Agenda Date: 10/31/16
Agenda Item: 2K

STATE OF NEW JERSEY

Board of Public Utilities
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Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

ENERGY

IN THE MATTER OF THE MERGER OF EXELON CORPORATION AND PEPCO HOLDINGS, INC.	)	ORDER APPROVING JOINT RECOMMENDATION FOR SETTLEMENT OF THE MOST FAVORED NATION ISSUE
	)	DOCKET NO. EM14060581

Parties of Record:

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

BY THE BOARD:

By this Order, the New Jersey Board of Public Utilities ("Board") addresses the resolution of the Most Favored Nation Provision ("MFN Provision") approved as part of the settlement of the merger of Exelon Corporation ("Exelon") and Pepco Holdings, Inc. ("PHI") ("collectively, Joint Petitioners").[1] The parties PHI, Atlantic City Electric Company ("ACE"), Exelon, Purple Acquisition Corp. ("Merger Sub"), Exelon Energy Delivery Company, LLC ("EEDC"), and New Special Purpose Entity, LLC ("New SPE") (collectively, the "Joint Petitioners"), the New Jersey Division of Rate Counsel ("Rate Counsel"), and Board Staff ("Staff") met and negotiated

[1] See In re the Merger of Exelon Corporation and Pepco Holdings, Inc., BPU Docket No. EM14060581, Order Approving Stipulation of Settlement, (March 6, 2015) ("Merger Order").

amicable terms joined and entered into a Joint Recommendation on October 17, 2016[2] ("MFN Joint Recommendation") which reconciles the Merger-related benefits provided to Delaware, Maryland and the District of Columbia with the benefits provided in New Jersey pursuant to a March 6, 2015 Order ("Merger Order"), which approved the merger of Exelon and PHI.

PROCEDURAL HISTORY

By Order dated March 6, 2015, the Board approved a stipulation of settlement ("Merger Stipulation") setting the terms and conditions for the merger of Exelon and PHI. The Merger Order contained a MFN Provision[3] which provided that Exelon meet with and work with Board Staff and Rate Counsel to reconcile the Merger–related benefits provided to the other jurisdictions involved in this merger so that New Jersey will receive, at a minimum, equal value of settlement terms.

The Joint Petitioners received the required approvals of the merger from the Board, the Delaware Public Service Commission ("Delaware PSC"), the Maryland Public Service Commission ("Maryland PSC"), the Virginia State Corporation Commission ("Virginia SCC") and the District of Columbia Public Service Commission ("DC PSC").[4] The DC PSC granted approval of the proposed merger on March 23, 2016. The Merger closed on March 23, 2016.

On April 1, 2016, the Joint Petitioners provided Board Staff and Rate Counsel with the final orders issued by the other jurisdictions which approved the merger, as well as an analysis of the value of benefits provided in each jurisdiction on a per-distribution customer basis. The per distribution customer benefits in the DC PSC order were higher than those provided in the Delaware or Maryland PSCs orders, therefore the DC PSC order became the benchmark for the calculation of benefits to be provided in New Jersey.

Board Staff, Rate Counsel and the Joint Petitioners ("the Signatory Parties") held multiple settlement conferences to discuss and analyze the MFN Provision, and the terms of the DC PSC Order. The Joint Petitioners provided requested updated information regarding the other jurisdiction's decisions. The Signatory Parties have agreed upon the amount of the additional benefits and allocation of those benefits. The Signatory Parties have memorialized the agreement in the Joint Recommendation which was filed with the Board on October 17, 2016.

The Board's Merger Order provided that Exelon and ACE spend $69.5 million to provide positive benefits to ACE customers and the State of New Jersey. The $69.5 million consisted of $62 million in direct rate credits to customers and an energy–efficiency program five–year commitment of $7.5 million or the estimated cost to provide $15 million in energy- efficiency program savings. Joint Petitioners estimate the ACE distribution customer count on February 29, 2016 to be 554,215, therefore the positive benefits in the Merger Order equate to $125.40 per NJ distribution customer, expressed on a nominal basis. Because the other jurisdictions adopted various timing schemes for funding the customer and public benefits, Joint Petitioners

[2] All parties involved in the initial matter were sent the Joint Recommendation. None will be joining in the Recommendation or filing comments about same.
[3] See Merger Order at p. 39 (summarizing the MFN Provision set out in Paragraph 91 of the Stipulation of Settlement).
[4] See Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction, Orders No. 17947 (dated August 27, 2015), at Paragraph 359.

have provided a Net Present Value ("NPV") calculation so an equivalent comparison can be made across jurisdictions by ensuring that all benefits are based on today's dollars. On an NPV basis, the positive benefits ordered by the Board equate to $123.13 per New Jersey distribution customer.

When comparing the level of benefits awarded to the merger jurisdictions, on a NPV basis, the commitments ordered in the DC PSC's Merger Order yield the highest benefits, $220.19 per-distribution customer on an NPV basis.[5]

As a result of the MFN provision, Exelon shall increase the New Jersey benefits from $123.13 per distribution customer to $220.19 per-distribution customer, an increase of $97.07 per customer, or an additional $53,795,196 (NPV). Therefore, ACE's New Jersey customers will receive an equivalent amount calculated on a per-distribution customer basis.

To account for the fact that, under the Joint Recommendation, certain portions of the $53,795,196 of MFN benefits will be paid over a number of years, Exelon agreed to increase the future installment payments to address net present value. In other words, future payments reflect the value of the MFN benefits delivered in future years. For that reason, as reflected in the Joint Recommendation, the approximately $53,795,196 of MFN benefits will actually result in a total of $56,781,162 in nominal installment payments over the next six (6) years, which ensures that New Jersey customers and the State of New Jersey receive an equivalent level of benefits as compared to the District of Columbia customers. Exhibit B of the Joint Recommendation contains the payout schedule.

JOINT RECOMMENDATION TERMS

The Signatory Parties have agreed to accept the terms set forth in the MFN Joint Recommendation and summarized below[6] that relate directly to the Merger Stipulation, and the Joint Petitioners agree to adopt certain additional commitments in New Jersey that arose out of the MFN reconciliation process in Delaware, or to the timing of the closing of the merger. The Signatory Parties agree and recommend the following Joint Recommendations and proposed revisions to the Merger Stipulation.:

Financial Benefits

The Signatory Parties agreed that the Joint Petitioners shall provide $53,795,196 on a net present value basis,[7] or equivalent to approximately $97.07 on a per-distribution customer basis, in additional benefits to ACE customers and the State of New Jersey. Consistent with the terms of the MFN Provision, this amount was calculated by determining the per-distribution customer financial benefits provided in each jurisdiction. As noted in the Joint Recommendation, the financial benefits ordered by the DC PSC were the highest on a per-

[5] See Exhibit A of the Joint Recommendation, which is a comparison of the New Jersey benefits to the level of benefits received by the DC PSC, Maryland PSC and the Delaware PSC.
[6] Although the terms of the Joint Recommendation are discussed in some detail in this Order, the full terms of the Joint Recommendation are enumerated in the document filed with the Board on October 17, 2016. Should there be any conflict between this summary and the Settlement, the terms of the Stipulation control, subject to the findings and conclusions of this Order.
[7] The NPV was calculated using a discount rate of 5%. The nominal value of these additional benefits is $56,781,162 as indicated on Exhibit B.

distribution customer basis and were used as the benchmark to calculate the additional benefits to be provided in New Jersey. When the additional $97.07 per-distribution customer benefit is combined with the $123.13 per-distribution customer benefit provided in the Board's Merger Order, which includes the $113.16 direct rate credit already provided to distribution customers, the total amount is $220.19[8] per-distribution customer, equivalent to the amount ordered by the DC PSC.

Additional Financial Benefits

Rate Credits: The Joint Petitioners will provide additional rate credits consisting of two components: (1) a $16,737,451 reduction of a portion of the present Non-Utility Generator Charge deferral balance and Uncollectible deferral balance that is part of the Societal Benefits Charge, both of which are the subject of a separate proceeding in BPU Docket No. ER16020099. (MFN Joint Recommendation Exhibit D contains additional details on how this rate credit will be applied); and (2) an additional customer rate credit of $22,001,538 which will be provided to offset the rate increase for all customer classes approved by the Board in an Order (dated August 24, 2016) in ACE's base rate case in BPU Docket No. ER16030252 (as described more fully in MFN Joint Recommendation Exhibit E).

