Agenda Date: 11/21/24
Agenda Item: 1A

STATE OF NEW JERSEY

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

AUDITS

IN THE MATTER OF AN AUDIT OF THE AFFILIATED TRANSACTIONS BETWEEN ATLANTIC CITY ELECTRIC COMPANY, PEPCO HOLDINGS LLC, EXELON INC. AND AFFILLIATES INCLUDING A REVIEW OF OPERATIONAL AND FINANCIAL PERFORMANCE OF ATLANTIC CITY ELECTRIC COMPANY PURSUANT TO N.J.S.A. 48:3-49, 48:3-55, 48:3-56, 48:3-58 & N.J.A.C. 14:4-3.7(E) AND (F) AND A COMPREHENSIVE MANAGEMENT AUDIT OF ATLANTIC CITY ELECTRIC COMPANY PURSUANT TO N.J.S.A. 48:2-16.4 & N.J.A.C. 14:3-12.1 ET SEQ	)	ORDER OF IMPLEMENTATION DOCKET NO. EA17030297

Parties of Record:

Clark M. Stalker, Esq., Associate General Counsel, Atlantic City Electric Company
Brian Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On October 2, 2019, The Liberty Consulting Group ("Liberty") submitted its audit report ("Final Report") to the New Jersey Board of Public Utilities ("Board" or "BPU") pursuant to the comprehensive management and affiliate standards compliance, relationship and transaction audit of Atlantic City Electric Company ("ACE" or "Company"). The Final Report contained seventy (70) recommendations. At the Board's May 5, 2020 agenda meeting, the Board accepted the Final Report for filing purposes only and authorized the release of the Final Report to the public for comment. On August 7, 2020, ACE and the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments. Both ACE and Rate Counsel subsequently submitted reply comments on August 21, 2020 and on September 21, 2020 respectively. Subsequently, the staff of the Board's Division of Audits ("Staff") conducted discussions with ACE to implement the recommendations. On August 9, 2021, ACE submitted a status update on the implementation of recommendations and continued to move forward on other areas of implementation.

By this Order, the Board considers the recommendations in the Final Report and the comments submitted to the Board regarding recommendations to be implemented by ACE.

BACKGROUND AND PROCEDURAL HISTORY

ACE is a public utility subject to regulation by the Board. ACE is engaged in the transmission and distribution of electricity for approximately 565,000 customers in an area of 2,700 square miles. ACE's service territory includes 124 municipalities in Atlantic, Cape May, Salem, Cumberland, and parts of Burlington, Camden, Gloucester and Ocean Counties. ACE provides default electricity supply, Basic Generation Service ("BGS"), which is the supply of electricity at regulated rates to retail customers in its service territory who do not elect to purchase electricity from a competitive supplier.

At its April 21, 2017 agenda meeting, the Board authorized Staff to initiate a two (2)-phase audit of ACE for the period January 1, 2008 through July 31, 2017 ("Audit Period"). Phase one consisted of an audit of affiliated relationships and transactions of ACE, Exelon Corporation ("Exelon"), and Pepco Holdings LLC ("Pepco Holdings" or "PHI")[1] and all affiliates, and any competitive services of ACE and compliance with the Board's affiliate and fair competition standards and Electric Discount and Energy Competition Act ("EDECA"). Phase one also included a review of ACE's financial and operational performance. Phase two consisted of a comprehensive management audit of ACE. The Board also authorized Staff to send a request for proposals ("RFP") to the seven (7) pre-approved management consulting firms under State Term Contract T2482.

The audit was to include a comprehensive management audit of all major and functional areas of ACE's operations and the effect of the Company's association with Exelon and Pepco Holdings and all affiliates. The scope of work in the RFP for the audit included an examination of executive management and corporate governance, organizational structure, human resources, strategic planning, finance, cash management, customer service, external relations, distribution and operation management, management of clean energy initiatives, support services and contractor performance.

At its September 22, 2017 agenda meeting, the Board selected Liberty to perform the audit at a not-to-exceed cost of $1,254,068. The Board further authorized former President Mroz to execute a consulting agreement with Liberty.

On March 11, 2020, Liberty submitted the Final Report with the seventy (70) recommendations. At the Board's May 5, 2020 agenda meeting, Staff recommended that the Board accept the Final Report for filing purposes only and authorize the release of the report to the public for comment. These actions were adopted by the Board. Comments were to be filed by August 7, 2020.

On August 7, 2020, ACE filed its comments on the recommendations included in the Final Report. The Company responded to the specific recommendations made by Liberty and provided further commentary on various statements made within the Final Report. The Company concurred with thirty-eight (38) of the recommendations and agreed to take action to implement those accepted recommendations. The Company disagreed with thirty-two (32) of the recommendations.

Rate Counsel also filed comments on August 7, 2020. Rate Counsel's four (4) areas of concern were: 1) ACE's Financial Performance (Chapter II in the Final Report); 2) Power Supply and Market Conditions (Chapter III in the Final Report); 3) Cost Allocation Methods (Chapter V in the

---

[1] The Board approved the merger of Exelon and PHI in 2015. See In re the Merger of Exelon Corporation and Pepco Holdings, Inc., BPU Docket No. EM14060581, Order dated March 6, 2015 ("Merger Order").

Final Report); and 4) Millennium Account Services ("MAS") Affiliate (Chapter VII in the Final Report).

On August 21, 2020, ACE filed reply comments responding to Rate Counsel's August 7, 2020 comments. On September 21, 2020, Rate Counsel filed reply comments to ACE's August 21, 2020 reply comments.

LIBERTY RECOMMENDATIONS, COMMENTS AND STAFF POSITION

Below is a detailed summary of the comments filed by the Company and Rate Counsel as they relate to specific recommendations made by Liberty. Additionally, the position of Staff is stated with respect to each of the audit recommendations.

Chapter III: Power Supply and Market Conditions

As part of the review, Liberty primarily examined the market conditions in which ACE purchases its energy and capacity, ACE's Non-Utility Generation ("NUG") contracts, its involvement in the PJM Interconnection, LLC ("PJM") market, and affiliate electricity sales to ACE.

ACE operates in the PJM market and primarily acquires its electric supplies through the Board-approved auction process for BGS. During the Audit Period, ACE also made purchases under mandated contracts from legacy NUGs, entered into in the 1980s with long-term contract periods. Electric distribution companies ("EDCs") were required to purchase the output from NUGs that were qualifying facilities as defined under the provisions of the federal Public Utility Regulatory Policies Act of 1978. At the time of Liberty's review, only three (3) contracts remained in effect. Logan and Chambers, both coal-fired plants, have contracts that terminate in 2024. The third NUG contract was between ACE and DRMI, a waste-to-energy facility that terminated in 2016.

During the Audit Period, ACE purchased the electricity output generated from Logan and Chambers and then in turn ACE bid the energy and capacity into PJM's day-ahead and real-time energy and capacity markets. While neither of these plants currently generate electricity, they did during the Audit Period.

Liberty found that NUG energy output declined between January 2014 and September 2017, and thus costs declined as well. Capacity costs do not vary with the energy produced and sold to ACE. Generally, resale prices of NUG purchases within PJM were much less than the NUG costs.

With regard to PJM participation, Exelon has representatives on each PJM committee and an internal team lead from Exelon charged with internal review of committee undertakings and channeling communications on PJM issues. Representatives on the Members Committee and the Markets and Reliability Committee, along with other Exelon affiliate employees, form a tariff review team that discusses key PJM issues however, PJM committee representatives ultimately support a unified Exelon position. Consistent with the rules at PJM, only the parent may vote. ACE does not have representation on full PJM committees but rather participates in three (3) subcommittees only: the Relay Testing, System Restoration Coordinators, and Transmission and Substation subcommittees. Liberty stated that, "[w]hile important, these assignments highlight the limits of ACE involvement in higher-level committees. Exelon's PJM Committee Interface Procedures set a policy of including all internal stakeholder input in PJM-related committee issues, but it has limited ACE membership to just these three (3) subcommittees. ACE would be better served to have participation in other committees in addition to the three subcommittees of which it is currently a member."

In the Final Report, with regard to Exelon's generation business's role in supplying electricity in New Jersey, Liberty stated, "[t]he best evidence of the objectivity and integrity of the New Jersey BGS process lies in its structure, controls, and execution, which our recent BGS audit for the BPU demonstrated." Data compiled by Liberty confirmed there was no indication that Exelon has an advantage in bidding for ACE's Residential and Small Commercial Pricing ("RSCP") load. Exelon's winning bid amount for ACE's Commercial and Industrial Energy Pricing ("CIEP") load fluctuated between 2014 and 2018 and averaged twenty-eight percent (28%). For the entire state, Exelon's winning bid amount was fifteen percent (15%) for NJ RSCP load and twenty-one percent (21%) for NJ CIEP load.

Recommendation III #1: Re-engage in efforts to negotiate the mitigation of above-market NUG contracts.

In the Final Report, Liberty recommended that ACE continue negotiations with Chambers and Logan ownership with a clear set of alternatives and sense of timing for pursuing them as ratepayers are still paying above market payments to the remaining NUGs.

Company: ACE accepted the recommendation and indicated that the Company fully recognized the customer rate impact of these above-market NUG contracts. In its reply comments, ACE disagreed with Rate Counsel's recommendation that the Board direct Liberty to remove the last sentence of recommendation III #1 as ACE did not interpret it to require the Company to pursue an unviable strategy to mitigate the remaining NUG contracts.

Rate Counsel: Rate Counsel indicated that it was also concerned about above-market NUG costs. Rate Counsel stated that it believes that ACE should pursue any *viable* strategy to mitigate its two (2) remaining NUG contracts. Rate Counsel agreed with the Final Report's claim that any concerted effort to pursue mitigation "represents time and resources well spent." Rate Counsel noted that the Final Report did not recommend a mitigation strategy for ACE to pursue. However, Rate Counsel did not agree that ACE should commit time and resources to mitigation strategies that are onerous and unlikely to be successful. Rate Counsel requested in their initial and reply comments that the Board reject, and direct Liberty to strike, the sentence which reads: "While successful mitigation may be onerous and even unlikely, a concerted effort to pursue it represents time and resources well spent."

Staff Response: Staff supports Liberty's recommendation and notes that ACE has already implemented the recommendation. ACE re-engaged in negotiation efforts to mitigate the above market NUG contracts with Chambers and Logan. By Order dated March 23, 2022, the Board approved a restructuring of ACE's contracts with Chambers and Logan ownership that would substantially reduce the Company's stranded costs under the contracts.[2]

In the Company's 2022 petition to reconcile its Non-Utility Generation Charge and Societal Benefits Charge, the Company provided additional information from the restructuring of ACE's contracts with Chambers and Logan. ACE stated that the uncertainty around the future of these plants supported the decision by ACE to mitigate and dissolve its contracts with Logan and Chambers. Staff supports Liberty's recommendation, as written, and finds that ACE has fulfilled its obligations under Liberty's recommendation. With regard to Rate Counsel's comment for the

[2] In re the Petition of Atlantic City Electric Company for Approval of the Modification of Power Purchase Agreements with Chambers Cogeneration Limited Partnership and Logan Generating Company, L.P., BPU Docket No. EM21121253, Order dated March 23, 2022.

Board to reject, and have Liberty strike the sentence: "While successful mitigation may be onerous and even unlikely, a concerted effort to pursue it represents time and resources well spent," Staff does not concur as Liberty's Final Report is an independent assessment by a third party auditor and the report was accepted for filing purposes by the Board on May 5, 2020. As contracts have already been mitigated by the Company, and the restructured NUG contracts approved by the Board, Staff does not believe Rate Counsel's request is appropriate or applicable.

Recommendation III #2: Provide a regular report to the BPU on PJM issues on which ACE is an internal Exelon stakeholder.

Although PJM encourages participation by all stakeholders, ACE only participates in the Relay Testing, System Restoration Coordinators, and Transmission and Substation PJM sub-committees and does not have a voting role at PJM or membership on any committee at PJM. PJM grants the parent company voting rights.

Company: The Company argued that the recommendation that ACE regularly report to the BPU on PJM issues is overly broad and administratively burdensome to implement as proposed. As noted in the Power Supply and Market Conditions Chapter of the Final Report, PJM has seventeen (17) different committees to manage stakeholder issues related to markets, operations, and planning. Given the volume of meetings, the Company indicated that it considers it efficient and cost-effective to leverage Exelon's scale and experience. Exelon deploys a robust internal coordination process to discuss and develop Exelon positions on issues across all PJM committees. ACE stated that the Company's personnel provide input during internal meetings on matters potentially impacting the utility, but Exelon does not catalogue the particular interests of each of its utilities or market affiliates. According to ACE, the addition of the reporting function recommended by Liberty would increase the time, burden and cost of participating in the PJM stakeholder governance process and eliminate the synergies and efficiency benefits of the merger in this area. In the alternative, in order to address the recommendation, the Company proposed to offer to meet with the Board and/or BPU staff twice a year to provide an update on PJM and other transmission-related issues. In doing so, the Company indicated that it could address any concerns or questions that the BPU may have regarding ACE's PJM activities.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. Such reporting may provide the Board with additional information to assess recent concerns regarding whether the interests of New Jersey's EDCs and New Jersey ratepayers are being fairly represented by their holding or voting member companies. The parent company and affiliates of ACE are involved in diverse businesses within the electric industry and in particular have contrary objectives and missions to those of distribution companies such as ACE.

Recommendation III #3: Expand representation by ACE representatives on key PJM committees.

Liberty found that ACE is included as a stakeholder per the PJM Committee Interface Procedures, but ACE employee representation on committees is limited to lower-level subcommittees. ACE employees are not the Exelon representatives for any of the senior committees within PJM. Liberty found that this may represent a shortfall in ACE's ability to become involved in policy issues that affect it.

Company: The Company disagreed with this recommendation. ACE argued that its employees are currently able to effectively influence PJM policy issues in an administratively efficient and cost-effective manner. ACE further stated that its personnel are not restricted from participating directly in PJM stakeholder meetings, but the Company has found it more efficient and cost-effective to leverage Exelon's scale, including ACE's sister utilities and its Business Services Company, to advance ACE's interests.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: This recommendation, in concert with III #2, may alleviate Staff concerns as discussed above. Staff supports Liberty's recommendation as written.

Chapter IV: Cost Allocation Methods

Liberty examined the cost accounting processes, cost assignment methods and procedures, controls, and transaction paths.

Recommendation IV #1: Update the Exelon Business Services Company ("EBSCo") Cost Allocation Manual ("CAM") to provide more complete information about allocation methods and procedures.

According to the Final Report, Exelon now employs, and PHI previously employed, industry-leading and effective systems for cost accounting, accumulation, and distribution to and among affiliates; they have been accompanied by detailed documentation and transparency for the affiliates receiving services.

Liberty concluded that the EBSCo CAM did not provide sufficient detail with regard to cost accounting, accumulation, and distribution methods used by EBSCo. Liberty stated that EBSCo should identify the cost allocation methods that they apply to services. Liberty further stated that EBSCo should provide similar detail as PHI provided in the past.

Company: The Company stated that EBSCo does not have a single document referred to as a CAM. According to ACE, EBSCo has a General Services Agreement ("GSA") which outlines the agreement between EBSCo and the Exelon operating client companies and includes a form of the annual Service Level Arrangements ("SLA"), which are executed annually by each EBSCo client company to identify the specific services provided by EBSCo. As referenced in the Final Report, Exelon utilizes a Service Catalog which describes all EBSCo Services and standard levels of service delivery offered and provided by EBSCo practice areas to all Exelon's Client Companies; and also has an Associate Transaction Procedures manual document, which provides an overview of the process by which EBSCo provides services. ACE argued that, together, these documents provide complete information about allocation methods and procedures.

