8. Permit Revocation

In the event of a change in circumstance beyond its control, Owner reserves the right to revoke any permit for any attachment when it, in its sole judgment and discretion, determines that such attachment may interfere with its own service requirements, including considerations of economy, safety and when Licensee has failed to obtain necessary permits or rights of way to place its facilities within or access private property or public rights of way.

9. Owner Liability

Neither Owner nor any other user of the poles and anchors will be liable to Licensee for any loss of revenues or other consequential damages arising our of interruption of Licensee's communications system resulting from any damage to Licensee's cable or facilities arising in any manner whatsoever. With respect to any such interruptions, Licensee specifically waives any claim against Owner or any other user of the poles or anchors for consequential damages or loss of profits, irrespective and any fault failure, negligence or alleged negligence on the part of Owner or any other user of the pole and anchors. Licensee also waives any claim against Owner for the cost of repairing physical damage to Licensee's cable or facilities caused in whole or in part by the actions for Owner or its employees, contractors or agents or any other user of the poles and anchors, including negligent actions. Notwithstanding the foregoing, Licensee does not waive and right to pursue a claim for Owners' cost of repairing and damage to Licensee's cable or facilities caused by grossly negligent or intentionally wrongful acts of Owner or its employees, contractors or agents or any other user of the poles and anchors.

10. Transfer of Licensee's facilities by Owner

In the event of any emergency or non-emergency which, in the opinion of the Owner, affects or threatens to affect the operations of the Owner, the Owner shall have the right to perform such detachment, disconnection, relocation, transfer or removal, at the Licensee's payment of Owner's actual costs, with minimum charge of $50.00 per pole location, of lines or facilities of the Licensee attached to poles or anchors of the Owner as, in the opinion of the Owner, may be necessary to meet such emergency or non-emergency situation.

11. Owner's Right

The Owner reserves the right to alter, replace, relocate, remove or abandon, from time to time, any of its poles, anchors or facilities, in which event, upon thirty (30) days written request of the Owner, the Licensee shall, at its expense, alter, relocate or remove its facilities attached thereto or otherwise affected thereby as the Owner may direct.

12. Removal of Attachments by Licensee

Within ten (10) days following the end of each calendar month, the Licensee shall notify the Owner, in writing, of the removal of any attachments occurring during such month, in the form of Exhibit A, attached hereto as a part hereof.

13. Attachment

(a) Rates

For the rights herein granted, but not later than January 31 and July 31 of each calendar year, the Licensee shall pay semi-annual rental to the Owner for each pole and anchor upon which an attachment was made and authorized as of most recent December 31 and June 30, respectively, Said semi-annual rental rate shall be one-half (1/2) of the annual rate which is subject to adjustments and shall be effective within thirty (30) days advance written notice to Licensee. The current **2009** annual rental rate for each pole in **PA is $34.45**; **MP is $34.15**; **MD is $26.59; MP WV is $34.18; PE WV is $19.58** and each anchor is **$5.00.** For any occupancy by the Licensee of a pole of the Owner greater than twelve (12) inches there shall be an additional charge for each additional 12-inch occupancy or any part thereof at a rate equal to the initial 12-inch attachment rate provided for by this section. **(2010 annual rates are: $33.90-PA; $34.06-MPWV; $21.34-PEWV; $18.31-MD; $16.24-VA)**

(b) Rental Adjustments

Owner has the right to adjust pole and anchor rental rates at any time in accordance with the maximum lawful rate permitted by the Communications Act of 1934, as amended, the rules and/or regulations of the FCC or any other law or rules and regulations of a governing body having jurisdiction over pole or anchor attachment rates, as the same may provide from time to time. Notification of such rental adjustment will be mailed to the Licensee at least sixty (60) days prior to implementation of such revised rental rates.

(c) Invoice Payments

The rental rate and any other charges provided for by this Agreement, shall be due and payable twenty (20) days following the mailing of an invoice by the Owner to the Licensee. Should, however, the rental or any part thereof or other charge as invoiced not be paid within the twenty (20) day period and remain unpaid for an additional ten (10) day period, the Owner shall be entitled to and the Licensee shall be liable for a finance charge of 1 ½% per month on any unpaid balance until paid.

14. Make Ready Work

Licensee shall submit with each application a survey of the subject poles and anchors indicating the make-ready work ("Make Ready Work") that Licensee believes must be completed to cause the poles to be ready to accept the installation of Licensee's facilities in compliance with this Agreement. Owner shall review the survey, prepare a final list of the Make Ready Work needed, and deliver same to Licensee along with an estimated statement of the charges that Licensee will be required to pay Owner for Owner's performance of the Make Ready Work. Licensee may accept that proposal by giving Owner written notice authorizing the performance of the Make Ready Work and delivering along with such notice payment of the stated charges. Owner shall invoice Licensee for the actual cost balance of the stated charges, and the cost of any changes agreed upon during the course of the work, upon completion of the Make Ready Work, and Licensee shall pay such invoice within thirty (30) days. If the Make Ready Work involves the moving, alteration or protection of facilities of third parties already installed on the poles, Licensee shall bear the cost of such work, including all costs incurred by such third parties.

15. Attachment Identification Tags

Following Owner's grant of Licensee's application for attachment and Owner's completion of the Make Ready Work, Licensee may attach its facilities in compliance with the plans, specifications and methods and procedures contained in or produced pursuant to this Agreement. Licensee shall coordinate the scheduling of all such installation work with Owner. Licensee shall perform such work using only personnel who have received training at least equivalent to that received by Owner's personnel who perform equivalent work. Licensee shall obtain Owner's approval, not be unreasonably withheld, of all contractors and subcontractors that will be used by Licensee to perform any such work, and the personnel of such contractors and subcontractors must have received training at least equivalent to that received by Owner's personnel who perform equivalent work. Licensee shall take all appropriate precautions to protect all persons and property in proximity to the work against injury or damage occurring by reason of the performance of the work or by reason of the presence of Licensee's facilities on the poles. Licensee shall at Licensee's expense cause all of Licensee's facilities to be tagged in the field with weather resistant identification tags having specifications approved by Owner, such approval not to be unreasonably withheld. Cable and anchor guy wire at each pole location shall be contained within identifiable wire sleeves. If Licensee fails to so identify Licensee's facilities, and such failure continues for more than thirty (30) days after notice, Owner may install such identification tags and sleeves at the expense of Licensee, and Licensee shall reimburse Owner for such cost incurred within thirty (30) days after receipt of an invoice.

16. Abandonment of Poles

Owner may elect to abandon or to remove the poles at any time, provided that, except in the event of a casualty, Owner shall give Licensee at least sixty (60) days notice of any such abandonment or removal. Licensee can purchase pole and/or anchor via "Bill of Sale" Agreement provided by Owner.

17. No Alterations by Licensee

Licensee shall not, at any time, make any changes in the location of the attachments on the poles or to other Licensee facilities within Owner's right-of-way area without Owner's written consent, except in cases of emergency, in which case oral permission must first be obtained and confirmed in writing by Licensee within five (5) days.

18. Unauthorized Attachments

In the event that Licensee facilities are attached to any pole or anchor for which an application has not been submitted and approved as described above in Paragraph 3, each such attachment shall be referred to herein as an "Unauthorized Attachment". Owner may give notice to Licensee, identifying any Unauthorized Attachments identified by Owner. Licensee shall within sixty (60) days thereafter either remove such Unauthorized Attachments in compliance with the relevant attachment removal provisions of this Agreement or shall submit to Owner an application pursuant to Paragraph 3 seeking permission to maintain such Unauthorized Attachment as an authorized attachment in compliance with this Agreement. Such application shall include a survey of Make Ready Work or other corrective actions required to render such attachments in compliance with all standards and specifications applicable this Agreement. Regardless of whether Licensee removes or makes legitimate an Unauthorized Attachment, Licensee shall pay to Owner an Unauthorized Attachment Fee for the period of unauthorized attachment that shall be calculated as the sum of (a) Fifty Dollars ($50) plus (b) back rental amount for five (5) years, to date of last inspection or to pole installation date, whichever is later, or Licensee reasonably proves with appropriate documentation that the Unauthorized Attachment commenced at a later date. Such fee shall be paid by Licensee within thirty (30) days after invoice. Owner and Licensee agree that Owner will be damaged by the presence of Unauthorized Attachments, some of which may jeopardize the physical integrity of Owner's poles and anchor and render it more difficult and more expensive for Owner to perform its primary function of providing electrical service. Because it would be difficult and time consuming to calculate precisely the amount of Owner's damages, the parties have agreed that the foregoing Unauthorized Attachment Fee represents a reasonable estimate of Owner's damages and such amount shall be paid as liquidated damages.

19. Indemnity by Licensee

The Licensee shall save harmless and indemnify, and if requested, defend, the Owner from and against all cost, awards, losses, damages, settlements, injuries and deaths (including attorneys' fees) occurring to any person or property, including any employee and property of the Owner and any contractor and subcontractor, and from and against all claims therefore, resulting in whole or in part from any attachment hereunder, or from the maintenance, repair, presence, use, operation, alteration, replacement, relocation or removal thereof, or of any lines so attached, or from any act or omission of the Licensee, its employees, contractors, agents or representatives in connection therewith.

20. Insurance

Prior to making any attachment hereunder and for the term of this Agreement, the Licensee (and all its subcontractors) shall, at their expense, procure, and thereafter keep in effect the following insurance for the protection of themselves and Owner Form and against any and all liability suits, workers' Compensation claims, demands, judgments, costs, and expenses of any nature, which may arise or result directly or indirectly from any attachment of its facilities on Owner's poles.

(1) Workers' Compensation sufficient to comply fully with the requirements and coverage specified by laws of jurisdiction in which the Licensee's pole attachments are located.
(2) Commercial General Liability Insurance providing limits of not less than $3,000,000 combined single limit per occurrence for bodily injury and death and for property damage and including coverage for contractual Liability and Products-Completed Operations
(3) Comprehensive Auto Liability (including owned, non-owned, and hired vehicles) providing limits of not less than $1,000,000 combined single limit per occurrence.
(4) Such other specific insurances as determined by Owner to be appropriate for this Agreement.

Licensee shall have owner added as an additional insured on the policies of insurance and Furnish Owner, Attention: Event Risk Management, 800 Cabin Hill Drive, Greensburg, Pa. 15601 with certificates of insurance companies showing such insurance to be in effect and the expiration dates and agreeing to give thirty (30) days notice to Owner in advance of any material change in or cancellation of such insurances.

Licensee shall cause its contractors and subcontractors to maintain the insurance listed above at all times during performance of work associated with this License and is solely responsible for maintaining proof of such insurance coverage

21. Bond Requirement

Prior to making any attachment hereunder the Licensee shall provide, and shall thereafter keep in effect during the continuation of any such attachments, a financial security, acceptable to the Owner, in the principal amount of $50,000 to guarantee payment to the Owner of sums due it hereunder for rentals, inspections, work performed for the benefit of the Licensee, removal of attachments upon termination hereof, or any other proper charge, and said bond shall provide for the giving of not less than thirty (30) days' written notice to the Owner in advance of any change in, or cancellation of, such bond. The financial security shall be in the form of a bond, irrevocable Letter of Credit, or other security as deemed acceptable by Verizon, such instrument shall be issued by a surety company or bank satisfactory to Verizon and shall guarantee the payment of any sums that may become due to Verizon. The security must be in full force and in effect for the term of the contract. If the security is non-renewed or cancelled, alternate security must be in place prior to the expiration date of the prior security.

22. Notices

All notices under this agreement shall be in writing and sent by certified mail, return receipt requested, or by commercial overnight delivery service, to the addresses set forth below or to such other address subsequently established by notice:

To Owner: Allegheny Power
Attn: Real Estate Dept.
800 Cabin Hill Drive
Greensburg, PA 15601
To Licensee: MCI Communications Services, Inc.
2400 North Glenville Dr.
Richardson, TX 75082

23. Termination

Except as herein otherwise provided, this agreement may be terminated by either party at the end of the tenth (10) calendar year following the year in which this agreement becomes effective, or at the end of any month thereafter, by the giving of written notice to the other party to such effect not less than one year prior to such termination.

24. Default of Performance

In the event the Licensee shall default in the performance of any of its obligations hereunder, and shall fail to remedy such default within thirty (30) days after notice thereof from the Owner, in addition to any other actions authorized herein the Owner may, (a) upon ten (10) days' prior written notice, require immediate removal of any attachments, lines and appurtenance of the Licensee involved in such default or (b) upon sixty (60) days' prior written notice terminate said agreement. Termination shall not eliminate a party of liabilities or obligations that accrued prior to the termination.

25 Removal

All attachments, lines and appurtenances of the Licensee shall be removed by not later than the effective date of any termination hereof. In the event the Licensee fails to remove its attachments, lines and appurtenances as required herein, the Owner may remove the same from its poles, anchors and rights-of-way at the expense of the Licensee.

26. Prior Agreements

This agreement constitutes the entire agreement between the parties, superseding all prior communications and agreements, whether written or oral, and it may not be modified or amended, nor may any obligation of either party be changed or modified, except in writing signed by the duly authorized officers or agents of the party against which enforcement of modifications is sought. .

27. Assignment

The Licensee shall not assign this Agreement or any part thereof, without the prior written consent of the Owner, such consent not to be unreasonably withheld.

28. Partial Invalidity.

If any portion of this agreement is declared invalid or unenforceable by a court of competent jurisdiction, the balance of the agreement shall remain in full force and effect and the stricken provision shall be replaced by a similar provision drafted to be as close as possible the stricken provision yet remain legally valid and enforceable.

29. Pole Loading Calculations

Licensee is responsible for determining if, in accordance with requirements of the National Electric Safety Code, the existing Owner's facilities will support the additional loading imposed by the Licensee's attachment.

Licensee is responsible for any and all costs incurred to improve existing Owner's facilities to provide the minimum clearances and/or support the additional loading imposed by the Licensee's attachment.

IN WITNESS WHEREOF, Licensor and Licensee have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

OWNER

Monongahela Power & Potomac Edison, dba, Allegheny Power

By Karen S Lind

Title: Manager, Lines Dist. Maintenance

Date 11-13-04

LICENSEE:

MCI COMMUNICATIONS SERVICES, INC.

By Lisa E Kahn

Title: Manager, Network Contract Services

Date 11.09.09

Exhibit 5

PotomacEdison
A FirstEnergy Company

01/07/2019 | Cust/IAR Number 800918661 / 120008606630

Invoice No. 90598069

Bill for:
VERIZON MARYLAND INC
ALLISON THOMAS
309 INTERNATIONAL CIR STE 110
COCKEYSVILLE MD 21030

Total due by 02/06/2019

To avoid a possible Late Payment Charge being added to your bill,please pay by the due date.

General Description

DO NOT MAIL-PLEASE RETURN TO Dan Link @G-CH

Item	Description	Qty	Total
1	Pole Attach Telephone	79,264.000	[redacted]
2	Pole Attachments - Cont Power Supply-MD	0.000	0.00
3	Pole Attach Anchor Guy	185.000	[redacted]
4	Pole Attach Allegheny Power	21,634.000	
5	ALLEGHENY ANCHOR GUY MARYLAND	7.000	

FIRST ENERGY CONTRACT #40013182
Former Allegheny Power Contract #20000182
FIS Code 01

2019
ANNUAL POLE ATTACHMENT RENT

Invoice questions, please contact:
Dan Link
dalink@firstenergycorp.com
724-830-5834

General Information

(Description Continued - Next Page)

Written correspondence may be mailed to:
Attn: Accounts Receivable, 6th Floor
FirstEnergy Corp.
76 S Main St
Akron OH 44308

Questions regarding this invoice may be directed to Accounts Receivable:

1-301-582-5290

PotomacEdison
A FirstEnergy Company

Return this part with a check or money order payable to:
POTOMAC EDISON
Write name, phone, or address changes on back and check here.

Invoice No.	Customer PO No.	Your Check Number/Date	Contract No.
90598069	01		120008606630

Amount Paid	
Please Pay	[redacted]
Due By	02/06/2019

POTOMAC EDISON
P.O. BOX 3615
AKRON OH 44309-3615

VERIZON MARYLAND INC
ALLISON THOMAS
309 INTERNATIONAL CIR STE 110
COCKEYSVILLE MD 21030

0912000860663000000000905980694000890356860890356864

PotomacEdison
A FirstEnergy Company

Bill for:	Date/Doc. no.	Page
VERIZON MARYLAND INC	01/07/2019 / 90598069	2 of 2
ALLISON THOMAS		
309 INTERNATIONAL CIR STE 110		

General Description (Continued)

Subtotal	[redacted]
Total Amount Due	

Exhibit 6

William J. Balcerski
Assistant General Counsel

verizon

VC54N070A
One Verizon Way
Basking Ridge, NJ 07920-1025

Phone 908 559-5560
Fax 908-766-8264
william.j.balcerski@verizon.com

April 30, 2012

Michael G. Wolfe, Esq.
FirstEnergy Corp. - Metropolitan Edison
2800 Pottsville Pike Box 16001
Reading, Pa. 19612

RE: Verizon Request to Purchase FirstEnergy-Metropolitan Edison Joint Use Poles

Dear Mr. Wolfe:

For over two years, Verizon has sought to purchase Met-Ed joint use poles in accordance with the terms of our companies' Joint Use Agreements. These agreements are as follows:

1. Met-Ed and Bell Telephone (now Verizon Pennsylvania) executed on September 28, 1973; amended on June 1, 2009

2. Met-Ed and Continental Telephone (now Verizon North) executed on March 17, 1972; amended on December 10, 1974 and June 1, 2009

3. Met-Ed and Quaker State Telephone (Verizon North) executed on January 8, 1971; amended on December 10, 1974 and June 1, 2009

4. Met-Ed and Bethel and Mt. Aetna Telephone (Verizon North) executed on January 1, 1968; amended on May 20, 1974 and June 1, 2009

5. Met-Ed and York Telephone (Verizon North) executed on May 22, 1967; amended January 1, 1974 and June 1, 2009.

There are provisions in each of these agreements that specify that the "ratio of ownership of the total number of joint use poles shall be considered balanced when the ratio of pole ownership attained is 55% - Met-Ed and 45% - Telephone." If that ratio is not maintained, the party that owns less than the requisite number of poles must make a deficiency payment to the other party. Currently, Verizon Pennsylvania owns only 18% of the Joint Use poles and Verizon North only owns 19%. As a result, in accordance with the terms of the contract, Verizon has been forced to make deficiency payments to Met-Ed. In 2011, the payments totaled [redacted]. Verizon would not have to make these payments if Met-Ed sold poles to Verizon as required by the terms of the Joint Use Agreement.

All of the joint use agreements have a provision that grants each party the right to purchase poles from the other party in an attempt to balance joint ownership at the 55/45 ratio. Despite our repeated demands, Met-Ed has refused to sell Verizon any poles without good cause. Verizon is seeking to purchase a total of 41,633 joint use poles, spread out among the five following joint use agreements as follows:

District	ST	COMPANY NAME	Total JU Poles	Met-Ed Poles	VZ Poles	Telco Share per contract	2012 # of Poles Def. to Purchase
EPA	PA	GPU METED - Eastern - 11002 (deficiency)	49,164	39,067	10,097	22,123	12,026
WPA - fBA	PA	GPU METED - Central - 11001 (deficiency)	31,566	26,819	4,747	14,204	9,457
WPA -fGTE	PA	GPU METED - Quaker - 11008 (deficiency)	12,989	10,897	2,092	5,845	3,759
WPA -fGTE	PA	GPU METED - Contel - 11007 (deficiency)	885	779	106	398	292
WPA -fGTE	PA	GPU METED - Verizon North - 11011(deficiency)	64,544	51,599	12,945	29,044	16,099
			159,148	129,161	29,987	71,614	41,633

Verizon has offered to facilitate the purchase of the joint use poles by using the same Pole Sale Process that has been used in the past for purchasing joint use poles. To date, Met-Ed has refused to sell Verizon these poles.

While Verizon would prefer to purchase the poles to achieve the 55/45 ratio set forth in the Joint Use Agreements, Verizon is also willing to entertain renegotiation of the rental fee associated with the deficiency payments set forth in the Agreements. The current rental fees were established in a Memorandum of Understanding (MOU) that was negotiated and executed on June 1, 2009. However, we believe that the rate that Verizon currently pays [redacted] per pole) is not just and reasonable and far in excess of the rate that Met-Ed may charge under the rules established by the FCC in its April 7, 2011 Order.

At this time, Verizon cannot determine whether the rates, terms and conditions of our Joint Use Agreements are comparable to the rates, terms and conditions offered to our competitors. To facilitate that analysis, we request that Met-Ed provide us with copies of the agreements that are offered to telecommunications carriers and cable operators that operate in the same territories as Verizon. I would point out that the FCC in its Order indicated that it expects that electric utilities will provide copies of these agreements to incumbent LECs to facilitate discussions between the parties. Without this information, Verizon cannot determine what is the appropriate rate that it should pay for attachments to Met-Ed poles but we believe that it is certainly far less than the rate that we are currently paying and most likely would be somewhere in the range of $5.30 to $12.10 per pole.

Please let me know if Met-Ed is willing to either: (1) sell Verizon the poles discussed above pursuant to the provisions of the joint use agreements or, (2) in the alternative, reduce the rental fees. If Verizon and Met-Ed cannot reach an amicable solution, Verizon reserves the right to file a complaint with the FCC and take such other action as may be appropriate, including reducing the deficiency payments. We hope that this will not be necessary.

Please feel free to contact me if you have any questions. Norm Parrish of Verizon has been working with Met-Ed representatives on this issue and is ready to work with them to resolve this matter quickly and fairly.

Very truly yours,

William J Balcerski

WJB/vjw

Exhibit 7

From: Parrish, Norman L
Sent: Friday, August 17, 2012 3:03 PM
To: sschafer@firstenergycorp.com
Cc: Slavin, James <james.slavin@one.verizon.com>; Bachmore, John J <john.j.bachmore@one.verizon.com>; Snyder, Joseph A <joseph.a.snyder@one.verizon.com>; Dennin JR, R C (Ray) <r.c.dennin.jr@one.verizon.com>; Balcerski, William J <william.j.balcerski@one.verizon.com>
Subject: FW: Verizon/Met-Ed Joint Use

Steve,

Your legal counsel has recommend that the business leaders get together to discuss Verizon's request as outline in the attached letter. Verizon is willing to participate in a meeting to discuss Verizon's request, but I'm confused by First Energy demand for Verizon to "set and maintain more poles than is current practice" in order to entertain Verizon's request to purchase joint use poles. Such a demand to arbitrarily set more poles is not a requirement in our joint use agreement, and Verizon already maintains its poles and will continue to do so.

Before we meet, I wanted to clarify Verizon's position so that there is no ambiguity. Verizon will no longer pay the unreasonable penalty rate that we are being charged if Met-Ed refuses to sell Verizon joint use poles so that Verizon can achieve parity as specified in the joint use agreement. Verizon has been requesting to purchase poles from Met-Ed for several years to create "parity status" in our joint use agreement. From the inception of these joint use agreements, Verizon and Met-Ed were never at "parity", which means from the beginning Verizon has been forced to pay the deficiency payments to Met-Ed. In fact, the gap in parity is so great that normal daily joint use pole sets (where either party would have the opportunity to recover their capital pole investment) would not reduce the parity deficiency that currently exists.

Verizon is willing to resolve this issue amiably, and have provided an alternative solution for Met-Ed as outlined in the attached letter. Is Met-Ed willing to meet with Verizon on September 20, 2010? I can make arrangements to have the meeting at Verizon's Engineering Office 180 Sheree Boulevard Suite Exton, Pa. 19341. Please advise. Thanks.

Regards,

Norman L. Parrish
Manager - Network Engineering
180 Sheree Boulevard Suite 2100
Exton, Pa 19341
(610)-280-2152

From: Balcerski, William J
Sent: Friday, August 10, 2012 3:41 PM
To: Parrish, Norman L
Subject: FW: Verizon/Met-Ed Joint Use

William J. Balcerski
Assistant General Counsel
VC54N070A
One Verizon Way
Basking Ridge, New Jersey 07920-1097
908-559-5560

908-766-8264 (fax)

From: mwolfe@firstenergycorp.com [mailto:mwolfe@firstenergycorp.com]
Sent: Friday, August 10, 2012 2:37 PM
To: Balcerski, William J
Cc: sschafer@firstenergycorp.com
Subject: RE: Verizon/Met-Ed Joint Use

Bill, we met internally late last week and have a couple follow on calls to make. In the meantime, my recommendation would be for Norm Parrish to reach out to Steve Schafer to set up a meeting between the appropriate business/operating folks within our two companies and determine if these issues can be resolved. In that regard it would be helpful for Norm to provide in advance his 'going forward ' plan, which Steve had requested when they last spoke, directed at having Verizon set and maintain more poles than is current practice. After such meeting[s], if they are unable to reach resolution, we could get involved as necessary. Please let me know your thoughts. Mike

---

Our internal meeting has been rescheduled three times due to storms. Currently scheduled for next week.

From: "Balcerski, William J" <william.j.balcerski@verizon.com>
To: "mwolfe@firstenergycorp.com" <mwolfe@firstenergycorp.com>
Date: 07/27/2012 02:59 PM
Subject: RE: Verizon/Met-Ed Joint Use

Where does this stand?

William J. Balcerski
Assistant General Counsel
VC54N070A
One Verizon Way
Basking Ridge, New Jersey 07920-1097
908-559-5560
908-766-8264 (fax)

From: mwolfe@firstenergycorp.com [mailto:mwolfe@firstenergycorp.com]
Sent: Friday, June 01, 2012 5:16 PM
To: Balcerski, William J
Subject: Verizon/Met-Ed Joint Use

William, I am in receipt of your letter and as soon as I am able to conduct an internal meeting with my client I will be in touch. Mike --

Exhibit 8

From: Parrish, Norman L
Sent: Monday, September 10, 2012 4:43 PM
To: 'lchapman@firstenergycorp.com'
Cc: 'sschafer@firstenergycorp.com'; 'dhawk@firstenergycorp.com'; 'kpatrick@firstenergycorp.com'; Parrish, Norman L
Subject: RE: Met-Ed and Penelec Rate Calculations

Len,

Although the PENELEC agreement calculation is computed correctly as specified in the MOU between Verizon and First Energy PENELEC, Verizon cannot determine whether the PENELEC rates, terms and conditions of our Joint Use Agreements are comparable to the rates, terms and conditions offered to our competitors. We believe that the rate that Verizon currently pays is in excess of the rate that PENELEC may charge under the rules established by the FCC in its April 7, 2011 Order. Accordingly, Verizon reserves the right to dispute the rate and seek a refund from PENELEC.

