

STATE OF MARYLAND  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of the )  
Merger of Exelon Corporation and )  
Pepco Holdings, Inc. )

Case No. 9361

DIRECT TESTIMONY OF  
PAUL CHERNICK  
ON BEHALF OF  
SIERRA CLUB  
AND  
THE CHESAPEAKE CLIMATE ACTION NETWORK

Resource Insight, Inc.

DECEMBER 8, 2014

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1 **I. Identification & Qualifications**

2 **Q: Mr. Chernick, please state your name, occupation, and business address.**

3 A: I am Paul L. Chernick. I am the president of Resource Insight, Inc., 5 Water  
4 St., Arlington, Massachusetts.

5 **Q: Summarize your professional education and experience.**

6 A: I received an SB degree from the Massachusetts Institute of Technology in  
7 June 1974 from the Civil Engineering Department, and an SM degree from  
8 the Massachusetts Institute of Technology in February 1978 in technology  
9 and policy. I have been elected to membership in the civil-engineering honor-  
10 ary society Chi Epsilon, and the engineering honor society Tau Beta Pi, and  
11 to associate membership in the research honorary society Sigma Xi.

12 I was a utility analyst for the Massachusetts Attorney General for more  
13 than three years, and was involved in numerous aspects of utility rate design,  
14 costing, load forecasting, and the evaluation of power supply options. Since  
15 1981, I have been a consultant in utility regulation and planning, first as a  
16 research associate at Analysis and Inference, after 1986 as president of PLC,  
17 Inc., and in my current position at Resource Insight. In these capacities, I  
18 have advised a variety of clients on utility matters.

19 My work has included, among other things, review of applications for  
20 approval of utility mergers and acquisitions before regulatory agencies, con-  
21 sidering the public interest and potential harms and benefits from the  
22 mergers. I have testified on mergers and acquisitions in Maryland  
23 (BGE/PEPCo and Allegheny/Duquesne), Utah and Washington (Scottish  
24 Power/ PacifiCorp), Maine (Energy East/CMP), and Connecticut (Energy  
25 East/Connecticut Natural Gas and Southern Connecticut Natural Gas). In

1 addition, I have addressed a range of issues related to energy-efficiency and  
2 conservation programs, renewable energy and distributed generation,  
3 environmental compliance, and performance-based ratemaking and cost re-  
4 covery in restructured gas and electric industries. My professional qualifica-  
5 tions are further summarized in Exhibit PLC-1.

6 **Q: Have you testified previously in utility proceedings?**

7 A: Yes. I have testified more than two hundred times on utility issues before  
8 various regulatory, legislative, and judicial bodies, including utility regulators  
9 in thirty states and five Canadian provinces, and two US Federal agencies.

10 **Q: Have you testified previously before the Maryland Public Service**  
11 **Commission?**

12 A: Yes. I have testified approximately 15 times before the Commission, as  
13 follows:

- 14 • Case No. 8278, on the adequacy of the integrated resource plan of  
15 Baltimore Gas & Electric (BGE);
- 16 • Case No. 8241, Phase II of BGE's Application for CPCN for the  
17 Perryman Project;
- 18 • Case No. 8473, Review of the Power Sales Agreement of BGE with  
19 AES Northside;
- 20 • Case No. 8487, BGE 1993 Electric Rate Case, on cost allocation and  
21 rate design;
- 22 • Case No. 8179, Approval of Amendment No. 2 to Potomac Edison  
23 Purchase Agreement with AES Warrior Run;
- 24 • Case No. 8697, BGE 1995 gas rate proceeding, on cost allocation and  
25 rate design;

- 1 • Case No. 8720, Washington Gas Light DSM, on avoided costs and  
2 least-cost planning;
- 3 • Case No. 8725, merger of BGE and Potomac Electric Power Company,  
4 on allocation of merger benefits and rate reductions;
- 5 • Case No. 8774, Allegheny Power-Duquesne merger;
- 6 • Case Nos. 8794 and 8804, BGE restructuring;
- 7 • Case No. 8795, Delmarva Power & Light restructuring;
- 8 • Case No. 8797, Potomac Edison restructuring;
- 9 • Case No. 9036, BGE's 2005 rate proceeding;
- 10 • Case No. 9159, Columbia Gas's 2009 rate proceeding; and
- 11 • Case No. 9230, BGE's 2010 rate proceeding.

## 12 **II. Introduction**

### 13 **Q: On whose behalf are you testifying?**

14 A: I am testifying on behalf of the Sierra Club and the Chesapeake Climate  
15 Action Network.

### 16 **Q: What is the subject of your testimony?**

17 A: In this proceeding, the Joint Applicants seek Commission approval of  
18 Exelon's acquisition of the power to exercise substantial influence over the  
19 policies and actions of Potomac Electric Power Company (Pepco) and  
20 Delmarva Power and Light Company (DPL), as explained in their  
21 Application to the Commission. My clients asked that I review the record of  
22 Exelon on matters related to renewable energy, energy efficiency, and related  
23 issues, to determine whether the PEPCo Holdings (PHI) companies (PEPCo  
24 and DPL) are likely to better serve their customers and the broader  
25 community under the ownership of PHI or Exelon.

1 **Q: Before you examined Exelon's record, did you have any reason to believe**  
2 **that Exelon's interests and motivations would be different from PHI's?**

3 A: Yes. Exelon is largely a generation company with distribution affiliates,  
4 while PHI is primarily a delivery company, with little or no generation  
5 interests.

6 **Q: What materials did you examine in your review?**

7 A: I reviewed documents in this case, including the application for approval of  
8 the merger, related testimony by company witnesses, discovery responses,  
9 and the deposition transcript of Exelon Chief Executive Officer Christopher  
10 Crane. I also examined data on performance of Exelon's distribution  
11 subsidiaries: Commonwealth Edison (ComEd) in Illinois, PECO in  
12 Pennsylvania, and BGE in Maryland—compared to other restructured  
13 investor-owned utilities in the same states, including the PHI companies  
14 (PEPCo and DPL) in Maryland.

15 I also examined the public policy positions Exelon has taken before its  
16 state regulators, FERC, legislatures, environmental regulators, and other  
17 public forums, regarding the treatment of its generation resources and of  
18 renewable energy, energy efficiency, and other issues of concern to  
19 consumers and the environment.

20 **Q: What topics did you review?**

21 A: I focused primarily on three topics:

- 22 • The importance to Exelon of merchant generation, especially in PJM.  
23 • The record of Exelon distribution subsidiaries on energy-efficiency  
24 performance.

- 1           • The positions Exelon has taken on renewable energy, energy-efficiency  
2           efforts, and other issues related to protecting consumers and the  
3           environment from the operations of merchant generation companies.

4   **Q: What are your conclusions and recommendations?**

5   A: They are as follows.

- 6           • Exelon is heavily dependent on its merchant generation and concerned  
7           with the welfare of that generation fleet, often in opposition to the  
8           interests of ratepayers.
- 9           • Exelon’s performance on energy efficiency and its attitude toward  
10          utility-funded energy-efficiency programs leave much to be desired. In  
11          particular, BGE’s energy-efficiency efforts have flagged following the  
12          merger with Exelon, and PHI’s plans for post-merger energy-efficiency  
13          programs are much smaller than their existing plans.
- 14          • Exelon’ utility subsidiaries have taken much more restrictive positions  
15          regarding the breadth of the total resource cost (TRC) test than those  
16          taken by the PHI companies in Maryland.
- 17          • Exelon has consistently resisted efforts to expand renewable capacity,  
18          often explicitly to protect its nuclear investments.

19           Renewable energy and energy-efficiency programs will be essential in  
20          Maryland’s compliance with the Greenhouse Gas Emissions Reduction Act,  
21          which requires Maryland to reduce Greenhouse Gas (GHG) emissions by  
22          25% below 2006 levels by 2020, and with the U.S. Environmental Protection  
23          Agency’s (EPA) proposed Clean Power Plan, which requires that Maryland  
24          reduce carbon emissions from power plants by 34% averaged over 2020–  
25          2029 and 42% by 2030. Maryland’s Greenhouse Gas Reduction Plan (at 1)  
26          envisions both a 25% increase in the Empower Maryland energy-efficiency

1 savings from current targets and a 60% expansion of the Renewable Energy  
2 Portfolio Standard for 2020, including tightening of RPS eligibility.<sup>1</sup> These  
3 carbon reductions will require increased efforts, most of which Exelon has  
4 resisted to prevent erosion of revenues for its nuclear and other wholesale  
5 generation. Meeting the Greenhouse Gas Reduction Plan and complying with  
6 the limits on carbon emissions under the EPA's Clean Power Plan will be  
7 much more expensive if Exelon is successful in limiting procurement of  
8 renewables and energy-efficiency savings.

9 Because my review does not find that the merger is in the public  
10 interest, convenience, and necessity (which would require that it produce  
11 benefits and cause no harm to consumers), I recommend that the Commission  
12 deny the petition for the merger of PHI into Exelon. If the Commission  
13 believes that the merger would generate such great benefit in some aspect of  
14 the utility operations that I have not reviewed (and cannot be achieved by  
15 other means), that merger should be approved only if subject to conditions  
16 described at the conclusion of my testimony. These conditions include  
17 splitting Exelon into (a) a generation company and (b) a transmission-and-  
18 distribution company by a date certain, or else a series of conditions  
19 described below that will mitigate the effects of the merger on energy  
20 efficiency, renewable energy, and related matters.

