)

---

<sup>11</sup> William W. Boyer and Edward C. Ratledge, 2016. GROWING BUSINESS IN DELAWARE: THE POLITICS OF JOB CREATION IN A SMALL STATE, p. 207, Rowman & Littlefield: London. Boyer is the Messick Professor Emeritus of Public Administration at the University of Delaware; Ratledge is the Director of the Center for Applied Demography and Survey Research.

<sup>12</sup> Id. at 206.

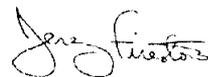
<sup>13</sup> Id. at 202, quoting Delaware Associate Professors of Economics Stacie Beck and Eleanor Craig.

already educate, inform and promote renewable energy and energy efficiency in the state, as there is no suggestion in the administrative record.

WHEREFORE, I, JEREMY FIRESTONE, INTERVENOR, RESPECTFULLY REQUEST THAT THIS HONORABLE COMMISSION:

1. Adopt as its own the allocation of MFN benefits that are uncontested and find such proposed allocation as being in the public interest;
2. Find that the other parties' proposed allocations of contested matters are not supported by record evidence;
3. Reject the other parties' proposed allocations of contested matters as they are not in the public interest;
4. Adopt as its own the allocation of contested MFN benefits that I propose and find such proposed allocation as being in the public interest; and
5. Grant such other relief as is appropriate and just.

Respectfully submitted,



Jeremy Firestone  
September 12, 2016

Exhibit JF24

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION )  
OF DELMARVA POWER & LIGHT COMPANY, )  
EXELON CORORPATION, PEPCO HOLDINGS ) PSC DOCKET NO. 14-193  
INC., PURPLE ACQUISITION CORPORATION, )  
EXELON ENERGY DELIVERY COMPANY, LLC )  
AND SPECIAL PURPOSE ENTITY, LLC )  
FOR APPROVALS UNDER THE PROVISIONS )  
OF 26 *Del. C.* §§ 215 AND 1016 )  
(FILED JUNE 18, 2014) )

**SECOND SUPPLEMENTAL TESTIMONY OF JEREMY FIRESTONE**

Jeremy Firestone  
130 Winslow Road  
Newark, DE 19711  
302 831-0228 (office/day)  
[jff@udel.edu](mailto:jff@udel.edu)  
*Pro Se*



1 preferences, cost-benefit and cost-effective analysis, and spatial planning) and regulatory  
2 dimensions of renewable energy.

3  
4 **4. Q. Have you previously submitted written testimony in this case?**

5 A. Yes, I submitted written testimony in this case on December 12, 2014 and March 6, 2015.

6  
7 **5. Q. Why are you supplementing your testimony at this time?**

8 A. I am testifying regarding my proposed allocation submitted on August 12,  
9 2016, as amended. My proposed allocation, like other parties, evolved somewhat over time  
10 given discussions among the parties and attempts to narrow differences.

11  
12 **6. Q. Which materials did you review prior to providing supplemental testimony?**

13 Prior to testifying, I primarily reviewed the parties' proposed allocations and a draft of  
14 the "Comparison of Most Favored Nations Benefit Recommendations," which includes parties'  
15 proposed allocations, as amended. I also reviewed the statutory standards under which the  
16 Commission evaluates mergers. Finally, I am familiar with renewable energy policies of the  
17 State of Delaware, including the Regional Greenhouse Gas Initiative (RGGI), the Delaware  
18 Renewable Portfolio Standards (RPS), and Integrative Resource Planning (IRP).

19  
20 **7. Q. Can you tell me where your proposal most differs with others?**

21 A. Yes, I can.

22 (i). First, the Public Service Commission Staff (Staff), the Delaware Public  
23 Advocate (DPA), and the Delaware Department of Natural Resources and Environmental

1 Control (DNREC) propose that \$8 million be dedicated to subsidize large commercial  
2 and industrial companies' adoption of energy efficiency measures; in contrast, I propose  
3 those \$8 million in funds be dedicated to low income households that are Delmarva  
4 Power ratepayers. I also propose an additional \$2 million for low-income households,  
5 which I will discuss later, bringing the total to \$10 million.