As for the rate calculation for the MET-ED/Verizon agreement**,** I have previously provided you notice that Verizon will no longer pay the unreasonable penalty rate that we are being charged if Met-Ed refuses to sell Verizon joint use poles so that Verizon can achieve parity as specified in the joint use agreement. While Verizon would prefer to purchase the poles to achieve the 55/45 ratio set forth in the Joint Use Agreements, Verizon is also willing to entertain renegotiation of the rental fee associated with the deficiency payments set forth in the Agreements. The current rental fees were established in a Memorandum of Understanding (MOU) that was negotiated and executed on June 1, 2009. However, we believe that the rate that First Energy is suggesting that Verizon pays [redacted] per pole) is not just and reasonable and far in excess of the rate that Met-Ed may charge under the rules established by the FCC in its April 7, 2011 Order.

In order for Verizon to determine whether the rates, terms and conditions of our Joint Use Agreements are comparable to the rates, terms and conditions offered to our competitors, we again request that Met-Ed provide us with copies of the agreements that are offered to telecommunications carriers and cable operators that operate in the same territories as Verizon. I would point out that the FCC in its Order indicated that it expects that electric utilities will provide copies of these agreements to incumbent LECs to facilitate discussions between the parties. Without this information, Verizon cannot determine what is the appropriate rate that it should pay for attachments to Met-Ed poles but we believe that it is certainly far less than the rate that we are currently paying and most likely would be somewhere in the range of $5.30 to $12.10 per pole.

I'm pleased that First Energy has agreed to meet with Verizon to discuss the MET-Ed agreement with Verizon. I should know within a day or two if the October dates provided works for the Verizon team. Thanks.

Norman L. Parrish
Manager - Network Engineering
180 Sheree Boulevard Suite 2100
Exton, Pa 19341
(610)-280-2152

From: lchapman@firstenergycorp.com [mailto:lchapman@firstenergycorp.com]
Sent: Monday, September 10, 2012 11:11 AM
To: Parrish, Norman L
Cc: sschafer@firstenergycorp.com; dhawk@firstenergycorp.com; kpatrick@firstenergycorp.com
Subject: Met-Ed and Penelec Rate Calculations

Norm,

Attached are the 2012 Verizon rate calculations based on the 2009 executed MOU and the January 2012 HWI and AUS indexes for Penelec and Met-ED. Please let me know if you concur with the calculations.

Thanks
Len Chapman
Penelec Joint Use
311 Industrial Park Road
Johnstown, Pa 15904
Office 814-269-6693
Wireless 814-241-6995 --

Exhibit 9

KELLER AND HECKMAN LLP
Serving Business through Law and Science®

1001 G Street, N.W.
Suite 500 West
Washington, D.C. 20001
tel. 202.434.4100
fax 202.434.4646

Writer's Direct Access
Thomas B. Magee
(202) 434-4128
magee@khlaw.com

January 25, 2013

Via Electronic Mail and Overnight Delivery

William J. Balcerski
Assistant General Counsel
Verizon
VC54N070A
One Verizon Way
Basking Ridge, NJ 07920-1025

Re: Verizon Notice of Default/Met-Ed Counter Notice of Default

Dear Mr. Balcerski:

We have been retained by FirstEnergy Corporation to help resolve the issues identified in your "Notice of Default" letter of December 13, 2012, which alleges that Metropolitan Edison ("Met-Ed") has refused to sell poles to Verizon.

Your letter suggests that Verizon may refuse to pay Met-Ed's latest invoices for deficiency payments. Those five invoices from October 2012 are attached. They total approximately [redacted], and cover the deficiency in pole ownership for calendar year 2011. Obviously, a pole ownership deficiency from 2011 cannot be "cured" by any pole sale today. The Joint Use Agreements require Verizon to pay for that deficiency and your payment is past due. Accordingly, this letter serves as Met-Ed's counter Notice of Default to Verizon. Please advise when Met-Ed can expect payment for the 2011 deficiency invoices in order to cure this Default. You have 60 days in which to do so.

You claim that the Agreements require a 55:45 ownership ratio, that the Agreements require Met-Ed to sell poles to Verizon, and that Met-Ed has "steadfastly refused" for nearly three years to sell Verizon any poles. Each of these claims is incorrect.

The parties' five agreements calculate the deficiency payment based on a 55:45 ownership ratio, but the Continental Telephone (#11007) and Quaker State Telephone (#11008) agreements make any pole sale to achieve that ratio entirely optional, by requiring each Company, "if it so desires," to sell poles to the other (see Article IV). The other three (Bell Telephone, Bethel and Mt. Aetna Telephone, and York Telephone, #s 11001, 11002 and 11011), allow the parties to refuse to sell poles to the other for "good cause" (see Article X). Despite the parties' ongoing discussions and repeated requests from Met-Ed, Verizon to date has provided no evidence that it has established any wood pole inspection and maintenance ("I&M") program, or that it is capable of setting taller replacement poles or responding in a timely fashion to down poles in an emergency. These all appear to qualify as "good cause." Further, despite repeated opportunities for Verizon to set more poles such as new pole lines, pole relocations, storm restoration poles, and priority one poles, Verizon has shown no initiative to do so.

Verizon's apparent reluctance to invest in a pole I&M program is particularly troublesome, considering the potential safety risks. You may recall, for example, that a Denver jury awarded Andy Blood, a 25-year-old former lineman for Xcel Energy, $39 million after he was paralyzed following the collapse of a rotted pole owned by Qwest Communications. Denver District Court Judge Sheila Rappaport increased that total award to $84 million, reportedly based upon Qwest's failure to address its pole I&M problem even after it was sued. To its credit, Qwest then embarked on an extensive, comprehensive pole I&M program covering its entire 14-state service territory.

We have to date seen no such commitment from Verizon. Considering pole sales are "subject to any necessary regulatory approval" (see Articles IV/ X), we expect that the Pennsylvania Public Utility Commission would require such a commitment before approving any sale. As you have been advised, Met-Ed has made commitments to the PUC regarding reliability and I&M standards which they consider very important to the safe and reliable operation of their system.

Contrary to your claim, it appears that Met-Ed has entertained Verizon requests to purchase poles for perhaps a year and a half, not "nearly three years." While the prospect of a pole sale appeared in a laundry list of items for discussion in an August 12, 2009 Norm Parrish letter, sent at the time the MOUs were signed, the subject did not surface again until August 2011, more than two years later.

It is perhaps no coincidence that Verizon's August 2011 interest in purchasing poles was expressed only after the FCC's April 2011 Pole Attachment Order was released. It therefore appears that Verizon's new insistence on a pole sale is being used by Verizon as leverage to renegotiate the MOUs themselves. Only two years earlier, however, Mr. Parrish praised the MOUs, which "amiably resolved" the Parties' rate issue and finally provided "a common rate structure that is fair and equitable for all the Joint Use Agreements between both companies in Pennsylvania." August 12, 2009 Parrish letter at 1. It therefore appears to Met-Ed that Verizon never intended to pay the 2011 deficiency payment and may have been acting in bad faith with respect to its existing obligations under the Agreement. In any event, Met-Ed is willing to continue discussing pole sales with Verizon.

As an alternative to a pole sale, you state that Verizon is willing to accept a new rental rate, which Verizon expects should be lower than the [redacted] deficiency payment that Verizon owes to maintain the 55:45 ratio. The [redacted] rate, however, is a bargain. The agreements, executed 40 years ago, required the deficiency payment to be no less than 90% of Met-Ed's carrying charges (*see e.g.*, Bell Telephone agreement at XI(D)). Met-Ed's carrying charges for year-end 2011 are $145.36, and 90% of $145.36 is $130.82, which is nearly [redacted] the amount that Verizon is paying. It is also notable that when the Parties entered into the various MOUs in June 2009 in order to index these rates, the MOUs contained no requirement at all to sell poles.

You have indicated that Verizon is considering filing an FCC complaint to recover a lower rate. The FCC, however, has indicated that "the Commission is unlikely to find the rates, terms and conditions in existing joint use agreements unjust or unreasonable." Pole Attachment Order, 26 FCC Rcd 5240, at ¶ 216 (2011).

Met-Ed looks forward to meeting with Verizon to continue our discussions. Please let us know when Verizon may be available for such a meeting.

Sincerely,

Thomas B. Magee

Enclosures

cc: M. Wolfe
S. Schafer

Met-Ed
A FirstEnergy Company

10/23/2012 Cust / Acct Number 800143281 / 120001612221

PUBLIC VERSION

Invoice No. 90353751

Bill for:
VERIZON
DEBBIE DELIA
2ND FLOOR
15 E MONTGOMERY AVE
PITTSBURGH PA 15212

Total due by 11/22/2012

To avoid a possible Late Payment Charge being added to your bill,please pay by the due date.

General Description

Attention: Ms. Debbie Delia

Annual billing for Pole Attachments for Agreement dated 9/28/1973 and the Memorandum of Understanding dated August 2009.

CIN # 11001
Invoice Period: January 1, 2011 through December 31, 2011
Total Poles: 31,576
Met-Ed Poles: 26,829
Verizon (Bell North) Poles: 4,747
Telco Share per contract: 14,209
Deficiency: 9,462

Comp Rate: [redacted]

Net Amount Due: [redacted]

Any questions regarding this invoice please contact Katherine Patrick (610) 921-6921.

Item	Description	Qty	Total
1	Joint Use - Annual Rent Billing	1.000	[redacted]

(Description Continued - Next Page)

General Information

Written correspondence may be mailed to:
Business Services
Met-Ed
PO Box 16001 2800 Pottsville Pike
Reading PA 19612

Questions regarding this invoice may be directed to Accounts Receivable:

1-610-921-6927

Met-Ed
A FirstEnergy Company

Return this part with a check or money order payable to:
MET-ED
Write name, phone, or address changes on back and check here. ☐

Invoice No.	Customer PO No.	Your Check Number/Date	Contract No.
90353751			120001612221

Amount Paid	

Please Pay	[redacted]
Due By	11/22/2012

MET-ED
PO BOX 3612
AKRON OH 44309-3612

VERIZON
DEBBIE DELIA
2ND FLOOR
15 E MONTGOMERY AVE
PITTSBURGH PA 15212

0212000161222100000000903537512000636603360636603366

Met-Ed
A FirstEnergy Company

10/23/2012 Cust / Acct Number 800042287 / 120000459608
PUBLIC VERSION

Invoice No. 90353747

Bill for:
VERIZON
DEBBIE DELIA
2ND FLOOR
15 E MONTGOMERY AVENUE
PITTSBURGH PA 15212

Total due by 12/07/2012
To avoid a possible Late Payment Charge being added to your bill,please pay by the due date.

General Description

Attention: Ms. Theresa Baker

Annual billing for Pole Attachments for Agreement dated 9/28/1973 and the Memorandum of Understanding dated August 2009.

CIN # 11002
Invoice Period: January 1, 2011 through December 31, 2011
Total Poles: 49,155
Met-Ed Poles: 39,054
Verizon (Bell South) Poles: 10,101
Telco Share per contract: 22,119
Deficiency: 12,018

Comp Rate: [redacted]

Net Amount Due: [redacted]

Any questions regarding this invoice please contact Katherine Patrick (610) 921-6921.

Item	Description	Qty	Total
1	Joint Use - Annual Rent Billing	1.000	[redacted]

(Description Continued - Next Page)

General Information

Written correspondence may be mailed to:
Business Services
Met-Ed
PO Box 16001 2800 Pottsville Pike
Reading PA 19612

Questions regarding this invoice may be directed to Accounts Receivable:

1-610-921-6927

Met-Ed
A FirstEnergy Company

Return this part with a check or money order payable to:
MET-ED
Write name, phone, or address changes on back and check here. ☐

Invoice No.	Customer PO No.	Your Check Number/Date	Contract No.
90353747			120000459608

Amount Paid	
Please Pay	[redacted]
Due By	12/07/2012

MET-ED
PO BOX 3612
AKRON OH 44309-3612

VERIZON
DEBBIE DELIA
2ND FLOOR
15 E MONTGOMERY AVENUE
PITTSBURGH PA 15212

VZ00184

0212000045960800000000903537470000808571040808571047

10/25/2012 Cust / Acct Number 800307395 / 120003560972
PUBLIC VERSION

Met-Ed
A FirstEnergy Company

Invoice No. 90354072

Bill for:
VERIZON
DEBBIE DELIA
2ND FLOOR
15 E. MONTGOMERY AVENUE
PITTSBURGH PA 15212

Total due by 12/09/2012

To avoid a possible Late Payment Charge being added to your bill,please pay by the due date.

General Description

Attention: Ms. Debbie Delia

Annual billing for Pole Attachments for Agreement dated 5/22/1967 and the Memorandum of Understanding dated August 2009.

CIN #11011
Invoice Period: January 1, 2011 through December 31, 2011
Total Poles: 64,717
Met-Ed Poles: 51,751
Verizon (GTE) Poles: 12,966
Telco Share per contract: 29,122
Deficiency: 16,156
Comp Rate: [redacted]

Net Amount Due: [redacted]

Any questions regarding this invoice please contact Katherine Patrick (610) 921-6921.

Item	Description	Qty	Total
1	Joint Use - Annual Rent Billing	1.000	[redacted]

(Description Continued - Next Page)

General Information

Written correspondence may be mailed to:	Questions regarding this invoice may be directed to Accounts Receivable:
Business Services Met-Ed PO Box 16001 2800 Pottsville Pike Reading PA 19612	1-610-921-6927

Met-Ed
A FirstEnergy Company

Return this part with a check or money order payable to:
MET-ED
Write name, phone, or address changes on back and check here. ☐

Invoice No.	Customer PO No.	Your Check Number/Date	Contract No.
90354072			120003560972

Amount Paid	
Please Pay	[redacted]
Due By	12/09/2012

MET-ED
PO BOX 3612
AKRON OH 44309-3612

VERIZON
DEBBIE DELIA
2ND FLOOR
15 E. MONTGOMERY AVENUE
PITTSBURGH PA 15212

VZ00185

02120003560972000000009035407220010869756810869756 82

Met-Ed
A FirstEnergy Company

10/25/2012 Cust / Acct Number 800307395 / 120003560972

PUBLIC VERSION

Invoice No. 90354071

Bill for:
VERIZON
DEBBIE DELIA
2ND FLOOR
15 E. MONTGOMERY AVENUE
PITTSBURGH PA 15212

Total due by 12/09/2012

To avoid a possible Late Payment Charge being added to your bill,please pay by the due date.

General Description

Attention: Ms. Debbie Delia

Annual billing for Pole Attachments for Agreement dated 3/17/1072 and the Memorandum of Understanding dated August 2009.

CIN #11008
Invoice Period: January 1, 2011 through December 31, 2011
Total Poles: 12,988
Met-Ed Poles: 10,894
Verizon (Quaker State) Poles: 2,094
Telco Share per contract, 5,844
Deficiency: 3,750
Comp Rate: [redacted]

Net Amount Due: [redacted]

Any questions regarding this invoice please contact Katherine Patrick (610) 921-6921.

Item	Description	Qty	Total
1	Joint Use - Annual Rent Billing	1.000	[redacted]

(Description Continued - Next Page)

General Information

	Written correspondence may be mailed to: Business Services Met-Ed PO Box 16001 2800 Pottsville Pike Reading PA 19612	Questions regarding this invoice may be directed to Accounts Receivable: 1-610-921-6927

Met-Ed
A FirstEnergy Company

Return this part with a check or money order payable to:
MET-ED
Write name, phone, or address changes on back and check here. ☐

Invoice No.	Customer PO No.	Your Check Number/Date	Contract No.
90354071			120003560972

Amount Paid	
Please Pay	[redacted]
Due By	12/09/2012

MET-ED
PO BOX 3612
AKRON OH 44309-3612

VERIZON
DEBBIE DELIA
2ND FLOOR
15 E. MONTGOMERY AVENUE
PITTSBURGH PA 15212

VZ00186

02120003560972000000000903540714000252300000252300009

Met-Ed
A FirstEnergy Company

10/25/2012 Cust / Acct Number 800307395 / 120003560972

PUBLIC VERSION

Invoice No. 90353988

Bill for:
VERIZON
DEBBIE DELIA
2ND FLOOR
15 E. MONTGOMERY AVENUE
PITTSBURGH PA 15212

Total due by 12/09/2012

To avoid a possible Late Payment Charge being added to your bill,please pay by the due date.

General Description

Attention: Ms. Debbie Delia

Annual billing for Pole Attachments for Agreement dated 3/17/1972 and the Memorandum of Understanding dated August 2009.

CIN #11007
Invoice Period January 1, 2011 through December 31, 2011
Total Poles: 885
Met-Ed Poles: 778
Verizon (Central) Poles: 107
Telco share per contract: 398
Deficiency: 291
Comp Rate: [redacted]

Net Amount Due: [redacted]

Any questions regarding this invoice please contact Katherine Patrick (610) 921-6921.

Item	Description	Qty	Total
1	Joint Use - Annual Rent Billing	1.000	[redacted]

(Description Continued - Next Page)

General Information

Written correspondence may be mailed to:
Business Services
Met-Ed
PO Box 16001 2800 Pottsville Pike
Reading PA 19612

Questions regarding this invoice may be directed to Accounts Receivable:

1-610-921-6927

Met-Ed
A FirstEnergy Company

Return this part with a check or money order payable to:
MET-ED
Write name, phone, or address changes on back and check here. ☐

Invoice No.	Customer PO No.	Your Check Number/Date	Contract No.
90353988			120003560972

Amount Paid	
Please Pay	[redacted]
Due By	12/09/2012

MET-ED
PO BOX 3612
AKRON OH 44309-3612

VERIZON
DEBBIE DELIA
2ND FLOOR
15 E. MONTGOMERY AVENUE
PITTSBURGH PA 15212

0212000356097200000000903539880000019578480019578487

Exhibit 10

From: DeWitt, Deanna R [mailto:ddewitt@firstenergycorp.com]
Sent: Wednesday, April 12, 2017 12:24 PM
To: Mills, Stephen C (Steve)
Cc: Schafer, Stephen F
Subject: [E] RE: *EXTERNAL* FW: VZ - ME Rate Discussion

Steve,

Thank you for bringing this to our attention. We have confirmed that your records for 11007 do indeed match Met-Ed's last billing period. I have corrected and have made a few revisions to the attached spreadsheet.

Regards,
Deanna DeWitt
724-830-5967

From: stephen.c.mills@verizon.com [mailto:stephen.c.mills@verizon.com]
Sent: Tuesday, April 11, 2017 8:51 AM
To: DeWitt, Deanna R <ddewitt@firstenergycorp.com>; Schafer, Stephen F <sschafer@firstenergycorp.com>
Subject: *EXTERNAL* FW: VZ - ME Rate Discussion

Deanna,

Have you had a chance to look at the pole count numbers again? I wanted to be sure we have that straight before moving forward with a proposal.

verizon

Steve Mills
Consultant Contract Management
Network Operations & Engineering
Verizon Wireline Network

502 E. Piedmont St
Culpeper, VA 22701

O 540.829.2711
stephen.c.mills@verizon.com

From: Mills, Stephen C (Steve)
Sent: Wednesday, April 05, 2017 3:44 PM
To: 'DeWitt, Deanna R'; Slavin, James
Cc: Schafer, Stephen F
Subject: RE: VZ - ME Rate Discussion

Deanna,

I've been looking at the pole counts again and on your sheet it shows the same pole count numbers for the 11007 and the 11011 agreement. I believe that is where the difference is. From our records we show the 11007 agreement as having pole ownership of 776/107, Met-Ed/Verizon respectively. Can you double check the figures please? Thank you.

Steve Mills
Consultant Contract Management
Network Operations & Engineering
Verizon Wireline Network

502 E. Piedmont St
Culpeper, VA 22701

O 540.829.2711
stephen.c.mills@verizon.com

From: DeWitt, Deanna R [mailto:ddewitt@firstenergycorp.com]
Sent: Monday, April 03, 2017 3:00 PM
To: Mills, Stephen C (Steve); Slavin, James
Cc: Schafer, Stephen F
Subject: [E] VZ - ME Rate Discussion

Steve and Jim,

Attached for your review is a copy of the spreadsheet with rate details from our discussion today.

Regards,
Deanna DeWitt
FirstEnergy Service Company – Joint Use
800 Cabin Hill Drive
Room C208
Greensburg, PA 15601
724-830-5967

CIN	Co. Name	VZ Poles	ME Poles	Total Poles	VZ Apportionment	ME Apportionment	VZ Deficiency Poles	Deficiency Rate	Last Billing Period	Invoice Amount
11001	Verizon of Pennsylvania Inc.	4748	26834	31582	14212	17370	9464	[redacted]	1-1-15 to 12-31-15	[redacted]
11002	Verizon of Pennsylvania Inc.	10105	39050	49155	22120	27035	12015	[redacted]	1-1-15 to 12-31-15	[redacted]
11007	Verizon North Inc.	107	776	883	397	486	290	[redacted]	1-1-15 to 12-31-15	[redacted]
11008	Verizon North Inc.	2094	10897	12991	5846	7145	3752	[redacted]	1-1-15 to 12-31-15	[redacted]
11011	Verizon North Inc.	12969	51864	64833	29175	35658	16206	[redacted]	1-1-15 to 12-31-15	[redacted]
	TOTALS	**30023**	**129421**	**159444**	**71750**	**87694**	**41727**			[redacted]

Joint Use Rental Calculation
Verizon / Met-Ed

Example: 2015 Rate as per MOU

Based on 55:45 Ratio		Parity	Actual	Poles Deficient	MOU Rate	Net
ME	55%	87,694	129,421	0	[redacted]	
VZ	45%	71,750	30,023	41,727		
		159,444	159,444			

Example: 2015 Rate at 50:50 ratio

Based on 50:50 Ratio		Parity	Actual	Ownership Ratio	MOU Rate	Net
ME	50%	0	129,421	81%	[redacted]	
VZ	50%	0	30,023	19%		
		0	159,444			

Exhibit 11

From: Mills, Stephen C (Steve)
Sent: Friday, July 07, 2017 7:12 AM
To: Schafer, Stephen F (sschafer@firstenergycorp.com); ddewitt@firstenergycorp.com
Subject: Verizon/First Energy Joint Use Negotiations - Verizon 2016 ARMIS Data

Deanna and Steve:

Thank you for meeting with us by telephone last week. Attached is the 2016 Pennsylvania ARMIS data that you wanted for use in your next rate proposal.

Please let me know as soon as possible what you have learned about the other issues we discussed. As you know, it is essential that we receive copies of Met-Ed's license agreements with CLECs and cable attachers (or at least a boilerplate agreement) and the 2016-2017 new telecom rates (or ranges of rates) that Met-Ed has charged its licensees so that we can understand and evaluate your claim that the joint use agreements have and will continue to provide Verizon benefits that justify higher rental rates.

We are concerned that these negotiations have been dragging on for years. We would appreciate receiving Met-Ed's rate proposal, and the information about its license agreements and rates, by July 21. Please let me know if there is some reason why that will not be possible.

Sincerely,

verizon

Steve Mills
Consultant Contract Management
Network Operations & Engineering
Verizon Wireline Network

502 E. Piedmont St
Culpeper, VA 22701

O 540.829.2711
stephen.c.mills@verizon.com

POLE CALCULATION INPUTS FOR RATE YEAR 2016
Source: ARMIS ANNUAL SUMMARY REPORT
FCC Report 43-01, Table III, From Jan 2016 to Dec 2016

y/e 2016
ARMIS/Accounting Data

		FCC 9NP-PA GTPA VERIZON NORTH - PENNSYLVANIA P11A	FCC 9N8-P3 COPA VERIZON NORTH - CONTEL PENNSYLVANIA PAC1	FCC 9N8-QS COQS VERIZON NORTH - QUAKER STATE PAC2	FCC PAPA VERIZON PENNSYLVANIA - PENNSYLVANIA	FCC Pennsylvania Total State 9NP-PA 9N8-P3 9N8-QS PAPA
	Table III - Pole and Conduit Rental Calculation Information					
Row	Row Title	Amount	Amount	Amount	Amount	Total
100	Telecommunications Plant-in-Service	1,270,688,000	144,572,000	117,537,000	15,234,348,000	16,767,145,000
101	Gross Investment - Poles	62,030,000	9,641,000	14,231,000	423,842,000	509,744,000
102	Gross Investment - Conduit	52,758,000	1,869,000	399,000	966,438,000	1,021,464,000
200	Accumulated Depreciation - Total Plant-in-Service	1,242,024,000	138,096,000	119,782,000	13,501,118,000	15,001,020,000
201	Accumulated Depreciation - Poles	51,358,000	8,884,000	14,712,000	559,243,000	634,197,000
202	Accumulated Depreciation - Conduit	24,456,000	789,000	250,000	657,004,000	682,499,000
301	Depreciation Rate - Poles	4.50	4.50	4.50	6.70	6.70
302	Depreciation Rate - Conduit	1.80	1.80	1.80	2.60	2.60
401	Net Current Deferred Operating Income Taxes - Poles	1,126,000	0	0	0	1,126,000
402	Net Current Deferred Operating Income Taxes - Conduit	957,000	0	0	0	957,000
403	Net Current Deferred Operating Income Taxes - Total	23,052,000	0	0	0	23,052,000
404	Net Non-current Deferred Operating Income Taxes - Poles	-13,166,000	-2,375,000	-2,774,000	-2,303,000	-20,618,000
405	Net Non-current Deferred Operating Income Taxes - Conduit	-11,198,000	-461,000	-78,000	-5,250,000	-16,987,000
406	Net Non-current Deferred Operating Income Taxes - Total	-269,706,000	-35,613,000	-22,911,000	-82,765,000	-410,995,000
501.1	Pole Maintenance Expense	611,000	1,460,000	5,000	21,435,000	23,511,000
501.2	Pole Rental Expense	2,522,000	777,000	1,988,000	22,494,000	27,781,000
501	Pole Expense	3,133,000	2,237,000	1,993,000	43,930,000	51,293,000
502.1	Conduit Maintenance Expense	-11,000	6,000	0	1,869,000	1,864,000
502.2	Conduit Rental Expense	0	0	0	0	
502	Conduit Expense	-11,000	6,000	0	1,869,000	1,864,000
503	General $ Administrative Expense	37,195,000	2,631,000	30,000	455,533,000	495,389,000
504	Operating Taxes	1,870,000	3,100,000	4,555,000	354,101,000	363,626,000
601	Equivalent Number of Poles	140,146	19,888	31,295	936,281	1,127,610
602	Conduit System Trench Kilometers	265	19	2	10,405	10,691
603	Conduit Duct Kilometers	1,182	64	8	67,573	68,827
700	Additional Rental Calculation Information	0	0	0	0	

Exhibit 12

From: DeWitt, Deanna R [mailto:ddewitt@firstenergycorp.com]
Sent: Friday, July 21, 2017 8:56 AM
To: Mills, Stephen C (Steve)
Cc: Schafer, Stephen F
Subject: [E] RE: *EXTERNAL* Verizon/First Energy Joint Use Negotiations - Verizon 2016 ARMIS Data

Steve,

Please find attached a copy of Met-Ed's Pole Attachment Agreement template presented to requesting CLEC / CATV entities with the understanding that modifications are negotiated.