Funding for Low-Income Customer Support: The Joint Petitioners have committed that they will provide a total of $4 million in equal installments over a four-year period in funding to agencies to support low-income customers in the ACE service territory. Within sixty (60) days after the effective date of this Order, the Joint Petitioners will disburse grants of $250,000 to each of the following four organizations: the Affordable Housing Alliance, Catholic Charities of the Diocese of Camden, New Jersey SHARES, and The People for People Foundation of Gloucester County.[9] The Joint Petitioners will then make annual grants for three additional years of $250,000 to each of these organizations. The agencies will utilize these funds to provide direct grants of up to $200 to ACE residential customers who require assistance in paying their ACE electric bills. Eligible residential customers will be able to receive one grant per 12-month period. Eligibility will be determined on an individual basis by the four organizations above; and absent extreme hardship, emergency or family crisis, an eligible individual's household income should not exceed 400% of the Federal Poverty Level.

Funding for Workforce-Development: Within sixty (60) days after the effective date of this Order, Joint Petitioners have committed they will provide Board Staff and Rate Counsel with a detailed program of proposed workforce-development initiatives, focusing on programs providing the skills needed for jobs within the public utility industry. Within sixty (60) days after the Joint Petitioners, Board Staff and Rate Counsel agree upon the recipients of the workforce-development funds, the Joint Petitioners will provide a total of $6,542,173 in installments over a six-year period to fund workforce-development initiatives in the ACE service territory.

Energy-Efficiency Programs for ACE Customers: The Joint Petitioners have committed they will spend $15 million over five years (through March, 2021) to provide energy-efficiency programs in the ACE service territory. ACE will direct the energy-efficiency programs and will include programs targeting low-income customers and economically-challenged towns and

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[8] There is a one cent difference in the total due to rounding.

[9] In the event that one of the receiving organizations is not able to fulfill its obligations under a Memorandum of Understanding to be negotiated with ACE, then the Joint Petitioners will instead provide the funds to another one of these agencies or will, after consulting with Board Staff and Rate Counsel, substitute a new organization to administer the funding.

cities. This spending level represents an incremental increase in spending of approximately $7.5 million on energy-efficiency programs over the five-year period as a result of the reconciliation of the MFN Provision.[10] No later than 120 days after the effective date of this Order, the Joint Petitioners will submit to Board Staff and Rate Counsel a detailed description of the energy-efficiency programs to be funded pursuant to this provision, including a plan to provide $1.5 million in program funding by March 31, 2017.

Proposed Additional Non-Financial Commitments[11]

4. Exelon will include the State of New Jersey among the locations of Exelon's Board of Directors meetings and Exelon's annual stockholder meetings, superseding paragraph 69 of the Merger Stipulation.

5. The Exelon Executive Committee will include the State of New Jersey among the locations of its meetings, superseding paragraph 70 of the Merger Stipulation.

6. ACE will honor all existing collective bargaining agreements. 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 ACE's utility operations in New Jersey. "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 New Jersey. For at least the first five (5) years following the consummation of the Merger, Exelon will provide current and former ACE employees compensation and benefits that are at least as favorable in the aggregate as the compensation and benefits provided to those employees immediately before April 29, 2014, or to the compensation and benefits of Exelon employees in comparable positions. PHI and ACE will also continue their commitments to workforce diversity. If, and only if, the Merger of PHI and Exelon obtains all necessary approvals and closes, ACE agrees or agreed to hire a minimum of sixty (60) bargaining-unit employees and to make a good faith effort to do so during the twenty-four (24) month period after the Merger closes. This paragraph in the Joint Recommendation supersedes paragraph 20 of the Merger Stipulation.

7. ACE shall, on an annual basis for the first five (5) years after the Merger closes, include information regarding employment levels at ACE during the prior calendar year in the annual report detailing Merger-related economic benefits described in Paragraph 8 below. ACE 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. Copies of the report shall be provided to Rate Counsel when it is filed with the Board.

8. For each of the first five (5) years after the Merger closes, ACE will submit an annual report to Board Staff and Rate Counsel detailing the economic benefits of the Merger for the State of New Jersey. The report will detail the methodology used to calculate the benefits and the specific description of the benefits.

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[10] Paragraph 8 of the Stipulation of Settlement required the Joint Petitioners to provide "a total of $15 million in savings to ACE customers over the life of the measures." The Joint Petitioners estimated that the cost to provide these savings was approximately $7.5 million over the five-year period.

[11] Exhibit F attached to the Joint Recommendation contains a listing of each paragraph in the Stipulation of Settlement and indicates if it will be revised and superseded by the terms of the Joint Recommendation.

9. Exelon agreed that any costs to migrate from PHI's SolutionOne SAP system to an Oracle-based system prior to the conclusion of the life of the asset will not be recovered in ACE'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.

10. Exelon is committed to having all of its utilities achieve and maintain first-quartile performance in safety. Consistent therewith, ACE will include information on its safety performance and safety initiatives in the annual report filed with the Board, with copies of the report provided to Rate Counsel at the time it is filed with the Board. ACE's reporting will include a report by Exelon on its existing safety and cybersecurity policies.

11. 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.

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

13. Exelon shall conduct an analysis of its operational and financial risk to determine the adequacy of existing ring-fencing measures. Exelon will include this analysis on a one-time basis in the report filed with the Board pursuant to this Recommendation, with copies provided to Rate Counsel at the time the report is filed with the Board.

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

15. Exelon and PHI shall file with the Board, with copies to Rate Counsel, 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 Board 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 Board.

Additional Agreements

16. Pursuant to Paragraphs 4 and 55 of the Merger Stipulation, the Joint Petitioners have sought Board approval of the documents and instruments associated with the Pepco Holdings money pool.[12] The Signatory Parties recommend that the Board approve the money pool documents as filed, and that ACE be permitted to participate in Pepco Holdings' money pool consistent with Paragraphs 4 and 55 of the Merger Stipulation.

17. The Signatory Parties acknowledge that Merger approvals granted in Maryland and the District of Columbia are subject to appeal. In the event that either of those proceedings ultimately results in an increase in the per-distribution customer benefits quantified by the Joint Petitioners in the MFN Provision analysis, then the Joint Petitioners agree to provide to Board Staff and Rate Counsel a supplemental MFN Provision analysis quantifying that increase along with a proposal for delivering any additional incremental benefits to ACE customers and the State of New Jersey.[13] If Board Staff or Rate Counsel finds the amount or form of incremental benefits offered by the Joint Petitioners to be insufficient, then Board Staff or Rate Counsel may petition the Board to require the Joint Petitioners to provide increased benefits.

18. The Signatory Parties acknowledge that the requirements contained in Paragraph 9 of the Merger Stipulation (to file a distribution base rate case within three years after the closing of the Merger), Paragraph 74 (to demonstrate in ACE's first post-Merger base rate case that ACE's costs allocated under the Exelon General Services Agreement are substantially the same as, or lower than, ACE's aggregate allocated costs pre-Merger), and Paragraph 76 (to file testimony regarding service company charges in ACE's next base rate case) were not addressed in the ACE base rate case in BPU Docket No. ER16030252.[14] Instead, these three requirements will be addressed by ACE in its next filed base rate case following the base rate case in BPU Docket No. ER16030252, Phase One of which concluded with a Board Order dated August 24, 2016.

PEPCO HOLDINGS MONEY POOL

Paragraphs 4 and 55 of the Merger Stipulation address the issue of ACE's participation in the Pepco Money Pool. Through the Merger Order, the Board approved ACE's participation in the Money Pool, but pursuant to the Merger Stipulation, the documents creating the Money Pool would be subject to approval by the Board. On April 22, 2015, Joint Petitioners filed the documents creating the money pool with the Board. These documents have been reviewed by Board Staff and through the Joint Recommendation; the Signatory Parties recommend approval of the documents.

FINDINGS

As set forth in the Board's Merger Order, pursuant to its statutory and regulatory obligations, the Board carefully evaluated the impact of the proposed acquisition on competition, on the rates of

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[12] Pepco Holdings and ACE filed the money pool documents with the Board by letter dated April 22, 2015, in this docket. The Board has not yet acted to approve the money pool documents.

[13] Any additional benefits provided pursuant to the operation of this provision shall be in the form of rate credits to ACE customers unless the Joint Petitioners propose an alternative mechanism.

[14] The ACE base rate case in BPU Docket No. ER16030252 was filed on March 22, 2016, one day prior to the receipt of approval of the Merger by the DC PSC on March 23, 2016. The Merger transaction closed on March 23, 2016.

ratepayers affected by the acquisition of control, on ACE's employees, and on ACE's provision of safe and adequate utility service at just and reasonable rates.