6 (ii). The PSC Staff and DNREC propose that \$4.0 million be dedicated toward a  
7 loosely defined endowed fund to advance the public interest (DPA opposes this fund); in  
8 contrast, I propose a more narrowly tailored fund of (a) \$0.5 million that would be  
9 dedicated to a series of paired electric vehicle charging stations located strategically  
10 around the state; and (b) the remaining \$3.5 million that would be dedicated to wind and  
11 solar academic research or training programs. These programs would be conditioned on  
12 the principle investigator being affiliated with the University of Delaware, Delaware  
13 State University or Delaware Tech, that those institutions match a minimum of 20% of  
14 the requested funds and that any overhead costs be limited, as they are for other state  
15 programs, to 38%, and that any such proposed research or training be shown that it would  
16 provide a benefit to Delmarva Power ratepayers.

17 (iii). The PSC Staff and DNREC propose to that \$4 million be dedicated to fund  
18 the commercial and industrial Energy-Efficiency Investment Fund ("EEIF"), which  
19 would re-establish this program for Delmarva Power customers only, and that an  
20 additional \$6 million be allocated to the Delaware Economic Department Office (DED0)  
21 in an attempt to entice companies to bring jobs to Delaware, while DPA and I each  
22 propose that \$8 million be dedicated to the EEIF fund. DPA shifts funds from the  
23 "public interest" projects to the EEIF while I allocate \$4 million of the \$6 million that

1 Staff and DNREC would allocate to DEDO to the EEIF, with the remaining \$2 million to  
2 low income residential customers (again, as noted, bringing the total allocation to low  
3 income households to \$10 million).

4  
5 **8. Q. Can you please elaborate on your opinion regarding the relative merits of**  
6 **dedicating \$8.0 million to low income households rather than to large, commercial and**  
7 **industrial corporations?**

8 A. In her testimony, the Joint Applicants' expert witness, Dr. Susan F. Tierney, noted  
9 that with regard to funds generally, the Commission could choose to make them available on "an  
10 "equal basis to all customers ... or disproportionately in favor of those customers who receive  
11 fewer of the other types of benefits likely to flow from the Merger (e.g., to ... low-income  
12 residential customers....)" (at page 20). Rather than favoring those parties who receive the  
13 fewest benefits and who have the least ability to pay, as I do, the PSC staff, DNREC and DPA  
14 favor those with the greatest ability to pay their own way. They have not provided any factual  
15 support for the proposition that the largest corporations in this state such as JP Morgan Chase,  
16 Bank of America and Dow-Dupont would only choose to adopt energy efficiency measures if  
17 they were to receive large subsidies. These large subsidies may well simply provide a financial  
18 benefit to the recipients' shareholders (ironically resulting in a transfer of wealth from Exelon's  
19 shareholders to say JP Morgan Chase's shareholders) or alternatively enhanced bonuses to  
20 corporate managers. Indeed, research shows that the median time to achieve a return on  
21 investments in energy efficiency at existing buildings is a mere 1.1 years, with a benefit-cost  
22 ratio of 4.5.<sup>1</sup> Given that these corporations have deep pockets, unlike small firms, they have

---

<sup>1</sup> Evan Mills, Lawrence Berkeley National Lab, Building Commissioning: A Golden Opportunity for Reducing Energy Costs and Greenhouse Gas Emissions (Prepared for the California Energy Commission, Public Interest

1 substantial funds on hand to make the needed capital investments, without the benefit of  
2 government largess. Rather than encouraging large corporations to rent-seek, the state should  
3 encourage its corporate community to join forward-looking corporations that go beyond energy  
4 efficiency and undertake voluntary measures such as buying carbon credits—that is, they pay for  
5 societal improvements rather than being subsidized by government to undertake private  
6 improvements. Those forward-looking firms do so to advance “corporate social responsibility,”  
7 demonstrate “climate leadership,” and engage customers and clients, and for branding.<sup>2</sup>

8 In contrast, those with low income pay a higher percentage of their income toward energy  
9 than the others. Indeed, the lowest quintile dedicates more than 11% of their household income  
10 to utility expenditures while the highest quintile dedicates less than 2%.<sup>3</sup> This raises equity  
11 issues. And while I enthusiastically support measures such as RGGI and RPS, I am also  
12 cognizant of the fact that these policies are regressive. Addressing energy inequity generally,  
13 and of RGGI and RPS program is not “welfare” but rather, simple fairness. The Congressional  
14 Budget Office (CBO), for example, has estimated the effects of a potential nationwide carbon  
15 cap and trade program on individuals and corporations.<sup>4</sup> For example, the CBO estimated that  
16 a 15 percent reduction in carbon emissions would result in a 3.3% increase in cost as a  
17 percentage of income for those households in the lowest quintile while only a 1.7% increase for  
18 those in the wealthiest quintile. If, however, revenues from the sale of carbon allowances were

---

Energy Research (2009), available at <http://cx.lbl.gov/2009-assessment.html>. See Executive Summary and Table 4, p. 22.