Met-Ed respectfully rejects your 5/22/17 reciprocal rate offer of [redacted] per pole which includes a calculated rate based on Met-Ed's costs, which incidentally is lower than the current CLEC / CATV rate. Using the pre-existing telecom formula as guidance and year-end 2016 ARMIS / FERC costs, we propose the following attachment rates:

ME on VZ poles: [redacted]
VZ on ME poles:

Regards,

Deanna DeWitt
Supervisor, Joint Use & Cable Locating
FirstEnergy Service Company
800 Cabin Hill Drive
Room C208
Greensburg, PA 15601
724-830-5967
FirstEnergy

From: stephen.c.mills@verizon.com [mailto:stephen.c.mills@verizon.com]
Sent: Friday, July 07, 2017 7:12 AM
To: Schafer, Stephen F <sschafer@firstenergycorp.com>; DeWitt, Deanna R <ddewitt@firstenergycorp.com>
Subject: *EXTERNAL* Verizon/First Energy Joint Use Negotiations - Verizon 2016 ARMIS Data

Deanna and Steve:

Thank you for meeting with us by telephone last week. Attached is the 2016 Pennsylvania ARMIS data that you wanted for use in your next rate proposal.

Please let me know as soon as possible what you have learned about the other issues we discussed. As you know, it is essential that we receive copies of Met-Ed's license agreements with CLECs and cable attachers (or at least a boilerplate agreement) and the 2016-2017 new telecom rates (or ranges of rates) that Met-Ed has charged its licensees so that we can understand and evaluate your claim that the joint use agreements have and will continue to provide Verizon benefits that justify higher rental rates.

We are concerned that these negotiations have been dragging on for years. We would appreciate receiving Met-Ed's rate proposal, and the information about its license agreements and rates, by July 21. Please let me know if there is some reason why that will not be possible.

Sincerely,

verizon

Steve Mills
Consultant Contract Management
Network Operations & Engineering
Verizon Wireline Network

502 E. Piedmont St
Culpeper, VA 22701

O 540.829.2711
stephen.c.mills@verizon.com

Exhibit 13

From: DeWitt, Deanna R [mailto:ddewitt@firstenergycorp.com]
Sent: Friday, August 11, 2017 4:08 PM
To: Mills, Stephen C (Steve)
Cc: Schafer, Stephen F
Subject: [E] RE: *EXTERNAL* Verizon/First Energy Joint Use Negotiations - Verizon 2016 ARMIS Data

Steve,

Per your request, I have attached PDFs containing data that supports the proposed rates.

In response to your question 2., your email dated 5/22/2017 included a sample calculation assumed to be based on Met-Ed's costs that yields a "VZ Rate to MetEd" of [redacted] which is lower than the current rate of [redacted] /attachment that Met-Ed charges CLEC/CATV attachers.

Regards,

Deanna DeWitt

Supervisor, Joint Use & Cable Locating
FirstEnergy Service Company
800 Cabin Hill Drive
Room M221
Greensburg, PA 15601
724-830-5967

From: Mills, Stephen C (Steve) [mailto:stephen.c.mills@verizon.com]
Sent: Thursday, July 27, 2017 11:55 AM
To: DeWitt, Deanna R <ddewitt@firstenergycorp.com>
Cc: Schafer, Stephen F <sschafer@firstenergycorp.com>
Subject: RE: *EXTERNAL* Verizon/First Energy Joint Use Negotiations - Verizon 2016 ARMIS Data

Deanna,

Thank you for providing a copy of Met-Ed's 2017 template Pole Attachment Agreement. We are currently reviewing the terms and conditions and comparing them to those contained in the joint use agreement that we have been negotiating.

In the meantime, we have a couple questions regarding Met-Ed's proposed attachment rates of [redacted] and [redacted] for Met-Ed and Verizon respectively.

1. You state in your email that the rates are derived by using the "pre-existing telecom formula as guidance." Would you please provide the details of how these rates were calculated -- in particular, the formula that was used, the method by which the pole costs were calculated, and the inputs or assumptions that were used in the formula, e.g., pole height, space occupied, number of attaching entities?

2. You also state that Verizon's proposed [redacted] rate per pole is lower than the current CLEC/CATV rate. However, Section 25(a) of the template Pole Attachment Agreement you provided states that the annual attachment rate per pole shall be the "maximum allowable rate permitted under Section 224 of

the Communications Act" and sets that "agreed" rate at [redacted]. Would you please provide the details of how this rate was calculated and explain why Met-Ed considers Verizon's proposed rate to be "lower than the current CLEC/CATV rate?"

This additional information will help us evaluate Met-Ed's proposal, so we would appreciate receiving it as soon as possible.

Regards,

verizon

Steve Mills
Consultant Contract Management
Network Operations & Engineering
Verizon Wireline Network

502 E. Piedmont St
Culpeper, VA 22701

O 540.829.2711
stephen.c.mills@verizon.com

From: DeWitt, Deanna R [mailto:ddewitt@firstenergycorp.com]
Sent: Friday, July 21, 2017 8:56 AM
To: Mills, Stephen C (Steve)
Cc: Schafer, Stephen F
Subject: [E] RE: *EXTERNAL* Verizon/First Energy Joint Use Negotiations - Verizon 2016 ARMIS Data

Steve,

Please find attached a copy of Met-Ed's Pole Attachment Agreement template presented to requesting CLEC / CATV entities with the understanding that modifications are negotiated.

Met-Ed respectfully rejects your 5/22/17 reciprocal rate offer of [redacted] per pole which includes a calculated rate based on Met-Ed's costs, which incidentally is lower than the current CLEC / CATV rate. Using the pre-existing telecom formula as guidance and year-end 2016 ARMIS / FERC costs, we propose the following attachment rates:

ME on VZ poles: [redacted]
VZ on ME poles: [redacted]

Regards,

Deanna DeWitt
Supervisor, Joint Use & Cable Locating
FirstEnergy Service Company
800 Cabin Hill Drive
Room C208
Greensburg, PA 15601
724-830-5967
FirstEnergy

From: stephen.c.mills@verizon.com [mailto:stephen.c.mills@verizon.com]
Sent: Friday, July 07, 2017 7:12 AM
To: Schafer, Stephen F <sschafer@firstenergycorp.com>; DeWitt, Deanna R <ddewitt@firstenergycorp.com>
Subject: *EXTERNAL* Verizon/First Energy Joint Use Negotiations - Verizon 2016 ARMIS Data

Deanna and Steve:

Thank you for meeting with us by telephone last week. Attached is the 2016 Pennsylvania ARMIS data that you wanted for use in your next rate proposal.

Please let me know as soon as possible what you have learned about the other issues we discussed. As you know, it is essential that we receive copies of Met-Ed's license agreements with CLECs and cable attachers (or at least a boilerplate agreement) and the 2016-2017 new telecom rates (or ranges of rates) that Met-Ed has charged its licensees so that we can understand and evaluate your claim that the joint use agreements have and will continue to provide Verizon benefits that justify higher rental rates.

We are concerned that these negotiations have been dragging on for years. We would appreciate receiving Met-Ed's rate proposal, and the information about its license agreements and rates, by July 21. Please let me know if there is some reason why that will not be possible.

Sincerely,

verizon

Steve Mills
Consultant Contract Management
Network Operations & Engineering
Verizon Wireline Network

502 E. Piedmont St
Culpeper, VA 22701

O 540.829.2711
stephen.c.mills@verizon.com

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[redacted]

[redacted]

[redacted]

Exhibit 14

Steve Mills
Consultant Contract Management
502 E. Piedmont St
Culpeper, VA 22701
Stephen.c.mills@verizon.com
(540) 829-2711

November 2, 2017

Deanna DeWitt
Supervisor Joint Use and Cable Locating
FirstEnergy Service Company
800 Cabin Hill Dr
Room M221
Greensburg, PA 15601
(724) 830-5967

BY EMAIL AND CERTIFIED MAIL

Dear Deanna,

Thank you for providing us a copy of Met-Ed's 2017 draft license agreement. Our purpose in originally requesting the draft back in early 2012 was to determine how the provisions of the draft license agreement, including the pole rental rate, compare to those being discussed in our ongoing effort to reach agreement on a new joint use agreement. Our review revealed that terms of the draft license agreement are not materially different from the terms of the parties' current Joint Use Agreements or the draft joint use agreement that we have been negotiating. In this respect, the draft license agreement confirms our view that Verizon has been entitled to the FCC's new telecom rental rate since the FCC issued its Pole Attachment Order back in 2011.

The Commission's recent Order in the Dominion pole attachment complaint proceeding fully supports our conclusion. The FCC's Enforcement Bureau vacated the rental rate in a "new" agreement because it was not just and reasonable and confirmed that Verizon was entitled to a refund of overpayments above the "just and reasonable' rate since the effective date of the Order. The Enforcement Bureau further confirmed that rate relief would also be warranted under an "existing" agreement if it, like the agreements here, was entered when the ILEC's pole ownership numbers placed it in an inferior bargaining position. In the Dominion proceeding, a 65% to 35% pole ownership disparity was sufficient to justify rate relief. Here, the disparity is even greater, with Met-Ed owning 81% of the joint use poles now and when the current rates were imposed on Verizon.

The Commission's Dominion Order and its pending Infrastructure NPRM confirm that the parties should be negotiating an appropriate new telecom rate for Verizon. Under our joint use arrangement, Verizon bears significant pole maintenance and replacement costs that are not imposed on our competitors. As such, Verizon does not enjoy any advantages that would justify a departure from the new telecom rate. Even under the draft joint use agreement, Verizon would not have an advantage over its competitors because we have worked to negotiate an agreement with modernized cost-causer terms and conditions.

While we appreciate Met-Ed's willingness to modify its rates, its series of offers all result in Verizon continuing to make a net annual pole payment in the [redacted] dollar range. For example, in 2016, Met-Ed invoiced Verizon for about [redacted]. Met-Ed's next rate offer, in April 2017, reduced that payment by $465. Similarly, its July offer would require Verizon to continue paying nearly [redacted] in annual payments – about a 1.5% discount off the 2016 invoiced amount. In stark contrast, were Verizon and Met-Ed to pay properly calculated proportional new telecom rates, the limited data currently available to Verizon shows that Verizon's annual net payment, using 2016 cost data, should be about $795,000, and possibly lower.

The latest rate offered by Met-Ed is [redacted], which is over [redacted] times the [redacted] new telecom rate that Met-Ed charges Verizon's competitors. In addition to this rate not being calculated under the new telecom rate formula, it is inflated by Met-Ed assigning Verizon 3 feet of occupied space, even though Verizon does not use 3 feet of space on Met-Ed's poles (nor is Verizon even allocated 3 feet of space under the Joint Use Agreements). Met-Ed also uses an average of 3.33 attaching entities but has not provided any survey evidence that supports this number. Verizon also notes that the number is different from Met-Ed's earlier position that its poles average 4 attaching entities. In the absence of actual data, the FCC's presumptive inputs apply.

In the Dominion Order, the Commission found that it was unjust and unreasonable for a power company to demand that Verizon pay a higher rate than the power company is willing to pay for the use of more space on each joint use pole. In our case, while Met-Ed occupies significantly more space on each pole than Verizon, it proposes to pay Verizon [redacted] per pole for that space, while proposing to charge Verizon [redacted] per pole.

Despite our efforts for nearly six years to agree on a just and reasonable rate, we have not been successful. Therefore, Verizon requests that executives of the parties with sufficient authority meet as soon as possible to resolve this dispute. If we are unable to reach agreement on a just and reasonable rental rate at the face-to-face meeting, Verizon will have no other option than to seek rate relief at the FCC and refunds for the amounts it has overpaid.

Please let us know as soon as possible when Met-Ed is available to meet during the next four weeks. If it will facilitate scheduling, Verizon is amenable to meeting at a location of Met-Ed's choosing.

Sincerely,

Stephen Mills

Exhibit 15

PUBLIC VERSION

FirstEnergy

Deanna R. DeWitt
Supervisor, Corporate Joint Use
800 Cabin Hill Dr.
Greensburg, PA 15601
(724) 830-5967

December 20, 2017

Steve Mills
Consultant Contract Management
Verizon
502 E. Piedmont St.
Culpeper, VA 22701
(540) 829-2711

BY EMAIL AND CERTIFIED MAIL

Dear Steve,

I received the letter you sent in November, please accept my apologies for the delay in getting back to you. I hope you will receive this letter in the spirit of our sincere desire to continue negotiations in this matter. I believe that further progress can be made, as our rental rate discussions have not run their course.

Our initial communications on this matter involved setting the ground work for approaching the conversation. As you recall, on April 3, 2017, we discussed the concept of establishing a frame of reference regarding the rental rates. The outcome of this exercise [redacted] pole) was not intended to represent an offer. Thereafter on May 22, 2017, you communicated Verizon's first proposal based on the FCC's new telecom formula rate using each party's respective costs. Your calculation resulted in a rental rate of [redacted] for Verizon to Met-Ed, and [redacted] for Met-Ed to Verizon. You proposed splitting the difference between these two rates for a reciprocal rate of [redacted]/pole, less than one-third the effective contract rate. As you noted in your May email, Verizon proposed to decrease the current contractual billing from approximately [redacted] annually to barely over [redacted] annually.

Met-Ed rejected this offer, and after the parties exchanged more information, Met-Ed proposed to use the FCC's pre-2011 telecom rate formula to guide our negotiations. Met-Ed's calculation using that formula resulted in rates of [redacted] for Verizon to Met-Ed and [redacted] for Met-Ed to Verizon, based on 2016 FERC and ARMIS data, respectively. In late July, you requested details of this rate calculation to help Verizon evaluate its offer, which I sent to you in early August. Nearly two months later, I sent follow-up inquiry as to whether I could provide more information to assist Verizon in its review of our first counter-offer. You replied in the negative.

Frankly, I was somewhat surprised that your next communication was not a counter-offer or further discussion about our positions, but instead characterized our dialogue as a stalemate and requested the matter to be escalated to executives within our companies to attempt to resolve as if no further progress was possible between us. I can't help but wonder if there hasn't been some misunderstanding that lead to this conclusion. I realize that there have been periods of delay between us, such as from work stoppage at Verizon, and storm duty at Met-Ed, but I would hope that we can agree that such delays did not signify unwillingness to negotiate.

I apologize if there was any miscommunication on my part. Of course, I'm happy to set in motion arrangements for an executive level meeting as you have requested; however, I'm hoping that you will agree to further negotiation efforts between us before simply sending it up the ladder to our respective executives. For example, you raised for the first time in your November letter that you believe the new draft agreement was drafted with the intent to eliminate joint use ILEC benefits. From Met-Ed's perspective, there are a number of such benefits that remain in the draft agreement, the starting point for which as you may know began with Verizon's template—not Met-Ed's. It also seems to me that there are a number of factual details to be discussed that have a bearing on an appropriate rental rate before this matter would be ripe for executive level discussions.

Please let me know if you are willing to continue to negotiate at our level, or whether you insist on proceeding to executive level discussions.

Best Regards,

Deanna R. DeWitt

Deanna R. DeWitt

Exhibit 16

Steven E. Strah
Senior Vice President and President, Utilities Business
FirstEnergy Corp.
76 South Main Street
Akron, Ohio 44308

BY CERTIFIED MAIL

Re: Verizon's Pole Attachment Agreements with Met-Ed, Penelec, Potomac Edison, and Penn Power

Dear Mr. Strah:

You may be aware that representatives from our companies have been in discussions since early 2012 in an effort to revise our Joint Use Agreements to conform with the Federal Communication Commission's 2011 *Pole Attachment Order*. That *Order* recognized that Verizon, like its CLEC and cable competitors, is entitled to just and reasonable, competitively neutral rates, terms, and conditions for its pole attachments.

To date, Verizon has worked with Stephen Schafer and Deanna DeWitt to replace Verizon's agreement with Met-Ed, with the expectation that any new agreement could then be replicated across Verizon's relationships with Penelec, Potomac Edison, and Penn Power. Throughout the negotiations, Verizon has been more than willing to compromise. But while the parties have made progress with respect to the operational aspects of a new agreement, FirstEnergy has failed to offer a rental rate or annual payment amount that approaches the requirements of federal law. For example, in 2016, Met-Ed invoiced Verizon for an annual net payment of [redacted]. Met-Ed's two subsequent offers would have required Verizon to make essentially the same annual net payment. In contrast, had First Energy complied with federal law and assigned properly calculated and proportional new telecom rates to both parties, it should have reduced Verizon's annual net payment by over [redacted] (assuming rates calculated using 2016 cost figures, other data available to Verizon, and conservative estimates for data FirstEnergy has not yet provided Verizon). We have reviewed Met-Ed's template license agreement, which confirmed that Verizon has not enjoyed under the current Joint Use Agreements, and will not enjoy under the new agreement as presently drafted, any material advantages relative to its competitors, and certainly none that would justify this extraordinary difference in annual payments.

Verizon has sought rate relief from the FCC in the past, as you may know from the attached Order that was issued in Verizon's dispute with Dominion Energy Virginia. This Order and the Commission's pending Infrastructure NPRM confirm that the Commission is willing to enforce Verizon's right to just and reasonable rates. But our strong preference is for a negotiated resolution. To this end, my team and I would like to sit down with FirstEnergy's senior executives and make one final effort to reach agreement in this longstanding dispute over the pole attachment rates required by the 2011 *Pole Attachment Order*. In the attached November 2nd letter, Verizon asked Ms. DeWitt for meeting dates during the month of November. As of this writing, FirstEnergy has not responded to Verizon's request.

With your involvement, I am hopeful that we can reach a business deal that eliminates the need for the FCC's involvement. To aid in our discussions, I am attaching our rental rate calculations for Verizon, Met-Ed, Penelec, Potomac Edison, and Penn Power. These are based on the best data available to us, and show that FirstEnergy has overcharged Verizon by about [redacted] on average each year since the 2011 *Pole Attachment Order* took effect. In the Dominion matter, the Commission confirmed that Verizon was entitled to refunds going back as far as the statute of limitations permits. Under this standard, Verizon would be entitled to at least [redacted] that it has overpaid to FirstEnergy.

Please let us know as soon as possible when FirstEnergy is available to meet in January or early February. If it will facilitate scheduling, Verizon is amenable to meeting at a location of FirstEnergy's choosing.

Sincerely,

Brian H Trosper

Brian H. Trosper
Vice President – Network Operations
& Engineering
Verizon Communications

Enclosures

Attachments

Attachment A

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Verizon Virginia, LLC and Verizon South, Inc.,	)	Proceeding No. 15-190
	)	Bureau ID No. EB-15-MD-006
Complainants,	)	
	)	
v.	)	
	)	
Virginia Electric and Power Company d/b/a Dominion Virginia Power,	)	
	)	
Respondent.	)	

ORDER

Adopted: May 1, 2017 **Released: May 1, 2017**

By the Acting Chief, Market Disputes Resolution Division:

I. INTRODUCTION

1. In this interim Order, we address two threshold issues raised in a pole attachment complaint by Verizon Virginia, LLC and Verizon South, Inc. (collectively, Verizon) against Dominion Virginia Power (Dominion), challenging the contractual rates that Verizon pays to attach to Dominion's electric utility poles. First, we find that the rates Verizon pays for its attachments to Dominion's poles are not just and reasonable, in violation of Section 224(b)(1) of the Communications Act. Second, we conclude that Verizon is entitled to a refund of overpayments it may have made prior to filing its Complaint, subject to true up of the post-Complaint period in question. We issue this interim order on two threshold issues to expedite final resolution of this case in a subsequent order or by settlement.[1]

II. BACKGROUND

A. Legal Framework

2. Pole attachment rates are the charges that owners of utility poles, including electric utility companies, assess when cable television operators, telecommunications carriers, and others attach their lines to utility poles. Section 224(b)(1) of the Communications Act of 1934, as amended (Act), authorizes the Commission to adopt rules to ensure, *inter alia*, that the rates, terms, and conditions of "pole attachments" are "just and reasonable."[2] Prior to 2011, the Commission construed the "just and reasonable" requirement of Section 224(b)(1) to apply to attachments by cable companies and competitive local exchange carriers (LECs), but not to attachments by incumbent LECs, like Verizon.[3]

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[1] We express no views at this time with respect to the remaining issues raised in the Complaint.

[2] 47 U.S.C. § 224(b)(1); *id*., § 224(a)(4) (definition of "pole attachment"). *See also* 47 CFR §§ 1.1401-1.1424 (Pole Attachment Complaint Procedures).

[3] *Implementation of Section 224; A National Broadband Plan for our Future*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5328, para. 205 & n.614 (2011) (*Pole Attachment Order*), *aff'd sub nom. Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (D.C. Cir. 2013).

Under separate provisions codified in subsections 224(d) and (e),[4] respectively, the Commission established formulas to calculate just and reasonable pole attachment rates for cable attachers (Cable Rate) and competitive LEC attachers (Old Telecom Rate).[5]

3. In 2011, the Commission released the *Pole Attachment Order*, in which it adopted a revised formula under Section 224(e) for computing the pole attachment rate paid by competitive LECs (New Telecom Rate), "thereby reducing the disparity between current telecommunications and cable rates."[6] The Commission also concluded for the first time that the "just and reasonable" requirement of Section 224(b)(1) applies to the rates, terms, and conditions governing attachments by incumbent LECs, such as Verizon.[7] The record indicated that, although incumbent LECs had in the past owned nearly as many poles as electric utility companies, incumbent LEC pole ownership rates had declined,[8] leading the Commission to conclude that "market forces and independent negotiations may not be alone sufficient to ensure just and reasonable rates, terms and conditions for incumbent LEC[] pole attachments."[9] The order identified "a need for targeted Commission oversight" of incumbent LEC attachment agreements "to ensure just and reasonable rates, terms, and conditions that might not otherwise result from negotiations standing alone."[10]

4. In the *Pole Attachment Order*, the Commission also recognized the necessity of analyzing incumbent LEC attachment rates "in a manner that accounts for the potential differences between incumbent LECs and telecommunications carrier or cable operator attachers."[11] It noted that incumbent LECs are unique in that they own many poles and have historically obtained access to electric utility poles through "joint use" agreements.[12] The Commission observed that such joint use arrangements typically provide incumbent LECs a number of advantages not afforded to telecommunications carrier and cable attachers, such as guaranteed space on poles, lower make-ready costs, and the ability to attach without obtaining advance approval.[13] In light of those differences, the Commission did not adopt a

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[4] 47 U.S.C. § 224(d) (describing cable rate formula); *id.* § 224(e) (describing telecommunications carrier rate formula).

[5] *Pole Attachment Order*, 26 FCC Rcd at 5296-97, paras. 129-31 (discussing adoption of separate formulas for determining maximum allowable just and reasonable pole attachment rates for providers of cable service and telecommunications carriers). For purposes of Section 224, the term "telecommunications carrier"- which is otherwise defined as "any provider of telecommunications services," 47 U.S.C. § 153(51) - "does not include any incumbent local exchange carrier." *See* 47 U.S.C. § 224(a)(5).

[6] *Pole Attachment Order*, 26 FCC Rcd at 5244, para. 8. The Old Telecom Rate compensated pole owners for "fully allocated costs," which are the costs a pole owner incurs in installing and maintaining poles even if there are no other attachers. The New Telecom Rate excludes recovery for a number of these costs, and usually results in a rate that is closer to the Cable Rate. *Id.*, 26 FCC Rcd at 5300-01, paras. 141-42.

[7] *See id.*, 26 FCC Rcd at 5331, para. 209 ("incumbent LECs are entitled to pole attachment rates, terms and conditions that are just and reasonable pursuant to Section 224(b)(1)"); *see also id.* at 5243-44, 5327-28, 5330, paras. 8, 202, 208. Unlike cable and competitive LEC attachers, however, incumbent LECs have no right of access to utilities' poles pursuant to Section 224(f)(1). *Id.* at 5328, 5329-30, 5332-33, paras. 202, 207, 212 & n.643.

[8] *Id.* at 5328-29, para. 206.

[9] *Id.* at 5327, para. 199.

[10] *Id.* at 5244, para. 8.

[11] *Id.* at 5333, para. 214.

[12] *Id.* at 5334, para. 214.