As noted above, the Merger Order required the reconciliation of the Merger-related benefits provided to Delaware, Maryland and the District of Columbia with the benefits provided in New Jersey as contained in the Merger Stipulation. Following the Board's review of the record in this matter, including the Merger Order and the Joint Recommendation, the Board **HEREBY CONCLUDES** that the additional benefits to the State of New Jersey which Joint Petitioners have agreed to pay for and implement are equivalent to the benefits contained in the DC PSC Order. The Board **FURTHER CONCLUDES** that the Joint Recommendation enhances the benefits to New Jersey resulting from the proposed merger, and that the statutory criteria set forth in N.J.S.A. 48:3-10, N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14(c) continue to be satisfied, and that the proposed change in control can be accomplished without adverse impact on competition, rates, employees or the provision of safe and adequate utility service at just and reasonable rates, and that on balance positive benefits will accrue to the customers of ACE and the State of New Jersey. As such, the Board **FINDS** that the Joint Recommendation is reasonable, in the public interest, and in accordance with the law. Accordingly, the Board **HEREBY APPROVES** and **ADOPTS** the Joint Recommendation.

The Board previously approved participation in the PHI Money Pool, but required Board approval of the PHI Money Pool documentation. Board Staff has reviewed the PHI Money Pool documentation and the Signatory Parties agree that the documentation should be approved. The Board **HEREBY APPROVES** the documents and instruments associated with the PHI Money Pool. ACE may participate in the PHI Money Pool subject to the representations and conditions set forth in the Merger Stipulation and Merger Order.

The Board **HEREBY FINDS** that as a result of appeals in Maryland and the District of Columbia, it is possible that an additional review of the MFN provision will be required. Therefore, the Board **HEREBY ORDERS** that the MFN provision of the Board's Order shall survive this review and should additional benefits result from an appeal in Maryland or the District of Columbia, the Joint Petitioners are required to analyze whether such additional benefits shall be provided to New Jersey and provide that analysis to Board Staff and Rate Counsel. If additional benefits should result in Maryland or the District of Columbia, Board Staff and/or Rate Counsel may seek additional recovery for ACE Ratepayers and New Jersey.

The Board **HEREBY ORDERS** that:

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

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

ACE's costs remain subject to audit by the Board. This Decision and Order shall not preclude nor prohibit the Board from taking any actions determined to be appropriate as a result of any such audit.

This Order shall be effective on November 10, 2016.

DATED: 10\31\16

BOARD OF PUBLIC UTILITIES
BY:

RICHARD S. MROZ
PRESIDENT

JOSEPH L. FIORDALISO
COMMISSIONER

MARY-ANNA HOLDEN
COMMISSIONER

DIANNE SOLOMON
COMMISSIONER

UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:

IRENE KIM ASBURY
SECRETARY

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

IN THE MATTER OF THE MERGER OF EXELON CORPORATION AND PEPCO HOLDINGS, INC. - DOCKET NO. EM14060581

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October 17, 2016

Via Overnight Delivery &
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Hon. Irene Kim Asbury, Secretary
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RE: I/M/O the Merger of Exelon Corporation and Pepco Holdings, Inc.
BPU Docket No. EM14060581

Dear Secretary Asbury:

Attached please find a Joint Recommendation executed on behalf of Exelon Corporation ("Exelon"), Exelon Energy Delivery Company, LLC, New Special Purpose Entity, LLC, Pepco Holdings LLC ("Pepco Holdings"), and Atlantic City Electric Company ("ACE") (together, the "Joint Petitioners"), the Staff of the Board of Public Utilities ("Board Staff") and the Division of Rate Counsel ("Rate Counsel") (collectively, the "Signatory Parties") in the above-referenced matter.[1] The Joint Recommendation has been prepared in connection with the Most Favored Nation Provision ("MFN Provision") contained in the Stipulation of Settlement previously approved by the Board of Public Utilities (the "Board") in this docket.[2] In approving the Stipulation of Settlement, the Board correctly found that the MFN Provision would provide

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[1] On October 5, 2016, the undersigned circulated the Joint Recommendation to counsel for the following intervenors: Independent Energy Producers of New Jersey; Public Service Electric and Gas Company, PSEG Power LLC and PSEG Energy Resources & Trade LLC; the Mid-Atlantic Renewable Energy Coalition; Monitoring Analytics; and NRG Energy, Inc., and to participants: Rockland Electric Company and the Clean Air Council (collectively, the "Intervening/Participating Parties"). Joint Petitioners invited all of the Intervening/Participating Parties to join in the Joint Recommendation as a Signatory Party. None of the Intervening/Participating Parties elected to become a Signatory Party.

[2] The MFN Provision is set out in Paragraph 91 of the Stipulation of Settlement. The Stipulation of Settlement was approved by the Board in *I/M/O the Merger of Exelon Corporation and Pepco Holdings, Inc.*, BPU Docket No. EM14060581, Order Approving Stipulation of Settlement, (dated March 6, 2015, and effective March 19, 2015)["Merger Order"] at 19.

"additional assurance" that positive benefits will flow to the customers of ACE and to the State of New Jersey.[3] The purpose of the Joint Recommendation is to set out the Signatory Parties' proposals for concluding the reconciliation process required by the MFN Provision.

The Board's initial finding regarding the MFN Provision is clearly borne out by the terms of the Joint Recommendation. As a result of the MFN Provision reconciliation process and the prior Merger commitments, the Joint Petitioners will provide an unprecedented package of direct benefits to ACE customers and the State of New Jersey totaling nearly $126 million (equivalent to a total value of $220.19 per ACE distribution customer). These financial benefits are in addition to the many other commitments the Joint Petitioners have made regarding system reliability, employee commitments, sustained capital spending, charitable contributions and customer service.

The Joint Petitioners are pleased to provide this substantial package of commitments as a tangible demonstration of the numerous benefits of the Merger. In addition, the benefits and initiatives proposed in the Joint Recommendation were expressly designed to include programs to help address some of the economic challenges facing southern New Jersey and the ACE service territory. Thus, the Joint Recommendation contains proposals to provide $4 million over four years to support ACE's low-income customers, $15 million of spending over five years on energy-efficiency programs (including programs targeting low-income customers and economically challenged communities), over $6 million over six years in funding for work force development initiatives in ACE's southern New Jersey service territory, and over $39 million in further customer rate credits and offsets. These commitments are in addition to $62 million in direct customer rate credits (equal to $113.16 per distribution customer) that have already been provided to ACE customers. Taken together, the Merger will provide substantial financial and non-financial benefits well in excess of previous New Jersey utility mergers.

The Joint Petitioners respectfully request that the Board review this Joint Recommendation at its October 31st public agenda meeting, and promptly approve the Joint Recommendation so that ACE customers and the State of New Jersey may enjoy the full panoply of benefits resulting from the Merger.

Respectfully submitted,

Colleen A. Foley

Colleen A. Foley

Enclosures
Cc: President Mroz (overnight delivery only)
Commissioner Fiordaliso (overnight delivery only)
Commissioner Holden (overnight delivery only)
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[3] *See* Merger Order, at 39.

MASTER SERVICE LIST
In the Matter of the Merger of Exelon Corporation
and Pepco Holdings, Inc.
BPU Docket No. EM14060581

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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES

IN THE MATTER OF THE MERGER OF EXELON CORPORATION AND PEPCO HOLDINGS, INC.	:	**BPU DOCKET NO. EM14060581**
	:	**JOINT RECOMMENDATION**

APPEARANCES:

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Colleen A. Foley, Esq., Saul Ewing LLP, on behalf of the Joint Petitioners

Alex Moreau, Deputy Attorney General, (Christopher S. Porrino, Attorney General of New Jersey), on behalf of the Staff of the Board of Public Utilities

Stefanie A. Brand, Esq., Director, Brian Lipman, Esq., Deputy Rate Counsel, Ami Morita, Esq., Deputy Rate Counsel, Diane Schulze, Esq., Assistant Deputy Rate Counsel, James Glassen, Esq., Assistant Deputy Rate Counsel, Kurt Lewandowski, Esq., Assistant Deputy Rate Counsel, and Brian Weeks, Esq., Deputy Rate Counsel, on behalf of the Division of Rate Counsel

TO THE HONORABLE BOARD OF PUBLIC UTILITIES:

Overview & Procedural History

In March, 2015, the Board of Public Utilities (the "Board") authorized the merger of Exelon Corporation ("Exelon") and Pepco Holdings, Inc. (the "Merger"), and approved a Stipulation of Settlement containing a Most Favored Nation Provision (the "MFN Provision").[2]

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[1] As a result of the closing of the Merger of Exelon Corporation and Pepco Holdings, Inc., the Joint Petitioners consist of the following entities: Exelon Corp., Exelon Energy Delivery Company, LLC, New Special Purpose Entity, LLC, Pepco Holdings LLC ("Pepco Holdings"), and Atlantic City Electric Company ("ACE") (together, the "Joint Petitioners").