The "precise, quantified factors" are not included in the service documents since allocation rate data may not be available at the time the SLA is signed. ACE stated that there are several types of allocation rate data (Revenues, Assets, Peak Load, Headcount, etc.) that are used to update these factors and these factors will change annually based on the most recent data available, but the data may not be available in time to include in the SLA. However, the annual EBSCo charges by practice area, allocation factors, as well as the underlying calculations for each, and a summary of changes in allocation factors for ACE, are provided to the BPU on an annual basis in compliance with Merger Order Commitment No. 74.[3] The Company believes that the referenced documents provide the "more complete information" requested by Liberty.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: While recognizing ACE's statement that EBSCo does not have a document called a CAM, Staff supports Liberty's recommendation as written. In order to meet the intent of Liberty's concerns, ACE shall update the appropriate documents to include in detail, each service provided by EBSCo to its affiliates including detailed cost allocators and percentages and the precise, quantified factors that develop those percentages, and methods and procedures used to allocate each of these services provided. Included with these documents shall be a detailed description of the allocation process, defining the method and procedure for truing-up the costs allocated for each service to ensure that ACE is being allocated the appropriate level of costs associated with the services, showing the precise actual factor rate data that make up the allocation formula for each service.

<u>Recommendation IV #2</u>: Reconcile the differences between the PHI and Exelon cost allocation schemes to create a uniform method for allocating costs to ACE from all affiliates.

In the Final Report, Liberty stated that the cost allocation factors used by Pepco Holdings Service Company ("PHISCo") and EBSCo differ in many cases for the same services performed, and PHISCo and EBSCo use different general allocators; however, Liberty found that it is not clear whether this significantly affects the allocations of costs to ACE.

Company: The Company stated that there is not a comparable allocation method at EBSCo for the services provided by PHISCo that are operational in nature and the allocation methods assigned are reasonable based on the nature of the services performed.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. Staff further recommends that ACE provide a basis for the differences and whether it affects the allocation of costs to ACE.

<u>Recommendation IV #3</u>: Undertake focused efforts to make clear that management's stated priority on direct charging sufficiently impels employees to do so.

According to Liberty, during the prior audit period, the service company was directly charging about thirty-six and one-half percent (36.5%) of the time. During the present Audit Period, the service company dropped its direct allocations to an average of below twenty percent (20%).

Company: The Company disagreed with this recommendation. The Company submitted that a detailed review of charging records is not necessary because there are controls in place that review transactions recorded to the general ledger and when new allocations need to be assigned. ACE further asserted that annual external audits are performed by PricewaterhouseCoopers ("PwC") over PHI financials and controls. The internal audits are performed every two (2) years by the Exelon Audit Service team of the service company billings

[3] The Merger Order approved a stipulation of settlement in this matter which included numerous commitments made by the Company ("Commitments").

process agreement. Additionally, according to ACE, there is a PHI cost allocation audit (now performed by an external firm, SB & Company, LLC), which is required when filing rate cases in other PHI jurisdictions to ensure the companies are complying with the terms of the CAM/Service Agreement.

Rate Counsel: Rate Counsel fully supported Liberty's recommendations in this regard. However, Rate Counsel stated that it was disappointed that Liberty did not undertake the investigations that it now asks ACE to do. Rate Counsel stated that this recommendation would result in ACE having to identify the problems and implement the solutions. However, Rate Counsel argued that these are precisely the things that Rate Counsel would have expected Liberty to accomplish in its audit. Without Liberty's specific guidance and a list of deliverables for ACE to complete, Rate Counsel asserted that more of the same could be probably be expected from ACE.

Staff Response: Staff supports Liberty's recommendation as written. The Company may have internal controls and perform audits, but that does not necessarily encourage the Company to directly allocate as much costs as possible and to allocate costs on the basis of the cause of their incurrence. PwC audit scopes do not necessarily include a review of the reasonableness and prudency of the allocation methods that regulators perform. The Company argued that its directly charged PHISCo costs have increased between 2016 and 2018 but that still does not explain why they have decreased from thirty-seven percent (37%) since the last BPU audit and it does not explain why EBSCo has only directly allocated thirteen percent (13%). The audit implementation plan to be provided by ACE as part of this Order mandate shall provide a detailed plan with specific targets for cost categories to increase the percentages directly charged and for those costs that cannot be directly charged, an analysis of these cost categories explaining the causes for their existence and how these causes directly impact these cost levels. This analysis shall also include impact studies on ACE and how it will differ from current cost allocations.

<u>Recommendation IV #4</u>: Investigate the reasons for the excessive use of the general allocator in assigning service company costs to ACE and examine and implement means for reducing the use of general allocators through direct charging or using appropriate cost-causative allocators.

Liberty found that the use of general cost allocators by PHISCo and EBSCo was very high as opposed to direct charging or using allocators that incorporate the causes incurring such costs on specific basis.

Company: The Company reviewed EBSCo and PHISCo practice areas using the general allocators to assess if there are areas that may benefit from a change to a cost-causative allocator. The Company believes all areas currently using general allocators are fair and accurate and does not believe any changes are necessary. ACE stated that EBSCo and PHISCo will continue to monitor the trend of general allocator use and continue to highlight the importance of direct charging through annual reminders to EBSCo and PHISCo employees.

Rate Counsel: Rate Counsel fully supported Liberty's recommendations in this regard. Rate Counsel referred to Liberty's findings that the cost accounts that are directly allocated at twenty percent (20%) is much less than what was found in the prior audit of ACE where thirty-six and one-half percent (36.5%) were directly allocated. Rate Counsel was disappointed that Liberty did not undertake the investigations. Rate Counsel further expressed their concern that the Final Report should have made specific guidance with a list of deliverables in the recommendations for concrete solutions to be implemented. Therefore, Rate Counsel requested that the Board return this section of the Final Report back to Liberty and seek specific recommendations from the auditors for actionable measures ACE can take to reduce the use of general allocators.

Staff Response: Staff supports Liberty's recommendation as written. It is the responsibility of the service company to directly allocate where possible and only allocate using a general allocator if absolutely necessary. This percentage should be increasing, not declining. According to the Final Report, prior to the merger, PHISCo started reducing the percentage of costs directly allocated to ACE. Although the Company agreed to directly bill service to the extent possible and then allocate based on cost-causative allocation methods of costs that cannot be directly assigned, it appears that post-merger, there had been a change in how costs were allocated by PHISCo. PHISCo's allocations more closely resembled the manner in which EBSCo allocates costs with more reliance on general allocators and less on cost-causative allocators. Liberty suggested the need for vigilance regarding cost allocation in the future. Staff supports Liberty's position that an investigation should be conducted regarding the reasons for the excessive use of general allocators and the means to reduce reliance on these allocators by applying the use of direct charging and the use of factors to design allocators that more closely reflect the manner in which these costs are incurred. Staff does not believe the Board should comply with Rate Counsel's request to return this section of the Final Report to Liberty. Staff will however review how the Company has responded to this recommendation and examine it in the next audit.

Recommendation IV #5: Eliminate default time charging from the Exelon employee time entry system and replace it with a positive time reporting process.

Exelon uses default time charging which, according to Liberty, discourages employees who work for multiple affiliates from directly allocating their time using the company specific code. Liberty stated that requiring employees to account for time spent on work for specific affiliates allows for more direct allocations. This method requires employees to take affirmative action each time they access their time records to change the coding assigned to them in eTime. Otherwise, the system automatically charges their time to their default codes. According to Liberty, such default time charging likely has a bearing on the low percentage of direct charging to ACE. Employees are the best judge to determine how much of their time is spent working on a specific utility and thus choose the code for their time.

Company: The Company disagreed with this recommendation and does not agree that direct charging to ACE is low. While the current eTime system allows default time charging, ACE asserted that this is considered reasonable for EBSCo and PHISCo employees since many employees are performing corporate governance services which are allocated to all operating companies.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. Staff disagrees with the Company's argument that direct charging is not low, and notes that direct charging was low during the Audit Period and has declined since the previous audit.

Chapter V: Capital Allocation

Recommendation V #1: Revisit ACE capital investment plans after examining and producing a consensus on reliability aspirations and targets.

From the capital allocation perspective, Liberty stated that the broader question becomes how much capital to continue allocating to a system that appears already capable of delivering the kind of performance that stakeholders and the BPU looked to at the time of the merger. Liberty found that an immediate top-level examination of continuing capital expenditure levels is in order, while the more detailed examination recommended as part of Liberty's focused operations review proceeds. Liberty recommended a focused review by top PHI and Exelon Utilities senior leadership to address the plans for ACE that will result from 2020's Long Range Plans ("LRP") processes. Liberty argued that the review should, at the least, substantially question the pace of network-related activities and expenditures involving ACE, seeking to determine whether there exist low-reliability-risk means to change the pace of work under capital programs designed to improve reliability. Liberty stated that it believes the review should be directly overseen by the Chief Executive of Exelon Utilities. According to Liberty, senior PHISCo operations and regulatory executives should also take direct and substantial roles.

Company: The Company stated that it has achieved reliability goals and has met or exceeded its targets in this area. According to ACE, capital has been available and is not expected to be a concern in the future as continued capital intensive projects are projected. ACE further stated that there are still areas within its service territory that are not experiencing the same level of reliability performance as the overall average, and therefore additional targeted reliability investments will be needed. ACE contended that it focuses on installation of new equipment and replacement of aging infrastructure.

ACE argued that on an annual basis, top level management examines continuation of capital expenditures levels as part of its LRP process. Specifically, the Company contended that LRP capital spends must be reviewed by Exelon Utilities' Chief Executive Officer ("CEO"). ACE further argued that in addition to development, review, and approval of the ACE capital spend during the LRP process, the PHI CEO, Chief Operating Officer, and senior PHISCo operations and regulatory executives review the monthly capital expenditures and discuss any variances to the project construction timelines and budget.

The Company further asserted that decisions regarding recovery of capital investments made by the Company as part of its Reliability Improvement Program ("RIP"), base rate cases, or PowerAhead program, involved senior PHISCo operations and regulatory executives as suggested in the Final Report and are first reviewed and approved by the parties, and approved by the Board before placed into rates.

As a result, the Company asserted that it does not believe that a senior leadership focused review or the resultant report needs to be produced as recommended in the Final Report as it considered it implemented and closed.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff finds merit in Liberty's assessment that the Company has achieved reliability goals and has met or exceeded its targets in this area. Staff recognizes that during the Audit Period, ACE implemented its RIP which was not pursuant to the more stringent Infrastructure Investment Program ("IIP") regulations at N.J.A.C. 14:3-2A.1 et seq.

Given the changes since the Audit Period, including the adoption the IIP regulations, Staff does not believe Liberty's recommendation is necessary. Staff notes that the IIP regulations require utilities to provide information necessary to evaluate proposed projects. Accordingly, Staff recommends that the Board reject this recommendation.

Chapter VI: Focused Operations Review - Outage Management

Recommendation VI #1: Provide a thorough, robust identification of the benefits of Advanced Meter Infrastructure ("AMI"), assess roll-out and sustaining costs in detail, value AMI's reliability benefits carefully, and offer detailed estimates of roll-out costs under a range of scenarios.

In the Final Report, Liberty recognized that AMI implementation is costly and emphasized the importance of comparing the direct costs of AMI with all direct and indirect benefits of implementing AMI such as all the cost savings resulting from AMI and restoration efficiencies benefits, as well as the ancillary benefits of reducing outage duration and obtaining customer usage information.

Company: The Company stated that it accepted and is in the process of implementing the recommendation.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. By Order dated July 14, 2021, the BPU approved ACE's request for approval to deploy its AMI system throughout its service territory, referred to by the Company as the Smart Energy Network ("SEN").[4] Specifically, the BPU approved a stipulation of settlement which detailed a deployment plan from 2022 through 2024 with regular semi-annual reporting requirements on the roll-out plan, and specifics regarding the costs for the roll-out and the SEN project costs separated into capital and operations and maintenance costs. By the July 2021 Order, the Board also found that the deployment of AMI is in the public interest and meets the objectives of New Jersey's Energy Master Plan. A prudence review was reserved for future base rate cases. By Order dated November 17, 2023, the Board authorized recovery of prudently incurred SEN costs with additional prudently incurred costs to be recovered in a Phase II portion of the base rate case assuming a certain number of SEN meters were activated.[5]

Recommendation VI #2: Prepare comprehensive, documented plans for restoring feeders in cases of total substation outages.

In the Final Report, Liberty found that ACE's operational control center organization, staffing, procedures, tools, and practices are thorough, but the Company needs to be prepared for

---

[4] In re the Petition of Atlantic City Electric Company for Approval of the Smart Energy Network Program and Cost Recovery Mechanism and Other Related Relief, BPU Docket No. EO20080541, Order dated July 14, 2021 ("July 2021 Order").

[5] In re the Petition of Atlantic City Electric Company for Approval of Amendments to its Tariff to Provide for an Increase in Rates and Charges for Electric Service Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, and for Other Appropriate Relief (2023), BPU Docket No. ER23020091, Order dated November 17, 2023 ("November 2023 Order"). The recovery authorized was for prudently incurred SEN costs through December 2023 and did not include the complete SEN roll out. SEN costs after December 2023, as well as those related to legacy meters will be reviewed in future base rate case proceedings.

instances of major substation losses by preparing detailed switching plans to restore feeders. In other aspects, Liberty found that the operation control center operates effectively.

Company: The Company stated that it accepted and is in the process of implementing the recommendation.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. By Order dated May 31, 2017, the Board approved ACE's PowerAhead Program to improve storm resiliency of, and restoration times for the company's distribution infrastructure to benefit its customers.[6] The PowerAhead Program included Barrier Island Feeder Ties and a new substation at Harbor Beach.

Chapter VI: Focused Operations Review - Reliability Improvement

Recommendation VI #3: Recalculate the basis for dollar-valuing reliability improvements and rethink the Reliability Improvement Plan's elements and expenditures.

Liberty stated that, as a result of its long-term focus and emphasis on improvements, ACE has reached a high level of reliability performance. As ACE continues to spend on reliability improvements, Liberty found that there is a strong basis for concluding that high levels of performance will continue. Liberty concluded that the Company will most likely continue to find value in identifying new reliability programs and projects that will result in a positive benefit as compared to costs but believes that the high rates that ACE charges have to be considered so that there is a better balance between improving reliability to such a high level and service affordability.

Company: The Company stated that it is committed to providing the level of service that meets its targets and commitments with the BPU and meets or exceeds customer expectations. ACE further asserted that its actions and performance, to date, demonstrate a strong fiscal responsibility with respect to investing in reliability programs and projects that provide a high reliability and resiliency benefit to our customers and the distribution system. ACE maintained that there are still areas within the system that require continued and additional investment, however maintaining existing levels of reliability requires sustained effort and continuing investment. As the State pursues new forms of distributed energy resources, including residential and community solar projects, battery storage, and microgrids, ACE stated that the Company will be required to make additional investments to connect and integrate these resources to the grid to insure system reliability and stability. ACE argued that its capital spend focuses on installation of new equipment and replacement of aging infrastructure. These replacements require continual investments into the system to maintain reliable service to its customers and meet the yearly reliability targets set forth by the BPU. Going forward, to the extent the BPU initiates a Statewide proceeding regarding the value of reliability, the Company indicated that it would participate and contribute its recommendations and proposals in order to support a successful resolution of the proceeding.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

[6] In re the Petition of Atlantic City Electric Company for Approval of Amendments to its Tariff to Provide for an Increase in Rates and Charges for Electric Service Pursuant to N.J.S.A. 48:2-21.1 and for Approval of a Grid Resiliency Initiative and Cost Recovery Related Thereto; and for Other Appropriate Relief (2016)-Phase II, BPU Docket No. ER16030252, Order dated May 31, 2017.