[13] *Id.* at 5335, para. 216 n.654.

formula for calculating the rate to be paid by incumbent LECs, opting instead to resolve incumbent LEC disputes on a case-by-case basis in complaint proceedings brought before the Commission.[14] The Commission found it reasonable to use the Old Telecom Rate "as a reference point" in complaint proceedings filed by incumbent LECs to "account for particular arrangements that provide net advantages to incumbent LECs" relative to competitive LECs.[15]

B. The Joint Use Agreements and the Parties' Dispute

5. Dominion and both Verizon South and Verizon Virginia have longstanding relationships as joint users of poles owned by Dominion or Verizon in the parties' overlapping service areas in Virginia.[16] The record reflects that Dominion has at all times relevant to this proceeding owned approximately 65 percent of the parties' joint use poles.[17] In 2006, Dominion and Verizon South began negotiating a new joint use agreement to replace a prior agreement in effect since 1978.[18] Thereafter, Dominion and Verizon Virginia similarly agreed to replace their prior joint use agreement in effect since 1992.[19] Although the parties concluded negotiations and reached an agreement in principal in late 2010, Dominion and Verizon executed virtually identical agreements (Joint Use Agreements)[20] in May and August 2011, respectively,[21] with an effective date of January 1, 2011.[22]

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[14] *Id.* at 5328, 5334, paras. 203, 214. *See also id.* at 5287, para. 102 & n.319 (indicating that in order to expedite pole attachment complaints, "whenever possible, the Enforcement Bureau will resolve pole attachment complaints itself, to the extent permitted by its delegated authority.").

[15] *Id.* at 5337, para. 218.

[16] *See Verizon Virginia LLC and Verizon South Inc. v. Virginia Electric and Power Company d/b/a/ Dominion Virginia Power*, Proceeding No. 15-190, Bureau ID No. EB-15-MD-006, Pole Attachment Complaint, at 42, para. 90 (Aug. 3, 2015) (Compl.) (referencing the parties' decades-old relationship); *Verizon Virginia LLC and Verizon South Inc. v. Virginia Electric and Power Company d/b/a/ Dominion Virginia Power*, Proceeding No. 15-190, Bureau ID No. EB-15-MD-006, Response to Pole Attachment Complaint, at 4 (Nov. 18, 2015) (Resp.) (referencing a succession of reciprocal attachment agreements dating back over seventy years). Any reference to the parties' historic joint use agreements includes any predecessor companies of the parties, as relevant.

[17] The shared Dominion-Verizon network consists of [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] poles, with Dominion owning or controlling [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] poles (65 percent) and Verizon owning or controlling [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] poles (35 percent). *See* Compl. at 6-7, para. 6; Resp., Exh. B (Declaration of William Zarakas) at 3, para. 4 (Zarakas Decl.); Resp. at 13 ("[T]he parties agree that the balance of pole ownership between Dominion and Verizon has not varied over the last several decades of their joint use relationship."); *see also* Reply at 11.

[18] Compl., Exh. B (Affidavit of Stephen Mills) at 4, para. 10 (Mills Aff.); Resp., Exh. A (Declaration of Michael Graf) at 3, 5, paras. 5, 10 (Graf Decl.).

[19] Compl., Exh. B (Mills Aff.) at 4, para. 10; Resp., Exh. A (Graf Decl.) at 5, para. 10 n.9.

[20] *See* Compl., Exh. 1, General Joint-Use Agreement Between Verizon Virginia and Dominion (Jan. 1, 2011) (Verizon Virginia Agreement); Compl., Exh. 2, General Joint-Use Agreement Between Verizon South and Dominion (Jan. 1, 2011) (Verizon South Agreement).

[21] Compl. at 6, para. 5 & n.17; Resp. at 5 & n.14; *id.*, Exh. A (Graf Decl.) at 3, 5, 6, 7, paras. 5, 10, 14, 16; Compl., Exh. B (Mills Aff.) at 4, 6-7, paras. 10, 18. Although Verizon does not indicate when the Joint Use Agreements were executed, it does not dispute Dominion's representation that they were executed by Dominion and Verizon in May and August 2011, respectively.

[22] *See* Joint Use Agreements, Recitals.

6. The Joint Use Agreements reserve [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] of usable space on each pole to Dominion and [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] of usable space to Verizon.[23] They also include, *inter alia*, [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][24] [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][25] [BEGIN CONFIDENTIAL] [redacted] END CONFIDENTIAL][26]

7. In a letter dated October 8, 2013, Verizon notified Dominion of its request for [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][27] Over the next several months, the parties participated in extensive negotiations, including private mediation, in an effort to resolve their differences regarding the annual pole rental rates.[28] In light of their failure to agree on an alternative rate framework, Dominion has continued to bill Verizon for its attachments to Dominion's poles in accordance with the Joint Use Agreements.[29]

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[23] Joint Use Agreements, Exh. D; Compl. at 10, para. 13; Resp. at 18.

[24] Joint Use Agreements, Art. 33 & Exhs. A-F. [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] *Id.*

[25] Joint Use Agreements, Art. 11.01.

[26] *Id.* Art. 11.02 states, however, that [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] Joint Use Agreements, Art. 11.02.

[27] Compl., Exh. 13 (Letter from Stephen Mills, Verizon, to Arlie Hahn, Dominion (Oct. 8, 2013) (October 2013 Letter)). Article 33.08 of the Joint Use Agreements states:

> [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] Joint Use Agreements, Art. 33.08.

[28] Compl. at 13-17, paras. 21-30; Resp. at 7-9. These discussions concluded on May 29, 2015. *See* Compl., Exh. 23 (Email from John Douglass, private mediator, to Christopher Huther, Counsel for Verizon, and Brett Heather Freedson, Counsel for Dominion (June 2, 2015)). Most recently, the parties participated in staff supervised mediation at the Commission. *See* Letter from Lisa Boehley, FCC, to Christopher Huther and Claire Evans, Verizon, and Brett Heather Freedson, Charles Zdebski, and Robert Gastner, Dominion (June 23, 2016) (commencing Mediation Process); Letter from Rosemary McEnery, FCC, to Christopher Huther and Claire Evans, Verizon, and Brett Heather Freedson, Charles Zdebski, and Robert Gastner, Dominion (Nov. 17, 2016) (concluding Mediation Process).

[29] Resp. at 9 & n.39 (referencing Joint Use Agreements, Arts. 33.07, 33.08). For their attachments on Dominion-owned poles, Verizon Virginia and Verizon South were charged under the Joint Use Agreements the following per pole rental rates for 2011 through 2015, respectively: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] For its attachments on Verizon Virginia-owned poles during this same time

8. [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][32] In October 2016, Dominion provided to Verizon a "Notice of Default" alleging *inter alia* that Verizon had failed to remit full payment for annual pole rental fees for the 2015 and 2016 rate years.[33] Dominion alleges that Verizon has withheld more than $10 million of annual pole rental fees owed to Dominion under the parties' agreements.[34]

C. The Pole Attachment Complaint

9. In its Complaint, Verizon alleges that the annual pole rental rate in the Joint Use Agreements is unjust and unreasonable under Section 224 and the Commission's pole attachment rules.[35] According to Verizon, the "exorbitant" rate in the Joint Use Agreements "resulted from Dominion's superior bargaining power and the insufficiency of 'market forces and independent negotiations . . . to ensure just and reasonable rates.'"[36] Verizon maintains that it does not receive under the Joint Use Agreements "any unique benefits" that would justify a higher rate than the rates paid by other carriers that attach to Dominion's poles, and therefore asks the Commission to set its rate at the "properly calculated" New Telecom Rate and to refund to Verizon any "overpayments" it has made under the agreements since the

period, Dominion was charged under the Joint Use Agreements the following per pole rental rates: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] For its attachments on Verizon South-owned poles, Dominion was charged under the Joint Use Agreements the following per pole rental rates: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[30] Resp. at 23; Reply at 3, 56-57.

[31] Resp. at 23; Reply at 3, 5, 57. Dominion states that Verizon's 2015 payment represents 11 percent of the total annual pole rental fees invoiced for that year pursuant to the Joint Use Agreements. Resp. at 9.

[32] Resp. at 23; Reply at 3, 57. In November 2015, Dominion brought a state court action against Verizon in an effort to enforce the Joint Use Agreement rates. *See* Compl., *Va. Elec. and Power Co. v. Verizon Virginia LLC and Verizon South Inc.*, Case No. CL15-3029-00 (Va. Cir. Ct. Nov. 18, 2015) (pending).

[33] Letter from Anthony Barni, Dominion, to Verizon Virginia and Verizon South at 1-2 (Oct. 13, 2016) (providing Verizon 60 days under Article 13.03 of the Joint Use Agreements to "cure the above defaults"). Over Verizon's objections, Dominion notified Verizon upon expiration of the 60-day "cure period" of its plan, "effective immediately, [to decline] to authorize any additional attachments requested by Verizon" under the Joint Use Agreements. *See* Letter from Anthony Barni, Dominion, to Verizon South and Verizon Virginia at 1 (Dec. 13, 2016) (also reserving "the right to remove, without any further notice to Verizon . . . any attachment made without Dominion's authorization in violation of this mandate"); *see also* Letter from David Gudino, Verizon, to Anthony Barni, Dominion at 1 (Nov. 1, 2016); Letter from Christopher Huther, Verizon, to Brett Heather Freedson, Dominion at 1-2 (Dec. 9, 2016).

[34] Letter from Brett Heather Freedson, Dominion, to Christopher Killion, FCC at 1-2 (Jan. 6, 2017).

[35] Compl. at 5, 7-8, 50, paras. 1 (citing 47 U.S.C. § 224 and 47 CFR §§ 1.1401-1.1424), 8-9, 107. Both parties note that the Commonwealth of Virginia has not certified that it regulates the rates, terms, and conditions for pole attachments in the manner established by Section 224, such as would preempt the Commission's jurisdiction over pole attachments in Virginia. *See* Compl. at 5, para. 4; Resp. at 3.

[36] Compl. at 7-8, para. 8 (quoting *Pole Attachment Order*, 26 FCC Rcd at 5327, para. 199); Reply at 22.

July 12, 2011 effective date of the *Pole Attachment Order*.[37] In the alternative, if the Joint Use Agreements *do* provide Verizon a material advantage relative to competitive attachers, Verizon argues that it should pay no more than the Old Telecom Rate.[38]

III. DISCUSSION

A. Standards for Commission Review of Incumbent LEC Complaints

10. In the *Pole Attachment Order*, the Commission held that incumbent LEC attachers are entitled to the protections of Section 224(b), but "decline[d] . . . to adopt comprehensive rules governing" incumbent LEC pole attachments, opting instead "to proceed on a case-by-case basis."[39] The Commission identified certain factors that it would consider, however, in determining the "need for targeted Commission oversight to ensure just and reasonable rates, terms, and conditions" including, whether a particular joint use agreement pre or post-dates the *Pole Attachment Order*.[40] In particular, the Commission expressed reluctance to disturb terms or conditions in joint use agreements that were entered into prior to the adoption of the *Pole Attachment Order* between parties with relatively equal bargaining power, and indicated that it would be "unlikely to find the rates, terms and conditions in [such] ***existing*** joint use agreements unjust or unreasonable."[41] By contrast, the Commission stated that it would review ***new*** joint use agreements, *i.e.*, those entered into following adoption of the *Pole Attachment Order*, "based on the totality of those agreements," and consistent with the Commission's directives regarding similar treatment of similarly situated providers.[42]

11. In this case, Dominion asserts that the Joint Use Agreements are "existing" agreements, "entitled to the presumption of having resulted from balanced arms-length negotiations between Dominion and Verizon."[43] Dominion notes that the negotiations, which spanned several years, concluded prior to the *Pole Attachment Order* and that the effective date in the agreements predates the *Pole Attachment Order* by several months.[44] Dominion therefore urges the Commission "to defer to the negotiated terms and conditions" in those agreements.[45] In its Reply, Verizon argues that, unlike the "historic" joint use agreements contemplated in the Commission's discussion, the present agreements are not long-standing and were not signed until after the date of the *Pole Attachment Order*, giving the parties

[37] Compl. at 7-8, 17-39, 43-46, paras. 8, 32-84, 93-98; *see also Verizon Virginia LLC and Verizon South Inc. v. Virginia Electric and Power Company d/b/a/ Dominion Virginia Power*, Proceeding No. 15-190, Bureau ID No. EB-15-MD-006, Pole Attachment Complaint Reply at 77 (Feb. 9, 2016) (Reply). [BEGIN CONFIDENTIAL] [redacted] END CONFIDENTIAL] Compl. at 3-4 & n.11; Reply at 22-23, 58-59.

[38] Compl. at 48-49, paras. 101-104; Reply at 83 n.462.

[39] *Pole Attachment Order*, 26 FCC Rcd at 5334, para. 214.

[40] *Id.*, 26 FCC Rcd at 5243-44, 5328, 5333-37, paras. 8, 203, 214-19.

[41] *Id.*, 26 FCC Rcd at 5334-35, para. 216 (emphasis added) & n.654 ("Nothing in the record suggests that existing agreements between incumbent LECs and electric utilities were entered into with the expectation that their provisions would be subject to Commission review.").

[42] *Id.*, 26 FCC Rcd at 5336, para. 216 & n.656.

[43] Resp. at 12.

[44] *Id.*

[45] *Id.* at 11 (noting that the Commission has "repeatedly stated its intent to defer to the negotiated terms and conditions of historic joint use agreements, such as those governing the relationship between Dominion and Verizon").

reason to expect that their provisions would be subject to Commission review.[46]

12. Due to the unique circumstances presented here, we conclude that the Joint Use Agreements should be considered "new" agreements, notwithstanding their pre-*Pole Attachment Order* effective date, because (1) they were executed several months after the Commission released the *Pole Attachment Order*, thus affording both parties the opportunity to assess their rights and responsibilities under that order,[47] and (2) they were not simply extensions of long-standing agreements, [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][48]

13. Although Dominion concedes that an incumbent LEC's inferior bargaining position and inability to terminate an agreement are also factors the Commission may consider in evaluating an incumbent LEC's pole attachment complaint, it claims that Verizon has demonstrated neither circumstance.[49] We disagree. While pointing to rate reductions accorded Verizon in the Joint Use Agreements as evidence of Verizon's bargaining power, Dominion fails to mention that, after four years of intensive rate negotiations, the rate reductions to which it refers were offset by significantly greater rate reductions achieved by Dominion.[50] After four years of negotiations, the record reflects that the per-pole rate charged to Verizon [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] even though Dominion uses significantly more space on each joint use pole than Verizon.[51] The record also reflects a consistent disparity in relative pole ownership levels throughout the course of the parties' joint use relationship, with Dominion owning 65 percent and Verizon owning 35 percent of the joint use poles at all relevant times.[52] Recognizing the Commission's

[46] Reply at 8-10; *id.* at 10 ("The Joint Use Agreement[s] remain[] 2011 agreement[s] signed with complete knowledge of the Commission's rate reforms.").

[47] Compl. Exh. 18 (Letter from Steven Mills, Verizon, to Arlie Hahn, Dominion at 1 (March 25, 2014) (noting that "the current agreements were signed a few months after the FCC 11-50 ruling . . . .") (March 2014 Letter)); Resp., Exh. A (Graf Decl.) at 7, para. 16 (noting that Dominion signed the Joint Use Agreements in May 2011, but did not receive the countersigned documents from Verizon until August 1, 2011).

[48] *See*, *e.g.*, Resp., Exh. A (Graf Decl.) at 3, paras. 5, 6 (noting that the Joint Use Agreements were the "first identical agreements that Dominion authorized for both of Verizon's operating companies within the parties' shared service area[,]"[BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]; Resp., Exh. C (Declaration of Michael Roberts) at 3, para. 7 (Roberts Decl.) [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[49] Resp. at 11.

[50] Resp. at 13 (stating that the Joint Use Agreements resulted in a [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[51] *See* Section III.B *infra*.

[52] Compl. at 11, para. 16; Resp. at 4-5. Although Dominion faults Verizon for not doing more to increase its own pole ownership stake in the parties' joint use network, it concedes that Verizon [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] *See* Resp. at 13-14; Resp., Exh. A (Graf Decl.) at 5-6, paras. 12-13. Dominion also claims that Verizon could have increased its pole

concern that an incumbent LEC's minority pole ownership status may negatively impact the incumbent LEC's bargaining position, we find that Dominion's nearly two-to-one pole ownership advantage, along with the significant disparity in the per-pole rates charged to each party, constitutes probative evidence of Verizon's inferior bargaining position relative to Dominion.[53]

14. Finally, review of the Joint Use Agreements is appropriate based on evidence demonstrating that Verizon "genuinely lacks the ability to terminate [the agreements] and obtain a new arrangement."[54] [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] we agree with Verizon that it "genuinely lacks the ability to terminate" the agreements.[55]

B. The Joint Use Agreement Rate Is Not Just and Reasonable Under Section 224(b)

15. Verizon offers two main arguments to support its claim that the Joint Use Agreement rates are not just and reasonable. First, Verizon argues that any unique advantages that it receives under the Joint Use Agreements do not justify a rate that it contends is [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] According to Verizon, the 2015 New and Old Telecom Rates were $6.51 and $9.87 "per pole," respectively.[56] By Verizon's calculations, the [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] per pole rate that it pays under the Joint Use Agreements therefore exceeds the New Telecom Rate by approximately [BEGIN

ownership stake by [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[53] *Pole Attachment Order*, 26 FCC Rcd at 5327, para. 199 (noting potential impact of disparate pole ownership on parties' relative bargaining power); *see also id.* at 5329, para. 206 & n.618 (expressing concern that, because electric utilities, in the aggregate, own approximately 65-70 percent of all poles today, "incumbent LECs . . . may not be in an equivalent bargaining position with electric utilities in pole attachment negotiations in some cases"). Dominion asserts that, because the parties' relative ownership percentages have not varied over the years, the 65-35 ratio here does not implicate Commission concerns about unequal bargaining power given that the Commission stated a concern only with respect to *increasing* pole ownership disparities between utilities and incumbent LECs. Resp. at 12-13. The Commission, however, did not limit its holding to situations in which a pole ownership disparity was increasing, and we reject the suggestion that such a limitation was intended given that it would deny relief to incumbent LECs whose inferior bargaining positions have continuously impacted their ability to negotiate a just and reasonable rate over time. *See Pole Attachment Order*, 26 FCC Rcd at 5334-35, para. 216 (noting that "long-standing agreements *generally* were entered into at a time when incumbent LECs . . . were in a more balanced negotiating position with electric utilities, at least based on relative pole ownership.") (emphasis added).

[54] *See Pole Attachment Order*, 26 FCC Rcd at 5335-36, para. 216 ("To the extent that an incumbent LEC can demonstrate that it genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement, the Commission can consider that as appropriate in a complaint proceeding.").

[55] *See* Joint Use Agreements, Art. 11.01 (stating in relevant part: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] Compl. at 6, para. 5 (quoting *Pole Attachment Order*, 26 FCC Rcd at 5335-36, para. 216); *see also id.* at 6 n.19; Reply at 11.

[56] *See* Reply at 83 & n.462.

CONFIDENTIAL] [redacted] [END CONFIDENTIAL] per pole and exceeds the Old Telecom Rate by approximately [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] per pole.[57]

16. In its Response, Dominion contends that the 2015 New and Old Telecom Rates were instead [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] respectively.[58] We note, however, that pole attachment rates are correctly calculated [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][59] Thus, even under Dominion's calculations, the [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] Joint Use Agreement rate is [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] the New Telecom Rate,[60] and is [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] than the Old Telecom Rate – which the Commission highlighted as a reference point to account for differences between competitive LEC and incumbent LEC attachments.[61]

17. Verizon has adduced substantial evidence in support of its argument that any advantages it obtains under the Joint Use Agreements do not remotely justify the difference between the rate it pays and the rate that competitive LECs pay to attach to Dominion's poles.[62] Based on that evidence, we find that Verizon has met its burden of showing that the rate it pays under the Joint Use Agreements is unjust and unreasonable. Any unique advantages Verizon receives under those agreements do not justify a rate that is [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] the Old and New Telecom Rates.[63]

18. Although Dominion maintains that unique benefits provided to Verizon under the Joint Use Agreements justify the [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] that it charges Verizon, our review of the record suggests that Dominion has overstated the value of a number of such alleged benefits.[64] For example, Dominion identifies as a financial benefit the fact that Verizon [BEGIN CONFIDENTIAL] [redacted]

[57] Reply, Exh. A (Calnon Aff.) at 2, para. 2 & n.3; Reply, Exh. 8 (2015 invoice). The Joint Use Agreement rate that Dominion charged Verizon in 2015 was [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] per pole, which is the most recent rate year included in the record.

[58] *See* Resp. at 32; Resp., Exh. C (Roberts Decl.), Exh. MCR-1.

[59] Dominion's argument that the Old and New Telecom Rates should be applied on a [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[60] Resp., Exh. C (Roberts Decl.), Exh. MCR-1.

[61] *See Pole Attachment Order*, 26 FCC Rcd at 5337, para. 218; Compl. at 9, para. 12.

[62] *See, e.g.*, Compl. at 7-8, 20-39, paras. 8, 37-84; Reply at 23-62.

[63] Verizon asserts that, [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] Compl. at 21, para. 38; Reply at 58. We express no view on that claim in this interim Order.

[64] Resp. at 2.

[redacted] [END CONFIDENTIAL][65] The Joint Use Agreements, however, [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][66] Where Verizon performs a particular service itself and incurs costs comparable to its competitors in performing that service, we agree with Verizon that Dominion may not "embed in Verizon's rental rate costs that Dominion does not incur."[67]

19. In addition, although Dominion argues that it is [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][68] [redacted] [END CONFIDENTIAL]

20. Moreover, with only a few exceptions, Dominion does not quantify the purported material advantages that Verizon receives under the Joint Use Agreements and therefore fails to justify charging rates [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][70] Where Dominion does attempt to assign a monetary value to particular purported advantages, it generally presents those values as the amount that all of its licensees "collectively" paid, thus omitting the information needed to analyze whether, and, if so, the extent to which, Verizon has been advantaged relative to a typical competitor or an average of its competitors.[71]

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[65] *See* Resp. at 19-20; Resp., Exh. A (Graf Decl.), Exh. MAG-1 at 1-2 [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[66] *See* Joint Use Agreements, Art. 15.03 [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]; Compl., Exh. C (Hansen Aff.) at 3-4, para. 8 [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[67] Reply at 32; *id.* at 31-33 (arguing that where Verizon pays for its own [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] by performing the work itself, and Dominion does not identify any costs that Verizon has not covered, Dominion may not justify charging higher rates to Verizon based on costs that only Verizon incurs). To charge a higher rate on this basis would effectively double charge Verizon – once when Verizon performs work [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[68] *See, e.g.*, Resp., Exh. A (Graf Decl.), Exh. MAG-1 at 2 (citing Joint Use Agreements, Arts. 17.01, 20.01, 21.01).

[69] Compl., Exh. A (Affidavit of Mark S. Calnon) at 37, paras. 77-79 (Calnon Aff.); Reply at 36-37; Joint Use Agreements, Art. 26.01 [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[70] Once a *prima facie* showing has been made by the complainant, the Commission's pole attachment complaint rules require the respondent to "set forth justification for the rate, term or condition alleged in the complaint not to be just and reasonable." *See* 47 CFR § 1.1407(a).

[71] *See, e.g.*, Resp. at 19 ("Dominion estimates that [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]; Resp., Exh. A (Graf Decl.), Exh. MAG-1 at 5 ("Over the 2011-2014 time frame, [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

21. Verizon next argues that the per-pole rate that Dominion charges Verizon is unjust and unreasonable because it far exceeds the per-pole rates that Verizon charges Dominion, despite the fact that Dominion uses significantly more space on each joint use pole than Verizon.[72] In fact, the record reflects that the [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] rate charged to Verizon in 2015 was [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] than the rate charged to Dominion to attach to Verizon Virginia poles (which account for 91 percent of the joint use poles belonging to Verizon), and [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] than the rate charged to Dominion to attach to Verizon South poles (which account for nine percent of the joint use poles belonging to Verizon).[73] The record confirms that, although Dominion's space allocation is [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] that of Verizon, Dominion pays [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] under the Joint Use Agreements for its use of that space.[74] Dominion argues that a simple comparison of annual pole rates "ignores that the parties divide costs associated with their combined pole network in direct proportion to the benefits that each derives from the joint use arrangement."[75] It concedes, however, that the parties enjoy "reciprocal" rights under the Joint Use Agreements.[76] By identifying as alleged "benefits" to Verizon services that Verizon is likewise required to extend to Dominion under the Joint Use Agreements, Dominion has failed to show that Verizon receives a disproportionate benefit that would account for the [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] between the parties.[77] We therefore conclude that Dominion has not justified charging Verizon a rate [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] the rates charged to Dominion under the Joint Use Agreements.[78]

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[72] Compl. at 10-11, para. 13.

[73] For Verizon's attachments on Dominion poles from 2011-2015, Dominion charged, under the Joint Use Agreements, the following per pole rates: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] For Dominion's attachments on Verizon Virginia poles from 2011-2015, Verizon charged the following per-pole rates: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] For Dominion's attachments on Verizon South poles from 2011-2015, Verizon charged the following per-pole rates: [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL]

[74] The Joint Use Agreements allocate [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] of space on each joint use pole to Dominion and [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] of space on each joint use pole to Verizon.

[75] Resp. at 28.

[76] *Id.* at 4.

[77] [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] *See* Resp., Exh. B (Zarakas Decl.) at 8, para. 14.

[78] *See Pole Attachment Order*, 26 FCC Rcd at 5337, para. 219 ("[I]n evaluating an incumbent LEC's complaint, the Commission may also consider the rates, terms and conditions that the incumbent LEC offers to the electric utility or other attachers for access to the incumbent LEC's poles, including whether they are more or less favorable than the rates, terms and conditions the incumbent LEC is seeking."); *see also id.*, 26 FCC Rcd at 5337, para. 218 n.662 (anticipating that incumbent LECs and electric utilities would charge each other roughly the same proportionate rate given the parties' relative usage of the pole "such as the same rate per foot of occupied space"). Verizon asserts that the rate it is charged under the Joint Use Agreements also [BEGIN CONFIDENTIAL] [redacted]

22. Accordingly, because Dominion has provided insufficient justification for the Joint Use Agreement rates, we conclude that the rate charged to Verizon under those agreements is unjust and unreasonable. We encourage the parties to negotiate an agreed-upon rate that is consistent with the guidance provided herein. Although we do not establish a new pole attachment rate at this time, we commit to doing so in a subsequent order if the parties are unable to achieve a negotiated resolution of the issues in dispute.[79]

C. Verizon Is Entitled to a Refund of Overpayments Made to Dominion

23. Verizon contends that the "sign and sue rule" permits it to challenge the unjust and unreasonable rates in the Joint Use Agreements and to seek a refund under Rule 1.1410(a)(3)[80] of any amounts it is determined to have overpaid dating back to the effective date of the *Pole Attachment Order*.[81] We agree.[82]

24. Under the Commission's "sign and sue rule," "an attacher may execute a pole attachment agreement with a utility, and then later file a complaint challenging the lawfulness of a provision of that agreement."[83] The rule was adopted at a time when only cable operators and competitive LECs, and not incumbent LECs, were deemed to have a right to just and reasonable rates, terms, and conditions under Section 224(b). In adopting the sign and sue rule, the Commission expressed concern that utilities' "monopoly control" over poles could force attachers to accept unreasonable terms as a condition for gaining timely access to utility poles.[84] The Commission also has observed a need for the sign and sue

[redacted] END CONFIDENTIAL]

[79] *See* Section IV *infra*.