[2] *See In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc.*, BPU Docket No. EM14060581, Order Approving Stipulation of Settlement, dated March 6, 2015, effective March 19, 2015, [the Merger Order], at p. 39 (summarizing the MFN Provision set out in Paragraph 91 of the Stipulation of Settlement).

The MFN Provision[3] required Exelon to engage with the Staff of the Board ("Board Staff" or "Staff") and the Division of Rate Counsel ("Rate Counsel") in a process to reconcile the Merger-related benefits provided in Delaware, Maryland and the District of Columbia with the benefits provided in New Jersey pursuant to the New Jersey Stipulation of Settlement and the Board's Merger Order. In approving the Merger, the Board found that the MFN Provision was intended to provide a level of assurance that ACE customers and the State of New Jersey would be treated as favorably as Maryland, Delaware and the District of Columbia with respect to benefits provided as a result of the Merger.[4]

On March 23, 2016, the Public Service Commission of the District of Columbia ("DC PSC") granted approval of the proposed Merger.[5] Authorization from the DC PSC was the last required regulatory approval. The Merger closed on March 23, 2016.[6]

Consistent with the Merger Order and the MFN Provision, on April 1, 2016 the Joint Petitioners provided Board Staff and Rate Counsel with copies of the final orders issued by the Delaware Public Service Commission ("Delaware PSC"), the Maryland Public Service Commission ("Maryland PSC"), and the DC PSC approving the Merger, as well as an analysis of the value of benefits provided in each jurisdiction on a per-distribution customer basis. The per-distribution customer benefits ordered to be provided by the DC PSC were higher than those provided in Delaware or Maryland, and thus the order of the DC PSC became the benchmark for the calculation of benefits to be provided in New Jersey.

[3] The MFN Provision is Paragraph 91 of the Stipulation of Settlement that was approved by the Board in its Merger Order. Employment and hiring commitments, the level of charitable contributions, and reliability performance and investment were all explicitly excluded from the MFN Provision.

[4] Merger Order, at 39.

[5] In Order No. 18148 of the DC PSC, in *Formal Case No. 1119*, issued March 23, 2016 [the "DC PSC Merger Order"].

[6] In a letter dated March 24, 2016, the Joint Petitioners notified the Board of the closing of the Merger on March 23, 2016.

The Joint Petitioners, Staff and Rate Counsel met numerous times to discuss the MFN Provision analysis and the terms of the DC PSC's Merger Order. The Joint Petitioners provided Staff and Rate Counsel with additional information on several aspects of the DC PSC's decision, as well as filings made in other jurisdictions. The Joint Petitioners, Staff and Rate Counsel also considered numerous options for deploying the additional funds provided to New Jersey through the MFN Provision. In addition, the Joint Petitioners circulated the proposed Joint Recommendation to all other parties, and invited them to become Signatory Parties to this Joint Recommendation. As a result of this process, the Signatory Parties have come to an agreement on both the amount of the additional benefits and the allocation of those benefits, and have memorialized that agreement in this Joint Recommendation to the Board.

New Jersey MFN Analysis

The Board's Merger Order approved commitments by Exelon and ACE to spend \$69.5 million (expressed as a nominal value) to provide positive benefits to customers and the State of New Jersey, consisting of \$62 million in direct rate credits to customers and a commitment to pay for and implement over a five-year period, energy-efficiency programs projected to yield a total of \$15 million in savings for ACE customers. The Joint Petitioners estimated that the cost to provide the \$15 million in energy-efficiency savings was \$7.5 million. As of February 29, 2016, ACE had a distribution customer count of 554,215.[7] Therefore, the customer and positive benefits awarded in the Merger Order equate to \$125.40 per New Jersey distribution customer, expressed on a nominal basis. Because different jurisdictions adopted different timing for the funding of different customer and public benefits, the New Jersey MFN Analysis (and the analyses being provided in Maryland and Delaware) applies a Net Present

[7] The ACE customer count includes individual customers that are part of master metered accounts, consistent with the approach to customer accounts that the DC PSC directed be used in the DC PSC Merger Order. *See* DC PSC Merger Order at Attachment B, ¶1. This has the effect of increasing the value to be provided to New Jersey by \$1,363,637.

Value ("NPV") calculation in order to make an "apples-to-apples" comparison of the benefits across jurisdictions. The application of an NPV approach allows the Board and the Signatory Parties to compare values on an equivalent basis by ensuring that all benefits are based on today's dollars. On an NPV basis, the positive benefits ordered by the Board equate to $123.13 per New Jersey distribution customer.

Attached as Exhibit A is a comparison of this level of New Jersey benefits to the level of benefits awarded by the DC PSC, the Maryland PSC and the Delaware PSC stated on an NPV basis. As this comparison demonstrates, and as noted above, the commitments ordered in the DC PSC's Merger Order yield the highest benefits – namely, $220.19 per-distribution customer on an NPV basis.

Under the MFN Provision, Exelon shall increase the New Jersey benefits from $123.13 per distribution customer to $220.19 per-distribution customer—an increase of $97.07 per-distribution customer, or $53,795,196 (NPV)—so that ACE's New Jersey customers receive an equivalent amount calculated on a per-distribution customer basis.

To account for the fact that, under this Joint Recommendation, certain portions of the $53,795,196 of MFN benefits will be paid over a number of years, Exelon has agreed to increase the future installment payments. In other words, future payments reflect the value of the MFN benefits delivered in future years. For that reason, as reflected in this Joint Recommendation, the approximately $53,795,196 of MFN benefits will actually result in a total of $56,781,162 in nominal installment payments over the next six years, which ensures that New Jersey customers and the State of New Jersey receive an equivalent level of benefits as compared to the District of Columbia customers. Exhibit B contains the payout schedule.

Joint Recommendation

As a result of numerous discussions, negotiations and additional information provided by the Joint Petitioners, the Joint Petitioners, Staff, and Rate Counsel (collectively, the "Signatory Parties") have come to an agreement on a Joint Recommendation regarding the additional benefits to be provided in New Jersey pursuant to the operation of the MFN Provision. The Signatory Parties agree the provisions of this Joint Recommendation represent incremental positive benefits to the customers of ACE and the State of New Jersey as a result of the Merger and the operation of the MFN Provision.

The Signatory Parties have also identified provisions of the Stipulation of Settlement that must be addressed due to the terms of this Joint Recommendation, the Joint Petitioners' agreement to adopt certain additional commitments during the MFN reconciliation process in Delaware, or to the timing of the closing of the Merger. Lastly, in the interest of providing a complete record to the Board, Joint Petitioners have prepared Exhibit C indicating the dates on which the Joint Petitioners have complied with specific provisions of the Stipulation of Settlement and the Merger Order.

Therefore, the Signatory Parties agree and recommend that the Board adopt the following Joint Recommendations and proposed revisions to the Stipulation of Settlement and the Merger Order:

Determination of Additional Financial Benefits

1. The Signatory Parties agree the Joint Petitioners have satisfied their obligations to engage in a reconciliation process pursuant to the MFN Provision, and the Merger Order. The Signatory Parties further agree that this Joint Recommendation will result in "a fair allocation of

the costs and benefits" associated with the Merger to ACE's customers and to the State of New Jersey.[8]

2. The Signatory Parties agree that the Joint Petitioners shall provide $53,795,196 on a net present value basis,[9] or equivalent to approximately $97.07 on a per-distribution customer basis, in additional benefits to ACE customers and the State of New Jersey. Consistent with the terms of the MFN Provision, this amount was calculated by determining the per-distribution customer financial benefits provided in each jurisdiction. As noted above, the financial benefits ordered by the DC PSC were the highest on a per-distribution customer basis and were used as the benchmark to calculate the additional benefits to be provided in New Jersey. When the additional $97.07 per-distribution customer benefit is combined with the $123.13 per-distribution customer benefit provided in the Board's Merger Order, which includes the $113.16 direct rate credit already provided to distribution customers, the total amount is $220.19[10] per-distribution customer, equivalent to the amount ordered by the DC PSC. The Signatory Parties agree that this sum represents the full and complete resolution of the benefits-reconciliation process required pursuant to the MFN Provision and the Merger Order. With this MFN Provision true-up, along with the direct benefits the parties negotiated in the Stipulation of Settlement, over $122 million on a net present value basis, or nearly $126 million on a nominal basis, in total value will be provided to ACE customers and the State of New Jersey pursuant to the Merger Order.