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<sup>1</sup>“Maryland’s Greenhouse Gas Reduction Plan: Executive Summary.” 2013. Baltimore: Maryland Department of the Environment.

1 **III. Importance of PHI's Role in PJM**

2 **Q: How well do the interests of electric distribution companies align with**  
3 **those of their customers?**

4 A: There are some intrinsic conflicts in the interests of electric distribution com-  
5 panies (EDCs) (which are also generally transmission owners) and their cus-  
6 tomers. The conflicts involve EDC interest in increasing returns, increasing  
7 T&D investment, and (depending on the regulatory regime) possibly  
8 increasing sales. But when issues arise regarding the wholesale power  
9 markets, the EDCs generally find common cause with consumers in  
10 minimizing charges from generators. This alliance of interests between the  
11 EDCs and their customers breaks down when the EDC is an affiliate of one  
12 or more generation companies operating in the competitive wholesale  
13 markets.

14 The conflicts in interests between consumers and generators arise in  
15 regulatory, legislative, and judicial processes, and in PJM committee  
16 advocacy and votes. The EDCs provide important inputs to all these  
17 activities, especially as the experts in the operation, design, and expansion of  
18 the transmission-and-distribution systems, and in the computation of revenue  
19 requirements and rate effects of proposed actions.

20 **Q: How has restructuring changed the relationship between EDCs and**  
21 **generation?**

22 A: Various states have taken different approaches to restructuring. In New York,  
23 Massachusetts, Connecticut, and Rhode Island, the restructured T&D utilities  
24 divested their generation (with some minor exceptions of units that remained  
25 under rate regulation) and most have no affiliated generation in the same

1 RTO.<sup>2</sup> In New Hampshire, the minor utilities divested, while the generation  
2 of the largest utility (Public Service Company of New Hampshire) remains  
3 under rate regulation. In Maine, the utilities divested, but have since been  
4 acquired by holding companies with generation assets in New England.<sup>3</sup>

5 In New York and New England, most the EDCs have no incentive to  
6 favor the interests of generators over those of consumers. As a result, the  
7 EDCs have frequently sided with consumer interests on such subjects as the  
8 structure of the independent-system-operator energy and capacity markets  
9 and price mitigation, and have generally been supportive of renewable-  
10 energy and energy-efficiency procurement.

11 In PJM, in contrast, most EDCs in restructured states (Pennsylvania,  
12 New Jersey, Maryland, Illinois, Ohio, Delaware, and the District of  
13 Columbia) have transferred a substantial portion of their generation assets to  
14 affiliates, as did ComEd and PECO to Exelon and BGE to Constellation (now  
15 also Exelon). The only exceptions appear to be PEPCo, Delmarva, Atlantic  
16 City Electric, General Public Utilities (Jersey Central, Metropolitan Edison  
17 and Pennsylvania Electric) and Rockland Electric (the subsidiary of New  
18 York's Orange and Rockland Utilities that serves about 200 MW of load in

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<sup>2</sup>National Grid owns both a New York distribution utility and some generation on Long Island, but the generation is under long-term contract to the Long Island Power Authority and is thus not active in the competitive market.

<sup>3</sup>The small Maine EDC, Bangor Hydro, is owned by Emera, which owns generation in the New England competitive market. The larger Central Maine Power and New York State Electric and Gas are owned by Iberdrola, which owns a relatively small amount of wind capacity in New England and New York.

1 New Jersey).<sup>4</sup> The GPU utilities have since been acquired by FirstEnergy, a  
2 major owner of generation in PJM, leaving only PHI as a major PJM EDC  
3 without affiliated generation.

4 The restructured PJM states (particularly Pennsylvania, New Jersey,  
5 Ohio, and Illinois, but also Maryland, with respect to BGE) have missed  
6 important opportunities as a consequence of not requiring full divestiture of  
7 generation by their utilities at the time of restructuring. The region lost  
8 ground when New Jersey and Pennsylvania allowed FirstEnergy to buy GPU.  
9 Rather than allowing the last independent EDCs to be subsumed by a major  
10 generation company, the PJM states should be encouraging separation of the  
11 EDCs from generation.<sup>5</sup>

12 **Q: Would the merger of PHI with Exelon have the same effect on the**  
13 **relationship between generation and EDCs as the Constellation-Exelon**  
14 **merger?**

15 A: No. Constellation already owned generation, so the merger had no effect on  
16 the number of EDCs without generation affiliates. Merging PHI into Exelon  
17 would eliminate the last such independent EDC.

18 **Q: Would any merger of PHI raise similar concerns?**

19 A: Only if the acquirer or merger partner had a major merchant generation  
20 operation. Companies with little or no generation (NStar, National Grid,  
21 Iberdrola) would not raise similar concerns. Neither would a company with

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<sup>4</sup>Atlantic City Electric's original effort at divestiture failed in a dispute over allocation of proceeds, and its divestiture was completed under PHI ownership.

<sup>5</sup>Interestingly, PPL is moving to divest its merchant generation, including about 8,400 MW in PJM, to an independent company, which would be 65% owned by PPL's current shareholders.

1 primarily rate-regulated generation. Concerns about a generation-owning  
2 merger partner would also be mitigated if its generation were located far  
3 from the PJM markets, such as in the West, Texas, the Southwest Power Pool,  
4 or western MISO. The combination of Exelon's large merchant fleet, the  
5 dependence of its nuclear plants on high market prices, and the location of  
6 much of that generation in PJM together pose a risk of harm to consumers.

#### 7 **IV. Exelon's Conflict with Consumer Interests**

##### 8 **A. *Exelon's Merchant Generation***

9 **Q: What is the magnitude of Exelon's commitment to its merchant**  
10 **generation operations?**

11 A: Exelon owns about 23,000 MW of merchant capacity in PJM, about 70% of  
12 its total merchant fleet, including about 16,500 MW of nuclear capacity.<sup>6</sup>

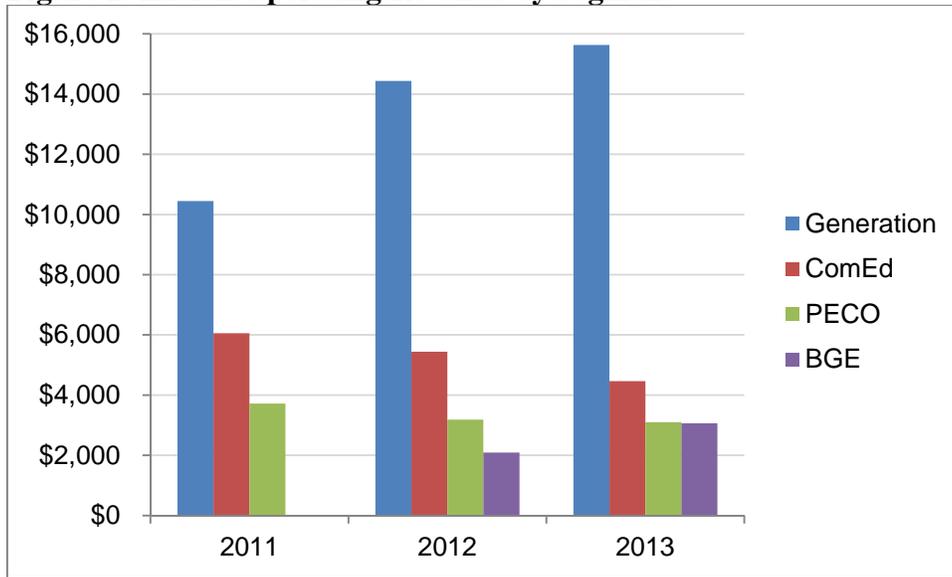
13 Exelon's generation subsidiaries generate more operating revenue and  
14 more net income than any of its utility subsidiaries, and often more than all  
15 its utility subsidiaries combined, as shown in Figure 1 and Figure 2. Exelon's  
16 generation assets also exceed those of any of its utility subsidiaries, as shown  
17 in Figure 3. All three of these figures show data from the 2013 Exelon  
18 Annual Report to Shareholders at 247.

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<sup>6</sup>Exelon also reports purchases of about 8,000 MW of capacity in 2015, including 800 MW in eastern PJM and 1,734 MW in the Midwest, which would be split between PJM and MISO. About 3,800 MW of Exelon's purchase contracts expire by 2018 (Exelon 2013 Annual Report to Shareholders at 13).