[80] 47 CFR § 1.1410(a)(3) (stating that if the Commission determines that a rate is unjust and unreasonable, it may order a refund of "the difference between the amount paid under the unjust and/or unreasonable rate … and the amount that would have been paid under the rate … established by the Commission, plus interest, consistent with the statute of limitations").

[81] Compl. at 7-8, para. 8 (arguing that it was compelled to enter into agreements as a result of "Dominion's superior bargaining power and the insufficiency of market forces and independent negotiations" to ensure just and reasonable rates) (internal quotations omitted); *see also id.* at 11-17, 42-43, 46, paras. 15-31, 91, 98; Reply at 9, 77 (asking the Commission to "set Verizon's just and reasonable rate as of July 12, 2011 at the properly calculated new telecom rate and order Dominion to refund [the amount of any] net rentals that Verizon has since overpaid."). Verizon also asks the Commission to impose new just and reasonable rates on a prospective basis.

[82] Any rate relief for the pre-Complaint period is subject to true up and therefore must take into account all amounts invoiced and paid after July 12, 2011.

[83] *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11864, 11905, para. 99 (2010); *Southern Co. Servs. v. FCC*, 313 F.3d 574, 578 (D.C. Cir. 2002) (under the "sign and sue" rule, "an attacher may 'sign' a contract with a utility and later file a complaint with the FCC to contest an element of that agreement deemed to be unfair").

[84] *See, e.g., Amendment of the Commission's Rules and Policies Governing Pole Attachments; Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12112, para. 13 (2001) (noting that "the original purpose of the Pole Attachment Act" was "to prevent utilities from charging monopoly rents to attach to their bottleneck facilities" and that "[n]othing in the record demonstrates that the utilities' monopoly over poles has since changed"); *Pole Attachment Order*, 26 FCC Rcd at 5294, para. 123 ("the sign and sue rule was adopted in recognition that in some situations . . . an attacher may be

rule in situations where an attacher "acquiesces in a utility's 'take it or leave it' demand that it pay more than the statutory maximum . . . without any *quid pro quo* other than the ability to attach its wires on unreasonable or discriminatory terms."[85]

25. When the Commission first held in the *Pole Attachment Order* that incumbent LEC attachers are entitled to just and reasonable rates, terms, and conditions under Section 224(b), it recognized the need to "account[] for the potential differences between incumbent LECs and telecommunications carrier or cable operator attachers[,]" including with respect to applying the sign and sue rule to incumbent LECs.[86] At that time, the Commission considered it unlikely that electric utilities would attempt to coerce incumbent LECs to accept unreasonable terms by threatening a loss of access to the utilities' poles, "given the likelihood that incumbent LECs [as pole owners themselves] would, in response, deny electric utilities access to their poles."[87] Nonetheless, the Commission allowed for the possibility that incumbent LEC attachers, like cable and competitive LEC attachers, may be coerced to enter pole attachment agreements that include unjust and unreasonable terms as a result of a utility's unequal bargaining power.[88] In such a case, the Commission determined that "the 'sign and sue' rule will apply [] in a manner similar to its application in the context of pole attachment agreements between pole owners and either [cable or competitive LEC attachers]."[89]

26. The record reveals that, after years of intensive rate negotiations, Verizon faced a choice to accept what it believed were unjust and unreasonable rates under the Joint Use Agreements or [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][90] While the record does not suggest that Dominion threatened Verizon with loss of access to its poles, the evidence reflects that Verizon nonetheless was coerced into signing the Joint Use Agreements as a result of Dominion's superior bargaining position.[91] In particular, years of rate negotiations had failed to achieve [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] in Verizon's net per pole rate,[92] and Verizon's leverage and options were further constrained by [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][93] That is, [BEGIN CONFIDENTIAL] [redacted]

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forced to execute a pole attachment agreement containing what it believes to be unjust and unreasonable terms in order to gain timely access to the utility's poles.").

[85] *See Pole Attachment Order*, 26 FCC Rcd at 5294, para. 123 n.380 (quoting *Southern Co. Servs.*, 313 F.3d at 583 (quoting Commission Brief with approval); *see also Southern Co. Servs.*, 313 F.3d at 583 ("sign and sue" is likely to arise where "the attacher has agreed, for one reason or another, to pay a rate above the statutory maximum . . . to which it is entitled under the Pole Attachments Act and the Commission's rules").

[86] *Pole Attachment Order*, 26 FCC Rcd at 5333, para. 214; *id.* at 5335, para. 216 n.655.

[87] *Id.* at 5335, para. 216 n.655.

[88] *Id.*

[89] *Id.*

[90] In 2010, Verizon Virginia and Verizon South paid a gross rate of [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] under the parties' prior agreements. *See* Resp. at 13; Compl. at 41, para. 88 & n.221.

[91] Denial of access to a utility's poles represents one possible scenario that may support an attacher's right to sign and sue. *Pole Attachment Order*, 26 FCC Rcd at 5335, para. 216 n.655.

[92] *See* Section III.B *supra*.

[93] Compl., Exh. 5 (Verizon Virginia predecessor agreement), Art. 8; *id.*, Exh. 7 (Verizon South predecessor agreement), Art. VIII [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL].

[redacted] END CONFIDENTIAL][94] Verizon's choices were reduced to accepting the Joint Use Agreement rates or remaining locked into even higher rates indefinitely pending final resolution of any formal proceedings brought to challenge those rates. Under these circumstances, Verizon's decision to sign the Joint Use Agreements and then file a complaint challenging the agreement rates, constitutes a valid exercise of its sign and sue rights.[95]

27. Dominion argues that, even if the sign and sue rule were applicable here, Verizon did not properly invoke the sign and sue rule or take steps necessary to preserve its sign and sue rights.[96] For example, Dominion suggests that, after release of the *Pole Attachment Order*, Verizon was required to notify it before signing the Joint Use Agreements, if Verizon believed that the agreement rates were unlawful under that order.[97] The *Pole Attachment Order* expressly rejected a proposed rule that would have required an attacher to provide a utility written notice of its objections to a proposed pole attachment agreement, during contract negotiations, as a prerequisite to later bringing a complaint challenging the executed agreement.[98]

28. Dominion's suggestion that the requested relief should be rejected because Verizon unduly delayed filing its complaint is similarly without merit.[99] In the *Pole Attachment Order*, the Commission declined to impose time limits on the filing of pole attachment complaints and, instead, determined to allow monetary recovery dating back as far as the July 12, 2011 effective date of the order, "consistent with the applicable statute of limitations."[100] In this case, it appears that Verizon signed the Joint Use Agreements in August of 2011[101] and, at the earliest opportunity permitted under the agreements, [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL][102] The

[94] Compl., Exh. 5 (Verizon Virginia predecessor agreement), Art. 3; *id.*, Exh. 7 (Verizon South predecessor agreement), Art. III [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL].

[95] *See generally Pole Attachment Order*, 26 FCC Rcd at 5333, 5335, paras. 214, 216 n.655 (recognizing the need to "account[] for the potential differences between incumbent LECs and telecommunications carrier or cable operator attachers[,]" including with respect to applying the sign and sue rule to incumbent LECs); *id.* at 5335-36, para. 216 ("To the extent that an incumbent LEC can demonstrate that it genuinely lacks the ability to terminate an existing agreement and obtain a new arrangement, the Commission can consider that as appropriate in a complaint proceeding.").

[96] Resp. at 17 n.79; *id.* at 16-17 (suggesting that, if Verizon believed the Joint Use Agreement rates were unjust and unreasonable, it could have demanded further negotiations before signing them or it could have signed them and then exercised its "sign and sue" rights thereafter, and asserting that "Verizon did neither").

[97] Resp. at 16.

[98] *Pole Attachment Order*, 26 FCC Rcd at 5292-95, paras. 119-25.

[99] *See* Resp. at 17.

[100] *Pole Attachment Order*, 26 FCC Rcd at 5287-90, 5334, paras. 106, 110-12, 214 & nn.343, 345, 647; *id.* at 5289, para. 110 (reasoning that the former rule, which allowed recovery only from the date the complaint was filed, fails to make injured attachers whole, and is inconsistent with the way claims for monetary recovery are generally treated under the law).

[101] Resp. at 5 (citing Graf Decl., para. 16); Reply at 8-9.

[102] Compl., Exh. 13 (October 2013 Letter); Joint Use Agreements, Art. 33.08 [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL].

record shows that the parties then embarked on another 20 months of rate negotiations that concluded on May 29, 2015 without resolving the contested issues, and that Verizon then filed its Complaint on August 3, 2015.[103] Consistent with the Commission's decision authorizing refunds to extend back as far as the applicable statute of limitations allows,[104] but no earlier than the *Pole Attachment Order* effective date, we reject the suggestion that, by waiting until August 3, 2015, Verizon unduly delayed filing its Complaint.[105]

IV. CONCLUSION

29. In light of our interim findings that the Joint Use agreement rate is not just and reasonable, we direct the parties to meet and confer in an effort to resolve the remaining disputes. The parties should report to Commission staff within 30 days as to their progress. If the case cannot be resolved by settlement, Commission staff will conduct any further proceedings necessary to issue a subsequent order resolving all remaining issues and setting a just and reasonable pole attachment rate.

30. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 4(i), 4(j), 208, 224, 301, 303, 304, 309, 316, and 332 of the Communications Act, 47 U.S.C. §§ 154(i), 154(j), 208, 224, 301, 303, 304, 309, 316, and 332, and Sections 0.111(a)(12), 0.311, 1.720-1.735, and 1.1401-1.1424 of the Commission's rules, 47 CFR §§ 0.111(a)(12), 0.311, 1.720-1.735, and 1.1401-1.1424, that the Complaint is GRANTED, in part, to the extent set forth in this Order.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary H. McEnery
Acting Chief
Market Disputes Resolution Division

[103] Compl. at 13-17, paras. 21-30; Resp. at 7-9; Compl., Exh. 23 [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] (May 29, 2015)).

[104] Verizon contends that Section 8.01-246(2) of the Virginia Code provides the applicable statute of limitations in this case and that its Complaint was filed within the five-year limitations period specified therein. *See* Reply at 9 n.33. Dominion does not dispute this contention.

[105] We also reject Dominion's claim that Verizon's alleged failure to comply with Rule 1.1404(k) offers a basis to deny the requested relief. Resp. at 38-40. Dominion does not dispute that Verizon engaged in extensive executive-level discussions, [BEGIN CONFIDENTIAL] [redacted] [END CONFIDENTIAL] in a serious effort to resolve the parties' dispute prior to filing its Complaint. Contrary to Dominion's claim, however, the record reflects that Verizon's March 25, 2014 letter, in conjunction with other correspondence within the same timeframe, fully outlined the basis for Verizon's demand for a just and reasonable rate under Section 224(b) and the *Pole Attachment Order*. *See*, *e.g.*, Compl., Exhs. 13, 14, 16, 18, 22, 23. Based on evidence that Verizon fully complied with the substantive goals and requirements of Rule 1.1404(k) (i.e., executive-level, pre-Complaint coordination and preview of substantive allegations), we find good cause to waive any procedural aspect of the rule with which Verizon may not have strictly complied. *See* 47 CFR § 1.3 (allowing waiver of Commission rule for "good cause shown").

Attachment B

verizon✓

Steve Mills
Consultant Contract Management
502 E. Piedmont St
Culpeper, VA 22701
Stephen.c.mills@verizon.com
(540) 829-2711

November 2, 2017

Deanna DeWitt
Supervisor Joint Use and Cable Locating
FirstEnergy Service Company
800 Cabin Hill Dr
Room M221
Greensburg, PA 15601
(724) 830-5967

BY EMAIL AND CERTIFIED MAIL

Dear Deanna,

Thank you for providing us a copy of Met-Ed's 2017 draft license agreement. Our purpose in originally requesting the draft back in early 2012 was to determine how the provisions of the draft license agreement, including the pole rental rate, compare to those being discussed in our ongoing effort to reach agreement on a new joint use agreement. Our review revealed that terms of the draft license agreement are not materially different from the terms of the parties' current Joint Use Agreements or the draft joint use agreement that we have been negotiating. In this respect, the draft license agreement confirms our view that Verizon has been entitled to the FCC's new telecom rental rate since the FCC issued its Pole Attachment Order back in 2011.

The Commission's recent Order in the Dominion pole attachment complaint proceeding fully supports our conclusion. The FCC's Enforcement Bureau vacated the rental rate in a "new" agreement because it was not just and reasonable and confirmed that Verizon was entitled to a refund of overpayments above the "just and reasonable' rate since the effective date of the Order. The Enforcement Bureau further confirmed that rate relief would also be warranted under an "existing" agreement if it, like the agreements here, was entered when the ILEC's pole ownership numbers placed it in an inferior bargaining position. In the Dominion proceeding, a 65% to 35% pole ownership disparity was sufficient to justify rate relief. Here, the disparity is even greater, with Met-Ed owning 81% of the joint use poles now and when the current rates were imposed on Verizon.

The Commission's Dominion Order and its pending Infrastructure NPRM confirm that the parties should be negotiating an appropriate new telecom rate for Verizon. Under our joint use arrangement, Verizon bears significant pole maintenance and replacement costs that are not imposed on our competitors. As such, Verizon does not enjoy any advantages that would justify a departure from the new telecom rate. Even under the draft joint use agreement, Verizon would not have an advantage over its competitors because we have worked to negotiate an agreement with modernized cost-causer terms and conditions.

While we appreciate Met-Ed's willingness to modify its rates, its series of offers all result in Verizon continuing to make a net annual pole payment in the [redacted] dollar range. For example, in 2016, Met-Ed invoiced Verizon for about [redacted]. Met-Ed's next rate offer, in April 2017, reduced that payment by $465. Similarly, its July offer would require Verizon to continue paying nearly [redacted] in annual payments – about a 1.5% discount off the 2016 invoiced amount. In stark contrast, were Verizon and Met-Ed to pay properly calculated proportional new telecom rates, the limited data currently available to Verizon shows that Verizon's annual net payment, using 2016 cost data, should be about $795,000, and possibly lower.

The latest rate offered by Met-Ed is [redacted], which is over [redacted] times the [redacted] new telecom rate that Met-Ed charges Verizon's competitors. In addition to this rate not being calculated under the new telecom rate formula, it is inflated by Met-Ed assigning Verizon 3 feet of occupied space, even though Verizon does not use 3 feet of space on Met-Ed's poles (nor is Verizon even allocated 3 feet of space under the Joint Use Agreements). Met-Ed also uses an average of 3.33 attaching entities but has not provided any survey evidence that supports this number. Verizon also notes that the number is different from Met-Ed's earlier position that its poles average 4 attaching entities. In the absence of actual data, the FCC's presumptive inputs apply.

In the Dominion Order, the Commission found that it was unjust and unreasonable for a power company to demand that Verizon pay a higher rate than the power company is willing to pay for the use of more space on each joint use pole. In our case, while Met-Ed occupies significantly more space on each pole than Verizon, it proposes to pay Verizon [redacted] per pole for that space, while proposing to charge Verizon [redacted] per pole.

Despite our efforts for nearly six years to agree on a just and reasonable rate, we have not been successful. Therefore, Verizon requests that executives of the parties with sufficient authority meet as soon as possible to resolve this dispute. If we are unable to reach agreement on a just and reasonable rental rate at the face-to-face meeting, Verizon will have no other option than to seek rate relief at the FCC and refunds for the amounts it has overpaid.

Please let us know as soon as possible when Met-Ed is available to meet during the next four weeks. If it will facilitate scheduling, Verizon is amenable to meeting at a location of Met-Ed's choosing.

Sincerely,

Stephen Mills

Attachment C

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Exhibit 17

From: Schafer, Stephen F [mailto:sschafer@firstenergycorp.com]
Sent: Friday, May 11, 2018 2:55 PM
To: Slavin, James
Cc: Trosper, Brian H; Karafa, David J.; Pryatel, Thomas R.; DeWitt, Deanna R; Endris, Robert M; Haynes, Reneta; Mills, Stephen C (Steve)
Subject: [E] RE: FirstEnergy Counterproposal

Hello Jim

Please find attached FirstEnergy's rate calculations supporting our counteroffer. As we've said, we don't believe there is a requirement to use any given formula to establish negotiated rates. However, we agree the information may prove useful and I'm happy to answer any questions you may have.

FirstEnergy's offer is to apply any renegotiated rates prospectively. FirstEnergy would not agree that the existing contractual rates that were mutually agreed upon by both parties are not just and reasonable. Periodically renegotiating the rates is one of the features of our agreement and does not indicate that past amounts invoiced were not just and reasonable.

Let me assure you that it was not my intent to mischaracterize any aspect of Mr. Trosper's letter nor the April 11 meeting. If we misunderstood Mr. Trosper's email following the April 11 meeting as representing an offer. In fact, I may still be confused as to Verizon's current offer--if you could reiterate, it would be appreciated.

As you are evaluating this information, we remain interested in your response to our offer to terminate the Joint Use agreements and move to a CLEC Pole Attachment Agreement. As I mentioned, it's a concept originally floated by Verizon and it could definitively resolve the rate issue.

The 2011 Order identifies several preconditions to a determination that contract rates are not just and reasonable, including that bargaining leverage is present. We don't believe that pole ownership ratio confers bargaining leverage in this situation for the same reasons as described in FirstEnergy's response at the FCC to the Frontier complaint a few years back. Meanwhile, there are a number of significant advantages that Verizon enjoys in its ILEC agreements; for example, as recently as two weeks ago, Stacey Culbreath demanded that Penn Power NOT require Verizon to follow the same application process for attachments that is required of CLECs. We'd be happy to discuss these benefits further as we continue these discussions.

Steve

Stephen F. Schafer
Manager, Joint Use & Cable Locating
Energy Delivery - Operations Services
FirstEnergy Services Company
76 South Main Street A-GO-11
Akron, Ohio 44308
330.384.3711
SSchafer@FirstEnergyCorp.com

From: james.slavin@verizon.com <james.slavin@verizon.com>
Sent: Friday, May 04, 2018 5:24 PM
To: Schafer, Stephen F <sschafer@firstenergycorp.com>

Cc: brian.trosper@verizon.com; Karafa, David J. <djkarafa@firstenergycorp.com>; Pryatel, Thomas R. <pryatelt@firstenergycorp.com>; DeWitt, Deanna R <ddewitt@firstenergycorp.com>; Endris, Robert M <rendris@firstenergycorp.com>; reneta.haynes@verizon.com; stephen.c.mills@verizon.com
Subject: [EXTERNAL] RE: FirstEnergy Counterproposal

Steve,

Thank you for the counteroffer. Before we can evaluate your offer, we need more information to fully understand what FirstEnergy is offering. Could you please provide this information by Tuesday, so that we can work to provide a response by the end of next week?

First, please send your rate calculations. Verizon provided a hard copy of its rate calculations in Brian Trosper's December 20, 2017 letter and you'll recall that your team asked for an electronic copy of our Excel spreadsheet at our April 11 executive-level meeting so that FirstEnergy could use it to develop a counteroffer. Brian sent the spreadsheet on April 13, and based on our meeting and Dave Karafa's April 20 and May 1 emails, we expected to receive it back with an explanation for any formula or input changes that FirstEnergy made. So that we can understand FirstEnergy's offer, please provide us the electronic version of the spreadsheet you used to calculate the proposed rates, along with an explanation for each of the inputs you used. Dave indicated that your team found the detailed rate calculations that we provided in December and April beneficial, and we would find similar information from your team helpful as well.

Second, your email does not specify the effective date for these proposed rates. We assume that FirstEnergy would apply them retroactively, since Verizon has had the right to just and reasonable rates as of the effective date of the 2011 Pole Attachment Order. Refunds against past amounts paid was one of the items we highlighted, and as your offer indicates, this has been going on for at least 7 years with the parties considering different alternatives. But, to avoid any confusion, we would appreciate it if you would clarify the retroactive relief that FirstEnergy is offering.

We remain hopeful that we can reach agreement, but are disappointed that your email mischaracterizes aspects of our prior negotiations. For example, we explained that the rate calculations attached to Brian's December letter were the rate calculations that we believe, based on the best data available to us, are properly calculated, proportional, new telecom rates. We provided those calculations in advance of our executive-level meeting so FirstEnergy would fully understand the relief that Verizon will seek at the FCC should these negotiations fail. There was no requirement that Brian make any compromise offer in that letter, and clearly no reason for him to again offer the compromise [redacted] per pole reciprocal rate that Met-Ed rejected last summer.

And while we continue to believe that the FCC's new telecom formula should be used to set Verizon's rental rate with FirstEnergy, we have repeatedly acknowledged that the 2011 Pole Attachment Order permits a higher rate if a Joint Use Agreement provides an ILEC net material advantages over its competitors. As we have explained, our Joint Use Agreements do not provide any such advantages. We have asked FirstEnergy to let us know if it disagrees, and to detail any competitive advantages that it thinks would support a rate higher than the new telecom rate along with the value of any alleged competitive advantage, but it has not done so.

These are only some of the concerns that we have with the statements made in your email, but we can address each of them in detail once we have a chance to understand FirstEnergy's rate calculations and inputs. I look forward to hearing from you next week.

Thanks again,

verizon✓

James Slavin
Senior Manager, Network Operations & Engineering
Verizon Wireline Network

One Verizon Way
Basking Ridge, NJ 07920

908-559-2887
james.slavin@verizon.com

From: Schafer, Stephen F [mailto:sschafer@firstenergycorp.com]
Sent: Wednesday, May 02, 2018 5:31 PM
To: Slavin, James
Cc: Trosper, Brian H; Karafa, David J.; Pryatel, Thomas R.; DeWitt, Deanna R; Endris, Robert M
Subject: [E] FirstEnergy Counterproposal

Hello Jim
Hope this finds you well since we last met. As you know, executives at our respective companies have been discussing the rental rate issue. I was asked by Dave Karafa, FirstEnergy's VP of Distribution Support, to respond to Brian Trosper's offer, which was communicated during our April 11, 2018 meeting and reiterated afterwards, to use the Post-2011 Telecom Formula Rate (i.e. CLEC rate) as the basis for rental rates, not just for Met-Ed, but also for Penelec, Penn Power, and Potomac Edison-Maryland. We see that your company seems resolute in its view that the CLEC rate must be applied - initially using Met Ed's rate as a reciprocal rate for each other's attachments, and more recently using each FirstEnergy operating company's rate outcome for Verizon's attachments, and Verizon's rate outcome for FirstEnergy's attachments. We couldn't help but notice, however, that in Mr. Trosper's offer following the April 11 meeting, the Met-Ed rate remains essentially unchanged from Verizon's previous demand. And now, Verizon is proposing a significantly higher rate for Met-Ed's (and other FE operating company's) attachments to Verizon's poles. It may prove difficult to successfully negotiate a mutually acceptable outcome if Verizon continues to lower its counteroffers.

As Mr. Karafa indicated, FirstEnergy's view is that the only guidance issued by the FCC is that the Pre-2011 Telecom Formula Rate will be used as a reference point for a complaint regarding ILEC rates. Our previous suggestion to use the Pre-2011 Formula Rate resulted in a [redacted] recurring annual savings for Verizon versus the contract rate (for the Met-Ed service territory). In fact, using the Pre-2011 Telecom Formula Rate would result in approximately [redacted] recurring annual savings to Verizon for all four operating FirstEnergy operating companies. You may recall that Met-Ed proposed to use the Pre-2011 Telecom Formula Rates, calculated using FERC and ARMIS inputs, respectively. Despite Verizon's recent step backwards, in the spirit of cooperation and an effort to advance negotiations, FirstEnergy is hereby proposing to use the following table of respective rates, generated by using the Pre-2011 Telecom Formula to calculate the rates but modified by using the average urban/non-urban presumptive number of attachers instead of the actual number of attachers calculated from each operating company's records for the rates of Verizon's attachment to FirstEnergy poles. The bottom line of this approach results in a reduction to Verizon (for all four companies) in total annual net revenues of approximately [redacted] from our previous suggestion, and nearly [redacted] annual savings vis-à-vis current contract rates.

FE OpCo	**VZ-FE**	**FE-VZ**
Met-Ed	[redacted]	[redacted]
PN	[redacted]	[redacted]
PP	[redacted]	[redacted]
PE	[redacted]	[redacted]

As an alternative, if Verizon continues to insist on the CLEC rate, then I suggest we terminate our current Joint Use agreements and Verizon can enter into the standard CLEC agreement, as one of your Directors once proposed. Instead of FirstEnergy buying all of Verizon's poles as Verizon had offered approximately 7 years ago, each FirstEnergy operating company can simply set, pay for, and own all new and replacement poles. After all, FirstEnergy already sets the overwhelming majority of poles during storm restoration, car-pole accidents, and new development construction, so it would be a simple matter of not invoicing Verizon for the cost to replace Verizon's poles as is done under the existing

ILEC Joint Use agreements. This accelerated attrition will eventually transition Verizon out of the pole-owning business in FirstEnergy service territories and place it on equal footing with its CLEC competitors (ignoring the advantageous lowest position on existing poles). Of course, we will need to address the details for FirstEnergy's attachment(s) to Verizon's poles during the transition, but a simple solution could be to use the applicable operational terms and conditions of the existing agreements. I realize this suggestion may be as novel for Verizon as it is for FirstEnergy, but perhaps thinking "outside the box" can lead to creative solutions meeting both our needs.