<sup>2</sup> Forest Trends Ecosystem Marketplace, *Ahead of the Curve: State of the Voluntary Carbon Markets 2015* Figure 13, p. 20, available at [http://forest-trends.org/releases/uploads/SOVCM2015\\_FullReport.pdf](http://forest-trends.org/releases/uploads/SOVCM2015_FullReport.pdf)

<sup>3</sup> Congressional Budget Office (CBO) by Terry Dinan, *Offsetting a Carbon Tax's Costs on Low Income Households* (2012), available at [https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/workingpaper/11-13LowIncomeOptions\\_0.pdf](https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/workingpaper/11-13LowIncomeOptions_0.pdf)

<sup>4</sup> See e.g., Congressional Budget Office (CBO) by Terry Dinan, *Trade-offs in Allocating Allowances for CO<sub>2</sub> Emissions*, Economic and Budget Issue Brief, (April 25, 2007), available at [https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/04-25-cap\\_trade.pdf](https://www.cbo.gov/sites/default/files/110th-congress-2007-2008/reports/04-25-cap_trade.pdf)

1 used to provide lump sum payments, the lowest quintile would see overall benefits of 1.8 %  
2 (rather than a 3.3% cost increase). On the other hand, the revenues were used to cut corporate  
3 taxes (having a similar effect to the subsidies provided here), the highest quintile would see  
4 benefits of 1.6% rather than a 1.7% decrease.

5 While the mechanics of such a targeted fund would need to be worked out and might be  
6 difficult for Exelon to do so on its own, the CBO has analyzed various mechanisms such as tax  
7 rebates, payroll tax rebates, earned income tax credits, and the Low Income Household Energy  
8 Assistance Program (LIHEAP) that could be employed. Thus, any such fund could be  
9 conditioned on the establishment of such a program either administratively or legislatively by a  
10 date certain (say five years from a final order) after which the funds could be re-distributed.  
11 Such a fund would be in the public interest, as compared to subsidizing multinational companies,  
12 which is in the private interest.

13

14 **9. Q. Can you explain why you favor a narrowly tailored fund rather than a fund**  
15 **that could be used for any project that could be deemed in the “public interest.”**

16 A. To begin with, given that Delaware is a small state that already has two  
17 government entities—DNREC and the Sustainable Energy Utility—that provide information and  
18 education and that promote renewable energy policies it is not clear that such a broad fund would  
19 provide the best use of limited dollars. I prefer a much more narrowly tailored fund so that the  
20 money can be allocated efficiently and used effectively to benefit Delmarva Power ratepayers. I  
21 would limit any such fund to (i) research and training programs at (ii) one of the three state  
22 academic institutions; (ii) to wind and solar. This focus advances state institutions to which  
23 ratepayers’ taxes are dedicated and examines that primary means of generating renewable

1 electricity in our regional grid and does so in the limited areas of research and training. In  
2 contrast to a broad request for proposals (RFP), which will be complicated and require large and  
3 perhaps unwieldy external evaluation teams to evaluate competing grant proposals, a focus on  
4 two areas—wind and solar—and two means—research and training—will be present a well-  
5 bounded evaluation process. Further, an explicit requirement of matching funds ensures that the  
6 recipients have skin in the game and the limitation on overhead ensures that Exelon dollars are  
7 primarily going toward research rather than overhead.

8 A further advantage of the more narrowly tailored program is the proposal to dedicate  
9 resources toward a specified purpose—paired (two per location) universal (so as not to favor one  
10 design of a charging plug over another) electric vehicle charging stations throughout the state. I  
11 propose that the funds be used not only for establishing the charging stations but for providing  
12 free charging for a period of five years as well. This program would build on a DNREC-  
13 University of Delaware partnership that deployed I believe five (unpaired) charging stations in  
14 the state with limited free charging (the funds I propose here could also be used to extend the  
15 limit period of free charging with the first five).