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**Figure 1: Exelon Operating Revenue by Segment**



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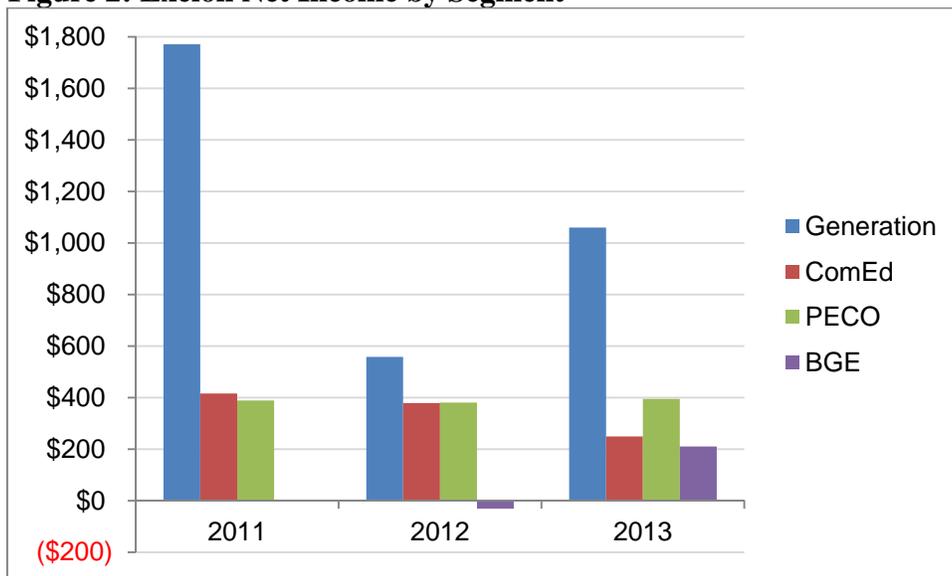
8

9

Exelon does not report total revenue for PJM, but it does report about \$5 billion in eastern PJM (including the MAAC region and all of Pennsylvania and West Virginia) and over \$4 billion in the Midwest. While Exelon defines the Midwest as including several states, the only state in which it owns generation is Illinois, and 90% of Exelon’s Illinois generation is in PJM. Thus, \$8 billion or \$9 billion of Exelon’s generation revenue appears to be from its PJM operations.

10

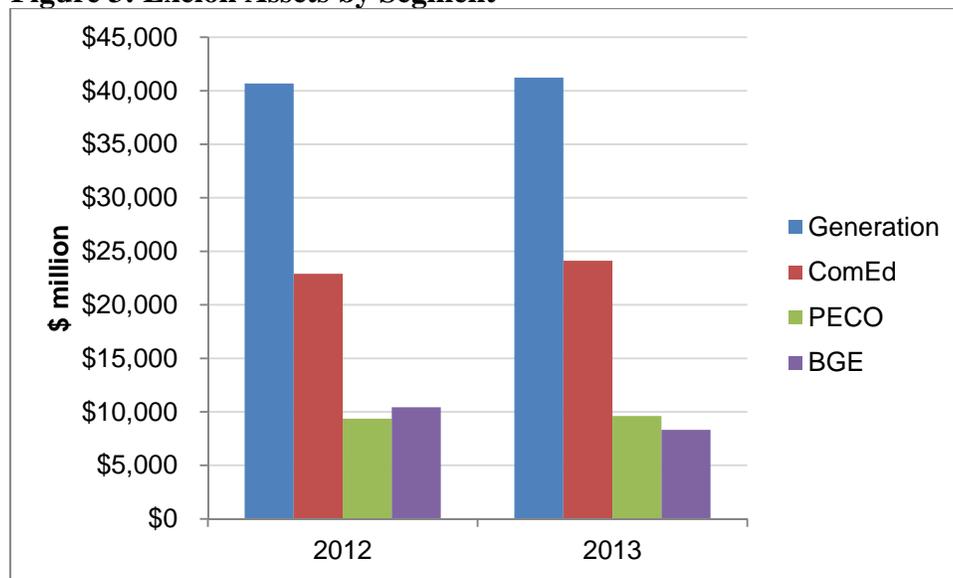
**Figure 2: Exelon Net Income by Segment**



11

1 Exelon's net income from generation is also higher than its income from  
2 any single EDC, and in 2011 and 2013, higher than income from all its EDCs  
3 combined. Since BGE was not part of Exelon in 2011, there is no BGE  
4 column in Figure 1 and Figure 2 for that year.<sup>7</sup>

5 **Figure 3: Exelon Assets by Segment**



6  
7 **Q: Is Exelon as likely to be concerned about the welfare of its distribution**  
8 **subsidiaries as it is about its generation fleet?**

9 A: No. In addition to the large share of revenue, income and assets represented  
10 by Exelon's merchant generation, that segment of Exelon's business is also  
11 riskier than the EDC operations. Changes in the wholesale market prices flow  
12 through the EDCs to consumers, but directly and substantially affect the  
13 profitability of Exelon's generation business. State regulators have  
14 traditionally been very careful to protect the financial stability of distribution  
15 companies, but no similar rate regulation or franchise protects merchant

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<sup>7</sup>The 2012 value for BGE in Figure 1 appears to reflect a partial year, while the 2012 value for BGE in Figure 2 is probably depressed by merger costs.

1 generators. A large number of generation companies have been through  
2 bankruptcy, including the following:

- 3 • NRG Energy (November 2002)—24,580 MW
- 4 • PG&E National Energy Group (July 2003)—6,500 MW
- 5 • Mirant (July 2003)—10,300 MW
- 6 • Calpine (December 2005)—27,000 MW
- 7 • Boston Generating (August 2010)—2,950 MW
- 8 • Dynegy (July 2012)—13,500 MW
- 9 • Edison Mission Energy (December 2012)—8,000 MW
- 10 • Luminant (April 2014)—10,300 MW

11 In addition, a number of smaller generation companies and subsidiaries  
12 have gone bankrupt, including Longview Power (September 2013), AES  
13 Thames (2011), AES Eastern Energy (2011), Homer City (2012), Entegra  
14 Power Group (2014), Optim Energy (2014), and a number of generation  
15 subsidiaries have surrendered their plants to lenders in lieu of bankruptcy,  
16 such as PG&E National Energy Group's Athens, Covert, Harquahala and  
17 Millennium plants (2003); Exelon's Mystic and Fore River plants (2003);<sup>8</sup>  
18 TECo's Union and Gila plants (2004); and Reliant's Liberty plant (2004).

19 In contrast, few investor-owned EDCs have filed for bankruptcy in  
20 recent decades, and all of those were driven by generation problems. In 2001,  
21 Pacific Gas and Electric was forced into bankruptcy by its obligation to  
22 purchase energy at market prices that were manipulated by Enron and sell at

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<sup>8</sup>The lenders that assumed ownership of these plants created Boston Generating to hold them. After Boston Generating's bankruptcy, Constellation purchased these plants, which then passed to Exelon in the merger. Exelon has since sold Fore River to Calpine, but still owns Mystic.

1 fixed retail prices. NorthWestern Energy went into bankruptcy reorganization  
2 in 2003, due to financial problems of non-utility affiliates. Oncor is included  
3 in the 2014 bankruptcy of its parent Energy Futures Holding (the former  
4 TXU), triggered by the losses at EFH's generation subsidiary, Luminant.

5 Considering both the scale and the vulnerability of Exelon's generation  
6 investments, it is essentially inevitable that Exelon management will pursue  
7 the interests of shareholders in maximizing generation revenues over the  
8 interests of its EDC customers in low and more stable bills, as well as the  
9 interests of Maryland in meeting environmental targets.

10 ***B. Positions Favoring Nuclear Capacity***

11 **Q: Has Exelon taken public positions favoring its nuclear capacity over the**  
12 **interests of consumers and the development of renewable energy?**

13 A: Yes. Some examples follow.

- 14 • Exelon has complained (in Comments, FERC AD13-7-000 at 9) that the  
15 capacity market in MISO, which has a very large capacity surplus, is not  
16 producing capacity prices high enough to keep its Clinton nuclear plant  
17 in Illinois economic. Exelon lamented the protections for merchant  
18 generators that existed in the traditional vertically integrated markets
- 19 • Exelon's comments on the EPA's proposed Clean Power Plan (SC-  
20 CCAN 1-26, Attachments A, B and C, attached as Exhibit PLC-2) focus  
21 primarily on the effects of the rule on nuclear power plants.
- 22 • In MEA 2-7, Attachment B at 11 (attached as Exhibit PLC-3), Exelon  
23 says the nuclear industry faces the following challenges:
  - 24 • Federal policies and mandates subsidizing other clean electricity,  
25 primarily wind and solar, severely distort energy markets causing  
26 other clean generators to operate at a loss.

- 1           •     Correctable Flaws in Wholesale Energy and Capacity Market  
2           Rules financially penalize nuclear energy for its carbon-free output  
3           and its unrivaled 24/7 reliability....
- 4           •     Load growth is down or flat—markets are shrinking. Between  
5           2008 and 2013, the base load market in Northern Illinois has  
6           declined by approximately 15%.

7           In short, Exelon recognizes that the profitability of its nuclear fleet is  
8           threatened by renewables and energy efficiency, and seeks some unспе-  
9           cified increase in market prices to reward nuclear generators.