Staff Response: Staff supports Liberty's recommendation as written. With Liberty finding that ACE's reliability performance has been at a comparatively high quality level, the value of further improving reliability metrics has to be balanced against service affordability. Staff will review how the Company has responded to this recommendation and review in the next audit.

<u>Recommendation VI #4</u>: Closely monitor momentary outage data and proactively address any repeat-outage performance drops from 2017 levels.

Liberty found that, in 2017, ACE had a great performance with some variation from a strong historical pattern. Liberty concluded this still warranted efforts to ensure that performance then was driven by sustainable factors, not variation in exogenous factors, like weather. Should the relevant outage rates accelerate above 2017 levels (measured monthly), Liberty found that ACE should expand the scope of instances addressed through detailed analysis and action plan development. Liberty expressed concern about repetitive short duration outages and recognized that ACE should focus on preventing these types of outages even when such data may not change System Average Interruption Frequency Index and Customer Average Interruption Duration Index measures significantly. The industry standard is for utilities to address these types of outages to comport with holistic definition of high-quality, reliable electricity service to prevent even a small number of customers from having too frequent, repeated outages. Paying close attention to outages should comprise a major focus as part of the efforts to determine whether ACE can sustain a strong level of performance in limiting repeat outages.

Company: The Company stated that it accepted this recommendation and stated it has completed its implementation in all material respects. According to ACE, the Company implemented a management system that it believes will be more robust to remediate and prevent outages. ACE stated that it also established a Reliability Oversight Team to target areas for post-storm inspections and identify areas for walking inspections. This process includes closely monitoring repeat outage areas through tracking metrics and performance. The Company has also implemented new metrics and removed some of the older metrics.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written and will review ACE's new metrics to determine whether they sufficiently address the recommendation, along with the changes to the management system intended to remediate and prevent outages. Staff suggests that ACE be directed to provide Staff with measurement information regarding momentary outages within three (3) months from the date of this Order and thereafter showing improvements in momentary outage data so Staff can determine whether ACE has taken appropriate action to reduce repeat outages. Such reporting shall continue until the end of the next management audit unless otherwise directed by the Board.

<u>Chapter VI: Focused Operations Review- Reliability Improvement - Asset Management, Inspection, and Maintenance</u>

<u>Recommendation VI #5</u>: Promptly complete investigations of crushed-stone condition and nitrogen pressure readings at substations.

ACE reported that it was investigating two (2) issues that Liberty observed during their substation inspections: a) lack of crushed-stone to serve as an insulator generally employed to ensure safety; and b) low or negative transformer nitrogen pressure readings, which utilities generally maintain at positive levels to prevent air intrusion. According to Liberty, the use of crushed stone is good practice and excessive air in transformers can create a risk of tank explosion or oxidation causing sludge or insulation deterioration. As such, Liberty recommended ACE complete these examinations promptly and take corrective action wherever possible and appropriate.

Company: The Company stated that, pre-merger, ACE's design standards did not consider this layer of crushed stone within its calculation of step and touch potentials, the two (2) key parameters for ground grid design and safety. Instead, ACE's design calculations were calculated based on the resistivity of the soil at the surface. Because safe levels were calculated without consideration to surface stone, the Company indicated that it does not believe the grounding design at ACE stations was inadequate. According to ACE, PHI's current grounding standards now incorporate a crushed stone layer as part of the ground grid design. ACE's current practice is, as the Company executes projects at ACE stations that impact the ground grid design, PHI engineering weighs the option of adding additional layers of crushed stone as a best practice where feasible and factors it into the calculations for step and touch potentials accordingly.

With respect to the low pressure readings, ACE indicated that it has implemented new practices that include bi-monthly station inspections. On the station inspection reports, the inspector must answer two (2) questions regarding nitrogen pressures on substation transformers. The inspector records the pound per square inch values for the main tank and the nitrogen bottle. If an issue with the nitrogen levels is observed, the inspector submits a corrective work order.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. ACE shall provide staff of the Divisions of Audit and Engineering with the inspection reports to show there is no lapse in inspections. ACE's inspectors shall provide the reports to the risk management department as an internal control.

<u>Recommendation VI #6</u>: Accelerate the replacement of rejected wood poles and ensure timely, accurate removal tracking.

Liberty found that inspection and treatment of wood transmission and distribution poles has met program design, but the replacement of poles identified as unacceptable and not correctible fell behind on schedule.

Company: The Company indicated that it accepted the recommendation and has accelerated the replacement of wood poles.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. According to the Company, ACE expects to reduce its backlog by more than half by 2025. ACE established a bi-weekly check-in call with the project manager and ACE team members to ensure replacement are on target. Staff will confirm with ACE that these replacements are being made at a faster pace. This issue will also be subject to review in ACE's next management audit. In the interim, ACE shall provide the Divisions of Audits and Engineering with detailed supporting reports on the progress of the removal and replacement project. Such reports should address this recommendation and compare current and past replacement trends, indicating that the Company is committed to ensuring proper attention to the acceleration of removal.

Recommendation VI #7: Bring underground residential development cable work into closer conformity to management's 28-day repair/replace window.

Liberty found that the Company was not adhering to management's twenty-eight (28)-day window to complete underground distribution cable repairs or replacements. Liberty found that the Company's twenty-eight (28)-day policy should be followed as it reflects good utility practice. Performance data for 2017 show failure to address twenty-eight percent (28%) of 138 failed cables. According to Liberty, delays too frequently extended well past the twenty-eight (28)-day window.

Company: The Company stated that it has substantially complied with the recommendation. Subsequent to the merger with Exelon, the Company asserted that it has implemented daily monitoring of underground residential distribution cable replacements at ACE. Over the twelve (12) month period August 1, 2019 – July 31, 2020, delays past the twenty-eight (28)-day/thirty (30)-day-time period were ten percent (10%) or less.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written and will confirm the improvements in this area to ensure compliance. Staff recommends that the Board direct ACE to provide all supporting documentation showing it has implemented Liberty's recommendation within six (6) months of the date of this Order to the Divisions of Audits and Engineering.

Chapter VI: Focused Operations Review- Reliability Improvement - Vegetation Management

Recommendation VI #8: Incorporate enhanced vegetation management activities into analyses and processes covered by Recommendation #3 above.

As stated in the Final Report, Liberty recommended that the Company include enhanced vegetation management activities in its analysis to ensure that it allows ACE to continue to achieve its high reliability performance while taking into consideration the impacts on rates and service affordability.

Company: The Company disagreed with Liberty's conclusion that there is "no present, precise way for segregating the reliability effects of the [vegetation management] programs and activities." ACE indicated that it incorporated its vegetation management program into its Reliability Improvement Plan elements and expenditure referenced in Recommendation VI #3 and believes that it has also successfully segregated the reliability effects of the vegetation management programs and activities, as described further below. In addition, the Company argued that its vegetation management spend is necessary to comply with the stringent new standards effective in 2016.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation in part, as ACE should conduct a cost benefit analysis when implementing a program resulting in an increase in costs, as it is good business practice. Staff, however, is satisfied that current spending on vegetation management was reviewed and found to be appropriate by the Board in ACE's last base rate case.[7] Staff will examine whether ACE successfully implemented the recommendation, showing that it performed an appropriate cost benefit analysis when proposing additional vegetation management spending.

Chapter VI: Focused Operations Review - Major Event Preparation and Response

Recommendation VI #9: Include the Staging Area and the Crew Leader and Daily Checklists in the Emergency Operations Plan ("EOP"), and amend the Crew Leader Checklist to incorporate inspections and verification requirements that should occur prior to re-energizing feeder sections.

Liberty found that EOP-related checklists, such as the Staging Area Checklist and the Crew Leader and Crew Daily Checklist, which are located in other documents should include reference to the location of such checklists within the EOP. According to Liberty, the Crew Leader checklist should also contain safety-related requirements prior to energizing any feeder section including: "(a) inspection of the entire feeder section for tree contact and damage to the primary and secondary conductors, (b) inspection to every street-to-house service conductors energized with energization of the feeder section, and (c) disconnection of every damaged secondary and service from the primary before energizing the primary."

Company: The Company indicated that it accepted the recommendation and either has implemented or will implement the recommendation as follows:

1. References to the Staging Area checklists, as well as to the major elements of the logistics incident response plan, have been included in the EOP of May 2020.
2. References to the Crew Leader and other Daily Checklists have been included in the EOP of May 2020.
3. Inspections and verification requirements that should occur prior to re-energizing feeder sections will be incorporated into the Crew Leader Checklist by May 31, 2021.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. It appears that ACE has implemented this recommendation however, this is subject to further review by Audit and Reliability and Security staff for confirmation. ACE shall provide the EOP to Staff, highlighting where these recommendations were incorporated.

Recommendation VI #10: Update the Customer Care Storm Emergency Response Plan to reflect recent changes to key supporting technologies and outage communications strategies.

ACE's Crisis Communications Plan, which includes scripting and messaging during emergency situations, is updated annually. However, Liberty found that the Customer Care Storm Emergency Response Plan has not been updated for recent changes related to key supporting technologies and outage communication strategies.

Company: The Company stated that it accepted the recommendation and has implemented it.

---

[7] See November 2023 Order.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. Staff will review further to ensure that this recommendation has been sufficiently addressed and implemented by the Company. ACE shall provide staff of the Divisions of Audits and Reliability and Security with copies of the updated Customer Care Storm Emergency Response Plan, highlighting where these changes were implemented and included.

Chapter VI: Focused Operations Review - Load Forecasting

Recommendation VI #11: Examine and implement means for improving distribution load forecasting.

Liberty found that improvements in forecasting that lead to greater consistency between forecasts and actual loads on distribution facilities will lead to efficiencies without jeopardizing the reliability of the distribution system. Liberty found that the Company forecasts were higher than actuals resulting in early capacity resource investments for substations and feeders which could have been lower or avoided altogether. Liberty found that tailoring forecasts to more closely reflect actuals will also improve the effectiveness of feeder and transformer capacity reinforcement. Liberty stated that ACE's load forecasting techniques for its facilities are sound and comprehensive, but other utilities use different techniques.

Company: The Company indicated that it accepted the recommendation.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. ACE should report back to staff from the Divisions of Audits and Engineering as to the status of examinations regarding alternative facility forecasting techniques and their assessments of facility load forecasting improvements, including its impact on facilities' efficiencies in low and high growth areas. ACE shall also provide data regarding forecasting loads and actual loads on distribution facilities for Staff and the auditor to examine in the next audit, to determine whether there have been improvements in consistency.

<u>Chapter VII: EDECA</u>

<u>Chapter VII: EDECA - PHI and Exelon's Retail Competitive Services</u>

<u>Recommendation VII #1</u>: Treat each affiliate offering services at retail, including those potentially excluded by management's interpretation regarding the provision of services to other utilities, common carriers, specialty services, a relatively limited number of customers, or telecommunications services, as a Related Competitive Business Segment ("RCBS").

Liberty stated that the offering of sales to utilities or a few commercial and industrial customers should be considered retail, even if they are specialized. Liberty's review of ACE Compliance Plans from earlier in the Audit Period identified affiliated entities that provided service to retail customers in New Jersey that were not appropriately considered by management to be an RCBS. The following entities offered services available to ACE's retail customers at some point during the Audit Period:

ATS Operating Services, Inc.
Conectiv Thermal Systems, Inc.

While neither of these entities remain as operating affiliates owned by Exelon or PHI, they were for at least a portion of the Audit Period.

Company: The Company stated that the Final Report recognizes that "'neither of these entities remain as operating affiliates owned by Exelon or PHI' and neither entity was included on the list of affiliates provided in Schedule 1 of the most recent Compliance Plan." As a result, the Company does not consider this recommendation applicable to the Company's current Compliance Plan and asserted that the recommendation should not be accepted.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff agrees with the Company's position with regards to ATS Operating Services, Inc. and Conectiv Thermal Systems, Inc., however any remaining current and future retail services that are providing competitive services should be treated by the Company as RCBSs.

<u>Chapter VII: EDECA - General Administration of the Affiliate and Fair Competition Standards ("Standards")</u>

<u>Recommendation VII #2</u>: Make additional portions of the Affiliate and Fair Competition EDECA Standards subject to internal audit review.

Liberty reviewed ACE's compliance with the Standards pursuant to N.J.A.C. 14:4-3.1 <u>et seq.</u> and found that management provided a sufficient review of cost allocations but not in the area of the Standards pertaining to information technology and information access. Liberty concluded that these areas should also be reviewed as part of internal audits to ensure compliance.

Company: The Company indicated that it provided the recommendation to Exelon's internal audit organization for consideration in its development of its audit plan as it deems appropriate.

ACE's internal auditing department currently performs audits to address information security, including the protection of customer specific information, and the applicable portion of the Standards is addressed through those audits. In addition, beginning with the Compliance Plan that was to be filed in 2020, the Company indicated that it would provide the internal audit department with a copy of the Annual Compliance Plan after filing with the BPU. The Company additionally indicated that, every other year, ACE's internal audit department will review the Compliance Plan and determine if any aspects of the Compliance Plan should be audited.
Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. ACE shall provide Staff with documentation supporting that its internal auditing department is continuing to review the Compliance Plan, and how the internal auditing department determines whether and which aspects have been audited and the basis. ACE shall also provide documentation of the controls implemented to ensure continued compliance going forward.

<u>Recommendation VII #3</u>: Update the Compliance Plan to include which individuals or departments have responsibility for enforcement of each section of the Standards.

Liberty found that management does not currently, but should, include in future versions of the Compliance Plan, a description of which positions or business groups have responsibility for each section of the Standards. As many of the services provided to or for ACE come from non-ACE specific personnel, this will help ensure that all relevant parties are aware of responsibilities and proper coordination occurs.

Company: ACE indicated that it would commit to update the Compliance Plan that was scheduled to be filed in December 2021 with the name of the department that oversees each section of the Standards as of the date of filing of the annual update.

However, due to ongoing changes in and to the organizations, including in the ordinary course of business (e.g., retirements and promotions), ACE argued that updating the Compliance Plan with the names of individuals responsible for each section of the Standards would be inappropriate (in part, because it would require specific employee names to be disclosed) as well as invite inaccuracies as staffing in the workplace changes. In addition, according to ACE, adoption of this portion of the recommendation would not support ongoing administrative streamlining efforts as departmental responsibilities change and administrative efficiencies are implemented.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff agrees with Liberty's recommendation in part. Staff also understands the Company's concerns and position. Staff recommends that ACE be required to include a current list of departments responsible for enforcing each area of the Standards in the Compliance Plan.

<u>Chapter VII: EDECA - Non-Discrimination Standards (Section 14:4-3.3)</u>

<u>Recommendation VII #4</u>: Ensure that all customer communications, including print, radio, television, and web advertisements are maintained sufficiently to support reviews of compliance with the Standards.

Liberty found that, in print and web advertisement materials used during the Audit Period and provided to Liberty, there was no evidence of preferential treatment afforded to customers. Liberty stated that ACE, and its New Jersey retail affiliates, did not in any written communications represent that any RCBS or RCBS customers would receive any type of preferential treatment such as but not limited to, price, terms and conditions, and timing. In the Final Report, Liberty did note that not all materials during the Audit Period remained in existence as the Company no longer retained it.

According to Liberty, management was not able to provide all such materials for each year of the Audit Period. Liberty stated that retaining this information in its entirety, and doing so in a way that permits review for compliance with the Standards, should be the goal.