16 Some individuals may contend that electric vehicle charging stations should be privately  
17 financed. They however do so only by ignoring the “Catch-22.” On the one hand, it is well-  
18 established that one of the largest impediments to electric vehicle adoption are range anxiety and  
19 the related concern over the lack of charging infrastructure.<sup>5</sup> Indeed, when consumers suffer  
20 from driving range anxiety, they are unlikely to consider purchasing an electric car.<sup>6</sup> One way to

---

<sup>5</sup> See e.g., Franke, T, et al., 2012. Adapting to the Range of an Electric Vehicle – The Relation of Experience to Subjectively Available Mobility Resources, [https://www.researchgate.net/profile/Thomas\\_Franke/publication/257401389\\_Adapting\\_to\\_the\\_range\\_of\\_an\\_electric\\_vehicle\\_The\\_relation\\_of\\_experience\\_to\\_subjectively\\_available\\_mobility\\_resources/links/00b4952530c399ee58000000.pdf?origin=publication\\_detail](https://www.researchgate.net/profile/Thomas_Franke/publication/257401389_Adapting_to_the_range_of_an_electric_vehicle_The_relation_of_experience_to_subjectively_available_mobility_resources/links/00b4952530c399ee58000000.pdf?origin=publication_detail)

<sup>6</sup> Daziano, R. 2013. Conditional-logit Bayes Estimators for Consumer Valuation of Electric Vehicle Driving Range,

1 address consumer concerns is to establish a comprehensive network of public charging stations,  
2 which effectively extends the EV batteries.<sup>7</sup> Unfortunately, without the presence of such a  
3 comprehensive network, many individuals are reluctant to invest in electric vehicles. On the  
4 other hand, those controlling private capital are hesitant to invest in privately-owned charging  
5 stations unless and until there is a critical mass of electric vehicles on the road, which would  
6 allow them to recoup their investment. Electric vehicle charging stations thus present an  
7 example of the type of good that is best provided by government/public funds. Once a market  
8 for electric vehicles is established, it will be appropriate to transition to privatize charging.

9 Others might contend that the benefits of such a program will largely go to middle to  
10 upper quintiles because of the larger capital costs required for an electric vehicle. That  
11 contention has merit, but ignores the fact that (a) it will lead to more mass production of electric  
12 vehicles which will bring down the costs for all; (b) there are diffuse health benefits from  
13 removing mobile sources of air pollution from Delaware roads and (c) that this proposal is paired  
14 with \$8 million to be dedicated to low income households

15

16 **10. Q. Is land-based wind power feasible in Delaware or must Delaware solely rely**  
17 **on offshore wind power?**

18 A. Newer wind turbine technology presents opportunity to have higher wind turbine  
19 hub heights where the winds are stronger, and newer composite materials for wind turbine blades

---

Resource and Energy Economics, 35(3): 429-450, available at  
[https://www.researchgate.net/profile/Ricardo\\_Daziano/publication/261171639\\_Conditional-logit\\_Bayes\\_estimators\\_for\\_consumer\\_valuation\\_of\\_electric\\_vehicle\\_driving\\_range/links/545140d40cf2bf864cba8f34.pdf](https://www.researchgate.net/profile/Ricardo_Daziano/publication/261171639_Conditional-logit_Bayes_estimators_for_consumer_valuation_of_electric_vehicle_driving_range/links/545140d40cf2bf864cba8f34.pdf)

<sup>7</sup> Saxena, S., et al. 2015, Quantifying EV Battery End-of-life through Analysis of Travel Needs with Vehicle Powertrain Models, Journal of Power Sources, 282: 265-276, 275.

1 result in substantially large swept areas by the wind turbines. Wind maps<sup>8</sup> suggest that  
2 economically viable wind power project might be able to be developed in the southern part of the  
3 State. My preliminary work in this area suggests that a levelized cost of energy (LCOE) of  
4 around \$83/MWh for a project that is 50% debt financed. This would provide Delaware with  
5 diverse fueled, price stable, and emissions-free generation that would also have the effect of  
6 suppressing prices more generally. Moreover, any such development, which would be on private  
7 property, would most likely be in rural parts of the state, and thus would provide rents and/or  
8 royalties to farmers who agree to lease small portions of their land for wind farming, benefiting  
9 the downstate economy as well and helping to maintain family farms; it would provide local tax  
10 benefits as well. Finally, when looking at the levelized costs of new generation and considering  
11 environmental damages, new wind power is substantially cheaper on a per kWh basis.<sup>9</sup> Further  
12 research into this promising technology, including spatial planning, regulatory, social and  
13 environmental considerations would be beneficial.