- 10          •     Exelon has also been very active in lobbying the Illinois legislature for a  
11          subsidy program that would improve the profitability of its eleven  
12          nuclear units in that state.<sup>9</sup>

13   **Q: Has Exelon taken similar positions in states in which it does not have**  
14   **distribution utilities?**

15   A: Yes. In its comments in New York’s Reforming the Energy Vision proceeding  
16   (Case 14-M-0101), Exelon cited what it called “a recent white paper” and the  
17   “2014 Germany Study,” without noting that it was commissioned by the  
18   Edison Electric Institute, to warn,

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<sup>9</sup>Daniels, Steve. “Exelon Warns State It May Close 3 Nukes” Cranes Chicago Business (March 1 2014) [www.chicagobusiness.com/article/20140301/ISSUE01/303019987/exelon-warns-state-it-may-close-3-nukes](http://www.chicagobusiness.com/article/20140301/ISSUE01/303019987/exelon-warns-state-it-may-close-3-nukes); Daniels, Steve. “Exelon puts an opening price tag on nuclear rescue: \$580 million” Cranes Chicago Business (Sep 24 2014) [www.chicagobusiness.com/article/20140924/NEWS11/140929909/exelon-puts-an-opening-price-tag-on-nuclear-rescue-580-million](http://www.chicagobusiness.com/article/20140924/NEWS11/140929909/exelon-puts-an-opening-price-tag-on-nuclear-rescue-580-million); Daniels, Steve. “How much money do Exelon’s nukes really make?” Cranes Chicago Business (Oct 25 2014) [www.chicagobusiness.com/article/20141025/ISSUE01/310259990/how-much-money-do-exelons-nukes-really-make](http://www.chicagobusiness.com/article/20141025/ISSUE01/310259990/how-much-money-do-exelons-nukes-really-make).

1 when not properly assessed in advance, large-scale integration of renew-  
2 ables into the power system ultimately leads to disequilibrium in the  
3 power markets, as well as value destruction to both renewable  
4 companies and utilities, and their respective investors. Exelon N.Y.  
5 Comments at 10

6 Exelon then characterized the study's results as indicating that the New York  
7 PSC should be concerned about the effect of renewables on the state's EDCs:

8 The effects of these policies include weakening German utilities'  
9 financial integrity. German utilities' stock has plunged by nearly 45  
10 percent since 2010. Such rapid destruction of financials, in turn, leads to  
11 increased costs of capital and credit for a utility. Exelon N.Y. Comments  
12 at 7

13 This should be of particular concern to the Commission, as EDCs will  
14 be expected to invest heavily in substantial architecture and  
15 infrastructure in order to support and facilitate the enhanced DER  
16 market envisioned under REV. Increases in EDCs' costs of capital will  
17 invariably lead to higher costs for their investments and, in turn,  
18 customers. Exelon N.Y. Comments at 10

19 **Q: Do these comments from Exelon properly characterize the information**  
20 **reported in the Germany Study?**

21 A: No. It is clear from the 2014 Germany Study that the German utilities'  
22 financial problems resulted from their ownership of merchant generation, not  
23 distribution:

24 wholesale prices in Germany for base load have fallen dramatically....  
25 This has created a large amount of load and margin destruction for  
26 utilities that built and financed thermal plants. Many new gas-fired  
27 power plants have been rendered uneconomical, leaving owners to shore  
28 up their balance sheets by undertaking large divestitures of some of their  
29 holdings, as well as by reducing their operational costs. The impact to  
30 utilities' shareholder value has been dramatic...."<sup>10</sup>

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<sup>10</sup>Poser, Hans, Jeffrey Altman, Felix ab Egg, Andreas Granata and Ross Board. 2014.  
"Development and Integration of Renewable Energy: Lessons Learned from Germany."  
Adliswil CH: FAA Financial Advisory AG

1           Since the New York utilities, like those in Maryland, own no merchant  
2           generation, Exelon has distorted an observation about the risks of renewables  
3           to merchant generation (including Exelon’s 1,400 MW in New York) to make  
4           it look like a problem for the EDCs.<sup>11</sup>

5           More substantively, Exelon’s New York comments oppose the recom-  
6           mendations of the NYPSC Staff “that procurement of supply-side large scale  
7           renewable resources become the responsibility of the utilities,” on the  
8           grounds that long-term contracts for “procurement of all renewable resources  
9           is not necessary to encourage economic investment, and may in fact be  
10          detrimental to consumers” (Exelon N.Y. Comments at 26).<sup>12</sup> At the same  
11          time, Exelon sought a long-term above-market contract for its Ginna Nuclear

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www.finadvice.ch/files/germany\_lessonslearned\_final\_071014.pdf. Interestingly, the major German utility E.ON has announced that it will be spinning off the conventional generation business to shareholders, to focus on its distribution and renewable energy businesses (Reed, Stanly, “With Spinoff, German Utility E.On to Focus on Renewable Energy” Dealbook (Dec 1 2014) <http://dealbook.nytimes.com/2014/12/01/german-utility-e-on-to-focus-on-renewable-energy>). This action is consistent with the actual conclusions of the 2014 Germany Study, rather than Exelon’s distorted representation of those conclusions.

<sup>11</sup>American EDCs with merchant-generation affiliates are generally protected from the financial problems of the merchant affiliates, so this red herring does not seem to apply anywhere in the United States.

<sup>12</sup>Exelon’s only demonstration that contracts are not necessary is its claim that a Constellation unit installed a 2.9 MW behind-the-meter PV system at a Corning factory in New York without a long-term contract. In fact, Constellation procured a 20-year contract with Corning for the output of the system, which supplies only about 6% of the plant’s power needs, and received incentives from the state’s NY-Sun Initiative ([ny-sun.ny.gov/About/Featured-Installations/Owens-Corning.aspx](http://ny-sun.ny.gov/About/Featured-Installations/Owens-Corning.aspx)). Thus, Exelon’s argument about the supposed redundancy of utility contracts is limited to projects that could get a better deal by selling to large, deep-pocketed hosts.

1 Plant near Rochester (Petition, NYPSC 14-E-0270).<sup>13</sup> Exelon understands the  
2 need for EDC contracts for its plants, to carry them through periods of low  
3 market prices, but advocates against similar contracts for renewable  
4 resources.

5 **Q: Are Exelon’s concerns about its nuclear fleet entirely unreasonable?**

6 A: No. Nuclear power plants have high fixed operating costs, so lower market  
7 prices can render continued operation uneconomic. It least in the short term,  
8 removing a must-run generator from the bottom of the dispatch stack will  
9 tend to increase market energy prices, and most replacement energy is likely  
10 to come from fossil units, increasing carbon emissions. There is nothing  
11 inherently improper about Exelon advocating for policies to support its  
12 nuclear capacity. The problems arise from (1) the incentive for Exelon’s  
13 utility subsidiaries to resist policy initiatives that might undermine nuclear,  
14 even if those initiatives would benefit consumers and the broader public  
15 interest, and (2) Exelon’s decision to protect its nuclear interest by opposing  
16 renewable development (and other initiatives), rather than to advocate for  
17 measures that would protect its interests while promoting new clean  
18 resources.<sup>14</sup> Exelon’s strategy may succeed in increasing values to its

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<sup>13</sup>Interestingly, Entergy (which owns three nuclear units in New York) and NRG (which owns 3,400 MW of New York fossil generation) opposed the Exelon petition.

<sup>14</sup>Exelon has sometimes taken a more constructive approach, as in its comments on design elements for the 2012 RGGI Program Review. In these comments Exelon argues for reducing carbon allowances, and hence raising market energy prices and profitability, for all carbon-free resources, including both renewables and Exelon’s own fleet of merchant nuclear generation. “Comments By Exelon Corporation on Design Elements for RGGI 2012 Program Review” [www.rggi.org/docs/ProgramReview/StakeholderComments/November/Exelon.PDF](http://www.rggi.org/docs/ProgramReview/StakeholderComments/November/Exelon.PDF).

1           shareholders while unnecessarily increasing costs to consumers and  
2           frustrating state initiatives.

3   **V. Exelon and Energy Efficiency**

4   **Q: How have you reviewed Exelon’s history regarding energy-efficiency**  
5   **programs?**

6   A: I examined the energy-efficiency achievements reported in recent years by  
7   the three Exelon EDCs (ComEd, PECO, and BGE since 2012), compared to  
8   the targets set by the legislatures and regulators in each state. I also examined  
9   the record of each Exelon EDC on energy-efficiency policy, including  
10   supporting or opposing expansion of energy-efficiency targets and inclusion  
11   of all consumer benefits in the TRC computation.

12   **Q: How has ComEd performed on energy-efficiency savings?**

13   A: ComEd exceeded the statutory energy-efficiency targets for the first five  
14   years of the Illinois energy-efficiency programs (2008–2013), until statutory  
15   budget limits constrained its programs, shifting responsibility for acquiring  
16   additional energy-efficiency savings to the Illinois Power Agency.