[8] Merger Order, at 39.

[9] The net present value ("NPV") was calculated using a discount rate of 5%. The nominal value of these additional benefits is $56,781,162 as indicated on Exhibit B.

[10] Please note there is a one cent difference in the total due to rounding.

Proposed Allocation of Additional Financial Benefits

3. The Signatory Parties recommend that the Board allocate the additional financial benefits provided through the MFN Provision in the following manner:

a. **Rate Credits**: The Joint Petitioners will provide additional rate credits consisting of two components: (1.) a $16,737,451 reduction of a portion of the present Non-Utility Generator Charge deferral balance and Uncollectible deferral balance that is part of the Societal Benefits Charge, both of which are the subject of a separate proceeding in BPU Docket No. ER16020099 (Exhibit D hereto contains additional details on how this rate credit will be applied); and (2.) an additional customer rate credit of $22,001,538 which will be provided to offset the rate increase for all customer classes approved by the Board in an Order (dated August 24, 2016) in the Company's base rate case in BPU Docket No. ER16030252 (as described more fully in Exhibit E hereto).

b. **Funding for Low-Income Customer Support**: The Joint Petitioners will provide a total of $4,000,000 in equal installments over a four-year period in funding to agencies to support low-income customers in the ACE service territory. Within sixty days after the issuance of an Order of the Board approving this Joint Recommendation, the Joint Petitioners will disburse grants of $250,000 to each of the following four organizations: the Affordable Housing Alliance, Catholic Charities of the Diocese of Camden, New Jersey SHARES, and The People for People Foundation of Gloucester County.[11] The Joint Petitioners will then make annual grants for three additional years of $250,000 to each of these organizations. The agencies will utilize these funds to provide direct grants of up to $200 to ACE residential customers who require assistance in paying their ACE electric bills. Eligible residential customers will be able

[11] In the event that one of the receiving organizations is not able to fulfill its obligations under a Memorandum of Understanding to be negotiated with ACE, then the Joint Petitioners will instead provide the funds to another one of these agencies or will, after consulting with Board Staff and Rate Counsel, substitute a new organization to administer the funding.

to receive one grant per 12-month period. Eligibility will be determined on an individual basis by the four organizations above; and absent extreme hardship, emergency or family crisis, an eligible individual's household income should not exceed 400% of the Federal Poverty Level. Once per year, the Joint Petitioners will include information indicating the annual amounts provided to each organization and the actual amount of the grants provided to eligible residential customers in the quarterly report provided to Board Staff and Rate Counsel in the Customer Service Improvement Plan established in BPU Docket No. ER09080664. The first quarterly report to include this annual spending information will be provided no later than the first quarterly report filed in 2018.

c. **Funding for Workforce-Development**: Within 60 days after the issuance by the Board of an Order approving this Joint Recommendation, Joint Petitioners will provide Board Staff and Rate Counsel with a detailed program of proposed workforce-development initiatives, focusing on programs providing the skills needed for jobs within the public utility industry. Within 60 days after the Joint Petitioners, Board Staff and Rate Counsel agree upon the recipients of the workforce-development funds, the Joint Petitioners will provide a total of $6,542,173 in installments over a six-year period to fund workforce-development initiatives in the ACE service territory.

d. **Energy-Efficiency Programs for ACE Customers**: The Joint Petitioners agree to spend $15,000,000 over five years (through March, 2021) to provide energy-efficiency programs in the ACE service territory. ACE will direct the energy-efficiency programs and will include programs targeting low-income customers and economically-challenged towns and cities. This spending level represents an incremental increase in spending of approximately $7.5 million on energy-efficiency programs over the five-year period as a result of the reconciliation of the MFN Provision.[12] No later than 120 days after the Board issues an order approving this Joint Recommendation, the Joint Petitioners will submit to Board Staff and Rate Counsel a detailed description of the energy-efficiency programs to be funded pursuant to this provision, including a plan to provide $1.5 million in program funding by March 31, 2017. Beginning in September, 2017, and once each year for the next four years thereafter (through September, 2021), the Joint Petitioners will include information indicating the actual annual spending and programs implemented pursuant to this provision in the report on reliability spending provided to Board Staff and Rate Counsel pursuant to Paragraph 16 of the Stipulation of Settlement. Paragraph 8 of the Stipulation of Settlement[13] (addressing the provision of energy-efficiency savings) shall be superseded by the recommended commitment contained in this paragraph.

Proposed Additional Non-Financial Commitments[14]

4. Exelon will include the State of New Jersey among the locations of Exelon's Board of Directors meetings and Exelon's annual stockholder meetings. This paragraph revises and supersedes paragraph 69 of the Stipulation of Settlement.

5. The Exelon Executive Committee will include the State of New Jersey among the locations of its meetings. This paragraph revises and supersedes paragraph 70 of the Stipulation of Settlement.

6. ACE will honor all existing collective bargaining agreements. For at least five (5) years after Merger close, Exelon shall not permit a net reduction, due to involuntary attrition as a

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[12] Paragraph 8 of the Stipulation of Settlement required the Joint Petitioners to provide "a total of $15 million in savings to ACE customers over the life of the measures." The Joint Petitioners estimated that the cost to provide these savings was approximately $7.5 million over the five-year period.

[13] The Joint Petitioners' commitments regarding energy-efficiency programs were originally set out in Paragraph 8 of the Stipulation of Settlement, and were summarized and discussed in the Merger Order at pages 10 and 34.

[14] Exhibit F hereto contains a listing of each paragraph in the Stipulation of Settlement and indicates if it will be revised and superseded by the terms of this Joint Recommendation.

result of the Merger integration process, in the employment levels at ACE's utility operations in New Jersey. 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 New Jersey. For at least the first five years following the consummation of the Merger, Exelon will provide current and former ACE employees compensation and benefits that are at least as favorable in the aggregate as the compensation and benefits provided to those employees immediately before April 29, 2014, or to the compensation and benefits of Exelon employees in comparable positions. PHI and ACE will also continue their commitments to workforce diversity. If, and only if, the Merger of PHI and Exelon obtains all necessary approvals and closes, ACE agrees to hire a minimum of sixty (60) bargaining-unit employees and to make a good faith effort to do so during the twenty-four (24) month period after the Merger closes. This paragraph revises and supersedes paragraph 20 of the Stipulation of Settlement.

7. ACE shall, on an annual basis for the first five (5) years after the Merger closes, include information regarding employment levels at ACE during the prior calendar year in the annual report detailing Merger-related economic benefits described in Paragraph 8 below. ACE 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. Copies of the report shall be provided to Rate Counsel when it is filed with the Board.

8. For each of the first five (5) years after the Merger closes, ACE will submit an annual report to Board Staff and Rate Counsel detailing the economic benefits of the Merger for the State of New Jersey. The report will detail the methodology used to calculate the benefits and the specific description of the benefits.

9. Exelon agrees that any costs to migrate from PHI's SolutionOne SAP system to an Oracle-based system prior to the conclusion of the life of the asset will not be recovered in ACE'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.

10. Exelon is committed to having all of its utilities achieve and maintain first-quartile performance in safety. Consistent therewith, ACE will include information on its safety performance and safety initiatives in the annual report filed with the Board pursuant to Paragraph 15 herein, with copies of the report provided to Rate Counsel at the time it is filed with the Board. ACE's reporting will include a report by Exelon on its existing safety and cybersecurity policies.

11. 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. Prior to September 30, 2016, Exelon will file with the Board for informational purposes, with copies to Rate Counsel, 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 Board. This paragraph revises and supersedes paragraph 56 of the Stipulation of Settlement.

12. ACE shall maintain a rolling 12-month average annual equity ratio of at least 48%. ACE will not pay dividends to its parent company if, immediately after the dividend payment, its common equity level would fall below 48%, as equity levels are calculated under the ratemaking precedents of the Board. This paragraph revises and supersedes paragraph 61 of the Stipulation of Settlement.

13. Exelon shall conduct an analysis of its operational and financial risk to determine the adequacy of existing ring-fencing measures. Exelon will include this analysis on a one-time basis in the report filed with the Board pursuant to Paragraph 15 herein, with copies provided to Rate Counsel at the time the report is filed with the Board. This paragraph revises and supersedes paragraph 64 of the Stipulation of Settlement.