Company: The Company stated that it did not object to Liberty's review of its and its affiliates' available customer communications, however the Company disagreed with the recommendation and objected to the imposition of an obligation for it and its affiliates to retain all customer communication over a potentially lengthy and undefined Audit Period. The Company has, however, updated its processes for archiving, accessing, and providing such customer education and marketing program material. On request, ACE indicted that it would be able to provide such program material for prior reasonable periods [i.e., two (2) to three (3) years].

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff concurs with Liberty on this recommendation. Staff recommends that the Company be required to maintain customer communications material in between audits and throughout the duration of a management audit. ACE should be required to provide Staff with its current retention policies for these types of materials and work with Staff to determine a reasonable amount of material to retain.

<u>Recommendation VII #5</u>: Ensure that website disclaimers regarding the taking of service from an affiliate are included on each retail affiliate's site and are presented in a way that will help ensure that customers will notice.

Liberty's review of current and archived versions of the websites indicated that none create any impression of preference. However, Liberty found that the inclusion of a disclaimer regarding the lack of connection between taking service from an RCBS and preference in utility service was not consistently applied or presented in a noticeable manner. Liberty argued that having a disclaimer is important as ACE's customers could access the site of an RCBS through ACE's parent, Exelon.

Liberty stated that the disclaimer used on the MAS website references only South Jersey Gas Company ("SJG") and makes no mention of ACE. Liberty suggested that the reference include ACE as well.

Company: The Company did not agree with the recommendation that a disclaimer should be included on all current and future websites for all affiliates that provide service to customers in New Jersey. ACE argued that the placement of disclaimers on affiliate websites is governed by a different section of the Standards than the section referenced in the relevant portion of the Final Report. ACE asserted that the section of the Standards from which the recommendation derives is N.J.A.C. 14:4-3.3, which generally prohibits a number of forms of preference or discrimination by the utility.

However, ACE argued that N.J.A.C. 14:4-3.5(k) addresses the use of the utility name and logo and requires the use of a disclaimer only in specific circumstances where the RCBS uses the electric and/or gas public utility's name and/or logo. ACE further argued that an additional disclaimer requirement beyond that reflected in N.J.A.C. 14:4-3.5(k) is unnecessary and may lead to confusion.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff agrees with the Company that section N.J.A.C. 14:4-3.5(k) deals with disclaimer language for specific circumstances. N.J.A.C. 14:4-3.5(k) specifically states:

> A related competitive business segment of a public utility holding company ("PUHC") shall not trade upon, promote, or advertise its relationship with the electric and/or gas public utility, nor use the electric and/or gas public utility's name and/or logo in any circulated material, including, but not limited to, hard copy, correspondence, business cards, faxes electronic mail, electronic or hardcopy advertising or marketing materials, unless it discloses clearly and conspicuously or in audible language that:
>
> 1. The PUHC or related competitive business segment of the public utility holding company "is not the same company as the electric and/or gas public utility";
> 2. The PUHC or related competitive business segment of the public utility holding company is not regulated by the Board; and
> 3. "You do not have to buy products in order to continue to receive quality regulated services from the electric and/or gas public utility."

Accordingly, if the PUHC of the regulated utility promotes its competitive and unregulated services while also mentioning its regulated distribution affiliates on its website it should include a disclaimer. If ACE retail customers are able to avail themselves of the PUHC's or its related RCBS's competitive business services, disclaimers are necessary as they are intended to advise customers of the relationship of the business, the nature of the service operating in a marketplace with other purveyors, and that the customer's regulated services continue unaffected regardless of which purveyor provides the competitive service.

Although MAS is an affiliate of ACE, it provides meter reading services that are not available to ACE's retail customers from other competitive purveyors that sell to individual retail customers. If customers of MAS cannot shop for the services MAS provides, and MAS is the sole purveyor of these services to ACE (and SJG), then the disclaimer that "you do not have to buy products in order to continue to receive quality regulated services from the electric and/or gas public utility" does not apply in this situation. ACE is simply outsourcing services it provides to its customers.

If MAS provides such services to other entities, it is important to ensure that ACE ratepayers are not subsidizing these services to other entities to increase MAS profits. It is additionally important to determine whether the services provided by MAS are indeed competitive and, if so, whether ACE properly bid out for these services. Staff's concern is whether the contractual relationship and arrangement between ACE, SJG, and MAS is in the best interest of ACE's and SJG's ratepayers, and whether customers are receiving safe, adequate, fair, equitable, and reliable service, and are paying a fair and reasonable rate for the services provided via the local distribution company ("LDC"). As stated elsewhere in this Order, ACE is required to provide the MAS service at the lower of book value or market price which would require ACE to solicit bids to determine a market price. As long as AMI is the method used in determining billing usage at the meter, this issue is moot.

Liberty did not address these issues. Staff suggests that these areas be revisited in the next audit. Staff recognizes that ACE has the right to request a waiver of Board rules in particular circumstances.

Recommendation VII #6: The Compliance Plan should explicitly address Section 14:4-3.3(j) of the Standards.

Liberty provided that this section of the Standards applies to situations where the LDC provides tariff service to its PUHC or a RCBS of its public utility holding company stating that such request for tariff service by such affiliates of the LDC should be applied in the same manner as to market participants and their respective customers regardless of any affiliation or not to the PUHC or its related competitive business segment. According to Liberty, the Compliance Plan failed to address this section of the rules. Liberty is recommending that the Compliance Plan in the future should address this section.

Company: The Company stated that it explicitly addressed N.J.A.C. 14:4-3.3(j) on page ten (10) of the Compliance Plan that was filed with the BPU on December 20, 2019.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Chapter VII: EDECA - Information Disclosure Standards (Section 14:4-3.4)

Recommendation VII #7: Management should change its interpretation of Section 14:4-3.4(a) and Section 14:4-3.4(b) of the Standards regarding contractual relationships and their impact on disclosure requirements.

According to Liberty, ACE management believes that because sharing of customer proprietary information to RCBSs during the Audit Period occurred pursuant to a contract, no public posting was required. Liberty does not agree with this interpretation of the Standards, as it is overly broad and could permit a utility and its affiliate to enter into a contract to avoid the public posting requirement.

Company: ACE accepted the recommendation that it should not rely solely on a contractual relationship as a basis for disclosure of customer information and that any reliance "should be very narrowly interpreted, and not applied broadly to all affiliates." In this particular instance, the meter reading services contract referenced by Liberty was the subject of BPU review during prior audits and ACE base rate cases. Any "sharing" occurred in the context of a contractual relationship and as permitted in connection with a contractual arrangement "authorized by the Board." Moreover, as noted in Conclusion No. 42 of the Final Report, ACE stated that it applied adequate processes to protect customer proprietary information from inappropriate internal release during the Audit Period.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written and also recognizes that, in certain circumstances, ACE may request, and the Board may grant, a waiver of the Board's rules to permit the sharing of customer information.

<u>Recommendation VII #8</u>: Management should ensure that all supplier lists are maintained in alphabetical order per Section 14:4-3.4(c) of the Standards.

The Compliance Plan restates this provision of the Standards, including the portion about alphabetizing the list of suppliers. Liberty found that ACE's website provides customers with information regarding available suppliers via a link to a site hosted by the BPU. The list of suppliers provided to Liberty in response to a data request did not list the eligible suppliers in alphabetical order as prescribed.

Company: The Company accepted the recommendation.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

<u>Chapter VII: EDECA - Separation Standards (Section N.J.A.C. 14:4-3.5)</u>

<u>Recommendation VII #9</u>: Reposition the duties of the individuals who serve as an Officer for ACE and Exelon Corporation and ACE, Exelon Corporation, and an RCBS.

In 2017, one (1) individual served simultaneously as an officer of both ACE and an RCBS and five (5) individuals served simultaneously as officers of ACE, Exelon, and several RCBSs. Similar occurrences existed in the other years of the Audit Period. Management interprets the Standards to allow such sharing due to shared services exemptions. Liberty disagreed with this interpretation, as the Standards do not include such exemptions in this section, though they are explicitly mentioned in other areas, suggesting no intent for an exception to be made with respect to Section 14:4-3.5(q).

Company: The Company disagreed with this recommendation. ACE stated that it has no corporate officers who are also members of the Boards of Directors of Exelon or RCBSs of Exelon. According to ACE, the Final Report interpreted N.J.A.C. 14:4-3.5(q) as not allowing the sharing of any corporate officers between ACE, Exelon, and RCBSs. The Company believes that certain non-operational officers, such as accounting, treasury, finance, tax, human resources, and corporate secretarial personnel within the shared services organization should be able to be common officers, as the oversight they provide serves corporate governance, financial reporting, and Sarbanes-Oxley purposes. ACE posited that repositioning the duties or individuals would create an extensive and undue burden on the organization, would result in less efficient and effective oversight and governance, and would provide no benefit to the Company's stakeholders.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff partially supports Liberty's recommendation. Staff is satisfied that ACE is meeting the intent of the N.J.A.C. 14:4-3.5(q), as long as no board member or corporate officer of Exelon serves as a board member or corporate officer of both the utility and the RCBS. No board member or corporate officer of the holding company can serve on both the RCBS of the PUHC and the utility. Staff also recognizes the reasonableness of shared and centralized services that are provided to all companies under the umbrella of the parent, such as the non-operational services mentioned above. ACE and Exelon have an ongoing obligation to avoid unfairly favoring unregulated entities over the utility and cannot share information or allocate costs and expenses from those services that would grant the unregulated affiliate an unfair competitive position in the marketplace. However, Staff expects ACE's full compliance with the Board's affiliate and fair competition standards and any deviation from those standards that could jeopardize the competitiveness of an industry should be taken seriously and recommends that such sharing of centralized services and positions that operate across an RCBS and the utility should be identified and noticed to the Board requesting a waiver with supporting documentation. This shall also be reviewed in the next audit for compliance.

Recommendation VII #10: Revise the Compliance Plan such that it properly interprets Section 14:4-3.5(q) of the Standards.

Liberty found that certain executives such as the Assistant Treasurer, Senior Vice President Finance, Treasurer, and Assistant Secretary provided shared services to ACE and Exelon, as well as the former competitive affiliate, Constellation. Constellation was an affiliate during the Audit Period but is no longer an affiliate as of the date of this Order.

Company: ACE disagreed with this recommendation. The Company maintained that the sharing of certain corporate officers across Exelon provides significant benefit with respect to corporate governance.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as modified below. Staff recognizes that certain benefits can accrue from the sharing of certain corporate officers across the Exelon family. Staff observes that Liberty found no impacts from the shared services and, although the PUHC provides shared services through these executives, they did not serve on the boards of both the utility and the RCBS. As long as no additional risk is placed on the utility and its ratepayers and that proper separation is adhered to, Staff understands the importance of cohesion for the positions of shared services to serve the PUHC as a whole. Staff recommends that the Company monitor whether these shared services improve overall governance, insulate the utility and its ratepayers from credit risks due to actions by any affiliates, and protect ACE from subsidizing any affiliates, as well as ensure that no competitive advantage results from shared officers or executives afforded to the competitive affiliates to the disadvantage of un-affiliated competitors in the marketplace.

Staff recommends that, in ACE's future annual compliance filings and in response to this Order, ACE be required to provide evidence to the Board that any decisions regarding shared services do not negatively impact the utility, its ratepayers, or the competitiveness of un-affiliated businesses providing services that are also provided by competitive affiliates of the utility or competitive business segments of the utility. ACE shall provide to Staff the names and positions of those corporate officers providing shared services across Exelon and its affiliates to ensure compliance with the Board's rules at N.J.A.C. 14:4-3.5(q). This shall also be reviewed in the next audit for compliance.

Recommendation VII #11: Require Board approval for future actions regarding any modification, extension, changes in pricing terms, or types or levels of services for the services provided by Millennium Account Services, LLC, and include in them analysis demonstrating how such actions comply with Section 14:4-3.5(t)2 and 14:4-3.5(t)6 of the Standards.

Liberty stated that various factors are important to consider regarding the future of not only the current ACE/MAS contract, but its relationship moving forward including implications beyond those surrounding compliance with the Standards. The concept of sharing meter reading services between separate electric and gas utilities with similar geographic service territories introduces the opportunity for economies of scale. However, Liberty stated that good practice means that the competitiveness of the current contract, now in its sixth year, should be tested by the market in another solicitation. Liberty asserted that even this solution presents present-day challenges, as there does not exist a deep pool of competitive suppliers for these services. Liberty maintained that of equal importance are the future needs of ACE, and SJG, for the services that MAS provides them.

Company: ACE acknowledged the Final Report's recognition that future technological changes and operational efficiencies might materially change the nature of the MAS business in the future however, ACE disagreed that additional Board oversight and approvals are required at this time.

In response to Rate Counsel's concerns outlined below, ACE further committed to addressing potential foreseeable impacts on its relationship with MAS in its AMI application and asserted that this commitment should be sufficient and that no further action is required.

Rate Counsel: Despite past MAS pricing being based upon competitive biddings from non-affiliated bidders, there have been no other competitive biddings by ACE meter reading service since 2012. Rate Counsel stated that although Liberty made note of past competitive pricing, Liberty made no substantive recommendation regarding MAS pricing other than to recommend Board approval for future actions under certain circumstances. Rate Counsel noted that even though the auditors concluded that "competitiveness of the current contract, now in its sixth year, should be tested by the market in another solicitation," Liberty did not propose a recommendation that addressed the conclusion. Rate Counsel referred to the EDECA requirement that MAS prices be set at the lesser of book or fair market value. Thus, Rate Counsel argued there is no support that the EDECA standard has been met. Thus, Rate Counsel recommended that Liberty be directed to conduct a determination of the book value of MAS's meter reading services to ACE and that ACE be directed to solicit competitive bids for meter reading service.

Staff Response: Staff supports Liberty's recommendation as written. Meter reader services have made a major shift towards AMI technology making MAS services provided to ACE electric customers obsolete.

<u>Recommendation VII #12</u>: Continue soliciting market information and make subsequent pricing adjustments to ensure that ACE's Mays Landing lease complies with Section 14:4-3.5(u) of the Standards.

Liberty stated that management should continue the process of using external sources to develop a comparable market price that ACE pays for its lease in the building owned by its affiliate.

Company: The Company accepted the recommendation and indicated that it planned to continue to solicit market information and make subsequent pricing adjustments to ensure that ACE's Mays Landing lease complies with N.J.A.C. 14:4-3.5(u) of the Standards.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. ACE continues to solicit market information and makes the necessary changes to conform with the Board's rules and regulations. This will further be confirmed as part of the next audit.

Recommendation VII #13: Make explicit the Compliance Plan's inclusion of intellectual property in asset transfer provisions and provide a sufficient explanation of what is covered to put all employees on notice of the types of intangible property that is covered.
Company: ACE indicated that it would add the requested reference to future updates to its annual Compliance Plan, beginning with the Plan that was scheduled to be filed in December 2020. The annual Compliance Plan, as revised, is circulated internally to all segments of the Company responsible for compliance with its components.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Chapter VIII: Merger Conditions

Chapter VIII: Merger Conditions - Self-Effectuating Merger Commitments

Liberty stated that the special purpose entity ("SPE") and Golden Share exist to insulate ACE and PHI from the consequences of financial distress in other sectors of the Exelon family. Liberty found compliance with commitments addressing SPE ownership, governance structure, capitalization, required consents to bankruptcy and other insolvency actions, separation, accounting, and arm's-length dealing. The circumstances and conditions that existed at the time of Liberty's audit met those required for compliance. However, in certain cases, the ability to change those circumstances in the future without notice or approval can create conditions or circumstances either out of compliance, or not in keeping with what Liberty view as the intent of certain commitments.

Recommendation VIII #1: Engage stakeholders in a discussion of the practical application of Stipulation of Settlement Commitment No. 27, under which Exelon has consented to BPU jurisdiction, should uncertainty about its intent exist among them.