17   **Q: What policy positions regarding energy-efficiency savings has ComEd**  
18   **taken recently?**

19   A: In Illinois Commerce Commission (ICC) Docket No. 14-0588, ComEd  
20   opposed the inclusion in cost-benefit analysis of both the price-suppression  
21   effects (also called demand-reduction-induced price effects, or DRIPE) and  
22   the non-energy benefits adopted by the Maryland Energy Administration  
23   (MEA) in Cases Nos. 9153–9157. ComEd’s opposition to treating reductions  
24   in energy prices as benefits to consumers is explicitly tied to the welfare of  
25   generators:

1 a reduction in the clearing price of energy that may be associated with  
2 energy efficiency...represents a transfer of wealth between power gener-  
3 ators and energy consumers. ComEd Response to the Objections to the  
4 Procurement Plan of the Illinois Power Agency, Docket No. 14-0588,  
5 October 21 2014, at 6

6 In terms of selecting the best option among competing program designs,  
7 ComEd opposed the ICC Staff position that the program with the highest  
8 TRC net benefits be selected, and argued instead that the program with the  
9 highest benefit/cost ratio should be pursued (Response to Objections at 3–5).  
10 ComEd’s preferred approach would favor a small program with a benefit/cost  
11 ratio of 3.0 (or two dollars of net benefits per dollar spent) over a program  
12 that spends three times as much with a benefit/cost ratio of 2.9 (\$1.90 of net  
13 benefits per dollar spent), even though the latter program would produce  
14 185% more net benefits than the former. ComEd also objected to the Staff  
15 proposal on the grounds that “TRC costs do not include customer incentive  
16 costs” and “absence of this cost component can result in highly distorting  
17 ‘net benefits’ results under the TRC Test” (Response at 5). In other words,  
18 Exelon is still fighting the primacy of the TRC test in guiding energy-  
19 efficiency-program design and is still arguing for leaving potential net  
20 benefits on the table.<sup>15</sup>

21 **Q: How has PECO performed on energy-efficiency savings?**

22 A: In Phase I of the Pennsylvania energy-efficiency programs, from June 2009  
23 through May 2013, all seven utilities exceeded their statutory savings targets.  
24 PECO’s savings were about 5% less than average, and well below those of  
25 Duquesne (the other urban utility) and Pennsylvania Power and Light (the

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<sup>15</sup>I have not identified any comparable recent criticism of the TRC test by any PHI company.

1 other large utility), and exceeded the savings of only the subsidiaries of  
2 FirstEnergy, another large PJM generator.

3 **Table 1: Pennsylvania Phase I Energy Savings**

	<b>Energy Saved as % of Target</b>
<i>PPL</i>	143%
<i>Duquesne</i>	132%
<i>PECO</i>	118%
<i>FirstEnergy Companies</i>	110%
Penn Power	116%
Met-Ed	111%
West Penn	110%
Penelec	106%

4 **Q: What policy positions regarding energy-efficiency savings has PECO**  
5 **taken recently?**

6 A: The utility has advocated for limiting the benefits considered in the TRC test  
7 and for reducing spending on energy-efficiency programs below the  
8 legislative limits.

9 **Q: What positions has PECO taken regarding cost-benefit tests?**

10 A: In the Pennsylvania Public Utility Commission (PAPUC) proceeding on  
11 application of the TRC test (Docket No. M-2012-2300653), PECO opposed  
12 inclusion of non-energy benefits, including “those experienced by utilities  
13 (e.g., reduced customer arrearages), by efficiency program participants (e.g.,  
14 improved comfort, health, and safety), and by society (e.g., reduced  
15 environmental impacts, health care costs, and national security costs) (PA  
16 PUC M-2012-2300653 Order at 6).

17 In the same proceeding, PECO opposed a proposal simply to

1 explore ways to incorporate alleged wholesale market price suppression  
2 benefits into the TRC Test because [inclusion of those benefits] could  
3 have long-term detrimental effects on competitive electricity markets  
4 [and] discourage merchant electricity suppliers and their investors from  
5 entering the market and could encourage their exit from the market.  
6 Order at 58

7 More specifically, PECO expressed concern that “merchant electricity  
8 suppliers” would find “that the value of their projects can be ‘devalued’ by  
9 uneconomic customer-funded projects” (PECO Reply Comments, Docket No.  
10 M-2012-2300653, July 2012, at 3).

11 **Q: What positions did PECO take regarding the savings targets set by the**  
12 **Pennsylvania PUC?**

13 A: After the PUC set savings targets for Program Years 2015 and 2016, PECO  
14 filed a petition requesting that the Pennsylvania PUC reduce its energy-  
15 efficiency target by about 35%, for the following two reasons.

16 First, PECO claimed that it needed to reserve funds “in anticipation that  
17 EDCs will be required to achieve an additional incremental reduction”  
18 (Initial Brief of PECO Energy Company, Docket No. P-2012-2320334,  
19 October 19, 2012 at 12).<sup>16</sup> PECO presented no data to support this contention,  
20 and sought to exclude the testimony of a witness who demonstrated the  
21 adequacy of PECO’s funding, given the program costs already adopted by the  
22 PUC (Penn. PUC P-2012-2320334 Order at 7–10)

23 Second, and in apparent contradiction to its claim that it did not have  
24 sufficient funding to pursue all its regulatory requirements, PECO asked the  
25 PUC to reduce its energy-efficiency funding levels, on the grounds that the  
26 wholesale market price in retail bills had declined (PECO Initial Brief at 16).

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<sup>16</sup><http://www.puc.pa.gov//pcdocs/1195938.pdf>

1 Remarkably, even though PECO noted that customer bills were lower than in  
2 the base year of 2006, it argued that restricting cost-effective energy-  
3 efficiency programs would “benefit all customers by lowering their overall  
4 electric bills” (PECO Initial Brief at 17).

5 At its heart, PECO’s position in Docket No. P-2012-2320334 amounted  
6 to an attack on the role of energy-efficiency programs in maximizing benefits  
7 to customers, replacing it with a vague commitment to short-term rate  
8 reductions. This position is consistent with Exelon’s concern that falling  
9 electric sales threaten its generation profits, but is inconsistent with pursuing  
10 benefits to customers.

11 **Q: How has BGE performed on energy-efficiency savings?**

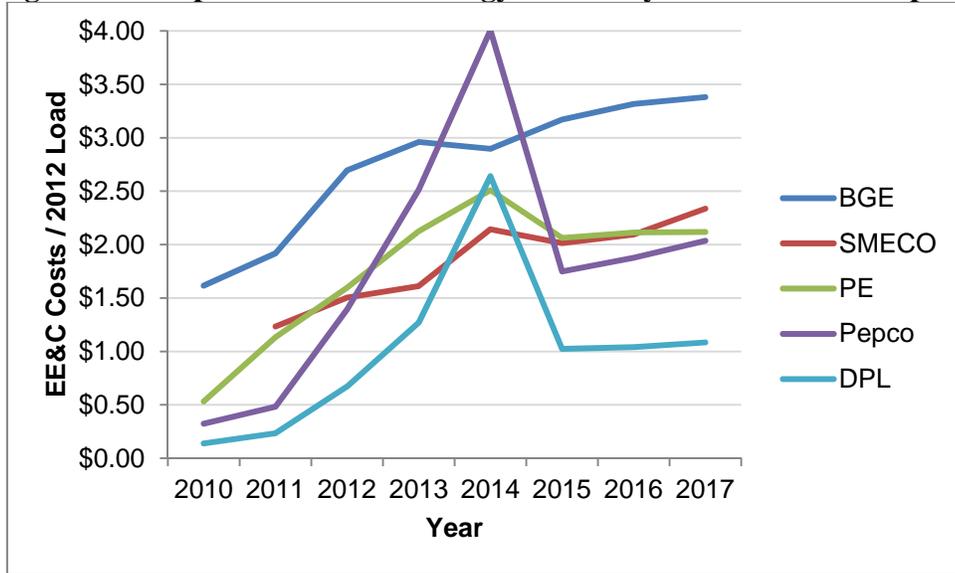
12 A: In 2012 and 2013, following the Exelon merger, BGE exceeded its energy-  
13 savings target by about 12%, but fell 63% below its demand-reduction target.  
14 In the same period, the non-BGE utilities achieved an average of 97% of  
15 their energy targets and 194% of their demand targets. The BGE demand  
16 savings were only about a quarter of what would have been expected from  
17 the energy savings and a typical 60% load factor, while the average of the  
18 other utilities’ demand reductions were about three times the reductions that  
19 would be expected at typical load factors.