Please contact me if you'd like to discuss these ideas before formulating a response. I look forward to hearing from you.

Steve

Stephen F. Schafer
Manager, Joint Use & Cable Locating
Energy Delivery - Operations Services
FirstEnergy Services Company
76 South Main Street A-GO-11
Akron, Ohio 44308
330.384.3711
SSchafer@FirstEnergyCorp.com

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Exhibit 18

From: Karafa, David J. [mailto:djkarafa@firstenergycorp.com]
Sent: Thursday, June 7, 2018 10:47 PM
To: Trosper, Brian H <brian.trosper@one.verizon.com>
Subject: [E] RE: FirstEnergy Counterproposal

Brian:

I share your disappointment that the parties have not progressed further in our negotiations, and I appreciate that you recognize FirstEnergy's offer to use the pre-2011 Telecom rate is "a constructive step forward." Our longstanding existing joint use agreements are entitled to deference by the FCC, and our offer to use the pre-2011 Telecom rate is consistent with the range of calculations that Verizon itself proposed in 2015. We therefore agree that FirstEnergy's compromise is a constructive step forward.

We continue to hope Verizon too will be inclined to take some constructive steps forward of its own.

The FCC's April 2011 Pole Attachment Order states the FCC will defer to existing agreements and indicates it will reject complaints about agreements like these that no party has sought to terminate. The FCC will look for bargaining leverage, but FirstEnergy lacks such leverage because the parties are dependent on each other for access to the other's poles and because FirstEnergy can't contractually remove most of Verizon's attachments anyway. Additionally, Verizon's own bargaining leverage is evidenced by its earlier refusal to pay joint use invoices and by its continuing unwillingness to operate and maintain its pole distribution system in accordance with our existing joint use agreements, no matter what those agreements require.

As we've repeatedly stated, FirstEnergy is willing to discuss the numerous advantages that Verizon has over its competitors, including how those advantages should be quantified, and we believe Verizon's competitive advantages will easily justify current contract rates. As for refunds, neither the facts nor the law support refunds in this case. Refunds are not appropriate because (1) the contracts have not been terminated, (2) FirstEnergy's rates are otherwise justified, and (3) the FCC's ratemaking rules are so vague that it is difficult to predict what the rate should be. We are also confused as to why Verizon has included Penelec, Potomac Edison and Penn Power in its refund requests, when the parties have been negotiating only Met-Ed's rates (and the Met-Ed rate negotiations were placed on hold for more than two years while the parties tried to negotiate other terms for new Met-Ed and Penelec agreements), including Verizon's work stoppage.

The Enforcement Bureau's "interim" Verizon v. Dominion decision and the FCC's pending pole attachment Notice of Proposed Rulemaking (NPRM) do not stand for what Verizon claims. Unlike our situation, the Verizon v. Dominion proceeding addressed a joint use agreement that post-dated the FCC's April 2011 Pole Attachment Order, and in that proceeding Dominion for some reason made no effort to monetize Verizon's advantages as directed by the FCC. To the contrary, FirstEnergy will make every effort to do so. As for the FCC's NPRM, that notice of proposed rules is of course not a final rule anyone can rely on, and the facts in this case support a favorable ruling for FirstEnergy even if the FCC's proposal were adopted. If Verizon believes the FCC's final ruling on its NPRM would be helpful for our negotiations, perhaps the parties should await that ruling before going further (we expect the FCC to rule on its NPRM soon).

Verizon has asked FirstEnergy to monetize its advantages over its CLEC and cable company competitors, and I would like to reinforce that we have repeatedly said we're willing to discuss these competitive advantages, and we continue to be willing to discuss them. Verizon's competitive advantages historically have included, and today continue to include, the following (among others):

Verizon Competitive Advantages

- Pre-planning makes room in advance for Verizon, and Verizon benefits considerably from being the first attacher on an unencumbered pole
- Verizon gets lowest attachment height which is easier to access
- And because Verizon gets the lowest position on the pole, it benefits from one additional attachment (i.e. 2 attachments in first 12" of space).
- Verizon is guaranteed a number of feet on each pole
- New attachers that wish to compete with Verizon must contend with already-congested poles
- Verizon's make-ready costs are dramatically lower than its competitors' costs
- Verizon's survey costs are dramatically lower than its competitors' costs
- Verizon's engineering costs are dramatically lower than its competitors' costs
- Verizon does not have to wait for the permitting process to receive permission to attach and so can serve customers faster and with less expense than its competitors
- Unlike new attachers, Verizon can overlash at will without having to wait for the permitting process to receive permission to attach in the first place. This allows Verizon to serve customers faster and with far less expense than its competitors
- Verizon's speed to market compared to new attachers (and even existing third party attachers) is worth millions to Verizon, and costs millions to its competitors
- Pole transfer provisions relieve Verizon of considerable attachment transfer costs that third party attacher competitors must incur
- Verizon can attach to FirstEnergy's multi-ground neutrals, unlike Verizon's competitors
- Verizon can attach to FirstEnergy's guys and anchors, unlike Verizon's competitors
- Verizon is not subject to audit costs as are Verizon's competitors
- Verizon need not affix identification tags as do Verizon's competitors
- Verizon is not subject to unauthorized attachment penalties as are Verizon's competitors
- Verizon is not subject to safety violation penalties as are Verizon's competitors
- Verizon need not post bonds or other security, as must Verizon's competitors
- Verizon does not pay any agreement preparation fees as do Verizon's competitors
- Verizon does not pay any attachment application fees as do Verizon's competitors
- Evergreen provisions in our joint use agreements mean Verizon cannot be removed from FirstEnergy poles even if the contract is terminated, unlike Verizon's competitors
- Insurance provisions are less burdensome for Verizon than for Verizon's competitors
- Indemnification provisions are more favorable to Verizon, saving Verizon millions in out of court settlements over its competitors

In addition to these competitive advantages on FirstEnergy's poles, Verizon has enjoyed similar competitive advantages on its own poles. In addition, Verizon has saved considerable additional money by not complying with its joint use obligations and by shifting costs that Verizon itself should be incurring to its joint use partner FirstEnergy.

We believe these advantages Verizon has in its joint use agreement are the reasons why Verizon has not responded to FirstEnergy's repeated offers to move away from the pole owning business and switch to a standard CLEC agreement providing the same rates, terms and conditions that Verizon's CLEC competitors operate under.

As envisioned by the FCC, the process of monetizing these advantages that Verizon has over its competitors requires discovery from Verizon. The attached FCC Briefing Order in the Frontier v. FirstEnergy proceeding resulted in the attached First Set of Discovery Requests from FirstEnergy to Frontier. In any such proceeding that might take place between FirstEnergy and Verizon, we would expect significantly more discovery to address the additional issues not addressed in the Frontier case. …

FirstEnergy hopes and believes the parties can resolve this matter outside of FCC involvement and renews its offer to Verizon to continue negotiating a mutually-satisfactory resolution. Please let us know if Verizon agrees. If so, perhaps another meeting would be appropriate either between ourselves or our personnel to discuss a path moving forward.

Thanks…….

From: brian.trosper@verizon.com <brian.trosper@verizon.com>
Sent: Wednesday, May 30, 2018 4:04 PM
To: Karafa, David J. <djkarafa@firstenergycorp.com>
Subject: FirstEnergy Counterproposal

Dave,

As we discussed on the phone last week, I met with my team to review First Energy's counteroffer. I am disappointed that we remain so far apart on what constitutes a just and reasonable rental rate for Verizon's attachments on FirstEnergy's poles. While FirstEnergy's offer to use the Pre-2011 telecom formula to set the rental rate is a constructive step forward, the FCC's orders have made two things clear:

1. ILECs are entitled to the new telecom formula when comparably situated to their competitors, with the rate resulting from the Pre-2011 Telecom Formula serving as a high-level reference point only in circumstances, unlike those present here, in which an ILEC attaches to an IOU's poles under terms and conditions that provide it a net material advantage relative to its competitors, and
2. Verizon is entitled to a refund of overpayments as far back as the statute of limitations will allow, which I understand is four years in Pennsylvania.

Your offer ignores these rulings from the FCC and the policies and proposed rules contained in the NPRM it issued last year. Although our respective joint use groups have been negotiating for more than 7 years, FirstEnergy has only recently identified a single alleged advantage that Verizon enjoys relative to its competitors: a different application process than its CLEC competitors follow for making attachments. Setting aside the fact that following a different process does not make it advantageous, FirstEnergy has not quantified the annual per-pole value of such alleged "advantage." And, even if FirstEnergy could show that this different application process was advantageous and had some quantifiable value, neither of which is the case, that value could not justify the significant difference between the rate resulting from the New Telecom Formula and the rate FirstEnergy has offered using the Pre-2011 telecom formula. Moreover, any calculation of competitive differences must also account for competitive disadvantages, and any value associated with a possible one-time process difference could not offset the ongoing costs of owning and operating a substantial pole network that Verizon's competitors are not obligated to incur. Mr. Schafer's recent proposal to provide Verizon the New Telecom Rate if it were to sign a license agreement misses the point. It is the terms of the agreements that matter, not their titles. After my team reviewed FirstEnergy's template license agreement, we continue to believe that Verizon enjoys no material competitive advantage under its joint use agreements and thus there is no basis for any upward departure from the rates resulting from the proper application of the New Telecom Formula.

It seems clear to me that First Energy does not agree with items 1 and 2 applying based on the outcome of our meetings, conversations and email exchanges. That disagreement presents a serious challenge to being able to reach a business deal.

I had mentioned during the call that I would send a counteroffer along with this email. But reflecting on these fundamental areas of disagreement, I didn't think it would be productive since any offer is grounded in First Energy needing to ultimately accept that the new telecom rate formula, with appropriate inputs, applies. Regarding inputs, for purposes of these negotiations, First Energy's revisions to cross-arm allowance, distribution pole counts, and cost of capital inputs are acceptable, subject to validation. The remaining inputs should be those that were used in the file attached to my April 17th email.

I welcome First Energy making an offer that incorporates the New Telecom Rate formula with acceptable inputs and an appropriate refund amount for past overpayments. If you don't plan to do so, please confirm that intent back to me. Then I'll move this along to what I feel are next steps for Verizon.

As we first discussed in late January and in subsequent exchanges, I continue to hope that we can reach a business deal regarding rental rates, but understand that may not be possible.

Regards,

Brian

Exhibit 19

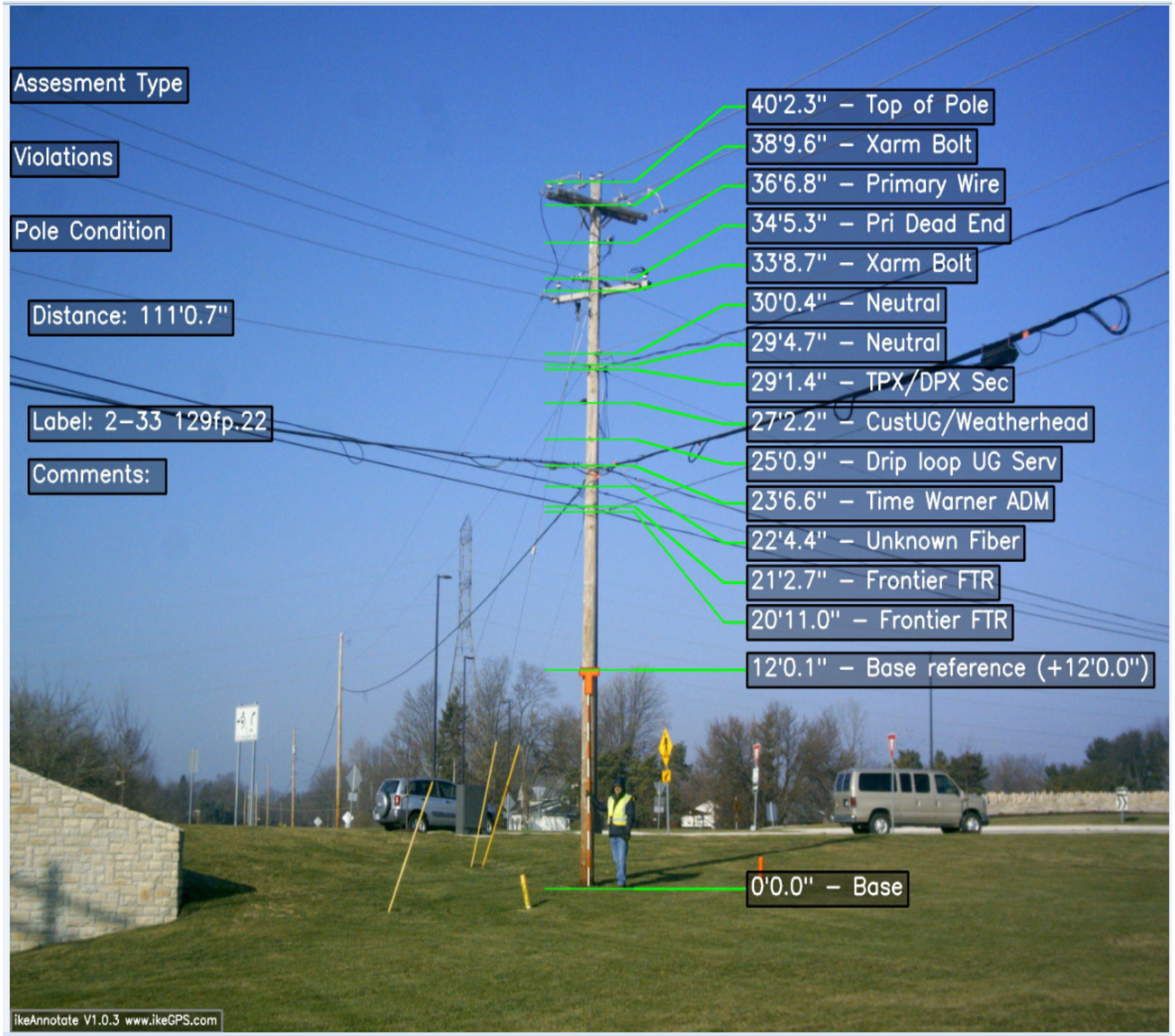
All attaching companies shall submit a Complete Application to FEOC. Incomplete applications will be returned to the applicant for correction and resubmittal. This document defines FEOC requirements for a Complete Application. Mandatory rules in this document are those that identify action that are specifically required and are characterized by the term shall**.** Prior to submitting a Complete Application, attaching company shall execute a Pole Attachment Agreement with FEOC. To establish a Pole Attachment Agreement, contact FirstEnergy Corporate Joint Use by email at corpjointuse@firstenergycorp.com.

A Complete Application shall include the following:

1. Use of FEOC's electronic permitting system (i.e., SPANS)
2. Submittal to the respective FEOC
3. Submittal of One Touch Make Ready (OTMR) separate from Non-OTMR
4. Attaching company name, key contacts, and approval signature
5. Contract number or pole attachment agreement ID
6. Application number
7. Maximum 25 poles per application for wireline attachments
8. Maximum 10 poles per square mile per application for wireless attachments
9. Pole/structure number (where tagged in the field) and location, including complete address and county
10. Telephone Company (i.e., ILEC) pole number (where tagged in the field)
11. Pole profile sheet[1] indicating height[2] of the following:
    a. Lowest power attachment
    b. Streetlights
    c. Existing communications attachments
    d. Mid-span clearances, including attachment above, below, and ground reference
    e. New attachment
12. Pole photographs[1] (equivalent to "Figure 1") including:
    a. Street view
    b. Adjacent spans
    c. Annotated heights for existing attachments
13. FEOC approved route map including:
    a. Permittable crossings (e.g., railroad crossings, limited access highways, and navigable waterways)
    b. Street names
    c. FEOC pole numbers (where tagged in the field)
    d. ILEC pole numbers (where tagged in the field)
14. Proposed make-ready construction
15. Description of any other work such as anchor attachments, vertical runs, etc.
16. Wireless Attachments have additional requirements:
    a. Exhibit D – Wireless Attachment and Associated Equipment Description and Approval
    b. MPE (Maximum Permissible Exposure) Report
    c. Manufacturer's equipment specifications for antenna and bracket
    d. RF warning signage
17. Transmission structures have additional requirements[3]:
    a. Must have distribution underbuild
    b. Number and size of cable being attached
    c. Max tension of cable and assumed conditions (e.g. NESC loading district)
    d. Guying application (applicable to angle structures and/or imbalanced loading conditions such as underground to overhead)

[1] Use of an ikeGPS™ or similar electronic measurement technology may be accommodated at FEOC sole discretion.
[2] Any breach of OSHA's minimum approach distance (including measurement) of electric facilities must be conducted by a qualified electrical worker and in accordance with good safety practices and OSHA guidelines.
[3] Transmission organization review and release of Complete Application is required before FEOC begins survey / engineering.

Figure 1

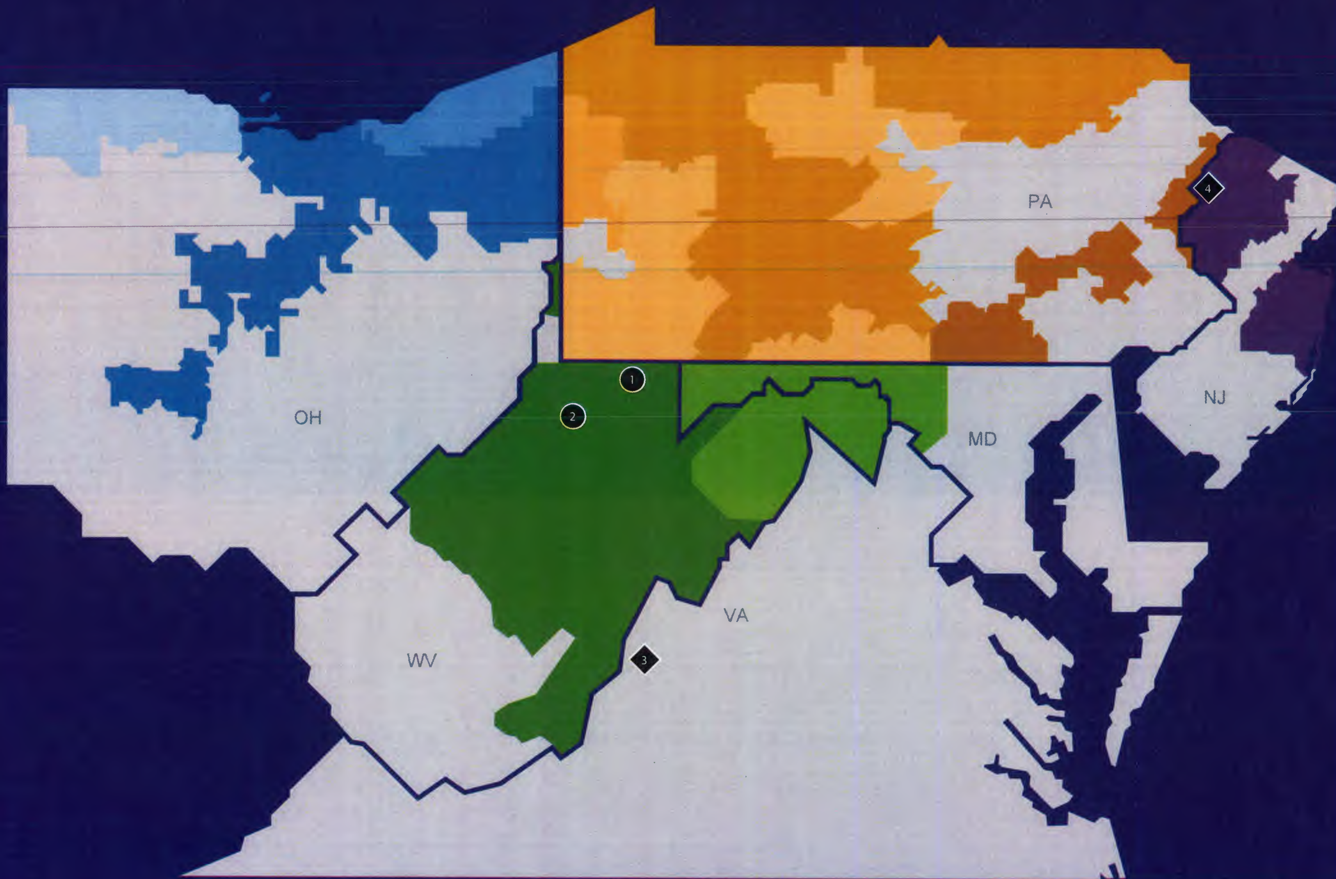


FEOC pole # 123d-654/CL pole # 987-789

Exhibit 20

ANNUAL REPORT 2018

FirstEnergy



FIRSTENERGY CORPORATE PROFILE

Headquartered in Akron, Ohio, FirstEnergy is a forward-thinking electric utility powered by a diverse team of employees committed to making customers' lives brighter, the environment better and communities stronger. Our subsidiaries are involved in the transmission, distribution and regulated generation of electricity.

Our workforce of approximately 12,500 employees is dedicated to safety, reliability and operational excellence. Our 10 electric distribution companies form one of the nation's largest investor-owned electric systems, based on serving 6 million customers in Ohio, Pennsylvania, New Jersey, West Virginia, Maryland and New York. The company's transmission subsidiaries operate approximately 25,000 miles of transmission lines connecting the Midwest and Mid-Atlantic regions.

FirstEnergy's regulated subsidiaries own two regulated coal plants and generation capacity from two pumped-storage hydro facilities.

OHIO

Ohio Edison
The Illuminating Company
Toledo Edison

PENNSYLVANIA

Met-Ed
Penelec
Penn Power
West Penn Power

WEST VIRGINIA/ MARYLAND

Mon Power
Potomac Edison

NEW JERSEY

Jersey Central Power & Light

GENERATION STATIONS

Coal
1 Fort Martin Power Station
2 Harrison Power Station

Hydro
3 Bath County Pumped-Storage Hydro
4 Yards Creek Pumped-Storage Hydro

Exhibit 21

THE POTOMAC EDISON COMPANY: D00515080

Department ID Number:

D00515080

Business Name:

THE POTOMAC EDISON COMPANY

Principal Office:

10802 BOWER AVE.

WILLIAMSPORT MD 21795

Resident Agent:

THE CORPORATION TRUST, INCORPORATED

2405 YORK ROAD

SUITE 201

LUTHERVILLE TIMONIUM MD 21093-2264

Status:

INCORPORATED

Good Standing:

Good Standing for this Business is Unavailable.

Please email sdat.charterhelp@maryland.gov with questions.

Business Type:

CORPORATION

Business Code:

07 PUBLIC UTILITY AND RAILROAD

Date of Formation/ Registration:

10/16/1922

State of Formation:

MD

Stock Status:

STOCK

Close Status:

NO

Exhibit 22

Section 1: 10-K (10-K)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K
(Mark One)

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the FISCAL YEAR ended December 31, 2018

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from __________________ to __________________

Commission File Number	Registrant; State of Incorporation; Address; and Telephone Number	I.R.S. Employer Identification No.
333-21011	FIRSTENERGY CORP. (An Ohio Corporation) 76 South Main Street Akron, OH 44308 Telephone (800)736-3402	34-1843785

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

Registrant	Title of Each Class	Name of Each Exchange on Which Registered
FirstEnergy Corp.	Common Stock, $0.10 par value per share	New York Stock Exchange

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT:

None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes ☑ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes ☐ No ☑

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☑ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files).

Yes ☑ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer ☑

Accelerated Filer ☐

Non-accelerated Filer ☐

Smaller Reporting Company ☐

Emerging Growth Company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act).

Yes ☐ No ☑

State the aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and ask price of such common equity, as of the last business day of the registrant’s most recently completed second fiscal quarter.

$17,109,706,919 as of June 30, 2018

Indicate the number of shares outstanding of each of the registrant’s classes of common stock, as of the latest practicable date:

CLASS	AS OF JANUARY 31, 2019
Common Stock, $0.10 par value	530,152,175

Documents Incorporated By Reference

DOCUMENT	PART OF FORM 10-K INTO WHICH DOCUMENT IS INCORPORATED
Proxy Statement for 2019 Annual Meeting of Shareholders of FirstEnergy Corp. to be held May 21, 2019	Part III

PART I

ITEM 1. BUSINESS

The Companies

FE was incorporated under Ohio law in 1996. FE’s principal business is the holding, directly or indirectly, of all of the outstanding equity of its principal subsidiaries: OE, CEI, TE, Penn (a wholly owned subsidiary of OE), JCP&L, ME, PN, FESC, AE Supply, MP, PE, WP, and FET and its principal subsidiaries (ATSI, MAIT and TrAIL). In addition, FE holds all of the outstanding equity of other direct subsidiaries including: FirstEnergy Properties, Inc., FEV, FELHC, Inc., GPU Nuclear, Inc., AESC and Allegheny Ventures, Inc.

FE and its subsidiaries are principally involved in the transmission, distribution and generation of electricity. FirstEnergy’s ten utility operating companies comprise one of the nation’s largest investor-owned electric systems, based on serving over six million customers in the Midwest and Mid-Atlantic regions. FirstEnergy's transmission operations include approximately 24,500 miles of lines and two regional transmission operation centers. AGC, JCP&L and MP control 3,790 MWs of total capacity.

FirstEnergy’s revenues are primarily derived from electric service provided by its utility operating subsidiaries (OE, CEI, TE, Penn, JCP&L, ME, PN, MP, PE and WP) and its transmission subsidiaries (ATSI, MAIT and TrAIL).

Regulated Utility Operating Subsidiaries

The Utilities’ combined service areas encompass approximately 65,000 square miles in Ohio, Pennsylvania, West Virginia, Maryland, New Jersey and New York. The areas they serve have a combined population of approximately 13.3 million.

OE was organized under Ohio law in 1930 and owns property and does business as an electric public utility in that state. OE engages in the distribution and sale of electric energy to communities in a 7,000 square mile area of central and northeastern Ohio. The area it serves has a population of approximately 2.3 million.

OE owns all of Penn’s outstanding common stock. Penn was organized under Pennsylvania law in 1930 and owns property and does business as an electric public utility in that state. Penn is also authorized to do business in Ohio. Penn furnishes electric service to communities in 1,100 square miles of western Pennsylvania. The area it serves has a population of approximately 0.4 million.