According to Liberty, it is not clear that Exelon's view of this consent would allow any significant practical application (beyond what jurisdiction the BPU has apart from the consent) in the event of a failure of Exelon to comply with a Commitment. According to Exelon, the BPU's jurisdiction is defined by statute, and cannot be expanded except by statute.

Company: The Company did not agree with the recommendation. ACE asserted that a stakeholder group to discuss the practical applications of this commitment would not be helpful. ACE argued that the outcome of such a group would most likely consist of opinions or points of views on hypothetical scenarios that may never come to pass and would have no impact on the legal implications of this commitment.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Exelon consented to BPU jurisdiction as part of the Merger Order. Staff recommends that the Board take action in the event Exelon and its affiliates do not adhere to Commitment No. 27. As Liberty did not find that a violation occurred during the Audit Period, Staff does not support Liberty's recommendation at this time.

<u>Chapter VIII: Merger Conditions - Ring-Fencing Generally</u>

<u>Recommendation VIII #2</u>: Make explicit in the PHI LLC Agreement ("LLC Agreement") the inability to alter (even with unanimous director and Golden Share Holder consent) Section X, Section 5.2.8, and any other provisions giving effect to the ring-fencing provisions of the merger commitments.

Liberty concluded that the thirteen (13) separateness requirements of Section X and the Section 5.2.8 limits on voluntary actions of the LLC Agreement should be preserved against dilution, even with unanimous board of directors and Golden Share Holder consent. Liberty stated that "[t]he changes may, and are in fact, likely to occur in times of financial health for Exelon. It is difficult to see the logic in determining that the protections were worth making a condition of merger approval, while thereafter exposing the continuation of those protections into the future to a single decision at any time by present or future PHI independent boards member or Golden Share Holders."

Company: The Company did not agree with the recommendation. ACE stated that the LLC Agreement referenced in the Final Report is the Pepco Holdings LLC Operating Agreement. According to ACE, the recommended addition of a new requirement to prohibit revision of Section X or Section 5.2.8 of the LLC Agreement is not necessary as it would be duplicative of the Company's existing obligations in its merger commitments.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports the Company's position and recommends that the Board reject Liberty's recommendation. The Company must adhere to any ring-fencing provisions of the Merger Order, as well as any subsequent Board approved ring-fencing measures. The Company has committed to adhering to the ring-fencing measures. The Company is obligated to report any LLC Agreement changes to the Board and Staff, and must show that it complies with ring-fencing measures. Thus, the Company must notify the Board of any changes to Section X or Section 5.2.8 of the LLC Agreement.

<u>Recommendation VIII #3</u>: Change the Special Purpose Entity ("SPE") Operating Agreement to require independent director and Golden Share Holder approval of changes material to the Commitments' ring-fencing protections.

Liberty indicated that it has concerns with the ability to amend the bankruptcy-related provisions, even with Golden Share Holder approval. Liberty also expressed concern about the ability of Exelon Energy Delivery Company LLC ("EEDC"), acting alone, to make a number of other important SPE agreement changes affecting the Commitments. ACE should not be subject to change at all without regulatory approval, let alone not even requiring approval by either the SPE independent director or the Golden Share Holder.

Company: The Company indicated that it accepts this recommendation and stated that it would amend the SPE Operating Agreement to prohibit the amendment, without the consent of the SPE's Independent Director or Golden Share Holder, of Sections 1.8, 1.10(a), 2.6, 2.7, 2.8, 2.9, and 3.2 thereof by December 31, 2020.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. Any changes that the independent director and Golden Share Holder approve that are material to the ring-fencing protection Commitments shall be reviewed by the BPU to ensure compliance with such Commitments.

Chapter VIII: Merger Conditions - Ongoing Special Purpose Entity and Golden Share Commitments

Recommendation VIII #4: Amend the language of Section 2.8 of the SPE Operating Agreement to prevent a loss of EEDC direct ownership of 100 percent of the SPE from any circumstances, including but not limited to alienation or pledging of membership units for the benefit of creditors.

Liberty concluded that SPE ownership has so far conformed to the requirements of Commitment No. 32 and changes in ownership are constrained by governing documents to a large extent; however, the documents do permit a result not consistent with SPE ownership requirements. According to Liberty, even the directors and the Golden Share Holder should not have the power to alter the entity existing to satisfy the ring-fencing protections of the Commitments.

Company: The Company disagreed with this recommendation. According to the Company, if Exelon determines that there is a need to change the ownership structure between EEDC and its subsidiaries, including the SPE, regardless of the provisions of the SPE Operating Agreement, Exelon would be required to obtain the consent of the BPU in order to make such a change due to the requirement set forth in Commitment No. 32 of the Merger Order.

Rate Counsel Response: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff understands Liberty's concerns in making this recommendation but also agrees with the Company that any change in ownership cannot be implemented without BPU approval. Accordingly, the Company shall seek Board approval of proposed changes in ownership.

Recommendation VIII #5: Amend Clause (ii) of Section 1.10(a)(4) of the Operating Agreement of the SPE to expand the definition of "Independent Director" so as to expressly preclude service by current or former officers of any Exelon entity as an SPE independent director.

Liberty concluded that SPE directors have so far met the requirements of Commitment No. 36. Liberty further concluded however, that Section 1.10(a)(4) of the SPE Operating Agreement needs to be modified as it bars current and former EEDC officers from serving as directors, but the definition does not bar former officers of the parent or other Exelon affiliates above or outside the EEDC line of ownership from becoming independent directors.

Company: The Company stated that it accepts this recommendation.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. Staff notes that ACE made the requested change by December 31, 2020. As part of the implementation stage of this audit, the Company shall provide all documentation showing its implementation of the recommendation.

Recommendation VIII #6: Establish a working group to discuss and seek consensus on the standards, interests, and other parameters that should guide Golden Share Holder decisions in matters requiring its assent or concurrence.

Liberty stated that it has its own views on the role of a Golden Share Holder in times of parent or non-utility affiliate financial distress. Liberty believed that role should be to preclude entangling the protected, utility-related entities in proceedings intended to resolve financial difficulties not arising from within the protected entities. Liberty agreed that settling on pre-determined outcomes considering hypothetical circumstances is fraught with analytical peril, but it is nevertheless clear to them that entangling the protected entities should be virtually always the exception.

Company: The Company disagreed with the recommendation. According to ACE, this recommendation would effectively be a re-opening of negotiations around the Company's merger commitments which were agreed to by a large group of stakeholders and subsequently deemed sufficient and approved by the BPU when it determined the merger could 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. The Company indicated that it would not support such a re-opening and does not believe it would be successful given the hypothetical and speculative nature of any such discussions. ACE further argued that, as it is highly unlikely that any working group would identify and form a consensus around any matter requiring a decision by the Golden Share Holder, establishing such a group would lead to an inefficient use of Company, stakeholder and BPU resources. Moreover, ACE contended that such a process would impede and infringe upon the independence of the Golden Share Holder, which is contrary to the intent of the agreed-upon merger commitments. As a result, the Company submitted that the recommendation should not be accepted.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff recognizes Liberty's concerns with regard to the lack of standards, interest, and other parameters that should guide the Golden Share Holder decisions. Staff recommends the Company notify staff from the Audits Division and the Office of the Economist regarding any decisions by the Company and Golden Share Holder that directly or indirectly impact ring-fencing. The Company has a burden to advise the Golden Share Holder of all federal, state, and BPU rules and decisions that must be adhered to by the Company.

Recommendation VIII #7: Amend the relevant governing documents and create controls designed to preclude material economic or financial interests by all entities and individuals associated with Golden Share holding.

Liberty concluded that there is a lack of restrictions in the relevant governing documents that relate to several agreements that discuss the role and responsibilities of the SPE and the Golden Share Holder. Although these agreements have restrictions and requirements relating to the SPE and Golden Share Holder and set the structure of the organization, it lacks restrictions in the following areas:

a) The percentage of Global Securitization Services LLC ("GSS") ownership of its subsidiary, GSS holdings, the entity established to hold the Class "B" Membership, or Golden Share interest in the SPE;
b) The lack of limits on competing business interests on the part of GSS - business interests that presumably may include creditors of Exelon;

c) The lack of limits on business that GSS may do with Exelon;
d) The provision of indemnity to the GSS and its subsidiary the Golden Share Holder for errors and omissions in carrying out the Golden Share Holder roles;
e) Uncertainty about the obligation of the Golden Share Holder to continue to perform services upon a breach of the agreement governing those services.

Liberty raised concern that the agreements with the Golden Share Holder and its parent do not preclude other, substantial business arrangements or common interests between them and any Exelon entity that could lead to substantial conflicts of interest.

Company: The Company disagreed with this recommendation. According to ACE, implementation of this recommendation would be a re-opening of the Company's merger commitments which clearly set forth the requirements for the holder of the Golden Share (i.e., that the holder be 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). ACE asserted that imposing additional requirements on the holder of the Golden Share is an expansion of the Company's merger commitments that were agreed to by a large group of stakeholders and subsequently deemed sufficient and approved by the BPU when it determined the merger was in the public interest. The Company would not support such a re-opening.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff agrees with Liberty's recommendation. As acknowledged by Liberty, the SPE and the Golden Share Holder exist to insulate ACE and PHI from the consequences of financial distress in other sectors of the Exelon family. Thus, it is essential that the Golden Share Holder be independent. Restrictions on economic and financial interests of the Golden Share Holder and its entities is critical to avoid biased decisions that are made for the benefit of the Golden Share Holder as opposed to PHI utilities including ACE. The purpose of the Golden Share Holder's fiduciary obligations and role to protect utility interests should be stated in governing documents including the LLC Agreement executed March 23, 2016, the SPE Operating Agreement dated July 9, 2015, the July 14, 2015 Purchase Agreement between SPE and GSS, the July 14, 2015 Engagement Agreement, the Services and Indemnity Agreement dated July 14, 2015, and any other agreements or documents that set forth the commitments of the Golden Share Holder including the Formation Document. This should be reflected in the controls established by the Company, as that will indicate its commitment to this responsibility and is consistent with the intent of the Merger Order to protect the interests of PHI utilities.

<u>Recommendation VIII #8</u>: Amend the documents governing PHI LLC board membership to limit membership to seven, at least four of whom must be independent and bar the ability to change these characteristics without BPU approval.

Liberty found Commitment No. 38 unusual, in that it permits the PHI board to begin with a majority of non-independent members, but does not explicitly preclude dilution of independent membership through the addition of as many management members as a majority of the PHI board might choose to elect. Nevertheless, Liberty found that the composition of the PHI board today complies with this Commitment.

Company: The Company did not agree with the recommendation to limit the number of members of the PHI board of directors to seven (7). In its August 9, 2021 update to Staff, the Company pointed out that the majority of board members are independent consistent with the merger agreements in Delaware and District of Columbia which were more restrictive than the New Jersey merger agreement. ACE argued that Liberty's recommendation is not necessary as the make-up of the Board members already addresses Liberty's independence concerns. The Company stated that it has no disagreement if the Board wishes to concur with the Delaware and District of Columbia language.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Liberty found the Company to be in compliance with sufficient independent board membership. Staff does not support restricting the number of PHI board members to seven (7), as long as the Company maintains that the majority of its board members are independent and are compliant with all relevant BPU, State, federal, and stock exchange requirements. Accordingly, Staff agrees with the Company and rejects Liberty's recommendation but does recommend that the Company notify the Chief Economist and Audit Staff of any changes.

<u>Recommendation VIII #9</u>: Eliminate the power to abolish the requirement that the Golden Share Holder consent to voluntary SPE or PHI bankruptcy filings.

Liberty stated that the Golden Share Holder must consent to the elimination of its consent requirements, but it is not clear what circumstances would justify elimination of that Golden Share Holder power, which clearly forms a central part of the Commitments related to ring-fencing. Liberty noted that the Commitment does not require Golden Share Holder consent to an ACE bankruptcy.

Company: The Company disagreed with the recommendation. ACE stated that the SPE Operating Agreement requires the consent of the Golden Share Holder to a voluntary SPE or PHI bankruptcy filing. Additionally, because the Company is already obligated by law to comply with Commitment Nos. 39 and 59, and given that the Company is obligated to comply with numerous laws and regulations that are not included in its governing documents, the Company maintained that it is unnecessary to amend the governing documents as recommended. Further, ACE argued that such an amendment to the SPE Operating Agreement would be inconsistent with Delaware law. Section 18-1101 of the Delaware LLC Act states that "[i]t is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements," and parties to a contract have standing or rights under such contract to make additional amendments.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff concurs with Liberty's recommendation as written and recommends that Liberty's recommendation be accepted.

<u>Chapter VIII: Merger Conditions - Ongoing Customer-Service Commitments</u>

<u>Recommendation VIII #10</u>: Develop and monitor specific plans for increasing the pace of Quick Home Energy customer-facing activities.

Liberty found that ACE adopted two (2) programs with expenditures from 2017 through 2021: 1) $8.7 million for the Residential Quick Home Energy Program for low-income customers; and 2) $6.3 million for the OPower residential behavior based program for low-income areas and high energy users. ACE provided Liberty a September 2017 semi-annual spend report of their RIP and an annual spend report on energy efficiency programs. ACE's actual 2017 reported spending through the end of August was $1,528,541 for the residential behavior based program, with no expenditures on the other program. Considering that program start-up had occurred over the half year or so covered by these expenditures, Liberty found outlays at a pace commensurate with the five (5)-year total obligation of $15 million. Liberty concluded from the information they received that the pace of expenditures still needed to increase, particularly for the Quick Home Energy program.

Company: The Company stated that it accepted and has implemented the recommendation.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Recommendation VIII #11: Provide a better-directed web experience for customers seeking energy efficiency and demand-response programs and develop a rapid-response capability to scale the organizations who will have substantial responsibility for implementing requirements and programs and meeting expectations created by recent New Jersey legislation.

Liberty concluded that management does generally maintain and support energy efficiency and demand response programs; however, Liberty found that the scalability of its organization to address the requirements and expectations of recent New Jersey legislation is unclear. Liberty found that ACE's website provides a number of downloadable forms and brochures covering various energy efficiency programs. According to the Final Report, ACE's website allows customers to move from the main webpage to the "Ways to Save" page to the "Energy Conservation Plans" page to then the New Jersey Clean Energy Programs site so customers can reach information explaining how to save energy. This was a long path for customers to follow and included many links. Liberty stated that ACE provided customers with information about the programs and offerings available, but not as prominently and easily traceable as it could.

Company: ACE stated that it accepted the recommendation and is committed to ensuring that all customers have access to the information and educational tools that can help them better manage their energy usage.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Chapter VIII: Merger Conditions - Ongoing Affiliates Commitments

Recommendation VIII #12: See the Recommendations section of Chapter IV.

Recommendation VIII #13: Enable the power to opt out of EBSCo services by providing a clear and appropriately scoped list of permitted opt-out areas.

According to Liberty, the list of services should clearly describe permitted opt-out areas of services and it should provide clear methods for PHI and ACE to identify, analyze, and propose opt-outs. Liberty stated that PHI should explicitly consider opt-out alternatives as part of its interaction and negotiation with EBSCo on centrally provided service options. Liberty additionally stated that PHI's documentation of its business planning activities should reflect when and what consideration it has given and what analysis it has undertaken with respect to opting out.

Company: The Company stated that it has robust processes for the establishment of EBSCo services and has enhanced the process as a result of this recommendation. The GSA, which serves as formal agreement between EBSCo and the Exelon operating companies, including ACE, for the services that are performed by EBSCo, explicitly states that all operating companies are required to accept Corporate Governance services, but have the discretion to opt out of other services.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Recommendation VIII #14: Establish an approach and means at the Exelon level to expedite the delivery of information: a) directly subject to Commitment No. 88, and b) relevant to meeting the broader needs of BPU-commissioned activities, such as this audit.