20 **Q: How have the energy-efficiency efforts of BGE varied from the period in**  
21 **which BGE was part of Constellation, to the period since the merger**  
22 **with Exelon?**

23 A: Prior to its merger into Exelon, BGE actually surpassed the performance of  
24 the other Maryland utilities. BGE’s efforts started higher than the other  
25 utilities, as measured by spending per MWh of sales, and those efforts grew  
26 rapidly until 2012 (about 29% annually). Following the merger in 2012, the

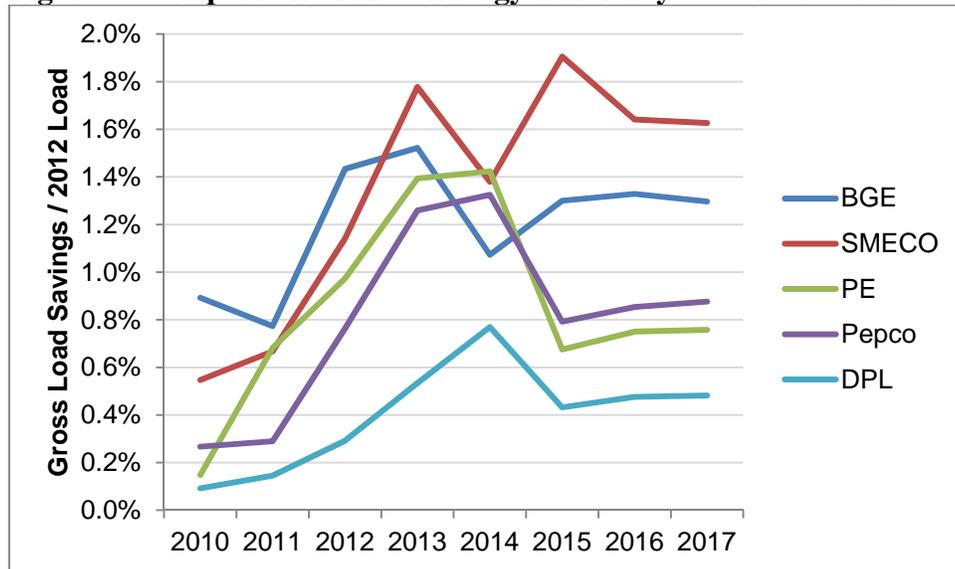
1 growth in BGE's energy-efficiency efforts slowed considerably, to just 5%  
 2 annually from 2012 through 2017, as shown in Figure 4.

3 **Figure 4: Comparison of EDC Energy-Efficiency & Conservation Spending**



4  
 5 In terms of the savings as a percentage of retail sales, BGE's results  
 6 started well above those of the other utilities, rose until the merger in 2012,  
 7 stalled in 2013, and fell thereafter, as shown in Figure 5. SMECO surpassed  
 8 BGE in 2013, as did PEPCo and Potomac Edison in 2014.

9 **Figure 5: Comparison of EDC Energy-Efficiency & Conservation Savings**



10

1 **Q: How have the energy-efficiency efforts of the Maryland PHI utilities**  
2 **varied from the period before the announcement of the merger with**  
3 **Exelon, to the utilities' latest proposals?**

4 A: The PHI companies started with much smaller energy-efficiency programs  
5 than BGE, but those rose much more rapidly than BGE's programs from  
6 2011 through 2014. Following the announcement of the merger, the PHI  
7 companies have proposed large reductions in their energy-efficiency  
8 spending and savings for 2015–2017, as shown in Figure 4 and Figure 5.<sup>17</sup>

9 **Q: What policy positions regarding energy-efficiency savings has BGE**  
10 **taken recently?**

11 A: In the current round of energy-efficiency plans for 2015–2017 (Cases Nos.  
12 9154, 9155, and 9156), BGE chose to omit non-energy benefits in its  
13 application of the TRC test, on the grounds that it did not have time to  
14 incorporate them, and because “BGE continues to have concerns about the  
15 appropriateness of NEBs, especially in the TRC.”<sup>18</sup> In contrast, PEPCo, DPL  
16 and SMECo included the following benefits in their screening: avoided air  
17 emissions, increased comfort due to the Home Performance program, and

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<sup>17</sup>The energy-efficiency programs in the District of Columbia are administered by the D.C. Sustainable Energy Utility, the programs in Delaware are administered by Energize Delaware, and the New Jersey programs are administered by the statewide Clean Energy Program, so the scale of programs in those jurisdictions cannot be attributed to the PHI companies.

<sup>18</sup>Baltimore Gas and Electric's 2015–2017 EmPOWER Maryland Program Filing, August 28 2014, at 3. BGE included the air emissions value alone in its application of the Societal Test (at 141); it is not clear that this test was actually used in portfolio design. The filing is available from the Maryland PSC's web site, [webapp.psc.state.md.us](http://webapp.psc.state.md.us), where it is document 526 in Case 9154.

1 reduced O&M costs for various non-residential programs.<sup>19</sup> While BGE  
2 included price suppression as a benefit, the estimates of price suppression  
3 were heavily weighted towards capacity DRIPE, which BGE (and other  
4 Maryland utilities) would find helpful in justifying investments in smart  
5 meters.

6 In addition, BGE has proposed to restrict participation in its Home  
7 Performance with Energy Star program by raising the Savings-Investment  
8 Ratio (SIR) requirement from 0.5 in 2014 to 1.25 in 2015 and 1.75 in 2016  
9 and 2017. The SIR is the ratio of (a) the first-year reduction in participant  
10 bills from an installation times the expected life of the measures, divided by  
11 (b) the customer's share of the efficiency investment. The relationship  
12 between customer savings and avoided costs varies widely, and this  
13 apparently arbitrary rule would almost certainly reject cost-effective  
14 installations (BGE 2015-2017 EmPOWER Maryland Program Filing at 55).

15 **Q: Please summarize the record of Exelon on energy-efficiency programs.**

16 A: The Exelon-owned EDCs have generally met the targets set by their  
17 legislatures and regulators, but have fallen short of the leading utilities.<sup>20</sup> In  
18 terms of energy-efficiency policy, Exelon has generally argued for limiting  
19 the scope of benefits counted in the TRC test, compared to current Maryland

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<sup>19</sup>See, e.g., PEPCo Energy Efficiency and Conservation Portfolio, EmPOWER Maryland 2015–2017, September 2 2014, Appendix E. The filing is available from the Maryland PSC's web site, [webapp.psc.state.md.us](http://webapp.psc.state.md.us), where it is document 607 in Case 9154. The values were developed by Itron for the PSC Staff.

<sup>20</sup>Mr. Crane acknowledged that customer energy-efficiency savings through "PECO's and ComEd's award winning 'Smart Ideas' programs" were required by state regulation (Deposition at 270, referring to Crane Direct at 21–22).

1 practice. In some cases, Exelon has specifically argued that customer benefits  
2 should be excluded from the cost-benefit test to protect merchant generators,  
3 which would include Exelon. Exelon's takeover of BGE coincided with a  
4 decline in BGE's level of effort, and this proposed merger is associated with  
5 a proposed steep decline in the energy-efficiency plans of the PHI companies.

6 An independent EDC, as well as consumer interests (such as the Office  
7 of Peoples Counsel), may well have concerns about the details of energy-  
8 efficiency program screening and design, either in terms of theoretical  
9 perspectives or practical realities (e.g., short-term rate impacts, equity among  
10 groups of customers). Those issues can be resolved among the parties  
11 through additional analysis and improvements in screening and design. The  
12 deeper conflict between the interests of a major generation company and  
13 consumer interests is not easily resolved, since any saving to consumers is a  
14 cost to the generators, and vice versa. Increased concentration of  
15 responsibility for energy-efficiency implementation in the hands of a  
16 generation-dominated holding company increases the risk of impairing  
17 energy-efficiency programs that would be beneficial to consumers, the  
18 economy, and the environment.

19 **Q: Other than reducing energy-efficiency implementation, are there other**  
20 **mechanisms for Exelon to use the EDCs to reduce the effect of the Em-**  
21 **POWER program on the value of its generation fleet?**

22 A: Yes. Most importantly, each EDC decides how much of its planned energy-  
23 efficiency and demand-response savings to bid into the PJM capacity market.  
24 The capacity that an EDC bids into PJM's Base Residual Auction (BRA)  
25 reduces the market price for the delivery year starting about three years later.  
26 Load reductions that are not bid into the market will have no effect until after

1 the reductions occur. For example, in 2015 PJM will run the BRA for  
2 2018/19; load reductions that an EDC anticipates in late 2017 and early 2018  
3 and bids into the BRA will reduce capacity prices starting in 2018/19. In  
4 contrast, reductions that are not bid into any BRA will show up as a reduction  
5 in the 2018 peak, which would first reduce capacity requirements in PJM's  
6 forecast used in the 2019 BRA for 2022/23, and will not be fully reflected by  
7 the PJM forecast until some years later.

8 In the avoided-cost analysis used by BGE, PEPCo, and DPL for their  
9 2015–2017 EmPOWER plans, MEA estimates that each megawatt of load  
10 reduction for 2017/18 reduces the market capacity price in the MAAC region  
11 by \$0.10/MW-day.<sup>21</sup> A 100 MW increase in the capacity bid would reduce  
12 revenue to Exelon's 12,200 MW in MAAC by about \$45 million annually; a  
13 five-year delay in recognizing the load reduction would thus be worth over  
14 \$200 million to Exelon.<sup>22</sup> Thus, Exelon will have a strong incentive to  
15 minimize the bidding of energy-efficiency and demand-response savings into  
16 the capacity market, reducing consumers' revenues from the capacity market  
17 and increasing the price of capacity purchases through SOS and competitive  
18 suppliers. Thus, the merger is likely to result in lower capacity revenues

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<sup>21</sup>I believe that MEA overestimated the magnitude of the effect on prices in MAAC. This overstatement is offset by MEA erroneously assuming that load reductions in MAAC would have no effect on the market price in western PJM, including Illinois, where Exelon owns another 10,000 MW of capacity. Hence, the total annual effect on Exelon is likely to be similar to the \$45 million I estimate here.