CEI was organized under Ohio law in 1892 and does business as an electric public utility in that state. CEI engages in the distribution and sale of electric energy in an area of 1,600 square miles in northeastern Ohio. The area it serves has a population of approximately 1.6 million.

TE was organized under Ohio law in 1901 and does business as an electric public utility in that state. TE engages in the distribution and sale of electric energy in an area of 2,300 square miles in northwestern Ohio. The area it serves has a population of approximately 0.7 million.

JCP&L was organized under New Jersey law in 1925 and owns property and does business as an electric public utility in that state. JCP&L provides transmission and distribution services in 3,200 square miles of northern, western and east central New Jersey. The area it serves has a population of approximately 2.7 million. JCP&L also has a 50% ownership interest (210 MWs) in the Yard's Creek hydroelectric generating facility.

ME was organized under Pennsylvania law in 1917 and owns property and does business as an electric public utility in that state. ME provides distribution services in 3,300 square miles of eastern and south central Pennsylvania. The area it serves has a population of approximately 1.2 million.

PN was organized under Pennsylvania law in 1919 and owns property and does business as an electric public utility in that state. PN provides distribution services in 17,600 square miles of western, northern and south central Pennsylvania. The area it serves has a population of approximately 1.2 million. PN, as lessee of the property of its subsidiary, The Waverly Electric Light & Power Company, also serves customers in the Waverly, New York vicinity.

PE was organized under Maryland law in 1923 and under Virginia law in 1974. PE is authorized to do business in Virginia, West Virginia and Maryland. PE owns property and does business as an electric public utility in those states. PE provides transmission and distribution services in portions of Maryland and West Virginia and provides transmission services in Virginia in an area totaling approximately 5,500 square miles. The area it serves has a population of approximately 0.9 million.

MP was organized under Ohio law in 1924 and owns property and does business as an electric public utility in the state of West Virginia. MP provides generation, transmission and distribution services in 13,000 square miles of northern West Virginia. The area it serves has a population of approximately 0.8 million. MP is contractually obligated to provide power to PE to meet its load obligations in West Virginia. MP owns or contractually controls 3,580 MWs of generation capacity that is supplied to its electric utility business, including a 16% undivided interest in the Bath County, Virginia pumped-storage hydroelectric generation facility (487

1. I have reviewed this report on Form 10-K of FirstEnergy Corp.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 19, 2019

/s/ Steven E. Strah
Steven E. Strah
Senior Vice President and Chief Financial Officer

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Section 16: EX-32 (EXHIBIT 32)

EXHIBIT 32

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350

In connection with the Report of FirstEnergy Corp. ("Company") on Form 10-K for the period ended December 31, 2018 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each undersigned officer of the Company does hereby certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that to the best of his knowledge:

(1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Charles E. Jones
Charles E. Jones
President and Chief Executive Officer

/s/ Steven E. Strah
Steven E. Strah
Senior Vice President and Chief Financial Officer

Date: February 19, 2019

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Exhibit 23

84 Md.P.S.C. 62, 1993 WL 667089 (Md.P.S.C.)
Slip Copy

Re Potomac Edison Company

Case No. 8469
Order No. 70371

Maryland Public Service Commission

February 24, 1993

APPEARANCES: Robert B. Murdock, Philip J. Bray, Alan P. Buchmann, Arthur E. Korkosz and Lisa R. Battaglia, for The Potomac Edison Company. Ronald E. Alper, for the Staff of the Public Service Commission of Maryland. John M. Glynn, Paul S. Buckley and Christopher Cook, for the Maryland Office of People's Counsel. Edward F. Shea, Jr. and Jeral A. Milton, for Eastalco Aluminium Company. John J. Carrara, for Westvaco Corporation.

BY THE COMMISSION:

I. *INTRODUCTION*

On July 29, 1992, The Potomac Edison Company ('PE,' 'Potomac Edison,' or 'Company') filed with the Commission an Application for authority to increase its electric rates by $22.96 million, an increase of 7.5 percent, to become effective on August 28, 1992. The Company's last increase in base rates was granted in 1991.[1] Potomac Edison is one of several subsidiaries of the Allegheny Power System, Inc. ('APS'), and provides Maryland jurisdictional electric service in Garrett, Allegany, Washington, and Frederick counties in their entirety, as well as parts of Montgomery, Carroll and Howard counties. The Company also provides electric service in Virginia and West Virginia.

1 *Re The Potomac Edison Company*, 82 Md. PSC 470 (1991).

By Order No. 70043, entered in this proceeding on August 5, 1992, the Commission suspended the proposed rates and instituted proceedings as to the justice and reasonableness thereof. At the prehearing conference held on August 27, 1992, members of the Commission's Staff Counsel Division ('Staff') and the Office of Maryland People's Counsel ('OPC' or 'People's Counsel') entered their respective appearances. Permission to intervene was granted to Eastalco Aluminum Company ('Eastalco') and Westvaco Corporation ('Westvaco').

Evidentiary hearings were held at the Commission's offices in Baltimore, Maryland in October and December 1992 and in January 1993. In November 1992, the Commission held evening hearings in Frederick and Hagerstown, Maryland, for the purpose of receiving public comment on PE's Application.

The following Company employees sponsored testimony in support of PE's Application: Thomas J. Kloc, Comptroller; Steve L. Klick, Manager, Ratemaking and Financial Studies; and David B. Hovis, Supervisor of Payables and Plant Accounting. APS employees who presented testimony include: Stanley I. Garnett, Vice President-Finance and Chief Financial Officer; Albert F. Kave, Director of Generation Planning; Donald R. Feenstra, Director of Power Stations; Francis D. Stillman, Manager-Rate Research; and Donald B. Pripstein, Director-Rates. In addition, two consultants testified on behalf of the Company: Dr. William E. Avera, a principal in Financial Concepts and Applications, Inc., and Manoj P. Singh, a partner in the management consulting division of Deloitte and Touche.

The Commission Staff sponsored the testimony of Alan D. Haymes, Director-Rate Research & Economics; Calvin L. Timmerman, Edward W. Mills, and Wayne L. Lash, Regulatory Economists with the Rate Research & Economics Division; and Lawrence W. Webster and Yvette L. Spriggs, Staff Auditors with the Accounting Division.

T. *Operating Income Finding*.

After making various adjustments to per books figures, the Commission concludes that PE's adjusted operating income for the 12 month period ended June 30, 1992 was $43,663,000.

V. *RATE OF RETURN*

Consistent with past Potomac Edison base rate cases, the capital structure and rate of return recommendations of the parties are based upon the financial indices of PE's parent, APS.

In addition to the usual issues concerning capital structure and the cost of debt and equity, company witness Kloc asked that PE's cost of equity be adjusted to recognize the good performance of management. He noted that, without such rewards (or penalties when appropriate), there is no differentiation in rate setting between a well-managed and a poorly-managed utility. He noted that other state regulatory commissions (Virginia and Pennsylvania) have granted rewards by setting the allowed return on equity at the upper end of the appropriate range determined by the agency or by adding an increment to the otherwise-determined return on equity result. As an alternative, Mr. Kloc suggests that the Commission approve PE's forward looking adjustments.

Company witness Garnett sponsored testimony regarding the financial position of PE and APS, noting in particular the impact of the CAAA upon the two entities. He also discussed PE's need to finance its construction program on favorable terms, the standards employed by rating agencies to evaluate the performance of PE, and the financial performance of PE and APS compared to other utilities in their service area.

A. *Capital Structure*.

There appears to be no dispute among the parties as to PE's appropriate capital structure for ratemaking purposes. Thus, we will accept the proposed capital structure which reflects PE's anticipated capital components at the beginning of the rate-effective period: 48.49 percent debt; 7.69 percent preferred stock; and 43.82 percent common equity.

B. *Cost of Debt and Preferred Stock*.

In his direct testimony, OPC witness Hill takes issue with the Company's projected embedded cost of short-term debt and its impact upon PE's total cost of debt. Mr. Hill's figure for preferred stock also differs from the Company's although his testimony states that he accepts PE's figure. There is some confusion as to these issues, however, since PE's figures for its cost of debt and cost of preferred stock are lower than Mr. Hill's figures. Because the lower figures would reduce PE's overall cost of capital, we assume that OPC would agree to the lower figures. Accordingly, we will accept the cost rates for debt and preferred stock as provided by the Company: 8.2 percent and 6.39 percent, respectively.

C. *Cost of Equity*.

The three rate of return witnesses in this proceeding utilized a Discounted Cash Flow (‘DCF‘) analysis as one method of estimating PE's cost of equity. As was stated in PE's last base rate case, ‘[t]he premise of the standard DCF model is that investors' equity return requirement (the cost of equity) equals the dividend yield plus the projected growth in dividends.‘*Re The Potomac Edison Company*, 82 Md. PSC at 486. This figure may then be adjusted upward to account for flotation costs.

Company witness Avera performed both a standard and constant growth DCF analysis for both APS and a 'comparable group' of 28 companies (publicly traded electric utilities having risks similar to those of PE). However, the witness placed greater reliance upon his risk premium analysis for determining his cost of equity recommendation, noting numerous criticisms of the DCF methodology.

In discussing a constant growth DCF analysis, Mr. Avera stated that a dividend yield of 7.2 percent could be utilized, based upon a recent price for APS stock of $45.00 and an expected dividend over the coming year of $3.22 (both figures are from Value Line). Determining growth expectations for use in the DCF model were described by the witness as controversial. Mr. Avera offered an extensive discussion of growth expectations for APS from various sources including: historical growth rates, the earnings retention method of estimating growth, and projections made by professional security analysts. However, Mr. Avera asserts that, at this time, there is wide variability in historical growth rates and illogical results produced by analysts' forecasts which make it virtually impossible to determine a single rate of growth that investors might consider regarding APS' common stock. For example, using the constant growth model, the witness obtained cost of equity estimates for APS ranging from 3.8 percent to over 18 percent. Similar results were obtained for the group of comparable companies.

In addition to the constant growth DCF analysis, Mr. Avera used the 'general form' DCF model to estimate PE's cost of equity. This model substitutes projections of a firm's future dividends and price, then imputes the cost of equity by equating the future cash flows to the current price. Mr. Avera applied the general form of the DCF model in four ways. In each case, a 5-year holding period (1992-1996) was analyzed. Expected dividends during this holding period were based on Value Line's forecasts of 1992, 1993, and 1996 dividends, with values for 1994 and 1995 being interpolated. The four applications differed in how the stock price expected at the end of 1996 was determined. The discount rate necessary to equate the 'Recent Price' reported by Value Line to the projected dividends in each year between 1992 and 1996 and the 1996 stock price was then calculated to impute the cost of equity.

The different 1996 expected stock prices were determined by four methods:

a.) taking the average price per share projected by Value Line for 1995-1997;

b.) multiplying Value Line's forecast of each electric utility's 1995-1997 earnings per share by its current trailing price-earnings ratio;

c.) using a constant growth DCF valuation model; and,

d.) calculating the present value in 1996 of a future dividend stream escalated using the growth in disposable income through 2010 projected by DRI/McGraw Hill for the region of the country in which the utility serves.

The cost of equity estimates produced by the alternative applications of the general form DCF model for APS range from 9.01 percent to 12.01 percent, while for the comparable group, they range from 7.99 percent to 12.37 percent. Within the comparable group, there is considerably more variation among the cost of equity estimates for the individual firms.

Mr. Avera later testified that a more realistic constant growth rate can by developed by looking beyond just the short-run to capture truly long-term growth expectations. Noting that growth forecasts provided by investment analysts are fairly near-term (with the longest being about five years), the witness stated that it is necessary to rely on more general growth forecasts, such as those for the economy as a whole, for long-term growth expectations. To develop a single, constant growth rate which reflects both short-and long-run expectations, Mr. Avera combined utility specific forecasts of earnings growth published by IBES through 1997 with the rate of growth in the gross domestic product ('GDP') between 1997 and 2016 as projected by DRI. [13] For APS, a weighted-average, long-term growth rate of 5.4 percent was computed by combining the 2 percent IBES growth rate and DRI's 6.3 percent GDP growth rate. When the long-term growth rate of 5.4 percent is added to the dividend yield of 7.2 percent, the result is a 'bare bones' cost of equity estimate of 12.6 percent.

13 *Review of the U.S. Economy — Long-Range Focus* (Winter 1991-1992).

In addition to the DCF model, Mr. Avera estimated APS' cost of equity using a risk premium analysis. This method estimates the cost of equity by adding an equity risk premium to observable bond yields. The equity risk premium is the additional return investors require to forego the safety of bonds and bear the greater risks associated with common stocks.

The first component of the calculation (the risk free rate) used by Mr. Avera was the 6.46 percent return on June 1992 five-year government bonds. The second component (the risk premium) was determined by obtaining observable proxies from: mechanistic estimates of the cost of equity, investor surveys, and historical realized rates of return. Mr. Avera noted that adjustments may be required if interest rate levels have changed since the time when the equity risk premiums were estimated. After describing in more detail the various approaches for measuring risk premium, Mr. Avera listed the various cost of equity results for APS obtained by using each method; the results ranged from a low of 11.60 percent to a high of 15.12 percent.

In summarizing his conclusions, Mr. Avera indicates that investors' current required return on equity for APS/PE is in the range of 12 to 13 percent, with the midpoint of 12.5 percent. To this figure, he adds 25 basis points to reflect flotation costs and the impact of AGC upon APS' return on common equity.

Based upon its witness' testimony and analyses, the Company recommends that more weight be given to a risk premium analysis than the DCF model in determining PE's cost of equity. Specifically, Potomac Edison recommends that the Commission adopt a cost of equity in this proceeding of 12.75 percent.

Staff witness Lash performed a DCF analysis for APS and a group of nine comparable companies, then used a Capital Asset Pricing Model ('CAPM') to check his DCF results.

In order to estimate the expected dividend yield over the next year, the witness reviewed current and expected dividends for each company in his comparable group as well as for APS. Also considered were specific quarterly dividend declarations over the prior three years. In computing the dividend yield for APS, Mr. Lash used the expected dividend as estimated by Value Line [14] ($3.24), divided by its average stock for the six months ending September 30, 1992 ($45.13). The dividend yield of 7.18 percent was then adjusted for flotation costs at a rate of 5 percent; the resulting adjusted dividend yield for APS totals 7.54 percent. Using the same analysis, the adjusted dividend yield for the comparable group totals 6.53 percent.

14 Edition 1, September 18, 1992 and Edition 5, October 16, 1992.

With respect to the dividend growth rate component of the DCF method, Mr. Lash testified that he considered historical and forecasted growth rates in dividends per share and earnings per share. To determine historical growth rates, Staff used log-linear least squares analysis; the time periods reviewed included five, seven, and ten-year periods. Further Mr. Lash cites the five-year forecasted growth rates for earnings per share and dividends per share made by Value Line and earnings per share by IBES. The witness stated that he believes a growth rate in the range of from 3.27 percent to 4.27 percent 'is reasonable' for APS. For the comparable group, Mr. Lash's growth rates range from 4.16 percent to 5.16 percent.

When Staff's figures are inserted in the DCF formula, the result is a range in the cost of equity for APS of 10.81 percent to 11.81 percent. For the comparable group, the cost of equity ranges from 10.69 percent to 11.69 percent.

Mr. Lash also used a CAPM to estimate PE's cost of equity. This method is based upon the assumption that an investor's expected rate of return of a security is equal to a rate of return on risk-free securities plus a risk premium which is proportional to the systematic risk (market-related risk of this security). The witness next explained the theory behind and the assumptions related to the CAPM.

In computing APS' cost of equity using the CAPM, Staff used the following inputs: Value Line betas; the average 30-year treasury bond rate and the average annual returns of the S&P 500 industrial market index for the period 1926-1991; and a treasury bond rate of 8.0 percent (reflecting the treasury bond futures markets at mid-1993). Staff's cost of equity estimates for APS and the group of comparable companies using a CAPM range between 10.64 percent and 12.44 percent (with a midpoint of 11.54 percent) after adjustments for flotation costs are made.

Taking into account both models, Staff witness Lash recommends a return on equity for PE of 11.7 percent.

OPC witness Hill estimated APS' cost of equity using several models: a DCF, and Earnings-Price Ratio (‘EPR‘), a Market-to-Book Ratio (‘MTB‘), and a CAPM. Like Staff, Mr. Hill placed primary reliance upon the DCF model; his estimation of APS' cost of equity is 10.75 percent. Before discussing his models for estimating the cost of equity, Mr. Hill reviewed the current financial and economic environment in the United States. According to the witness, capital costs are currently very low; they do, however, accurately reflect the market view that investors are requiring returns from a utility equity investment which are historically low. With respect to the economy in general, Mr. Hill discussed changes in interest rates, the GDP, the cost of debt, the Federal Energy Regulatory Commission's Generic Determination of Rate of Return on Common Equity for Electric Utilities, and market-to-book ratios of the electric utility industry.

Mr. Hill performed a DCF analysis on APS and a group of 10 electric companies selected for their comparability with APS. He indicated that by analyzing a group of utilities with similar characteristics, the estimated value of the growth rate (the controversial component of the DCF model) is more likely to equal the ‘true‘ value for that type of utility operation than is the estimate of growth for an individual company.

The witness testified that several assumptions regarding the growth rate of the DCF model do not exactly track reality; as a result, he attempts to determine a company's long-term sustainable (or internal) growth rate. Mr. Hill's sustainable growth rate takes into consideration historical trends, the most recent growth trends, and Value Line growth expectations for both APS and the comparable group. Specific data considered include: retention ratios, returns on equity, book values per share, and number of shares outstanding. In addition to measuring internal growth rates, the witness also measured growth from external sources (sales of stock). For APS, combining the expected internal and external growth rates (2.5 percent and 0.93 percent, respectively) yields an expected long-term growth rate of 3.43 percent; for the comparable group (including APS) it is 4.28 percent. Comparing his figures to projections by Value Line and IBES, Mr. Hill observed that his sustainable growth rate for APS may be overstated. However, as a group, his growth rates indicate that investors expect growth rates from electric utility investments to be somewhat higher than those in the past.

Mr. Hill calculated dividend yields for APS and the comparable group using each company's next quarter annualized dividends, divided by the daily closing average stock price for the most recent six-week period (ending October 31, 1992). The dividend yield for APS was 7.11 percent while the yield for the comparable group was 6.17 percent.

Combining the growth rates with the dividend yields for both APS and the comparable group (including APS) resulted in a cost of equity of 10.54 percent for the former, and 10.46 percent for the latter.

The second method used by Mr. Hill for estimating the cost of equity was an EPR analysis, modified to include expected returns on equity for the companies under study. The EPR analysis is calculated as the expected earnings per share divided by the current market price. He noted further that when utility market-to-book ratios are different from unity, the mid-point of the range of the expected equity return and the earnings-price ratio is far more accurate than the earnings price ratio alone. The results of Mr. Hill's EPR analysis of the cost of equity for APS and the comparable group is 9.82 percent and 10.03 percent, respectively.

The third method utilized by Mr. Hill was the Market-to-Book (‘MTB‘) Ratio analysis. This model relies on point-in-time data projected one year and five years into the future; as such, the witness indicated that it offers a practical, corroborative check of the traditional DCF. The MTB cost of equity for APS, adjusted for a current average market-to-book ratio of 1.72, is 10.21 percent using the current year data and 10.22 percent using longer-term projected data. For the comparable group, the figures are 10.26 percent for the former and 10.08 percent for the latter.

The final method used by Mr. Hill for estimating APS' cost of equity was the CAPM (described above in Mr. Lash's testimony). With respect to this model, Mr. Hill cautioned that certain theoretical shortcomings reduce its usefulness as a stand-alone analytical technique; instead, he used it as supporting the reasonableness of his DCF estimate. Using the CAPM formula, the witness calculated the cost of equity for APS to be 9.6 percent while the group of comparables' return was 9.54 percent.

The four separate cost of equity analyses performed by Mr. Hill produced a cost of equity for APS ranging from 9.6 percent to 10.54 percent. For the group of comparable companies, the cost of equity ranged from 9.54 percent to 10.46 percent. Mr. Hill testified that, weighing all the evidence, he estimates that the cost of equity for APS falls within the range of 10.25 percent to 10.75 percent with a midpoint of 10.50 percent. Mr. Hill makes no adjustment to this figure for risk associated with acid-rain since the market has been aware of the impact for more than a year. Nor does the witness adjust this figure for flotation costs since PE's stock is sold only to its parent, APS. Mr. Hill does, however, increase the 10.50 percent figure by 25 basis points to reflect the impact upon APS and its operating subsidiaries (including PE) of APS' wholesale generating subsidiary: Allegheny Generating Company. Thus, OPC's recommended cost of equity in this matter is 10.75 percent.

In recognition of the Commission's preference for using the DCF model to estimate utilities' cost of equity, all three expert witnesses have provided testimony and exhibits on the DCF methodology. Both Staff and OPC have based their cost of equity recommendations on their witness' respective DCF analysis. However, as in Potomac Edison's last base rate case, the Company's witness asserts that little reliance should be placed on either the constant growth or the general form DCF models. In support of this position, PE argues that both forms of the model produce wildly varying and/or illogical results. Instead, PE recommends that we give primary weight to Mr. Avera's risk premium analyses.

While we acknowledge that all cost of equity models have their limitations, we are not persuaded that Mr. Avera's various risk premium analyses provide a better indication of the Company's cost of equity than does the DCF method. The results of any model, of course, depend upon the reasonableness of the inputs utilized. Thus, when Mr. Avera uses a negative growth estimate (which no one forecasts), or an exceptionally high historical growth rate for market price, this will necessarily skew the outcome so as to produce an unrealistic cost of equity. These skewed results, in turn, contribute to the ‘wild‘ spreads in equity returns referred to by Mr. Avera.

Moreover, the results of the seven risk premium analyses performed by Mr. Avera also vary (from 11.60 percent to 15.12 percent — a spread which is greater than the spread in his constant growth DCF results, but less than the spread in his general form DCF results). On the other hand, Mr. Avera's general form DCF model produces a range in cost of equity for APS of between 9 percent and 12 percent — a spread we do not consider ‘wild.‘

Mr. Avera's third alterative DCF method, a constant growth DCF which looks at long-term growth expectations, uses projections for the United States economy in general (not just electric utilities) through the year 2016. The witness, however, did not persuade us that such general and long-term considerations are used in any meaningful way by investors determining their current equity return requirements from APS.

After all of his criticisms of the DCF models and his advocacy of risk premium analyses, Mr. Avera testified that he believed APS' cost of equity was between 12.0 percent and 13.0 percent with a midpoint of 12.5 percent. His final recommendation of 12.75 reflects flotation costs and the impact of AGC.

While we were not persuaded by Mr. Avera's various risk premium analyses, we also have reservations concerning People's Counsel's DCF analysis. In calculating APS' dividend yield, Mr. Hill used stock prices over a six-week period; in past cases we have indicated our concern that such a short period may be subject to distortion. With respect to Mr. Hill's internal and external growth rates, the data used in his calculations are sometimes adjusted for his personal judgment without adequate explanation as to its reasonableness. We also reject Mr. Hill's view that flotation costs should not be included in Potomac Edison's cost of equity.

In a similar vein, we find that Staff witness Lash's discussion of his DCF analysis is meager. For example, Mr. Lash spends more time citing the criteria used in determining the electric companies to be included in his comparable group than he does in discussing the reasonableness of the components used in his DCF model.

Having considered the evidence presented, we will again place primary reliance upon the DCF model for determining APS' cost of equity. Notwithstanding our reservations concerning the witnesses' presentations, we believe that a range in the cost of equity for APS of between 11.0 percent and 12.0 percent is reasonable under all of the circumstances of this case. This range is also consistent with several of the ‘corroborative‘ analyses offered by the parties. For purposes of computing the revenue requirement, we will adopt a cost of equity of 11.9 percent. We have accepted a figure at the upper end of our range in order to recognize flotation costs and the impact upon the opportunity of APS to earn its authorized return on equity from the operations of AGC.

D. *Overall Rate of Return.*

Applying the cost rates found reasonable herein to the capital structure previously found appropriate results in an overall cost of capital for PE of 9.68 percent, calculated as follows:

	Capitalization Ratio	*Cost Rate*	*Weighted Cost*
Debt	48.49%	8.2%	3.98%
Preferred Stock	7.69%	6.39%	0.49%
Common Equity	43.82%	11.90%	5.21%
	....		....
	100.00%		9.68%

VI. *CAAA SURCHARGE*

Exhibit 24

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PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 22nd day of May, 2007.

CASE NO. 06-0960-E-42T

MONONGAHELA POWER COMPANY and
THE POTOMAC EDISON COMPANY both
dba ALLEGHENY POWER
Rule 42T application to increase electric
rates and charges.

CASE NO. 06-1426-E-D

MONONGAHELA POWER COMPANY and
THE POTOMAC EDISON COMPANY both
dba ALLEGHENY POWER
Information required for change of depreciation
rates pursuant to Rule 20.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

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until the tax bill is generated and received. The Companies argue that the costs become known only at the point the Companies receive their tax bills, which is in Year 2, not Year 1 as Mr. Sprinkle's recommendation assumes.

The Commission finds that Mr. Adams' explanation helps to clarify this issue. As Mr. Adams explained, property in service during a particular year does not associate with a property tax liability until the following year. However, the Commission finds that this linkage between the year of the assessment date with the eventual determination of the tax amount supports the Staff's position. Put another way, if a business begins operation in Year 1, it will not pay property taxes until the following year even though it owns and uses property subject to taxation during Year 1. No cash will be required to pay property taxes throughout Year 1, even though "property" will be used by the business and revenues will be collected from customers throughout Year 1. The Commission is not impressed by the argument that it has never treated property taxes this way in prior cases because we can find no reference to the issue ever having been raised in prior cases. Even if the Commission had specifically addressed the issue and rejected a particular position in prior cases, the Commission is free to reconsider its treatment of issues in future cases as long as that new treatment is not arbitrary and is applied prospectively and not retroactively. Because we find the Staff's evaluation of property tax lags to be accurate and reasonable, the Commission shall adopt the Staff's treatment of property taxes for purposes of determining cash working capital in this case.