14 **11. Q. Can you explain why you would have the Commission dedicate funds for**  
15 **energy efficiency upgrades rather than job growth?**

16 A. Yes. It is my understanding based on past DNREC experience that \$4 million  
17 will likely fund the EEIF for only about one year; my proposal would fund it for about two years  
18 with all the concomitant energy efficiency benefits. In contrast, sending funds to the non-Party  
19 DEDO, albeit with the nominal purpose of bringing jobs first to the natural gas infrastructure  
20 sector, and should any money be left over, to the energy efficiency sector, provides little

---

<sup>8</sup> See the Delaware map at 100m at <http://usasolarwind.com/USA%20Wind%20Maps/Delaware/Delaware%20wind%20speed%20map%20100m.pdf>; and national maps with hub heights at 110m and 140m are published by the US Department of Energy at [http://apps2.eere.energy.gov/wind/windexchange/windmaps/resource\\_potential.asp](http://apps2.eere.energy.gov/wind/windexchange/windmaps/resource_potential.asp).

<sup>9</sup> D.T. Shindell, The Social Cost of Atmospheric Release, *Climatic Change*, 10.1007/s10584-015-1343-0 (2015)

1 assurance of much of anything. To begin with, it is not clear how this vague proposal would  
2 work for natural gas infrastructure given that DEDO has specific grant, loan, training and tax  
3 incentive programs and Staff, DPA and DNREC have failed to provide a roadmap to any such  
4 program; Indeed, in its initial proposal, DPA, who originated the idea, acknowledges that there  
5 may be “no such DEDO program.”

6 As for the back-up energy efficiency program, there is no assurance that energy will be  
7 used any more efficiently by Delawareans or Delaware businesses or that any Delawareans and  
8 Delaware businesses will be able to obtain energy efficiency contracting services at lower prices.  
9 In essence, the energy efficiency component is a jobs program masquerading as an energy  
10 efficiency program. And, even if successful, which is in doubt, it may not provide a single  
11 additional job to Delaware in that the General Assembly may simply decrease the state funds that  
12 it would otherwise allocate to DEDO by an amount equivalent to the funds the parties propose  
13 here to provide to DEDO.

14 Further, DEDO’s track record in the electricity and natural gas sectors is far from  
15 encouraging. DEDO, for example, (a) sought to subsidize costs related to a data center and large  
16 natural gas (>250MW) power plant that were proposed to be located in the center of the City of  
17 Newark while forward-looking companies such as Google and Apple are building data centers  
18 powered with renewable energy; and (b) it subsidized the natural gas-powered Bloom Energy  
19 fuel cell project, which transferred substantial costs from Bloom to Delmarva Power ratepayers,  
20 much to the chagrin of the DPA, among others, and, it created complications for the Delaware  
21 RPS as well.

22 **12. Q. Does this complete your second supplemental testimony today?**

23 A. Yes.

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE APPLICATION )  
OF DELMARVA POWER & LIGHT COMPANY, )  
EXELON CORORPATION, PEPCO HOLDINGS ) PSC DOCKET NO. 14-193  
INC., PURPLE ACQUISITION CORPORATION, )  
EXELON ENERGY DELIVERY COMPANY, LLC )  
AND SPECIAL PURPOSE ENTITY, LLC )  
FOR APPROVALS UNDER THE PROVISIONS )  
OF 26 *Del. C.* §§ 215 AND 1016 )  
(FILED JUNE 18, 2014) )

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2016, that on behalf of Jeremy Firestone, *Pro Se*, I filed **Jeremy Firestone's Pre-Hearing Submission in Support of Proposed Allocation of MFN Benefits** with Delafile and served a copy of the same on all persons on the email service list by email attachment.

Respectfully submitted,



Jeremy Firestone  
12 September 2016



August 12, 2016

Electronically Filed and Email

Mr. Mark Lawrence  
Senior Hearing Examiner  
Delaware Public Service Commission  
861 Silver Lake Blvd., Suite 100  
Dover, DE 19904

Re: The Mid- Atlantic Renewable Energy Coalition's Comments on Proposed Allocation of the Additional Benefits Resulting from the Most Favored Nation Clause in PSC Docket No. 14-193

Dear Hearing Examiner Lawrence:

Please accept this letter as the Comments of the Mid-Atlantic Renewable Energy Coalition ("MAREC") on the proposed allocation of the additional benefits resulting from the Most Favored Nation clause ("MFN") of the Amended Settlement Agreement in this matter dated April 7, 2015 ("Amended Settlement Agreement"). MAREC appreciates the opportunity to comment at this stage of the proceeding and will offer some focused comments on just several of the proposals primarily related to renewable energy.