14. The Joint Petitioners agree to implement the ring-fencing and corporate governance measures set out in the Stipulation of Settlement and this Joint Recommendation within 180 days after Merger closing, or as otherwise required by the Board, for the purpose of providing protections to customers. Not earlier than five (5) years after the closing of the Merger, the Joint Petitioners shall have the right to review these ring-fencing provisions and to make a filing with the Board requesting authority to modify or terminate those provisions. Notwithstanding such right, the Joint Petitioners agree not to proceed with any such modification or termination without first obtaining Board approval in a written order. In addition, the Joint Petitioners recognize that the Board at any time may initiate its own review or investigation regarding ring-fencing measures (or upon petition by any party) and order modifications that it deems to be appropriate, in the public interest and the best interest of ACE customers. This paragraph revises and supersedes paragraph 72 of the Stipulation of Settlement.

15. Exelon and PHI shall file with the Board, with copies to Rate Counsel, 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 Board 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 Board.

Additional Agreements

16. Pursuant to Paragraphs 4 and 55 of the Stipulation of Settlement, the Joint Petitioners have sought Board approval of the documents and instruments associated with the Pepco Holdings money pool.[15] The Signatory Parties recommend that the Board approve the money pool documents as filed, and that ACE be permitted to participate in Pepco Holdings' money pool consistent with Paragraphs 4 and 55 of the Stipulation of Settlement.

17. The Signatory Parties acknowledge that Merger approvals granted in Maryland and the District of Columbia are subject to appeal. In the event that either of those proceedings ultimately results in an increase in the per-distribution customer benefits quantified by the Joint Petitioners in the MFN Provision analysis, then the Joint Petitioners agree to provide to Board Staff and Rate Counsel a supplemental MFN Provision analysis quantifying that increase along with a proposal for delivering any additional incremental benefits to ACE customers and the State of New Jersey.[16] If Board Staff or Rate Counsel finds the amount or form of incremental

[15] Pepco Holdings and ACE filed the money pool documents with the Board by letter dated April 22, 2015, in this docket. The Board has not yet acted to approve the money pool documents.

[16] Any additional benefits provided pursuant to the operation of this provision shall be in the form of rate credits to ACE customers unless the Joint Petitioners propose an alternative mechanism.

benefits offered by the Joint Petitioners to be insufficient, then Board Staff or Rate Counsel may petition the Board to require the Joint Petitioners to provide increased benefits.

18. The Signatory Parties acknowledge that the requirements contained in Paragraph 9 of the Stipulation of Settlement (to file a distribution base rate case within three years after the closing of the Merger), Paragraph 74 (to demonstrate in ACE's first post-Merger base rate case that ACE's costs allocated under the Exelon General Services Agreement are substantially the same as, or lower than, ACE's aggregate allocated costs pre-Merger), and Paragraph 76 (to file testimony regarding service company charges in ACE's next base rate case) were not addressed in the ACE base rate case in BPU Docket No. ER16030252.[17] Instead, these three requirements will be addressed by the Company in its next filed base rate case following the base rate case in BPU Docket No. ER16030252, Phase One of which concluded with a Board Order dated August 24, 2016.

19. Each Signatory Party agrees to use its best efforts to ensure that this Joint Recommendation shall be submitted to the Board for approval as soon as possible.

20. The Signatory Parties agree that this Joint Recommendation represents the entirety of the agreement among the Signatory Parties.

21. The Signatory Parties agree to support approval of the Joint Recommendation in any proceedings before the Board. The Signatory Parties further agree to defend this Joint Recommendation in the event of opposition to approval of the Joint Recommendation from non-signatory parties before the Board.

22. This Joint Recommendation shall be binding on the Signatory Parties upon approval by the Board. None of the Signatory Parties shall be prohibited from or prejudiced in

[17] The ACE base rate case in BPU Docket No. ER16030252 was filed on March 22, 2016, one day prior to the receipt of approval of the Merger by the DC PSC on March 23, 2016. The Merger transaction closed on March 23, 2016.

arguing a different policy or position before the Board in any other proceeding, as such agreement pertains only to this matter and to no other matter.

23. This Joint Recommendation may be executed in as many counterparts as there are Signatory Parties of this Joint Recommendation, each of which counterparts shall be an original, but all of which shall constitute one and the same instrument.

JOINT PETITIONERS

October 13, 2016
Date

By: Paul R. Bonney
Paul R. Bonney, Esq.
Senior Vice President Legal and
Regulatory Strategy
Pepco Holdings LLC
On behalf of the Joint Petitioners

CHRISTOPHER S. PORRINO
ATTORNEY GENERAL OF NEW JERSEY
Attorney for the Staff of the Board of Public Utilities

October 17, 2016
Date

By: ________________
Alex Moreau
Deputy Attorney General

STEFANIE A. BRAND, ESQ.
NEW JERSEY DIVISION OF RATE COUNSEL

October 17, 2016
Date

By: ________________
~~Stefanie A. Brand, Esq.~~
~~Director~~
AMI MORITA
DEPUTY RATE COUNSEL

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EXHIBIT A

[Application of MFN Clause – Summary of Financial Benefits by Jurisdiction]

Exelon-PHI Merger
New Jersey
Attachment - Application of MFN Clause
Summary of Financial Benefits

	Delaware		Maryland		District of Columbia		New Jersey	
	$	NPV $	$	NPV $	$	NPV $	$	NPV $
Commitments								
Rate Credits	$ 40,000,000	$ 39,672,603	$ 68,915,300	$ 66,684,580	$ 14,000,000	$ 13,885,411	$ 62,000,000	$ 61,492,534
Customer Base Rate Credit					$ 25,600,000	$ 22,813,996		
Workforce Development	$ 2,000,000	$ 1,843,186	$ 4,000,000	$ 3,686,371	$ 5,200,000	$ 5,157,438		
Energy Efficiency	$ 2,000,000	$ 1,888,467	$ 43,200,000	$ 40,790,873	$ 11,250,000	$ 11,157,919	$ 7,500,000	$ 6,747,618
DC 1130 MEDSIS Funding					$ 21,550,000	$ 21,373,615		
AR Forgiveness	$ 1,006,009	$ 1,006,009	$ 1,732,516	$ 1,732,516	$ 438,711	$ 438,711		
Green Sustainability			$ 14,400,000	$ 14,282,137				
Grid of the Future Consultant			$ 500,000	$ 491,849				
Total	**$ 45,006,009**	**$ 44,410,265**	**$ 132,747,816**	**$ 127,668,325**	**$ 78,038,711**	**$ 74,827,090**	**$ 69,500,000**	**$ 68,240,152**
Number of Customers 2/29/16	324,907	324,907	797,930	797,930	339,822	339,822	554,215	554,215
$ Per Customer	$ 138.52	$ 136.69	$ 166.37	$ 160.00	$ 229.65	$ 220.19	$ 125.40	$ 123.13

New Jersey MFN True Up

	$ Per Customer	Total $
New Jersey NPV Per Settlement Agreement	$ 123.13	$ 68,240,152
MFN True Up Amount	$ 97.07	$ 53,795,196
New Jersey Total NPV	$ 220.19	$ 122,035,348

NJ MFN Summary

EXHIBIT B

[New Jersey MFN Benefits]

New Jersey
Calculation of MFN Payout

Discount Rate	5%
ACE Customers	554,215

MFN Benefits:	MFN Amount (NPV $s)	Term	11/30/2016(1)	11/30/2017	11/30/2018	11/30/2019	11/30/2020	11/30/2021	Total
NGC/SBC Deferral Balance	16,737,451	0 yr	$ 16,737,451	$ -	$ -	$ -	$ -	$ -	$ 16,737,451
Workforce Development	5,773,350	6 yr	$ 1,090,362	$ 1,090,362	$ 1,090,362	$ 1,090,362	$ 1,090,362	$ 1,090,362	$ 6,542,173
Low Income Programs	3,701,484	4 yr	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ 1,000,000	$ -	$ -	$ 4,000,000
			11/30/2016(1)	3/31/2017	3/31/2018	3/31/2019	3/31/2020	3/31/2021	
Additional Energy Efficiency Program (2)	6,654,590	5 yr	$ -	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 1,500,000	$ 7,500,000
			11/30/2016(1)	5/1/17 to 1/31/18					
Rate Credits	20,928,311		$ -	$ 22,001,538					$ 22,001,538
	$ 53,795,196		18,827,813	25,591,900	3,590,362	3,590,362	2,590,362	2,590,362	$ 56,781,162

Payout Schedule

(1) Assumes 60 day after Order issued on 9/30/16
(2) Total spend for Energy Efficiency programs is $3M per year for 5 years from 11/30/17 thru 11/30/21; $1.5M per year from the original Order and $1.5M per year under the MFN.