<sup>22</sup>In addition to whatever PECO and BGE capacity it would withhold from the market, the merger would allow Exelon to withhold capacity from Atlantic City Electric, DPL in both Maryland and Delaware, and PEPCo in both Maryland and DC.

1 being credited to PEPCo and DPL customers and to all Maryland customers  
2 paying higher prices for capacity.

### 3 **VI. Exelon's Record on Renewable Energy**

4 **Q: What has Exelon's record been regarding renewable energy?**

5 A: Exelon's utility subsidiaries have met their statutory requirements under state  
6 renewable-portfolio standards.<sup>23</sup> Those EDCs have not actively encouraged  
7 development of local renewables or facilitating customer purchases of  
8 additional renewable energy.<sup>24</sup>

9 Exelon has also been active in renewable energy as a developer and  
10 owner of about 1,500 MW of wind and solar facilities. Most of those  
11 renewables are located in the West or the Plains states, where Exelon has no  
12 nuclear capacity and a small portion of its total generation; only about 80  
13 MW are in PJM.

14 **Q: What positions has Exelon taken with respect to renewable-energy  
15 development?**

16 A: Exelon has been a leading voice among generators in opposing renewable  
17 energy development. The letter from Christopher Crane to shareholders in the  
18 Exelon 2013 Summary Annual Report states Exelon's position as follows:

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<sup>23</sup>In Illinois, the Illinois Power Authority acquires renewable energy to meet the RPS, so ComEd is not directly involved in procurement of renewables.

<sup>24</sup>A number of utilities—not including the Exelon companies—have developed standard-offer options that include higher percentages of renewable energy or offer mechanisms for customers to offset their usage by purchasing renewable energy credits.

1 State-sponsored preference to specific generation providers, technology-  
2 specific mandates, and the wind production tax credit are all anti-  
3 competitive market strictures that put continued operation of clean and  
4 reliable nuclear energy at risk. They cost taxpayers and consumers a lot  
5 of money, and as they threaten the economics of nuclear generation, they  
6 also put the nation's progress in reducing emissions at risk. For that  
7 reason, Exelon is and will remain a leading voice in policy debates and  
8 decision-making, particularly around our critical priorities:

- 9 • Opposition to non-competitive energy subsidies
- 10 • Recognition of nuclear as a clean, resilient energy source
- 11 • Promotion of market rules and structures that ensure fair treatment  
12 of clean, competitive, reliable generation. Crane Letter at 4

13 and

14 Properly designed competitive markets ensure cost-effective reliable  
15 power supply and have demonstrated the ability to eliminate dirty,  
16 inefficient plants in the most efficient way. To that end, Exelon remains  
17 active in advocating for competitive markets, opposing policies that ask  
18 either taxpayers or consumers to subsidize or give preferential treatment  
19 to specific generation providers or technologies.... Crane Letter at 5

20 In his deposition in this proceeding (at 250), Mr. Crane acknowledges,  
21 We have vocally in editorials, letters to the editor, in conversation with  
22 elected and regulatory officials, stakeholders,...communicated the unin-  
23 tended consequences and why we think [the wind production tax credit]  
24 should be allowed to expire.

25 He clarifies that the unintended consequences were “an  
26 overdevelopment of wind around multiple nuclear plants that is causing  
27 pricing suppression” (Deposition at 250).

28 Mr. Crane further states (at 253),

29 In Maryland, I think we're just about at the point that we've exhausted  
30 our capabilities of wind development. So I don't think it will have much  
31 of an effect on Maryland at all.

32 Maryland had about 120 MW of wind capacity on line in 2012, with 150  
33 MW more reported to be under construction, while NREL estimates about  
34 1,500 MW of on-shore wind potential at 80-meter hub height (excluding

1 urban and protected areas) and 52,000 MW of off-shore wind potential.<sup>25</sup> Mr.  
2 Crane's assertion appears to reflect Exelon's aspiration that no more wind be  
3 developed in Maryland rather than any exhaustion of potential.

4 Mr. Crane further says that "subsidized generation of any kind" that "is  
5 an unnecessary burden on ratepayers, taxpayers and shareholders" includes  
6 any generation that receives a tax credit, as well as net metering for  
7 distributed generation (Deposition at 255). As a result, he says that Exelon  
8 supports the phase-down and expiration of the solar investment tax credit,  
9 even though (Deposition at 254), "the cost of development for the state of  
10 Maryland would increase."

11 In other words, Exelon opposes renewable portfolio standards,  
12 renewable tax incentives, and any other measure that would compete with  
13 Exelon's nuclear generation. It is not clear where Exelon believes that it has  
14 observed the "Properly designed competitive markets [that] have  
15 demonstrated the ability to eliminate dirty, inefficient plants in the most  
16 efficient way" without the renewable standards and incentives. Certainly, the  
17 retirement of dirty inefficient coal and heavy-oil plants in the United States  
18 and Canada has been driven in part by the influx of wind and solar energy  
19 supported by renewable standards and tax incentives.

20 **Q: Have renewable-advocacy organizations reacted to Exelon's positions?**

21 A: Yes. The American Wind Energy Association expelled Exelon from its  
22 membership in September 2012, because "they continue leading an organized

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<sup>25</sup>Lopez, Anthony, Billy Roberts, Donna Heimiller, Nate Blair, and Gian Porro. 2012. "U.S. Renewable Energy Technical Potentials: A GIS-Based Analysis" NREL/TP-6A20-51946. Golden: Col.: National Renewable Energy Laboratory. Detailed estimates of potential are available at [www.nrel.gov/gis/docs/us\\_re\\_technical\\_potential.xlsx](http://www.nrel.gov/gis/docs/us_re_technical_potential.xlsx).

1 campaign against the industry's No. 1 priority[;] they're not acting in the best  
2 interests of the industry.”<sup>26</sup>

3 **Q: Has Exelon taken similar positions with respect to renewable energy in**  
4 **Maryland?**

5 A: Yes. Exelon opposed 2014 legislation in the Maryland Legislature (HB1149)  
6 that would have increased both the renewable portfolio standard for Tier I  
7 resources and the required solar portion of the renewable portfolio.<sup>27</sup>  
8 Exelon's position papers are reproduced as Exhibit PLC-4. Exelon's major  
9 point, in its comments on House Bill 1149, is that

10 Maryland has a significant amount of clean, efficient, baseload power  
11 [Exelon's Calvert Cliffs nuclear plant] within the state that contributes to  
12 reduced greenhouse gas emissions. Increasing the RPS places additional  
13 stress on those assets that are serving to reduce greenhouse gas  
14 emissions, yet not able to avail themselves of the revenue stream created  
15 by the RPS.

16 In other words, Exelon opposes assistance to renewables because the  
17 renewables reduce prices and reduce profits from Exelon's nuclear resources.

18 **Q: Did PHI take the same position?**

19 A: No, at least at the hearing on the bill. The witness list from the February 27  
20 2014 hearing on HB1149 before the General Assembly's Economic Matters  
21 Committee lists a panel of five utility witnesses taking positions unfavorable  
22 to the bill. There were one witness each from Exelon, FirstEnergy and  
23 SMECo, and two from BGE, but no witness from PHI, PEPCo, or DPL.

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<sup>26</sup>Wernaur, Judy, "Wind Energy Group gives Exelon the Boot," Chicago Tribune (Sep 10 2010) [articles.chicagotribune.com/2012-09-10/business/chi-wind-energy-group-gives-exelon-the-boot-20120910\\_1\\_exelon-corp-wind-energy-wind-investment](http://articles.chicagotribune.com/2012-09-10/business/chi-wind-energy-group-gives-exelon-the-boot-20120910_1_exelon-corp-wind-energy-wind-investment).

<sup>27</sup>The legislation is available online at [legiscan.com/MD/bill/HB1149/2014](http://legiscan.com/MD/bill/HB1149/2014).

1 **Q: Has Exelon taken any positions regarding net metering for renewable**  
2 **energy resources?**

3 A: In Illinois, ComEd resisted a proposed rule that would require that power  
4 suppliers respond to requests from customers to aggregate meters on a single  
5 site (such as an apartment building or office building with multiple tenants)  
6 for net-metering of distributed renewables. State law already requires that  
7 suppliers “consider whether to allow meter aggregation for the purposes of  
8 net metering” for this category of customers (220 ILCS 5/16-107.5(l)); the  
9 proposed rule language that ComEd found so objectionable was that

10 Electricity providers shall consider applications for meter  
11 aggregation...and shall summarize their consideration and ultimate  
12 determination in a written document provided to the project sponsor.  
13 Comments of Commonwealth Edison Company on Proposed Net  
14 Metering Rule, June 9 2014, at 7<sup>28</sup>

15 ComEd’s position would allow it to issue a blanket prohibition on net  
16 metering for the entire load of all buildings not served on a single meter,  
17 without offering any justification, seriously restricting the development of  
18 solar energy.

19 Similarly, Exelon opposed the proposed Maryland community  
20 renewable energy pilot program in 2014.<sup>29</sup> Exelon’s comments, attached as  
21 Exhibit PLC-5, assert that community renewable projects should be paid only  
22 the wholesale market price of generation. This position stands in contrast to  
23 Exelon’s interest in payments above the wholesale market price for its  
24 nuclear generation.