First, MAREC recommends that any proposal to utilize any of the additional funding or additional benefits as a result of decisions made in other jurisdictions be specifically detailed and apply in the manner that Delmarva Power and Light ("Delmarva Power"- used to encompass Exelon Corporation as well) customers benefit. Because the merger impacts

29 North State Street, Suite 300  
Dover, Delaware 19901

tel. 302-331-4639

[www.marec.us](http://www.marec.us)

Delmarva Power customers, it is only appropriate that these are the customers that should benefit from a distribution of additional benefits from the merger. Detailing how the funding or benefits are allocated is essential, because it is important that discretion is provided only in a manner that leads to the best possible use of funding for the Delmarva Power service territory or for the express benefits of Delmarva Power customers.

1. One proposal that has been suggested by the Company relates to providing the Delaware Economic Development Office (“DEDO”) \$6.0 million for the purpose of creating new jobs through the provision of funding to “new renewable energy businesses, new energy-efficiency businesses, new energy related innovative startups, or new infrastructure investments.” MAREC certainly understands the desire to create new jobs in the state and supports that concept. However, we disagree that DEDO would be restricted to apply the funding for such a purpose to only “new” businesses, whether they are renewable energy or energy efficiency businesses. We believe that the state should be focused on new jobs and therefore the interest to focus on “new” businesses seems to be off point and highly risky. Any existing company desiring to locate a project or expand existing facilities in the state should be encouraged to apply for such funding. While MAREC believes in new business or startups as a way to meet some of the goals of this provision, there is also a major risk involved when new businesses are awarded essentially public funding just by the very nature of the risk involved in getting such a business off the ground and becoming successful. New businesses often fail, whereas existing businesses with a good track record will most likely be around for a long time and their record for developing jobs can be easily reviewed.

Another concern with this recommendation is the use of the language: “new energy related innovative startups, or new infrastructure investments” as potential recipients of the funding. MAREC believes there should be significant qualifications to

this language in addition to the previously stated concern over only utilizing “new” entities. Delaware is a leader in its environmental stewardship and there should be explicit language in any ruling on this funding that makes it absolutely clear that the projects in these categories must show benefits to the environment that do not lead to any additional harmful emissions as a result of these projects being developed in the state. For instance, there could be innovative startups that propose to use new coal technologies or an energy infrastructure project that could provide greater environmental risks for Delaware residents. MAREC recommends that significantly more detail is necessary as it relates to these types of projects to avoid unintended uses of these dollars.

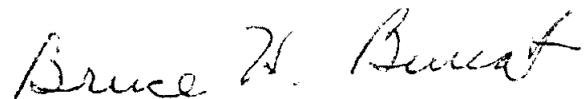
2. Delmarva also proposes that \$4.0 million be used to fund “public interest projects that would provide benefit to the State of Delaware and its citizens.” The use of these funds would be subject to the review and approval of the Delaware Public Service Commission (“Commission”). MAREC supports this concept as well, except that we are concerned that there could be a potentially overly broad interpretation of the term “public interest projects” that could be used. MAREC believes that it would be appropriate to make it clear what is meant by defining this term for purposes of this proposal. In fact, any use of these funds should be limited to specific purposes that are generally considered “public interest projects” like renewable energy and energy efficiency projects. As another example, these funds could also be utilized for job training to help people develop the necessary skills to work in these fields.
3. MAREC agrees in concept with Delmarva’s proposal to provide “\$3.0 million of capital to creditworthy government entities for the development of renewable energy projects in Delaware.” Again our concern with this proposal is not the concept, but that there needs to be quite a bit more meat on the bones of this proposals to ensure that there are proper safeguards with the allocation of this funding for these projects. We know

that this provision is consistent with a provision in the District of Columbia merger case. However, there should be more detail with regard to the level of funding for a project or projects and to ensure that this funding goes only to projects that are truly non-emitting renewable energy projects.

4. Finally, MAREC agrees with the concept of developing a five (5) MW of renewable energy generation in Delaware. However, we do think that consistent with the principles of competitive markets, such a project should be competitively bid. Delmarva/Exelon could purchase and sell the power from such a project into the market, but it would not be developed directly by Exelon or an affiliate, unless it was the successful bidder through an arm's length process.

MAREC appreciates this opportunity to address the potential disposition of the benefits of the MFN and looks forward to forward dialogue on the subject in this proceeding.

Sincerely,



Bruce H. Burcat  
Executive Director  
Mid-Atlantic Renewable Energy Coalition  
29 N. State Street, Suite 300  
Dover, DE 19901  
302-331-4639  
[bburcat@marec.us](mailto:bburcat@marec.us)