Recap of Total Benefits:

	NPV $	Nominal $
Original Merger Order	68,240,152	69,500,000
MFN True-up	53,795,196	56,781,162
Total	122,035,348	126,281,162
Original Merger Order	$ 123.13	$ 125.40
MFN True-up	$ 97.07	$ 102.45
Total	$ 220.19	$ 227.86

EXHIBIT C

RECORD OF COMPLIANCE

Paragraph Reference	Stipulation of Settlement Requirement	Compliance Date
2 & 57	ACE may become a direct subsidiary of Pepco Holdings	ACE became a direct Pepco Holdings subsidiary on March 23, 2016
3 & 74	Execute Exelon General Services Agreement ("GSA") included in the Merger Petition as Exhibit D	GSA executed effective March 23, 2016
4 & 55	Obtain BPU approval of money pool documents	Documents filed April 22, 2015. Approval sought herein
7	Pay $62 million in direct rate credits to ACE customers within 60 days	Rate credits paid over one billing cycle beginning April 18, 2016
12	File alternative capital structure in future base rate cases	Included in ACE base rate case filed March 22, 2016
13	Provide a comprehensive Reliability Analysis to achieve first quartile reliability performance within six months of Merger closing	Filed Sept. 23, 2016; review meeting to follow as soon as possible thereafter.
17	Provide a plan for implementing ACE's Root Cause Analysis regarding recurring customer complaints within three months of Merger closing. Provide an update on how ACE will reduce customer complaints within six months of Merger closing.	Root Cause Analysis plan provided June 6, 2016. Discussed in a meeting on June 7, 2016. Update on complaint reduction plan provided September 6, 2016. Discussed at Sept. 7, 2016 CSIP meeting.
18	Provide a plan within three months of Merger closing to increase the number of successfully repaid deferred payment arrangements	Plan filed June 21, 2016.
31, 32 & 33	Establish SPE as LLC to hold 100% equity interest in Pepco Holdings	Effective March 23, 2016.
36	Appoint 4 SPE directors, including one independent director	Effective March 23, 2016
37	SPE issues a Golden Share to separate administration company	Effective March 23, 2016
38	Appoint Pepco Holdings directors, including at least three independent directors	Effective March 23, 2016

60	Obtain non-consolidation opinion acceptable to the BPU	Opinion filed July 7, 2016
65	File certification upon formation of SPE	Filed March 28, 2016
71	Adopt delegations of authority in Table Two of Stipulation	Effective March 23, 2016
72	Implement ring-fencing and corporate governance measures	Effective March 23, 2016
73	ACE and other Exelon affiliates will comply with NJ affiliate transactions statutes and regulations	Compliance Plan submitted March 30, 2016
90A	Thirty days prior to submission to PJM, provide parties to the Merger proceeding with a list of independent third-party engineering consulting firms qualified to conduct Facilities Studies under the PJM generator interconnection process	List provided September 1, 2016
90D(6)	Implement standards to prevent preferences and improper information flow between affiliates	Filed September 22, 2016
91	MFN Provision-Submit orders of approval from DE, MD and DC with an analysis of benefits	Orders & analysis provided April 1, 2016

EXHIBIT D

NON-UTILITY GENERATOR CHARGE & UNCOLLECTIBLE BALANCE RATE CREDIT MECHANISM

On February 1, 2016 in BPU Docket No. ER16020099, ACE initiated a proceeding at the BPU seeking to recover certain actual costs related to its Non-Utility Generator Charge ("NGC") and Uncollectible account balances.[18] These under-recovered amounts are regulatory assets on the books of ACE, and total approximately $32.6 million.

In BPU Docket No. ER16020099, ACE proposed an increase of approximately $16.7 million (pre-tax) in the current level of NGC and the SBC surcharges to recoup the under-recovered balances. Table One below sets out the under-recovered balances for both the NGC and the Uncollectible accounts by rate class as of March 31, 2016 that make up ACE's request to increase the NGC and Uncollectible surcharges by $16.7 million. This proposed increase was expected to become effective on July 1, 2016, and would have resulted in an increase in residential rates (for an average residential customer using 1,000 kWh) of approximately $2.06 per month or approximately 1.10% per month on the total bill. ACE has agreed to place its pending NGC/SBC request on hold until the BPU has reviewed the Joint Recommendation.

Table One

Rate Class	Annualized Sales @ Customer (kWh)	NGC	Uncollectible	Annualized Overall Revenue Change
RS	4,028,660,063	$ 4,624,243	$ 3,104,753	$ 7,728,996
MGS Secondary	1,168,175,409	$ 1,340,874	$ 900,274	$ 2,241,148
MGS Primary	19,148,142	$ 21,404	$ 14,757	$ 36,161
AGS Secondary	1,858,223,848	$ 2,132,937	$ 1,432,071	$ 3,565,008
AGS Primary	528,913,165	$ 591,218	$ 407,616	$ 998,834
TGS	1,071,707,477	$ 1,172,753	$ 825,929	$ 1,998,682
SPL/CSL	75,506,174	$ 86,669	$ 58,190	$ 144,859
DDC	12,386,246	$ 14,217	$ 9,546	$ 23,763
Total	8,762,720,525	$ 9,984,316	$ 6,753,135	$ 16,737,451

As a result of the MFN Reconciliation process, the Joint Petitioners will provide $16,737,451 to be used to offset a portion of the under-recovered NGC and Uncollectible account balances. Upon the BPU's approval of this Joint Recommendation, ACE will update its NGC/SBC filing and propose no change to the NGC and Uncollectible portions of its tariff. Consequently, the average residential customer will save approximately $2.06 per month (or about $25 per year). ACE, however, will seek a small change in the SBC to recover a regulatory asset of $0.3 million related to the Clean Energy Fund, which change will be reflected in ACE's updated NGC/SBC filing. The updated NGC/SBC filing will be submitted for BPU review within 30 days after the BPU's approval of the Joint Recommendation.

[18] Uncollectible balances are recovered through the Societal Benefits Charge ("SBC").

<u>**EXHIBIT E**</u>

BASE DISTRIBUTION RATE CREDIT MECHANISM

The Joint Petitioners will create a Rate Credit Offset Account in the amount of $22,001,538 to offset monthly increases in base rates authorized in BPU Docket No. ER16030252. The Rate Credit Offset Account will be maintained until it is fully utilized to provide rate credits to ACE's customers in the following manner:

1. In BPU Docket No. ER16030252, the BPU authorized a $45 million increase in base distribution rates.

2. The Rate Credit Offset will be used to offset 100% of the monthly base rate increase for all customer classes until the total Rate Credit Offset Account is fully utilized.

3. The Rate Credit Offset will be designed to offset the increase in the approved kWh distribution base rate for all customer classes. The Signatory Parties recommend that this rate credit become effective on June 1, 2017, the date on which ACE implements its summer rates.

4. ACE will provide monthly reports to the BPU on the utilization of the Rate Credit Offset Account until such time as the Rate Credit Offset Account has been fully utilized.

5. Once the Rate Credit Offset Account has been fully utilized, ACE will end the rate credit, and the rates established in BPU Docket No. ER16030252 will continue. ACE will file a report with the BPU indicating the Rate Credit Offset account is fully utilized and the Rate Credit has ended. All amounts will be subject to audit and further adjustment.

EXHIBIT F

SUMMARY OF APPLICABLE COMMITMENTS

COMMITMENT IN THE STIPULATION OF SETTLEMENT	REVISED COMMITMENT
¶¶ 1-7	**No change in original commitments**
¶ 8	**Revised and superseded by ¶ 3(d) of the Joint Recommendation which requires as follows:** The Joint Petitioners agree to spend $15,000,000 over five years (through March, 2021) to provide energy-efficiency programs in the ACE service territory. ACE will direct the energy-efficiency programs and will include programs targeting low-income customers and economically-challenged towns and cities. This spending level represents an incremental increase in spending of approximately $7.5 million on energy-efficiency programs over the five-year period as a result of the reconciliation of the MFN Provision. No later than 120 days after the Board issues an order approving this Joint Recommendation, the Joint Petitioners will submit to Board Staff and Rate Counsel a detailed description of the energy-efficiency programs to be funded pursuant to this provision, including a plan to provide $1.5 million in program funding by March 31, 2017. Beginning in September, 2017, and once each year for the next four years thereafter (through September, 2021), the Joint Petitioners will include information indicating the actual annual spending and programs implemented pursuant to this provision in the report on reliability spending provided to Board Staff and Rate Counsel pursuant to Paragraph 16 of the Stipulation of Settlement. Paragraph 8 of the Stipulation of Settlement (addressing the provision of energy-efficiency savings) shall be superseded by the recommended commitment contained in this paragraph.
¶¶ 9-19	**No change in original commitments**
¶¶ 20	**Revised and superseded by ¶ 6 of the Joint Recommendation which requires as follows:** ACE will honor all existing collective bargaining agreements. 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 ACE's utility operations in New Jersey. 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 New Jersey. For at least the first five years following the consummation of the Merger, Exelon will provide current and former ACE employees compensation and benefits that are at least as favorable in the aggregate as the compensation and