Liberty found that, in other cases, there was "remoteness" between a holding company and its operating utilities. According to Liberty, PHI-level regulatory management appeared to need to make more clear to EBSCo and holding company level personnel the nature and extent of activities, quantitative data, and qualitative information relevant to the types of inquiries likely to come from BPU-related activities. Liberty found strength in Exelon's location of regulatory management close to the jurisdictions involved. However, according to Liberty, the time and effort it took Liberty to get information, some of it basic, indicated a gap at the Exelon end in providing a place for PHI to go to get needed information expeditiously and completely.

Company: The Company stated that the recommendation is focused on information requested from Exelon and does not apply to information requested from ACE and the PHI companies. At the time of the audit, the merger between Exelon and PHI had recently been completed, Exelon and PHI were in the middle of an integration effort, and the PHI personnel were at the beginning of developing their relationships with Exelon and understanding the subject matter experts within Exelon. Accordingly, ACE asserted that there was a delay in the time required to obtain information from Exelon for the audit.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Chapter VIII: Merger Conditions - Ongoing Reporting Commitments

Recommendation VIII #15: Provide for cyclical reporting of compliance with ring fencing and other requirements.

Liberty considered it useful for the BPU to determine whether annual compliance reporting survives under Commitment No. 64 and, if it does not, to impose such reporting in any event. Liberty stated that there is merit, considering the burdens on management and on the resources of the BPU and stakeholders, to set up a two (2) or three (3) year cycle for reporting on all Commitments, staggering them to reduce yearly burdens and to reflect the lesser "immediacy" some of those Commitments likely exhibit.

Company: The Company disagreed with the recommendation. The Company stated that although Commitment No. 64 of the Merger Order required that "ACE will file with the BPU an annual compliance report with respect to the ring-fencing and other requirements," the language in Commitment No. 13 of the Most Favored Nations ("MFN") joint recommendation approved by the Board on October 31, 2016, revised and eliminates this requirement.[8] Commitment No. 13 provides that "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...." The Company further referred to the MFN joint recommendation and Board Order approving the recommendations clearly stated that paragraph 13 revised and superseded paragraph 64 of the stipulation of settlement. The Company stated that it complied with its commitment and filed the report with the BPU on June 30, 2017 and received no inquiries regarding the report from the BPU. The recommendation inappropriately re-opens the matter and effectively calls into question the BPU's judgment in approving the MFN joint recommendation.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. Staff agrees with the Company's statement that the Commitment to provide cyclical reporting of compliance with ring-fencing and other requirements was revised and superseded by MFN Commitment No. 13, which was approved by the Board in the MFN Order. However, ring-fencing is a critical component in addressing certain risks within a large holding company and thus additional reporting is reasonable. Staff suggests annual reporting and more often if there is a significant change in the Company ring-fencing procedures/requirements. If the Board deems additional reporting requirements as necessary, ACE must comply. The MFN Order also clearly stated that the MFN 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. Thus, Staff disagrees with the Company that additional ring-fencing would impair or reopen matters settled in the Merger Order.

Recommendation VIII #16: Remove "consistent with the requirements of the Order" from the required Exelon officer certifications and add to the certification a statement that Exelon "has maintained" separation.

Rather than certify using the language "consistent with the requirements of the Order", Liberty stated that the language should provide certification that it has maintained (as opposed to will maintain) separateness.

Company: The Company accepted this recommendation and has implemented the recommendation. As part of the Merger Order, Exelon provided the BPU a certificate contains the required language.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

[8] In re the Merger of Exelon Corporation and Pepco Holding, Inc. - Order Approving Joint Recommendation for Settlement of the Most Favored Nations Issue, BPU Docket No. EM14060581, Order dated October 31, 2016 ("MFN Order").

Chapter VIII: Merger Conditions - Merger Commitment Tracking

Recommendation VIII #17: Establish and conduct a regular process for examining, tracking, and reporting of compliance with merger commitments to the BPU.

Liberty stated that management needs to identify, with respect to each Commitment, applicable: a) controlled documents (e.g., an SPE governing document), b) required and prohibited actions, c) required or prohibited conditions or circumstances, and d) other factors whose existence or non-existence is material to sustaining compliance. For each item in these categories, Liberty stated that management should determine what investigation is required to sustain compliance, carry out that examination, record findings with respect to sustaining compliance, and explain the nature and extent of any non-compliance found. These activities should occur under the direction of an officer of Exelon at a level sufficient to provide the certification called for under Commitment No. 65.

Company: The Company stated that it tracks all merger Commitments related to the Exelon/PHI merger in a compliance tracking database and manages the process within the Exelon legal department. Once a commitment is completed, a final sign-off is required by the executive sponsor and others after adequate documentation supporting the completion of the commitment is received and reviewed. For ongoing Commitments that require no specific action (i.e., ACE agrees to not engage in an activity), an Annual Certification is signed by the executive sponsor annually as a reminder of the Commitment. ACE also responds to the status of various merger Commitments in rate cases and other proceedings. The Company believes it has a robust process to track, monitor, and document its merger commitments. The Company recommended that the current process continue and that ACE submit a status report of its compliance by June 23, 2021.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation that the tracking process should include more detail and show control documentation that reflect the status of Commitments. However, Liberty found a few areas which should also be included in ACE's current tracking system, such as identifying detailed specific actions that remain open for a particular Commitment that is in progress and a schedule for completion of each open action under the Commitments in progress. Specific actions should also be identified with a schedule of completion for each action under Commitments that have a continuing nature. Liberty also found that ACE's tracking system for compliance regarding ethics Commitments needs to identify the underlying groups responsible for sustaining compliance which should be provided to Staff. Staff asks that through this implementation process, ACE provide Audits and the Office of the Economist with a report and appropriate company documents showing that ACE updated its tracking system to include the above additional information within one (1) year of this order, including amended written processes implemented throughout the Company.

Chapter IX: Executive Management and Governance

Chapter IX: Executive Management and Governance – Boards of Directors

Recommendation IX #1: Expand the numbers of Exelon and PHI LLC board meetings and include regular sessions bringing both together.

Liberty stated that the addition of two (2) Exelon meetings would bring it into closer conformity with industry experience and it would provide an opportunity for driving the strategic move toward identifying utility growth, uncertainties, opportunities, and risks, and would allow for deeper examination of utility investment levels. For an enterprise with vast operations beyond those of its utility companies, Liberty sees the benefit in increasing board attention on ensuring that the redirection of resources remains consistent with utility needs overall and with specific focus on each of the operations involved, including ACE. According to Liberty, increased meetings would also provide more opportunities for taking oversight of PHI utility matters closer to those existing when PHI had a larger and more broadly experienced board.

Company: The Company did not agree with this recommendation. The Company asserted that the frequency of board meetings varies from company to company and is determined by the board of directors in such a manner to ensure that the board is able to discharge its fiduciary duties and responsibilities properly. ACE argued that the number of times that a board meets during the course of a year can vary based upon circumstances and current company needs, and is therefore determined by a number of factors that may change from year to year, such as merger activity, natural disasters, financial condition, cyber-attacks, political environment, pandemics, and various other factors that may impact a company. As such, the manner in which one company communicates with its board and how it counts and reports the number of meetings in a year can vary. ACE argued that what is ultimately important is whether the board fulfills its obligations, exercises its fiduciary duties, and performs its functions properly. ACE argued that there has been no finding of inadequate board performance and, as a result, there is no need to arbitrarily increase the number of board meetings.

Moreover, the recommendation states that the additional meetings are needed to "provide an opportunity for driving the strategic move toward utility growth, uncertainties, opportunities, and risks, and would allow for deeper examination of utility investment levels." ACE asserted that over the past four (4) years, Exelon has invested approximately $22 billion across its six (6) utilities for resilience, reliability, and infrastructure improvements, and planned to invest approximately $26 billion of capital across its utilities from 2020 – 2023 for grid modernization and resiliency for the benefit of customers. The Exelon board (and the PHI board with respect to investments at PHI) has been and will continue to be fully engaged and involved in overseeing the Company's execution of the capital investment plan.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: While Staff supports the Company's position, understanding that the Exelon board currently meets quarterly and if necessary more often but will decide that as circumstances arise, Staff also sees merit in Liberty's recommendation taking note of Liberty's reference to other similarly, large holding companies like Exelon managing multiple utility operations that meet more often than quarterly. Although Staff is not recommending that the Board set forth a specific number of board meeting times in a given year, Staff recommends that the minimum, should not fall below the current quarterly meetings as Exelon manages multiple entities across multiple states. Staff suggests that managing its large enterprise of multiple operating companies across multiple states, more meetings become more critical for the board to fulfill its fiduciary obligations and overall obligations of primary oversight of the Company's management team. Additional meetings would also be useful in enabling the board to ensure that strategic initiatives align with corporate purposes while maintaining legal compliance and integrity according to the National Association of Securities Dealers Automated Quotations. Enhanced oversight becomes more important in light of recent federal investigations into FirstEnergy and Commonwealth Edison Company, a utility under the umbrella of Exelon, as these investigations have indicated a need for board attention to potential risks and failures of internal controls. Additional board meetings would enable the Exelon and PHI boards to become more aware of the operations of the Company and its governance matters, which could prevent the breakdown of ethics rules that may lead to investigations. It is also important for the PHI board to meet with the Exelon board to ensure that resource needs, performance issues, and other matters are raised to the highest levels so that ACE and New Jersey concerns are not lost in a holding company that manages numerous utilities and other entities. Within, three (3) months from the effective date of this Order, the Company shall provide Staff with the internal guidelines used to determine the number of board meetings in a given year that provide a level of comfort that the board is meeting its obligations and responsibilities of oversight of such a large holding company.

Recommendation IX #2: PHI LLC board membership of seven, with representation from the four jurisdictions involved needs to remain a central element of the governance structure.

Liberty concluded that the current governance structure calls for PHI, LLC board membership of at least seven (7), with at least four (4) independent members, one (1) from each of the four (4) PHI utility jurisdictions. According to Liberty, retaining that number and independent membership distribution is essential to ensuring appropriate ring-fencing, and to ensuring attention to New Jersey needs and circumstances. Liberty believes that the governance documentation surrounding PHI board membership should incorporate these limits.

Company: The Company did not agree with the recommendation to fix the number of members of the PHI board of directors at seven (7). Commitment No. 37 of the Merger Order provides that the PHI board of directors must consist of seven (7) or more individuals. While the PHI board of directors has consisted of seven (7) members since the closing of the merger, ACE argued that there may come a time when it is deemed appropriate to increase the size of the board, and the PHI board of directors or Exelon (as the ultimate sole member of PHI) should have the ability to govern the Company in such a manner to ensure proper governance oversight of PHI.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff is satisfied with keeping the number of PHI board members at seven (7) or more, consistent with the Commitment No. 38, as approved by the Board with the majority as independent members. Accordingly, Staff recommends that the Board reject Liberty's recommendation to cap the number of PHI board members at seven (7).

Recommendation IX #3: Make clear that new PHI, LLC independent directors shall be subject to restriction on economic interests beyond those nominally compliant with exchange listing-requirements.

Liberty stated that upon replacement of the current directors, their successors and families should have no economic interest that would have the appearance of affecting their ability to exercise the votes that require independent director support or consent in Exelon or any of its entities.

Company: The Company did not agree with the recommendation. At the time of the merger between Exelon and PHI, each of the utility commissions with jurisdiction over the PHI utilities, including the BPU, approved the New York Stock Exchange ("NYSE") listing standard regarding independence as the appropriate standard for determining director independence. The NYSE standard sets forth a robust set of requirements and is well established and considered sufficient by the investment community and the U.S. Securities and Exchange Commission to ensure that the directors of NYSE listed companies do not have material relationships with the listed company. Moreover, ACE argued that the recommendation is vague as to the particulars of the recommended "restrictions" and provides no guidance as to an acceptable threshold of economic interests. The Company does not believe that an arbitrary and more conservative standard is warranted for PHI's directors.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports and agrees with ACE's position. The NYSE standards on independent directors are sufficient and the Company is required to meet all federal and State statutory and regulatory requirements. Staff's support of ACE's position does not excuse the Company and its board members from restricting economic interest that could be in conflict with proper governance responsibilities and actions that are in the best interests of the overall company operations, financial health, customers, shareholders, investors, and regulators, especially if the economic interest poses some risk on preserving the integrity of the Company and its operations.

Recommendation IX #4: Document more clearly the role of the PHI, LLC board with respect to oversight activities.

Liberty found that the board members did not express uniformity in discussing roles with respect to typical board activities; e.g., long-range planning, candidate replacement identification, self-assessment of its performance, or contribution to PHI-entity executive compensation. Liberty stated that greater clarity should exist in what specific approvals are required of the board and at what junctures. If there exists a range of areas where informing them is just for the purpose of keeping them informed, that should be made more clear.

Company: The Company stated that the PHI Corporate Governance Principles, provided in connection with the audit, describe the various duties and responsibilities of the PHI board, including those associated with oversight activities. In accordance with the Corporate Governance Principles, the board reviews and discusses the Company's five (5) year long-range plan during the first quarter of every year and receives subsequent updates during the year on the status of the Company's progress with respect to various aspects of the plan. The Company stated that it is currently in the process of amending its Corporate Governance Principles to, among other things, clarify the roles and responsibilities of the board of directors and, with respect to director candidate replacement and self-assessment, to provide greater clarity on the process for identifying and vetting potential candidates for the board, which will largely be conducted by the Corporate Governance Committee of the Exelon board of directors, and to provide a process for conducting annual evaluations of PHI board and individual director performance.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. The Company claimed it implemented the recommendation by updating the PHI Corporate Governance Principles in

August 2020. Staff recommends that the Company provide all the Corporate Governance documents and any other documents it is relying to support this claim.

Recommendation IX #5: Provide the PHI, LLC board with regular updates regarding Exelon's operations and financial condition, and regularly examine Exelon financial distress scenarios.

According to Liberty, key votes that require independent director support or consent on matters arising in times of financial distress are likely to require quick action under intense pressure. Liberty stated that the PHI board should receive at least semi-annual presentations addressing Exelon's financial performance, condition, and risks. According to Liberty, the board should also be periodically presented with a test-scenario designed to help it to develop a robust perspective from which to respond to a variety of conditions that may put its special voting or consent powers and obligations into play. These exercises should focus on ensuring how the interests of PHI and its subsidiaries may differ from those of the rest of Exelon, what other players (*e.g.*, creditors or bankruptcy courts) may be acting in their own forums and managers, and what resources may be required to be marshalled to assist the board in its deliberations in such circumstances.

Company: The Company stated that it did not believe that the recommendation was necessary. With respect to test scenarios, the Company argued that it is necessary to conduct regular exercises to evaluate hypothetical scenarios. The PHI directors are fully aware of their responsibilities regarding circumstances of financial distress and would be able to evaluate the facts as they come to light and, if deemed necessary by the board, would be able to retain independent legal, financial, and other advisors should any such situation arise. Nevertheless, the Company indicated that it would offer the PHI board the opportunity for an annual "refresher" on the ring-fencing requirements that address financial distress scenarios, to the extent the board considers such information useful and effective.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Chapter IX: Executive Management and Governance - Top Management's Focus and Support

Recommendation IX #6: Restore the ACE-only President position.

Liberty stated that the individual selected should combine significant levels of operational and regulatory/community experience. ACE's President should: report to the PHI CEO, act as a regular, active participant in the monthly Chief Operating Officer meetings addressing performance, attend and make a presentation at each PHI board meeting on "what's happening" on the ground in New Jersey, prepare at least monthly reports for executive management at PHI, PHISCo leadership, and Exelon Utilities' leadership, work in close coordination with regulatory affairs, and become and remain a credible, reliable, knowledgeable source of information about ACE operations and customer service details of interest or concern to the BPU.