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<sup>28</sup>[www.icc.illinois.gov/downloads/public/ComEd%20Comments%20Net%20metering%20May%202014.doc](http://www.icc.illinois.gov/downloads/public/ComEd%20Comments%20Net%20metering%20May%202014.doc).

<sup>29</sup>The legislation is available online at [legiscan.com/MD/bill/SB786/2014](http://legiscan.com/MD/bill/SB786/2014).

1 **Q: Has PHI taken positions similar to those of Exelon on these issues?**

2 A: In contrast, PEPCo (and Washington Gas) supported the D.C. Community  
3 Renewable Energy Legislation.<sup>30</sup> PEPCo expressed concerns regarding  
4 avoidance of FERC jurisdiction, ensuring that the program participants  
5 continue to pay some distribution charges and program costs, and  
6 accommodating the program in PEPCo's billing program, and emphasized  
7 the need for a working group with the PSC, the solar industry and others "to  
8 develop the best model of community solar for the District." Interestingly,  
9 Washington Gas advocated expanding the program to include gas-fired CHP,  
10 rather than opposing community renewables as competitors, as Exelon has  
11 done.

12 **Q: Is Exelon's opposition to renewable energy shared across the merchant  
13 generation industry?**

14 A: No. For example, James L. Robo, chairman and CEO of NextEra Energy  
15 Inc., criticized the zero-sum thinking of Exelon and others, as follows:

16 Unfortunately, energy policy has become politicized by too much zero-  
17 sum thinking. Some...insist that renewable energy is bad for the nuclear  
18 business. Many are quick to criticize tax provisions related to one  
19 technology, such as the PTC, while being slow to acknowledge long-  
20 standing federal policies related to other technologies like oil and gas,  
21 solar, and nuclear energy. Investments and improvements in one  
22 technology must spell disaster for all the others, or so this thinking goes.

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<sup>30</sup>July 2 2013 report of the Committee on Government Operations to the Council of the District of Columbia, at unnumbered pages 90–94 and 96–102. <http://www.dcsun.org/wp-content/uploads/2013/10/committee-report.pdf>.

1 My company thinks very differently. Yes, we are the largest wind  
2 developer in the country. Yet we also operate one of the nation's largest  
3 nuclear fleets. We are a major developer of utility-scale solar power and  
4 we purchase more natural gas than any other U.S. electric utility.... And  
5 from our perspective, nuclear plants in competitive markets are not  
6 challenged by wind energy but by low natural gas prices caused by the  
7 shale gas revolution.<sup>31</sup>

8 David Crane, CEO of NRG Energy, another large merchant generator,  
9 has also publicly criticized Exelon's advocacy of the elimination of subsidies  
10 for wind and solar power while at the same time asking for public help to  
11 bolster the finances at several of its nukes in Illinois"<sup>32</sup>

12 **Q: Please summarize how Exelon's positions on renewable energy can be**  
13 **harmful to consumers.**

14 A: Exelon has consistently opposed the measures (tax credits, renewable  
15 portfolio standards, long-term contracts, net metering) that will reduce the  
16 risk and hence the cost of developing new clean resources. Increasing the  
17 costs of these clean resource additions will result in higher prices for  
18 renewables required under the RPS, higher market energy prices, and higher  
19 costs for meeting emissions standards under the Clean Power Plan and  
20 Maryland's Greenhouse Gas Emissions Reduction Act.

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<sup>31</sup>"Congress Should Extend the Production Tax Credit, Develop a Long-Term Alternative"  
Roll Call (April 7 2014).  
[www.rollcall.com/news/congress\\_should\\_extend\\_the\\_production\\_tax\\_credit\\_develop\\_a\\_long\\_term-231981-1.html](http://www.rollcall.com/news/congress_should_extend_the_production_tax_credit_develop_a_long_term-231981-1.html)

<sup>32</sup>[www.chicagobusiness.com/article/20140403/NEWS11/140409889/nrg-ceo-crane-new-energy-guy-in-town-takes-a-shot-at-incumbent-exelon](http://www.chicagobusiness.com/article/20140403/NEWS11/140409889/nrg-ceo-crane-new-energy-guy-in-town-takes-a-shot-at-incumbent-exelon).

1 **VII. Exelon Record on State Efforts to Moderate Costs to Consumers**

2 **Q: Has Exelon taken other positions adverse to the interests of customers?**

3 A: Yes. Many of Exelon’s positions on “non-competitive” resources disadvant-  
4 aging Exelon’s nuclear resources were directed at the attempts by Maryland  
5 and New Jersey to support construction of new gas-fired combined-cycle  
6 plants to reduce congestion into constrained portions of PJM.

7 Exelon is a member of the Electric Power Supply Association, which  
8 appealed the inclusion by the Federal Energy Regulatory Commission  
9 (FERC) of demand response in PJM and other capacity markets. Upon a  
10 favorable court ruling, Exelon urged FERC to promptly change the market  
11 rules in PJM and New England, to prevent a situation in which “demand  
12 response may again be selected in these auctions and displace other supply  
13 resources which may be forced into retirement” (Comments of Exelon in  
14 FERC EL 14-55 at 4).<sup>33</sup> About 11,000 MW of demand response cleared in the  
15 latest BRA, including 4,300 MW in MAAC (2017/2018 RPM Base Residual  
16 Auction Results at 11). The sensitivity analyses that PJM conducted found  
17 that removing from the auction 6,000 MW would have increased the market  
18 prices by about \$48/MW-day, increasing bills to Maryland consumers by  
19 about \$270 million annually.

20 Exelon also joined in opposition to PJM’s proposal to pay the full  
21 market price for demand response by small and medium customers, claiming  
22 that doing so “undermines the competitive market and sends

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<sup>33</sup>Exelon’s position in this docket was more moderate than that of FirstEnergy, which filed the original petition and would have FERC immediately remove all demand response from the overturn the results of the auction for 2017/18.

1 counterproductive price signals” (PJM Interconnection, FERC Docket No.  
2 EL09-68-000, Comments of Joint Commenters, September 16 2009, at 1). In  
3 those comments at 6, Exelon also asserts that

4 subsidies are not needed to increase participation in the PJM markets, as  
5 demonstrated by the more than 10,000 MW of DR and energy efficiency  
6 offers into the 2012-2013 RPM base residual auction.

7 The underlying concern (at 7) is that demand response “can be used by  
8 certain buyers to depress market clearing capacity prices.” In other words,  
9 encouraging demand response reduces capacity prices, reduces costs to  
10 consumers, and reduces Exelon’s wholesale revenue.

11 The proposed merger would give Exelon additional opportunities to  
12 undermine resources that would reduce market prices.

### 13 **VIII. Recommendations**

14 **Q: How do you recommend that the Commission respond to the concerns**  
15 **you discuss above?**

16 A: The problems I identify above—the loss of the last independent EDCs in  
17 PJM, Exelon’s ability to interfere with renewable-energy development and  
18 energy-efficiency implementation—can be mitigated by denying the merger.

19 If other benefits are so great that the Commission cannot resist  
20 approving the merger, then the Commission should impose conditions on the  
21 merger to limit, as much as possible, the effects of Exelon’s conflicts of  
22 interest.

23 The problems identified above can be fully mitigated by a very simple  
24 condition: that Exelon agree (by a date certain, within two years of the  
25 merger) to split its generation business from its EDC subsidiaries, as PPL is  
26 doing, resulting in a generating company (Genco) and a T&D company

1 (Disco), without cross-ownership.<sup>34</sup> The resulting Disco would have all the  
2 claimed benefits of sharing expertise and resources (as well as diversification  
3 of risks) among six EDCs and six jurisdictions, without the conflicts of  
4 interest that arise from affiliation with the generation operation.

5 If the Commission approves the merger and declines to impose the  
6 divestiture condition, the Commission should impose significant, measurable,  
7 and enforceable requirements to advance the development of nationally  
8 leading renewable-energy and energy-efficiency programs, to meet and  
9 exceed Maryland's energy and environmental policy objectives, including the  
10 medium and long-term targets in Maryland's Greenhouse Gas Reduction Act,  
11 EmPOWER Maryland, the Renewable Energy Portfolio Standard, the  
12 Healthy Air Act, and the Regional Greenhouse Gas Initiative.

13 **Q: Would these performance conditions fully mitigate the adverse effect of**  
14 **the merger?**

15 A: Not entirely. For example, the operator of the transmission and distribution  
16 system has many opportunities to interfere in the development of renewable  
17 generation, by raising excessive concerns about the effect of the generation  
18 on the safety and reliability of the delivery system, and overstating the cost of  
19 ameliorating the effects of that generation. The merger would also eliminate  
20 PHI as an independent utility voice on legislative and regulatory issues.

21 **Q: Does this conclude your testimony?**

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<sup>34</sup>This form of divestiture is common for large firms with diverse divisions that interfere with one another, either in operations or attracting capital. While the two companies would start with the same shareholders, those interested in stable returns would tend to sell their Genco shares and those with greater risk tolerance would tend to sell the Disco shares. Each company would be a purer play and more attractive to specific groups of investors.

1 A: Yes.