91613.5 10/13/2016

	benefits provided to those employees immediately before April 29, 2014, or to the compensation and benefits of Exelon employees in comparable positions. PHI and ACE will also continue their commitments to workforce diversity. If, and only if, the Merger of PHI and Exelon obtains all necessary approvals and closes, ACE agrees to hire a minimum of sixty (60) bargaining-unit employees and to make a good faith effort to do so during the twenty-four (24) month period after the Merger closes. This paragraph revises and supersedes paragraph 20 of the Stipulation of Settlement.
¶¶ 21-55	**No change in original commitments**
¶¶ 56	**Revised and superseded by ¶ 11 of the Joint Recommendation which requires as follows:** 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. Prior to September 30, 2016, Exelon will file with the Board for informational purposes, with copies to Rate Counsel, 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 Board. This paragraph revises and supersedes paragraph 56 of the Stipulation of Settlement.
¶¶ 57-60	**No change in original commitments**
¶¶ 61	**Revised and superseded by ¶ 12 of the Joint Recommendation which requires as follows:** ACE shall maintain a rolling 12-month average annual equity ratio of at least 48%. ACE will not pay dividends to its parent company if, immediately after the dividend payment, its common equity level would fall below 48%, as equity levels are calculated under the ratemaking precedents of the Board. This paragraph revises and supersedes paragraph 61 of the Stipulation of Settlement.
¶¶ 62-63	**No change in original commitments**
¶¶ 64	**Revised and superseded by ¶ 13 of the Joint Recommendation which requires as follows:** Exelon shall conduct an analysis of its operational and financial risk to determine the adequacy of existing ring-fencing measures. Exelon will include this analysis on a one-time basis in the report filed with the Board pursuant to Paragraph 15 herein, with copies provided to

	Rate Counsel at the time the report is filed with the Board. This paragraph revises and supersedes paragraph 64 of the Stipulation of Settlement.
¶¶ 65-68	**No change in original commitments**
¶ 69	**Revised and superseded by ¶ 4 of the Joint Recommendation which requires as follows:** Exelon will include the State of New Jersey among the locations of Exelon's Board of Directors meetings and Exelon's annual stockholder meetings. This paragraph revises and supersedes paragraph 69 of the Stipulation of Settlement.
¶ 70	**Revised and superseded by ¶ 5 of the Joint Recommendation which requires as follows:** The Exelon Executive Committee will include the State of New Jersey among the locations of its meetings. This paragraph revises and supersedes paragraph 70 of the Stipulation of Settlement.
¶ 71	**No change in original commitment**
¶ 72	**Revised and superseded by ¶ 14 of the Joint Recommendation which requires as follows:** The Joint Petitioners agree to implement the ring-fencing and corporate governance measures set out in the Stipulation of Settlement and this Joint Recommendation within 180 days after Merger closing, or as otherwise required by the Board, for the purpose of providing protections to customers. Not earlier than five (5) years after the closing of the Merger, the Joint Petitioners shall have the right to review these ring-fencing provisions and to make a filing with the Board requesting authority to modify or terminate those provisions. Notwithstanding such right, the Joint Petitioners agree not to proceed with any such modification or termination without first obtaining Board approval in a written order. In addition, the Joint Petitioners recognize that the Board at any time may initiate its own review or investigation regarding ring-fencing measures (or upon petition by any party) and order modifications that it deems to be appropriate, in the public interest and the best interest of ACE customers. This paragraph revises and supersedes paragraph 72 of the Stipulation of Settlement.
¶¶ 73-91	**No change in original commitments**

COMMITMENT ADDED IN THE JOINT RECOMMENDATION	ADDITIONAL COMMITMENTS
¶ 3. a.	3. a. **Rate Credits**: The Joint Petitioners will provide additional rate credits consisting of two components: (1.) a $16,737,451 reduction of a portion of the present Non-Utility Generator Charge deferral balance and Uncollectible deferral balance that is part of the Societal Benefits Charge, both of which are the subject of a separate proceeding in BPU Docket No. ER16020099 (Exhibit D hereto contains additional details on how this rate credit will be applied); and (2.) an additional customer rate credit of $22,001,538 which will be provided to offset the rate increase for all customer classes approved by the Board in an Order (dated August 24, 2016) in the Company's base rate case in BPU Docket No. ER16030252 (as described more fully in Exhibit E hereto).
¶ 3. b.	3. b. **Funding for Low-Income Customer Support**: The Joint Petitioners will provide a total of $4,000,000 in equal installments over a four-year period in funding to agencies to support low-income customers in the ACE service territory. Within sixty days after the issuance of an Order of the Board approving this Joint Recommendation, the Joint Petitioners will disburse grants of $250,000 to each of the following four organizations: the Affordable Housing Alliance, Catholic Charities of the Diocese of Camden, New Jersey SHARES, and The People for People Foundation of Gloucester County. The Joint Petitioners will then make annual grants for three additional years of $250,000 to each of these organizations. The agencies will utilize these funds to provide direct grants of up to $200 to ACE residential customers who require assistance in paying their ACE electric bills. Eligible residential customers will be able to receive one grant per 12-month period. Eligibility will be determined on an individual basis by the four organizations above; and absent extreme hardship, emergency or family crisis, an eligible individual's household income should not exceed 400% of the Federal Poverty Level. Once per year, the Joint Petitioners will include information indicating the annual amounts provided to each organization and the actual amount of the grants provided to eligible residential customers in the quarterly report provided to Board Staff and Rate Counsel in the Customer Service Improvement Plan established in BPU Docket No. ER09080664. The first quarterly report to include this annual spending information will be provided no later than the first quarterly report filed in 2018.
¶ 3. c.	3. c. **Funding for Workforce-Development**: Within 60 days after the issuance by the Board of an Order approving this Joint Recommendation, Joint Petitioners will provide Board Staff and Rate Counsel with a detailed program of proposed workforce-development

	initiatives, focusing on programs providing the skills needed for jobs within the public utility industry. Within 60 days after the Joint Petitioners, Board Staff and Rate Counsel agree upon the recipients of the workforce-development funds, the Joint Petitioners will provide a total of $6,542,173 in installments over a six-year period to fund workforce-development initiatives in the ACE service territory.
¶ 3. d.	Modifies the original stipulation of settlement and is addressed above.
¶ 7.	7. ACE shall, on an annual basis for the first five (5) years after Merger close, include information regarding employment levels at ACE during the prior calendar year in the annual report detailing Merger-related economic benefits described in Paragraph 8 below. ACE 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. Copies of the report shall be provided to Rate Counsel when it is filed with the Board.
¶ 8.	8. For each of the first five (5) years after Merger close, ACE will submit an annual report to Board Staff and Rate Counsel detailing the economic benefits of the Merger for the State of New Jersey. The report will detail the methodology used to calculate the benefits and the specific description of the benefits.
¶ 9.	9. Exelon agrees that any costs to migrate from PHI's SolutionOne SAP system to an Oracle-based system prior to the conclusion of the life of the asset will not be recovered in ACE'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.
¶10.	10. Exelon is committed to having all of its utilities achieve and maintain first-quartile performance in safety. Consistent therewith, ACE will include information on its safety performance and safety initiatives in the annual report filed with the Board pursuant to Paragraph 15 herein, with copies of the report provided to Rate Counsel at the time it is filed with the Board. ACE's reporting will include a report by Exelon on its existing safety and cybersecurity policies.
¶15.	15. Exelon and PHI shall file with the Board, with copies to Rate Counsel, 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 Board 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 Board.
¶17.	17. The Signatory Parties acknowledge that Merger approvals granted in Maryland and the District of Columbia are subject to appeal. In the event that either of those proceedings ultimately results in an increase in the per-distribution customer benefits quantified by the Joint Petitioners in the MFN Provision analysis, then the Joint Petitioners agree to provide to Board Staff and Rate Counsel a supplemental MFN Provision analysis quantifying that increase along with a proposal for delivering any additional incremental benefits to ACE customers and the State of New Jersey. If Board Staff or Rate Counsel finds the amount or form of incremental benefits offered by the Joint Petitioners to be insufficient, then Board Staff or Rate Counsel may petition the Board to require the Joint Petitioners to provide increased benefits.