Company: The Company disagreed with the recommendation. With the retirement of ACE's former region president, the Company made the decision to align the position with the successful structure followed in the Potomac Electric Power Company ("Pepco") region. As a result, the role of the ACE and Delmarva Power & Light Company ("Delmarva") region president were combined in order to have a region president responsible for activities across the region.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff agrees with Liberty's recommendation as written given the size of the holding company and to ensure that ACE has appropriate representation and authority to make decisions regarding its New Jersey utility operations as they would have the knowledge of ACE specific issues and concerns expressed in New Jersey.

Chapter XI: Staffing and Compensation

Chapter XI: Staffing and Compensation- Staffing

Recommendation XI #1: Promptly complete the work needed to provide strongly founded resources plans for PHISCo and EBSCo and provide resource alignment, numbers, and costs based upon realistically achievable efficiency gains.

Liberty stated that at each of the ACE, PHISCo, and EBSCo levels, leadership has acknowledged the ability to make sizeable gains in the effectiveness and efficiency of resources employed directly for and in support of ACE management and operations. Nevertheless, Liberty found that PHISCo had yet to make substantial progress in the resource reductions that management acknowledged as available. Moreover, Liberty asserted that significant work remains in producing the economies expected to result from consolidation. According to Liberty, the ability that management has to produce material reductions in resources makes current actual and approved staffing numbers poor predictors of short-term personnel requirements. Liberty indicated that management responded to Liberty's question about structured reviews of resource levels since 2014 with a general response citing an ongoing effort to review organization structure and resource levels, considering other Exelon Utilities practices and the environments in which they apply them.

Company: The Company stated, as recommended by the Auditors, the Company has completed the work necessary to realize efficiency gains and has incorporated the results of those efforts into its LRP through two (2) specific initiatives, one within Exelon Utilities and one within EBSCo. The two (2) initiatives were as follows:

(1) PHI completed its efforts associated with the Exelon Utilities efficiency analysis and identified significant cost savings opportunities. The identified savings opportunities at PHI were estimated at approximately $100 million over the 2019 - 2023 LRP period and were incorporated into the LRP for 2019 – 2023. The opportunities included the alignment of regional reliability, design and engineering with PHI's centralized preventive maintenance ("PM") model integration, i.e., centralize and align PM support work; optimizing substation inspection crew sizes and work loading; and insourcing overhead transmission corrective maintenance and capital construction work.

(2) EBSCo continuously maintained a focus on cost optimization efforts to drive synergies around the organization. The identified savings were then incorporated into the LRP. The 2018 EBSCo Transformation cost initiative, with savings expected to be achieved by target year 2021. PHI's portion of EBSCo Transformation savings billed to PHI were anticipated to be $9 million annually, by 2021. These savings were incorporated into LRP 2.0 2020 - 2024. At the time of Liberty's review, EBSCo was in the process of supporting the 2020 Exelon Cost Challenge initiative which were incorporated into future LRPs.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Chapter XI: Staffing and Compensation- Compensation and Benefits

Recommendation XI #2: Conduct a comprehensive review of benefit levels and apply the results to assess competitiveness of combined compensation and benefits values.

According to Liberty, management compensation as measured by company ratios (comparing it to market) have been increasing. Liberty stated that they marginally exceed par (100 percent of market), but remain reasonable. However, Liberty argued that new, consistent data regarding benefits values and costs would substantially inform decisions about combined compensation and benefits competitiveness.

Company: The Company accepted the recommendation and Exelon completed benchmarking of employee benefits plans in 2018.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. The Company shall provide to Staff all documentation indicating the Company implemented the recommendation.

Chapter XIII: Finance and Cash Management

Recommendation XIII #1: Prioritize improving ACE credit ratings at Moody's and Fitch.

At the time of the audit, the ACE corporate credit ratings and secured credit ratings at Moody's and Fitch were lower than at Standard and Poor's by one ratings notch. In addition, Delmarva and Pepco are rated higher at Moody's than ACE. Liberty noted that Moody's "indicated rating" for ACE from its own analysis grid is Baa1, but notches ACE downward to the Baa2 level in its ratings reports.

Company: The Company accepted the recommendation and indicated that Exelon prioritized improving ACE credit ratings at Moody's and Fitch. The Company stated that Exelon Treasury has open and regular communications with the rating agencies. The Treasury Capital Markets team is comprised of six (6) members whose main functions include maintaining relationships with the agencies, communicating key company and industry updates, and advocating for appropriate and consistent ratings outcomes for all Exelon subsidiaries. The Company further stated that in addition to regular dialogue, Exelon organizes annual in-person deep-dive meetings with each of the agencies in New York to discuss the financial outlooks, regulatory updates, and key initiatives for all subsidiaries at a detailed level.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Recommendation XIII #2: Verify the continuation of language that does not implicate ACE assets or operations in future financing documents.

In reviewing the ACE Bond Purchase Agreement, Liberty found no potential encumbrances of utility assets, guaranties or support agreements in the favor of affiliates, cross-default or material adverse change clauses, or other provisions with the potential for obligating ACE to pay or making its assets reachable for debts and obligations not its own. According to the Final Report, the credit agreements did not have any troublesome financial interties, support agreements or cross-defaults in the agreements.

Company: Exelon has verified the continuation of language that does not implicate ACE assets or operations in applicable financing documents. Looking forward, ACE stated that there would be no financing documents, credit agreements or any other debt documents that will include language establishing or implying availability of ACE assets or resources for the satisfaction of the parent or subsidiaries of Exelon. All documents are currently, and will be, reviewed and signed off by an attorney in the legal department, the Treasurer, and Assistant Treasurer.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. The Company has an ongoing responsibility to ensure that ACE's assets are protected in these agreements.

Chapter XIV: Accounting and Property Records

Recommendation XIV #1: Review the execution of non-rate-related revenue accounting procedures to ensure the availability of supporting documentation and correct classification.

Liberty found that accounting practices and procedures conformed to Generally Accepted Accounting Principles, and Federal Energy Regulatory Commission regulatory reporting. Management collected and recorded non-rate-regulated revenues in specific general ledger accounts and undertook efforts appropriate in excluding them from revenue requirements calculations. Liberty found that the lack of requested support for two (2) losses and the incorrect recording of sale proceeds, however, point to the need for management to ensure better execution of procedures in this area. However, the amounts were not material.

Company: The Company accepted the recommendation and indicated that it has addressed it.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Chapter XV: Customer Service

Recommendation XV #1: Continue complaint root cause efforts to reduce complaints and to improve the customer experience of customers who are challenged to pay their accounts.

Liberty found that during the Audit Period, ACE struggled to reduce the number of complaints to levels directed by the Board. Complaints rates remained high, with efforts to date focused on the customer experience of ACE's most vulnerable customers. Changes to the collection process, especially referrals to available energy assistance were very positive. Liberty recommended that ACE continue to examine complaints to fine tune collection tools and techniques and broaden payment options for customers.

Company: The Company accepted the recommendation.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Recommendation XV #2: Promote paperless billing to increase participation and reduce billing costs.

Liberty stated that ACE should actively promote paperless billing options to customers, mainly to encourage participation. Liberty noted that paperless billing is well accepted across the nation and thus the option to join should be readily available on the website and ACE should consider sending email reminders recommending this option. Liberty recommended that new accounts should be asked to participate when signing up for service and customer service representatives should frequently suggest this service to customers contacting the call centers or courtesy centers.

Company: The Company stated that it has implemented this recommendation and began a campaign in 2019 to promote paperless billing to its customers. In addition to signing customers up at the point of service connection, the Company launched a digital ad campaign, made modifications to the website, and sent email to customers not yet enrolled.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Chapter XVI: External Relations - Regulatory Affairs and Strategy

Recommendation XVI #1: Restore the ACE-only President position.

Liberty proposed the same recommendation as part of Chapter IX Executive Management and Governance – Top Management's Focus and Support, Recommendation six (6). According to Liberty, the particular significance for this recommendation in relation to regulatory affairs is the importance of ensuring that ACE's presidential roles includes close coordination with the Regulatory Policy & Strategy organization in addressing New Jersey regulatory requirements, stakeholder expectations, and ACE's position as a major state business operation and corporate neighbor in the communities it serves. Liberty further concluded that the organization responsible for managing corporate communications has witnessed significant cost reductions in recent years and gives strong indication that it remains on a path to sustain them. Far fewer resources now manage and perform communications activities, while focusing at the same time on enhancing certain aspects of communications, such as social media.

Company: The Company disagreed with the recommendation. With the retirement of ACE's former region president, the Company made the decision to align the position with the successful structure followed in the Pepco region. As a result, the role of the ACE and Delmarva region president were combined in order to have a region president responsible for activities across the region.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff agrees with Liberty's recommendation as written given the size of the holding company and to ensure that ACE has appropriate representation and authority to make decisions regarding its New Jersey utility operations as they would have the knowledge of ACE specific issues and concerns expressed in New Jersey. The restoration of the ACE-only president would help to ensure New Jersey's ratepayers and other local community representative concerns are appropriately addressed and communicated up the chain of command in the organization.

Recommendation XVI #2: Develop a program for regular outreach with the BPU and with New Jersey stakeholders.

Company: The Company accepted and asserted that it has complied with the recommendation in all material respects.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Chapter XVII: Distribution and Operations Management

Recommendation XVII #1: Conduct an analysis of the causes of estimated-to-actual cost variances on projects experiencing significant variances and validate the ability of the new estimating tool to address them.

Liberty recommended that management review, analyze, and identify underlying causes, and recommend corrective actions, to address why pre-construction estimates for several large capacity expansion projects completed in 2016 and 2017 were substantially less than the final costs. According to Liberty, it appeared that some contingencies that eventually happened could have been identified and considered in the design of the original project scopes. Management should confirm that its new estimating tool and underlying data provide acceptable accuracy.

Company: The Company accepted the recommendation and indicated that it would conduct a thorough review of the financial information for the ten (10) large capital load growth construction projects listed in the response to question Liberty Data Request 7-988. ACE indicated that it filed with the Board's Secretary a detailed review of the financial information for the ten (10) large capital growth construction projects, including a summary of the new estimating tools, on December 29, 2020.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Based on the detailed information in the report provided on December 29, 2020, Staff believes this recommendation has been implemented. During the implementation stage of this audit, ACE shall provide all documentation supporting its implementation of this recommendation

<u>Chapter XVIII: Cyber Security and System Vulnerability</u>

<u>Recommendation XVIII #1</u>: Develop a two-phased, 10-year staffing and development plan for cyber security resources.

Liberty's recommendation is based upon the risks and rapidly changing environment for cyber security and although currently in a strong position, it must maintain it, not just as needs grow but as more and more companies seek these resources it behooves the Company to have a long term plan to ensure it focuses on maintaining and developing the skills and experience in this area.

Company: The Company did not agree with this recommendation. According to ACE, Exelon believes its existing staffing process is sufficient to meet the needs of the Corporate and Information Security System ("CISS") organization. Exelon's staffing cycle is completed on a five (5) year basis rather than on a ten (10) year basis. The current five (5) year staffing cycle allows Exelon to organize and account for the demands of acquiring and retaining resources within cybersecurity while keeping organizational goals in the forefront. The Company does not believe that extending the staffing plan from five (5) years to ten (10) will further improve the CISS staffing process as the industry evolves too quickly to plan more than five (5) years in the future.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff agrees with the Company that a five (5) year staffing cycle is appropriate.

<u>Recommendation XVIII #2</u>: CISS should launch an initiative to design and implement meaningful, actionable metrics for management to review on a regular basis.

Liberty stated that metrics are useful to show how the environment is changing (e.g., the number of attacks that are attempted per month) and how effective CISS is at thwarting the attacks (e.g., the number of cybersecurity events per month). Other metrics can be designed and implemented to capture response and recovery times. Liberty understands that CISS has just begun capturing and reporting on these metrics. Liberty recommended that regular reporting of these metrics, consistent with the strongest regard for confidentiality, should be provided to the BPU upon request.

Company: Exelon maintained that it is dedicated to strengthening its abilities in gathering meaningful metrics that will enhance the organization's reporting efforts. Monitoring security performance is an essential part of the CISS team, particularly when dealing with a threat landscape that is constantly evolving. At the time of the audit, several metrics were tracked by CISS, including, but not limited to, threat intelligence, security alerts and time taken to close them, threat hunting, and various cyber defense operation metrics that are all monitored on a monthly or more frequent basis. Due to the sensitive nature of the statistics and logistics concerning the format and frequency of information, these metrics will be provided to the BPU upon request and "consistent with the strongest regard for confidentiality."

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as modified by the Company. The Company shall provide the metrics upon request of the BPU, as regular reporting is not necessary. Staff has the authority to review the information at any time and Exelon is in regular contact with the Division of Reliability and Security on cyber issues.

<u>Recommendation XVIII #3</u>: Provide for regular external examinations of cybersecurity.

Liberty asserted that such examinations should result from the normal audit planning processes employed. The Company's internal audit department should augment as required its internal resources to assist in the risk assessment elements of that planning process, and also employ any outside expertise necessary to ensure the effectiveness of reviews undertaken. These examinations should extend beyond procedural compliance, incorporating clear methods and applying required expertise to examine substantive performance effectiveness. This recommendation does not arise from any observations of performance gaps or deficiencies on Liberty's part, but from the belief that the importance and changing nature of the threats involved call for special focus in a fast-changing environment.

Company: The Company stated that Exelon recognized the importance of maintaining a good security posture in today's ever-changing threat landscape and agrees that regular external examination of cyber security is appropriate. The practice of performing internal/external reviews is a key component Exelon strives to maintain as it progresses. Exelon believes periodic audits will place Exelon in the best position to handle impending issues, assist with its efforts to evolve, and improve strategies and protocols to be better prepared against attacks.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written. Examinations of cybersecurity are important. Staff can initiate reviews of the cyber programs at any time and standards are in place for compliance already. Staff supports regular practice of performing internal reviews and audits as Staff believes it will place Exelon in a better position with regard to addressing cyber security attacks. ACE shall share with the BPU cyber security staff and the Division of Reliability and Security the results of its internal reviews upon request.

<u>Chapter XX: Contractor Performance</u>

<u>Recommendation XX #1</u>: Develop and execute measures to continue expansion of third-party use of the New Jersey One Call notification system, emphasizing communications with contractors and customers.

According to Liberty, third-party damage incidents not only cost money, they bring a far more important threat to public safety. Liberty found that management's combination of incident investigation and damage prevention exhibit a commendable focus on minimizing all forms of incidents involving ACE facilities. Management provides continuing scrutiny to hazards, such as those whose risks the underground locating process mitigates. Liberty recommended that ACE continue to emphasize the importance of the New Jersey One Call notification system with contractors and customers, and identify means of ensuring universal understanding of its use and availability. Aggressive goals to reduce incidents not preceded by mark-out requests assist in encouraging creative means of expanding ways to "get the word out" to those whose activities implicate ACE facilities.

Company: The Company agreed with the importance of the New Jersey One Call system and has recently put in place processes to expand third party use of the system. Its Damage Prevention organization has implemented improvements to continue to proactively work to mitigate damages to the Company's underground infrastructure. According to the Company, these steps have proactively educated the community and locate partners rather than waiting for post damage education opportunities and have resulted in reduced damages.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation as written.

Recommendation XX #2: Extend the tracking of contractor distribution work completion to additional work to underground, secondary, and service-drop to which contractors regularly and materially contribute.

According to Liberty, such tracking and analysis of the reasons for variations between planned and effective work will improve management of the work and provide useful information in considering new and extended contracts.

Company: The Company stated that it does not believe that additional tracking of contractor work performance is warranted as its existing processes provide sufficient monitoring of contractor performance. Contractors rarely perform only underground, secondary and service drop work. If this work is performed, it is part of a larger job that is tracked through the work management scheduling tool application used by the Company for operations work activities. As part of the tracking, the Company reviews work schedule adherence, i.e., work completion.

Rate Counsel: Rate Counsel did not take a position on this specific recommendation.

Staff Response: Staff supports Liberty's recommendation to extend such tracking.

Summary Staff Recommendation

As noted above, there are seventy (70) recommendations in Liberty's Final Report for improvement in the management and operations of ACE. The Company objected to thirty-two (32) recommendations. Staff recommends implementation of fifty-five (55) recommendations as written, and four (4) recommendations with modifications (i.e., VII #3, VII #9, VII #10, and XVIII #2). In addition, Staff recommends rejecting the remaining eleven (11) recommendations, which consist of the following: V #1, VII #1, VII #5, VIII #1, VIII #2, VIII #4, VIII #8, IX #1, IX #2, IX #3, and XVIII #1.

DISCUSSION AND FINDINGS

After review of the Final Report, the comments filed by the Company and Rate Counsel, and Staff's recommendations, the Board agrees with Staff's recommendations, as summarized in Appendix 1 attached to this Order. Therefore, the Board **HEREBY ORDERS** the Company to implement the fifty-five (55) recommendations, as written in the Final Report, and the four (4) recommendations with modifications as recommended by Staff. With respect to the remaining eleven (11) recommendations (V #1, VII #1, VII #5, VIII #1, VIII #2, VIII #4, VIII #8, IX #1, IX #2, IX #3, and XVIII #1), the Board **HEREBY REJECTS** those recommendations.

Specifically, the Board **HEREBY DIRECTS** ACE, with the assistance of the Staff, to formulate detailed implementation plans for the fifty-five (55) recommendations and the four (4) modified recommendations within sixty (60) days from the date of this Order. ACE shall implement all recommendations as soon as possible, but not later than one (1) year from the date of this Order, unless otherwise directed in this Order above.

Furthermore, the Board **HEREBY DIRECTS** ACE to file quarterly reports with the Staff by the fifteenth day of the month following the conclusion of each calendar quarter regarding the status of all recommendations. Staff shall monitor, evaluate, and modify, as necessary, the implementation of the recommendations. The recommendations of the Final Report shall not be dispositive of issues raised in any other proceedings before this Board.

This Order shall be effective on November 28, 2024.

DATED: November 21, 2024

BOARD OF PUBLIC UTILITIES
BY:

CHRISTINE GUHL-SADOVY
PRESIDENT

DR. ZENON CHRISTODOULOU
COMMISSIONER

MARIAN ABDOU
COMMISSIONER

MICHAEL BANGE
COMMISSIONER

ATTEST:

DAWN A. GRAY
EXECUTIVE ASSISTANT

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 AN AUDIT OF THE AFFILIATED TRANSACTIONS BETWEEN ATLANTIC CITY ELECTRIC COMPANY, PEPCO HOLDINGS LLC, EXELON INC. AND AFFILIATES INCLUDING A REVIEW OF OPERATIONAL AND FINANCIAL PERFORMANCE OF ATLANTIC CITY ELECTRIC COMPANY PURSUANT TO N.J.S.A. 48:3-49, 48:3-55, 48:3-56, 48:3-58 & N.J.A.C. 14:4-3.7(E) AND (F) AND A COMPREHENSIVE MANAGEMENT AUDIT OF ATLANTIC CITY ELECTRIC COMPANY PURSUANT TO N.J.S.A. 48:2-16.4 & N.J.A.C. 14:3-12.1 ET SEQ.

Docket No. EA17030297

SERVICE LIST

Board of Public Utilities
44 South Clinton Ave, 1st Floor
Post Office Box 350
Trenton, NJ 08625-0003

Sherri L. Golden, Board Secretary
board.secretary@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Counsel's Office

Elspeth Hans, Deputy General Counsel
elspeth.hans@bpu.nj.gov

Colin Emerle, Deputy General Counsel
colin.emerle@bpu.nj.gov

Kit Burnette, Regulatory Officer
kit.burnette@bpu.nj.gov

Division of Audits

Alice Bator, Director
alice.bator@bpu.nj.gov

Pasquale Salvemini
pasquale.salvemini@bpu.nj.gov

Jehvson Espiritu
jehvson.espiritu@bpu.nj.gov

Office of the Economist

Benjamin Witherell, Chief Economist
benjamin.witherell@bpu.nj.gov

Jackie O'Grady
jackie.ogrady@bpu.nj.gov

New Jersey Division of Rate Counsel
Brian O. Lipman, Esq., Director
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
blipman@rpa.nj.gov

Atlantic City Electric Company
Clark M. Stalker, Associate General Counsel
P.O. Box 6066
92DC42
Newark, DE 19713
Clark.Stalker@exeloncorp.com

Division of Law

Meliha Arnautovic, Deputy Attorney General
NJ Department of Law and Public Safety
Richard J. Hughes Justice Complex
Public Utilities Section
25 Market Street, P.O. Box 112
Trenton, NJ 0625
meliha.arnautovic@law.njoag.gov

Appendix 1 – Summary of Board Decision on Recommendations

Summary of Audit Recommendations	Decision
Chapter II: Evaluation of ACE Financial Performance	
No recommendations	N/A
Chapter III: Power Supply and Market Conditions	
1. Re-engage in efforts to negotiate the mitigation of above-market NUG contracts.	Agreed
2. Provide a regular report to the NJBPU on PJM issues on which ACE is an internal Exelon stakeholder.	Agreed
3. Expand representation by ACE representatives on key PJM committees.	Agreed
Chapter IV: Cost Allocation Methods	
1. Update the EBSCo CAM to provide more complete information about allocation methods and procedures.	Agreed
2. Reconcile the differences between the PHI and Exelon cost allocation schemes to create a uniform method for allocating costs to ACE from all affiliates.	Agreed
3. Undertake focused efforts to make clear that management's stated priority on direct charging sufficiently impels employees to do so.	Agreed
4. Investigate the reasons for the excessive use of the general allocator in assigning service company costs to ACE and examine and implement means for reducing the use of general allocators through direct charging or using appropriate cost-causative allocators.	Agreed
5. Eliminate default time charging from the Exelon employee time entry system and replace it with a positive time reporting process.	Agreed
Chapter V: Capital Allocation	
1. Revisit ACE capital investment plans after examining and producing a consensus on reliability aspirations and targets.	Rejected
Chapter VI: Focused Operations Review	
1. Provide a thorough, robust identification of the benefits of AMI, assess roll-out and sustaining costs in detail, value AMI's reliability benefits carefully, and offer detailed estimates of roll- out costs under a range of scenarios.	Agreed
2. Prepare comprehensive, documented plans for restoring feeders in cases of total substation outages.	Agreed
3. Recalculate the basis for dollar-valuing reliability improvements and rethink the Reliability Improvement Plan's elements and expenditures.	Agreed
4. Closely monitor momentary outage data and proactively address any repeat-outage performance drops from 2017 levels.	Agreed
5. Promptly complete investigations of crushed-stone condition and nitrogen pressure readings at substations.	Agreed
6. Accelerate the replacement of rejected wood poles and ensure timely, accurate removal tracking.	Agreed
7. Bring underground residential development cable work into closer conformity to management's 28-day repair/replace window.	Agreed
8. Incorporate enhanced vegetation management activities into analyses and processes covered by Recommendation #3 above.	Agreed

9. Include the Staging Area and the Crew Leader and Daily Checklists in the Emergency Operations Plan, and amend the Crew Leader Checklist to incorporate inspections and verification requirements that should occur prior to re-energizing feeder sections.	Agreed
10. Update the Customer Care Storm Emergency Response Plan to reflect recent changes to key supporting technologies and outage communications strategies.	Agreed
11. Examine and implement means for improving distribution load forecasting.	Agreed
Chapter VII: EDECA	
1. Treat each affiliate offering services at retail, including those potentially excluded by management's interpretation regarding the provision of services to other utilities, common carriers, specialty services, a relatively limited number of customers, or telecommunications services, as an RCBS.	Rejected
2. Make additional portions of the Standards subject to Internal Audit review.	Agreed
3. Update the Compliance Plan to include which individuals or departments have responsibility for enforcement of each section of the Standards.	Modified
4. Ensure that all customer communications, including print, radio, television, and web advertisements are maintained sufficiently to support reviews of compliance with the Standards.	Agreed
5. Ensure that website disclaimers regarding the taking of service from an affiliate are included on each Retail Affiliate's site, and are presented in a way that will help ensure that customers will notice.	Rejected
6. The Compliance Plan should explicitly address Section 14:4-3.3(j) of the Standards.	Agreed
7. Management should change its interpretation of Section 14:4-3.4(a) and Section 14:4-3.4(b) of the Standards regarding contractual relationships and their impact on disclosure requirements.	Agreed
8. Management should ensure that all supplier lists are maintained in alphabetical order per Section 14:4-3.4(c) of the Standards.	Agreed
9. Reposition the duties of the individuals who serve as an Officer for ACE and Exelon Corporation and ACE, Exelon Corporation, and an RCBS.	Modified
10. Revise the Compliance Plan such that it properly interprets Section 14:4-3.5(q) of the Standards.	Modified
11. Require Board approval for future actions regarding any modification, extension, changes in pricing terms, or types or levels of services for the services provided by MAS, and include in them analysis demonstrating how such actions comply with Section 14:4-3.5(t)2 and 14:4- 3.5(t)6 of the Standards.	Agreed
12. Continue soliciting market information and make subsequent pricing adjustments to ensure that ACE's Mays Landing lease complies with Section 14:4-3.5(u) of the Standards	Agreed
13. Make explicit the Compliance Plan's inclusion of intellectual property in asset transfer provisions and provide a sufficient explanation of what is covered to put all employees on notice of the types of intangible property that is covered.	Agreed

Chapter VIII: Merger Conditions	
1. Engage stakeholders in a discussion of the practical application of Stipulation of Settlement Commitment No. 27, under which Exelon has consented to BPU jurisdiction, should uncertainty about its intent exist among them.	Rejected
2. Make explicit in the LLC Agreement the inability to alter (even with unanimous director and Golden Share Holder consent) Section X, Section 5.2.8, and any other provisions giving effect to the ring-fencing provisions of the merger commitments.	Rejected
3. Change the SPE Operating Agreement to require independent director and Golden Share Holder approval of changes material to the Commitments' ring-fencing protections.	Agreed
4. Amend the language of Section 2.8 of the SPE Operating Agreement to prevent a loss of EEDC direct ownership of 100 percent of the SPE from any circumstances, including but not limited to alienation or pledging of membership units for the benefit of creditors.	Rejected
5. Amend Clause (ii) of Section 1.10(a)(4) of the Operating Agreement of the SPE to expand the definition of "Independent Director" so as to expressly preclude service by current or former officers of any Exelon entity as an SPE independent director	Agreed
6. Establish a working group to discuss and seek consensus on the standards, interests, and other parameters that should guide Golden Share Holder decisions in matters requiring its assent or concurrence.	Agreed
7. Amend the relevant governing documents and create controls designed to preclude material economic or financial interests by all entities and individuals associated with Golden Share holding.)	Agreed
8. Amend the documents governing PHI LLC board membership to limit membership to seven, at least four of whom must be independent and bar the ability to change these characteristics without BPU approval.	Rejected
9. Eliminate the power to abolish the requirement that the Golden Share Holder consent to voluntary SPE or PHI bankruptcy filings.	Agreed
10. Develop and monitor specific plans for increasing the pace of Quick Home Energy customer- facing activities.	Agreed
11. Provide a better-directed web experience for customers seeking energy efficiency and demand- response programs and develop a rapid-response capability to scale the organizations who will have substantial responsibility for implementing requirements and programs and meeting expectations created by recent New Jersey legislation.	Agreed
12. See the Recommendations section of Chapter IV.	
13. Enable the power to opt out of EBSC services by providing a clear and appropriately scoped list of permitted opt-out areas.	Agreed
14. Establish an approach and means at the Exelon level to expedite the delivery of information: (a) directly subject to Commitment No. 88, and (b) relevant to meeting the broader needs of BPU-commissioned activities, such as this audit.	Agreed
15. Provide for cyclical reporting of compliance with ring fencing and other requirements.	Agreed

16. Remove "consistent with the requirements of the Order" from the required Exelon officer certifications and add to the certification a statement that Exelon "has maintained" separation.	Agreed
17. Establish and conduct a regular process for examining, tracking, and reporting of compliance with merger commitments to the BPU.	Agreed
Chapter IX: Executive Management and Governance	
1. Expand the numbers of Exelon and PHI LLC board meetings and include regular sessions bringing both together.	Rejected
2. PHI LLC board membership of seven, with representation from the four jurisdictions involved needs to remain a central element of the governance structure.	Rejected
3. Make clear that new PHI LLC independent directors shall be subject to restriction on economic interests beyond those nominally compliant with exchange listing-requirements.	Rejected
4. Document more clearly the role of the PHI LLC board with respect to oversight activities.	Agreed
5. Provide the PHI LLC board should receive regular updates regarding Exelon's operations and financial condition, and regularly examine Exelon financial distress scenarios.	Agreed
6. Restore the ACE-only President position.	Agreed
Chapter X: Human Resources	
No recommendations	N/A
Chapter XI: Staffing and Compensation	
1. Promptly complete the work needed to provide strongly founded resources plans for PHISCo and EBSCo and provide resource alignment, numbers, and costs based upon realistically achievable efficiency gains.	Agreed
2. Conduct a comprehensive review of benefit levels and apply the results to assess competitiveness of combined compensation and benefits values.	Agreed
Chapter XII: Strategic Planning	
No recommendations	N/A
Chapter XIII: Finance and Cash Management	
1. Prioritize improving ACE credit ratings at Moody's and Fitch.	Agreed
2. Verify the continuation of language that does not implicate ACE assets or operations in future financing documents.	Agreed
Chapter XIV: Accounting and Property Records	
1. Review the execution of non-rate-related revenue accounting procedures to ensure the availability of supporting documentation and correct classification.	Agreed
Chapter XV: Customer Service	
1. Continue complaint root cause efforts to reduce complaints and to improve the customer experience of customers who are challenged to pay their accounts.	Agreed
2. Promote paperless billing to increase participation and reduce billing costs.	Agreed
Chapter XVI: External Relations	
1. Restore the ACE-only President position.	Agreed
2. Develop a program for regular outreach with the BPU and with New Jersey stakeholders	Agreed

Chapter XVII: Distributions and Operations Management	
1. Conduct an analysis of the causes of estimated-to-actual cost variances on projects experiencing significant variances and validate the ability of the new estimating tool to address them.	Agreed
Chapter XVIII: Cyber Security and System Vulnerability	
1. Develop a two-phased, 10-year staffing and development plan for cyber security resources.	Rejected
2. CISS should launch an initiative to design and implement meaningful, actionable metrics for management to review on a regular basis.	Modified
3. Provide for regular external examinations of cybersecurity.	Agreed
Chapter XIX: Clean Energy	
No recommendations	N/A
Chapter XX: Contractor Performance - - Mark-Outs and Services	
1. Develop and execute measures to continue expansion of third-party use of the New Jersey One Call notification system, emphasizing communications with contractors and customers.	Agreed
2. Extend the tracking of contractor distribution work completion to additional work to underground, secondary, and service-drop to which contractors regularly and materially contribute.	Agreed
Chapter XXI: Support Services.	
No recommendations	N/A