The Commission adopts the remainder of the Companies' lead-lag study, noting that no party objected to it at the hearing. However, the Commission notes that, in accepting the study, the Commission is not adopting the methodology used by the Companies for any purpose other than this case.

X. RATE OF RETURN

The major issues raised with regard to the overall rate of return (cost of capital) were capital structure and a reasonable return on stockholder equity.

The Companies argued that their known, January 1, 2007, capital structure, should be used to establish the revenue requirement in this case. They argue that they their affiliates have substantially reorganized their asset bases and capital structures in recent years and that in this case the Commission should use their proposed capital structure, which is based on the post-Asset Swap actual capital structure as of January 1, 2007. The Companies note that the CAD concurred in the need for such an approach whereas the Staff used an "outdated," December 31, 2005, capital structure. The Companies argue that the only Staff motive for using the old capitalization - which contained more debt and less equity - is to achieve an artificially low revenue requirement in this case.

Staff is recommending the use of a capital structure as it existed on December 31, 2005, the end of the test year. In its Brief, Staff indicated that it does not question whether the capital structure as of January 1, 2007, following the Asset Swap, is known and measurable. However, Staff does question the Companies' decision to shift the financing of net assets from less expensive sources of capital to the most expensive type, common equity, following the end of the 2005 test year. Staff argues that the Companies were not required by the Commission to use such a large percentage of common equity to achieve the Asset Swap or otherwise finance assets and that the Companies have failed to submit sufficient evidence to justify deviation from their capital structures at the end of the test year.

The CAD has taken the position, mostly consistent with the Companies, that the most recent actual capital structure should be used in setting rates. CAD accepts the updated capital structure data submitted by the Companies. The only issue between the CAD and Companies with regard to capital structure relates to the inclusion of short term debt in the capital structure. In developing its recommended capital structure, the CAD noted that the Companies originally used a short term debt amount of $15.1 million at a cost rate of 5%. However, when the Companies filed updated information on capital structure as of January 1, 2007, the short term debt was eliminated. Company Exhibit PET-B, at Attachment PET-2. The CAD objects to the exclusion of short term debt from the capital structure and notes that short term debt was part of the Companies' capital in the past two rate cases. CAD further argued that Companies' witness Toomey agreed that it would be appropriate to include short term debt in the capital structure consistent with the original number used. Tr. I, at 126-27.

Including short term debt in capital structure, the two capital structure positions being presented in this case are:

	Companies and CAD	Staff
Type of Capital	Percentage	Percentage
Long Term Debt	50.75%	57.09%
Short Term Debt	1.20%	0.00%
Preferred Equity	1.98%	1.30%
Common Equity	46.07%	41.61%
Total Capital	100.00%	100.00%

The Commission agrees with the basic concerns expressed by Staff. Significant movements in the relative relationships between components of capital structure can have an impact on the calculated cost of capital and such movements should be evaluated by the Commission. The Commission is not bound to use the most recent capital structure of a utility in determining cost of capital. Capital structures can shift from time to time and any single snapshot of capital structure may or may not represent a reasonable expectation of the capital structure over an extended period of time. Furthermore, excess reliance on either debt or equity can be imprudent and contrary to the best interest of utility company customers. The Commission must balance the relative benefits of the amount of debt in the capital structure against the detriments of reduced financial flexibility that can be the result of excessive reliance on debt financing. Conversely, just because a utility has the opportunity and chooses to increase equity does not mean that a regulatory Commission is bound to accept increasing percentages of equity in capital structure for ratemaking purposes.[2] The Commission has addressed this issue in the past. For example, in *Huntington Water Corporation*, Case No. 84-173-W-42T, Order April 4, 1985, the Commission said:

> With regard to the adoption of any capital structure, be it historic, projected or hypothetical, the Commission has historically exercised its judgment and is not obligated to select a capital structure merely because that structure is reflected in the utility's capital accounts. . . . [i]t should be clear that the Commission is not bound to a historical capital structure when a historic test year is being used for purposes of ratemaking.

> Similarly, in *West Virginia Water*, Case No. 84-008-42T, Order January 25, 1985, the Commission said: We are not bound to either a test year capital structure or a projected capital structure. Rather we review historic, projected and hypothetical capital structures to arrive at a structure which is reasonable, fairly balances the interests of the customers and the utility and produces the lowest possible overall revenue requirements while maintaining reasonable financial integrity and flexibility.

In this case, although the issues are similar, we are not presented with a hypothetical capital structure. Instead, we are presented with two actual snapshots of capital structure separated by approximately one year. Although Staff has expressed concern that the latest capital structure is not an optimum capital structure, it never actually addressed the balancing of interests, lowest overall revenue requirements and financial integrity and flexibility as mentioned in *West Virginia Water* cited above. Furthermore, the CAD, which is well aware of the Commission's historic positions on the need to evaluate the capital structure chosen in a rate case, accepts the capital structure that has reduced debt from approximately 57% to approximately 52% and increased common equity capital from approximately 42% to 46%. While the Commission believes that the Companies may be approaching a level of common equity that will require further justification and analysis there is no justification in the record to find that the Companies capital structure, as modified by the CAD, is unreasonable or imprudent. The Commission shall accept the capital structure recommended by the CAD as reflected in the table above for purposes of developing the overall rate of return (cost of capital) in this case.

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[2] See, e.g. FERC in Transcontinental Gas Pipe Line Corporation, 71 FERC ¶ 61,305 (1995)(citations omitted), ("[t]he determination of an appropriate capital structure involves a balancing of the investor and consumer interests. Equity generally costs more than debt. Hence, ratepayers would be subjected to an excessive burden if their rates had to be set at a level high enough to compensate the pipeline for excessive equity in its capital structure. This burden on ratepayers can be limited by 'levering a capital structure with lower-cost debt.")

The second, and larger, cost of capital issue in this case is the cost rate on common equity that the Commission should find to be fair and reasonable in this case. The Companies propose a return on equity of 11.75%. The recommended returns on equity by other parties were: Staff, 10.15%; CAD, 9.625%; and WVEUG, 9.90%.

All of the witnesses used a variety of methods, including discounted cash flow "DCF" and the Capital Asset Pricing Model "CAPM" to determine their recommended return on equity. However, there was a wide variance between them with regard specific methodologies to employ within the basic models, selection of a sample, or proxy group, of companies for a DCF analysis, selection of growth rates for a DCF analysis, selection of a indices of a risk free return for a CAPM analysis and some other components of their various analyses.

The Companies argue that their witness, Dr. Avera, thoroughly applied and explained contemporary cost of capital estimation. Dr. Avera concluded that his application of alternative quantitative methods to a proxy group of other electric utilities implied a cost of equity range of 11.0% to 12.0%. He further considered expectations for higher long-term interest rates, an allowance for flotation costs, and the impact of capital costs shifted from Allegheny Generating Company by FERC to arrive at a recommended return on equity that was 25 basis points above the mid-point of his range. He further argued that a return on equity above the midpoint of the proxy range is also supported by the need to support the Companies' efforts to enhance their credit standing and fund continued system investment even under adverse circumstances. Folding all of these considerations into a final recommendation, Dr. Avera recommended a return on equity of 11.75%.

Staff witness, Steve Kaz, recommended a 10.15% ROE, derived from his application of the DCF (8.01%) and CAPM (12.29%). Mr. Kaz also tested the reasonableness of his recommendation by looking at the end results in the form of coverage of interest expense, internal cash flow available for dividends and internal cash flow available for capital expenditures. With regard to his DCF and CAPM analyses, the Companies argue that Mr. Kaz did not exercise financial judgment or common sense. The Companies criticized Mr. Kaz's proxy group of companies and his choice of dividend growth for his DCF model. They argue that many of Mr. Kaz's DCF results for his proxy group are patently illogical, indicating a cost of equity below the cost of debt, and are contrary to basic financial theory. The Companies contend that it was an error for Mr. Kaz to give each sample company result the same weight to arrive at an unreasonably low DCF cost of equity. They further criticized his risk free CAPM component. Finally, the Companies criticize Mr. Kaz's end results analyses, mainly because they believe (erroneously in the opinion of the Commission) that those analyses were used to determine the indicated cost of equity rather than to test the reasonableness of a particular return on equity.

CAD witness, Randall Short, recommended a 9.625% ROE, also based largely on his application of the DCF and CAPM analyses. The Companies criticized Mr. Short's DCF model for failing to modify his choice of growth rates away from growth in dividends. The Companies argue that Mr. Short, although paying "lip service" to consideration of alternative growth indicators for his DCF model, did not address the circumstances of the electric utility industry, "where structural and industry changes have led to declining dividends, earnings pressure, and, in many cases, significant write-offs." The Companies conclude that Mr. Short ultimately relied unduly on dividends in his estimate of growth, producing, like Mr. Kaz, an unreasonably low DCF result.

The Companies argued that Mr. Short used the geometric (as opposed to arithmetic) mean in calculating his market risk premium in his CAPM. Then, spreading their criticism around fairly, they argue that both Mr. Kaz and Mr. Short misapplied the CAPM to the extent that they relied upon short-term Treasury bills as the "risk-free" rate of return. The Companies contend that other commissions use, like Dr. Avera, long-term U.S. Treasury bonds as the risk free component of the CAPM.

Mr. Baudino on behalf of the WVEUG, recommended an equity return of 9.90% based on his DCF analysis. For this witness, among other things, the Companies criticized his disregard of his own CAPM calculations. The Companies contend that Mr. Baudino's CAPM analysis would produce indicated results that were significantly higher than his recommended return on equity. The Companies further argue that Mr. Baudino's DCF errors were similar to those of the Staff and CAD witnesses. They also maintained that he erred when he applied his own, subjective criteria to exclude any firm with a calculated growth rate less than 1%, or greater than 10%. The Companies argue that Mr. Baudino chose to throw away data in his DCF analysis simply because he judged the indicated ROE was too high. They further argue that with CAPM, after making calculations as high as 12.84%, he threw out his CAPM analysis entirely.

The Companies suggest a "benchmarking" test in this case whereby the Commission would take note of returns authorized by other Commissions. Thus, the Companies urge the Commission's attention to the "benchmark" of ROEs authorized by sister commissions.

Staff criticized the Companies' rate of return on equity analysis arguing that Dr. Avera's sample group is so unlike the Companies that the results of his analysis should be discarded as an accurate predictor of what is a reasonable rate of return on equity in this case. Staff argues that all other witnesses on this topic agreed that unregulated electric utilities, such as five of those used by Dr. Avera, are riskier ventures than regulated utilities.

Staff defended its use of historic and projected 13-week T-bill rates as the risk free return component in the CAPM. Staff strongly disagreed with Dr. Avera's choice of a risk free component. Staff noted that the Commission found 13-week T-bills an appropriate risk-free component in *West Virginia-American Water Co.*, Case No. 03-0343-W-42T. In its development of its CAPM analysis in this case, the Staff used an average risk free return component of 4.754%. Staff calculated its rate of return on the market by determining the difference between the arithmetic mean of the return on common stocks as measured by the S&P 500 Composite Index and the risk free T-bill rates for the period of 1926-2005.

The CAD also defended its positions strongly and criticized Dr. Avera's approach and recommendation, both through its witness and in its Brief. CAD alleges that the return recommendation of Companies' witness Avera is inflated by use of improper methods and improper data. The CAD points out that Dr. Avera's recommended return of 11.75%, approximately 160 - 210 basis points higher than the other witnesses. CAD further argues that the sample group chosen by Dr. Avera is based on liberal screening criteria that allows inclusion of companies, which are more risky than Allegheny and which derive a substantial amount of their revenues from unregulated operations. CAD Exhibit 1, at 41-2. The CAD further argues that it was unreasonable and wrong for Dr. Avera to rely only on projected growth rates in computing his DCF-derived return on equity when historic growth rates should have been considered as well.

The CAD argues that Dr. Avera did not update his risk premium analysis to incorporate lower current bond yields and improperly adjusted his cost of debt based on projected bond yields. Dr. Avera failed to update either his risk-free rate or the market-risk premium used in his CAPM analysis. The CAD continues by arguing that Dr. Avera's comparable earnings calculation is unreliable because it is based on anonymous companies, which have not been shown to bear any resemblance to a regulated electric utility. And, finally, CAD criticizes Dr. Avera's recommendation to establish a return on equity 25 basis points above the actual midpoint of his various methods. CAD says that this compensation for flotation costs, capital costs shifted from Allegheny Generating Company, and market expectations for higher capital costs do not warrant modification of the return awarded in this case. CAD asserts that Dr. Avera's estimated return on equity of 11.75% is outdated and grossly overstated.

The CAD argues that economic trends show that the Companies' current return on equity should be lowered. Although short-term interest rates have risen, long-term rates continue to remain low. During the Companies' last rate case, long-term interest rates for utility bonds were 7.5%. The same rates have now dropped to slightly above 6%. Tr. II at 88. Additionally, Allegheny obtained long-term financing during the fourth quarter of 2006 at rates of approximately 5.8%. Tr. I at 107. The Companies' current embedded long-term debt cost is only 6.779% compared to 8.07% in the 1994 rate case. Company Exhibit PET-B, at Attachment PET-2; Case No. 94-0035-E-42T, Recommended Decision entered September 30, 1994, at 61.

According to CAD, the Companies seek to increase their equity return above that allowed in 1994 resulting in a requested overall return of 9.05%. All other parties are seeking a decrease in equity return. CAD maintains that the Companies' request for an increase in overall return is contradicted not only by the other rate of return witnesses, but also by its own parent company's view of the capital markets. AE expects to earn an overall return of 8.25% on its invested OPEB and pension plan assets. Company Exhibit 1; Tr. I, at 215-16. AE's expected return is reflective of the continuing decline in the cost of capital. In 2003, AE expected a return on its assets of 9%, dropping to 8.5% in 2005 and 8.25% in 2006. Tr. I at 216. CAD argues that AE's current view of the market is far below the return requested by the Companies in this case and corroborates the returns recommended by CAD, WVEUG and Staff.

CAD recommends a rate of return on common equity of 9.625%. CAD Exhibit 1 at 24-40. CAD witness Short used the stock data for a sample group of similar electric utilities as a proxy in determining the return on equity for the Companies. Mr. Short relied upon a DCF analysis and performed two different capital asset pricing model ("CAPM") analyses. CAD Exhibit 1 at 21-23.

In determining dividend yield for CAD's DCF, Mr. Short divided a recent representative stock price into the expected dividend for the next twelve months for each company in his sample group to derive a dividend yield of 3.81%. Id. at 31, and Attachment RRS-1, Sch. 4. Mr. Short analyzed several different indicators of historic, fundamental and projected growth to arrive at a range of growth rates from 4.75% to 5.25%. Id. at 31; and Attachment RRS-1, Sch. 2 & 3 *Revised*; Tr. II at 81-83. Adding these growth rates to dividend yield produced a DCF-determined cost of equity capital of 8.56% - 9.06%.

Under the CAPM analysis, CAD's witness Short selected as his risk-free rate the current 13-week T-bill rate of 4.92%. Because the rate determined in this case will be in effect longer than the shortest-term government security,which is the basis for the risk-free rate, Mr. Short also performed a CAPM analysis using the current rate for longer term T-bonds of 4.77%. To these two measures, Mr. Short added two different risk components: one based upon a geometric mean and one based on an arithmetic mean. He multiplied both of the risk components by the beta coefficient applicable to the sample group of companies, as reported by *Value Line Investment Survey*.

Mr. Short's final estimate of the cost of equity capital for the Companies was 9.625%. The allowed return advocated by Mr. Short produced pre-tax interest coverage for Allegheny of 3.12 times when the results of CAD's evaluation were applied to the capital structures of Allegheny. CAD maintains that the coverage level is more than sufficient to maintain a strong bond rating and to continue to attract capital at reasonable rates. A return of equity of 9.625% will represent a premium of almost 400 basis points over the cost of debt which Allegheny actually incurred in the fall of 2006. CAD argues that because WVEUG's recommendation (9.9%) and Staff's recommendation (10.15%) are so close to CAD's recommendation, this proves the reasonableness of Mr. Short's recommended return on equity.

The Commission's determination of a reasonable return on equity is a combination of quantitative analysis of market and other economic data and a qualitative analysis of investor expectations. In *Bluefield Water Works & Improvement Co. v. Public Service Commission*, 262 U.S. 679, 43 S. Ct. 675, 67 L. Ed. 1176 (1923), the Supreme Court discussed three tests for determining whether a regulatory Commission's return allowance was, or was not, confiscatory. These are generally described as the "comparable earnings" test, the "financial integrity" test, and the "capital attraction" test. The Court held that the allowed return should be reasonably sufficient to assure confidence in the financial soundness of the utility, and should be adequate, under efficient and economic management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.

In evaluating investor expectations, the Commission's determination must further analyze whether the data supporting investor expectations reflect companies of comparable risk to the utilities that we regulate. This requirement of the Commission's determination was set forth by the United States Supreme Court in *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591, 64 S.Ct. 281, 88 L. Ed. 333 (1944). In that case, the Court said that:

> [T]he return to the equity owner should be commensurate with returns on investment in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.

Even though these tests are well established, the methodologies employed by the Commission to determine a fair and reasonable return on equity are varied and do not, necessarily, individually produce a single correct answer. Therefore, the Commission must exercise its judgement to evaluate from among a number of competing calculations and analyses to arrive at an overall return on equity that meets the standards established by the law.

The returns on equity recommended to the Commission by four different witnesses, from low to high, were 9.625% (Short for CAD), 9.90% (Baudino for WVEUG), 10.15% (Kaz for Staff), and 11.75% (Avera for Companies). The Commission recognizes that each witness approaches return on equity from different perspectives and that the CAD and WVEUG witnesses have a constituency that benefit from the lowest possible return on equity. However, we cannot help but notice that the CAD, WVEUG and Staff recommendations fall reasonably close to each other around an average of 9.9%. The spread between the CAD recommendation, which is the lowest recommendation, and the WVEUG recommendation is 27.5 basis points. The spread between the CAD recommendation and the Staff recommendation is 52.5 basis points. Moreover the spread between each witness' recommendation and the next lowest is also close when looking at the CAD, WVEUG and Staff. The spread between the WVEUG's recommendation and the next lowest recommendation is 27.5 basis points. The spread between the Staff and the next lowest recommendation is 25 basis points. This relative clustering of recommendations changes dramatically when deriving the same spread information for the Companies' recommendation. The spread between the Companies' recommendation and the CAD recommendation, which is the lowest, is 212.5 basis points. Likewise, the spread between the Companies' recommendation and the next lowest recommendation is 160 basis points. The Commission discounts arguments made by the CAD, that the closeness of WVEUG's and Staff's recommendation to Mr. Short's recommendation proves the reasonableness of Mr. Short's recommendation. However, it is clear that three witnesses are viewing the cost of capital under current conditions, applicable to companies comparable to Monongahela Power Company and Potomac Edison Company, remarkably the same as each other and remarkably different than the view of the Companies. Even if the Commission discounts the extra 25 basis points recommended by Dr. Avera for expectations for higher long-term interest rates, an allowance for flotation costs, and the impact of capital costs shifted from Allegheny Generating Company by FERC,[3] his mid-point recommendation of 11.5% deviates much more significantly from the other

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[3] The Commission is inclined to discount these factors suggested by Dr. Avera. Expectations for changing interest rates are an ever present factor no matter when the Commission is considering return on equity. The market will reflect these expectations in stock and bond prices, which will be captured by the DCF, CAPM and other analysis tools used by rate of return experts. The Commission seen no justification for doubling up the effect of such expectations by factoring return on equity further in either direction. Likewise, the Commission is not going to apply an arbitrary fudge factor for equity floatation costs. Finally, we do not see any shifting of capital costs from Allegheny Generating Company that must be picked up by

witnesses than they deviate from each other.

The Commission finds that some of the criticisms leveled by each party on another party's recommendation is constructive and instructive. Although we find the CAD, WVEUG and Staff recommendations to be too low, we find the Companies recommendation to be significantly too high.

The strongest data driven criticism leveled by the Companies against the recommendation of Staff's DCF prong relate to Mr. Kaz's use of companies that have unrealistic results when viewed alone, and his use of projected growth in dividends for his DCF growth factor. With regard to selection of companies for a DCF proxy group, the Commission is hesitant to go down the road suggested by Dr. Avera, which is to eliminate data that, in Dr. Avera's opinion, does not produce credible results. However, Dr. Avera's schedules, which do just that are in the record and we can consider them. Dr. Avera suggests that eliminating from Mr. Kaz's group of companies any that have an indicated ROE of less than the current yield on triple-B bonds changes Mr. Kaz's average DCF and CAPM calculations to 11.28%. He further opines that a similar exercise, which eliminates any company having an indicated ROE below 7.61% produces an average DCF and CAPM calculation of 11.70%. Accepting Dr. Avera's suggestion of incredible results, the Commission notes that there may be equally incredible results on the high side that Mr. Kaz did not choose to eliminate. For example, Dr. Avera's WVEA 9 purports to show the most recent allowed return on equity for Mr. Kaz's reference group. The average of these numbers is 11.04% and there is one outlier at 12.5%. Looking at this data, it might be reasonable to assume that any indicated ROE in excess of 12.5% is just as incredible as Dr. Avera's opinion of returns below 7.61%. Although there are no such outliers in Mr. Kaz's DCF data, looking at his CAPM data there are eight companies with indicated returns on equity in excess of 12.8% with most exceeding 13% and one as high as 16.2%. Eliminating these high end outliers, just as Dr. Avera has done with what he considers to be low end outliers, results in Dr. Avera's 11.28% alternative on Exhibit WVEA-10, page 1, to drop to 10.4%. Similarly, the same approach results in his 11.7% alternative shown on Exhibit WVEA-10, page 2, dropping to 10.7%. Company Exhibit WEA-B, Pre-filed rebuttal testimony of William Avera at Attachment WVEH-10. The Commission finds that manipulating Mr. Kaz's reference group as the Companies' witness has suggested, but evenly eliminating high end outliers as well as low end outliers would produce a more credible result than Dr. Avera's suggestions. That result is in the 10.4% to 10.7% return on equity range.

Although the Companies criticize Staff for using projected growth in dividends in Mr. Kaz's DCF model, the Commission believes that the Companies' objections are largely unfounded. Dr. Avera suggests that in recent years utilities have reduced their dividends or even stopped dividends altogether. Because of this, he does not believe that growth in dividends is an appropriate measure

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giving a West Virginia affiliated generation/distribution company an extra boost in return on equity. FERC's determination that Allegheny Generating Company is less risky than Allegheny overall does not change our analysis. Indeed, we may determine that Monongahela Power Company and Potomac Edison are less risky than other Allegheny affiliates, including Allegheny Generating Company. Dr. Avera did not suggest that if the Commission made such a finding that he, or we, should factor a mid-point finding for a reasonable return on equity downward.

of the growth component of the DCF. We note, however, that Mr. Kaz is not using historic dividend growth in his calculations. Instead, he is using a projected dividend some time in the future and then calculating the growth rate necessary to achieve that dividend. Therefore, Dr. Avera's criticisms regarding past dividend reductions by utilities do not apply to Mr. Kaz's projected dividend growth calculations. In fact, if dividends have been reduced in the past, then Mr. Kaz's use of projected dividends and growth rate may actually increase the growth component of the DCF analysis as growth is calculated from a lower base. From such a lowered base, even small growth increments would reflect a higher mathematical growth rate than would have been the case if dividends had not been lowered in the past. While the Commission will consider all evidence, including growth rates such as those proposed by Dr. Avera, we continue to find that the DCF model should consistently use dividend yield and expected dividend growth as a starting point.

Finally, the Commission does not agree with the Companies' criticism of the end result analyses performed by Staff. We do not interpret Staff's evaluation of the end result of its recommendation as being used to determine a reasonable return on equity. The end result tests were established by the Commission many years ago to provide a real picture of the effect of a range of return on equities to important financial indicators such as interest coverage, dividend payout and generation of internal cash flow for construction of utility plant. In evaluating the end results of a recommendation for return on equity, the Commission is not using the end result to determine the investor required return on equity. Rather, the Commission is placing the output from a variety of analyses, including DCF and CAPM, into the financial picture of the actual utility for which we are establishing a fair return on equity. If that picture shows that the utility is not likely to achieve even minimum coverage levels, realistic sustainable dividend payout or reasonable internal cash flows, then further analyses as to "why" may be required.

In spite of the Companies' objections to the Staff's end result analysis, the Commission has been guided by that analysis to determine that a return on equity of 10.15% is not sufficient. Staff's calculations in its end result analysis indicates that at the Staff's recommended capital structure, its recommended return on equity produces a pre-tax long term interest coverage of 2.18 times. Considering the financial difficulties of Allegheny over the last several years, the Commission shall move the allowed returns on equity above the levels recommended by the CAD and somewhat above the levels recommended by the WVEUG and Staff. The Commission does this so that the Companies can have an opportunity to contribute to the resurgence of the financial fortunes of Allegheny. A pre-tax long term debt interest coverage in excess of the near minimum 2.18 times is necessary to accomplish that. Even at the CAD capital structure, which the Commission is adopting in this case, the Staff recommended 10.15% ROE does not provide sufficient coverage using the methodology for calculating coverage included in Mr. Kaz's exhibit. Therefore, the Commission shall approve a return on equity for the Companies in excess of the 10.15% recommended by Staff. Consequently, the return on equity approved by the Commission will also be higher than the recommendation of the CAD or the WVEUG.

Although we find a 10.15% ROE to be insufficient, the Commission finds that the 11.5% recommended by the Companies, before the added 25 basis points as discussed above, is excessive and not supported by the record. Considering Dr. Avera's modifications to the companies used in the Staff DCF, as moderated by evaluating CAPM results that appear to be excessive, and considering the rebuttal to Dr. Avera's recommendations presented by the CAD and WVEUG, and considering a more robust end result target, the Commission finds that a 10.5% return on equity is reasonable in this case. When we apply a 10.5% ROE to the Companies proposed capital structure the resulting pre-tax long term debt interest coverage end result as calculated by Staff would be approximately 2.5 times. Other end result indicators, including dividend payout ratios and internal cash flow for construction are also improved, which is consistent with our goal of allowing the Companies to make a positive contribution to the continued financial resurgence of Allegheny Power Company. We shall develop overall revenue requirements based on a return on equity of 10.5%. Using the CAD's proposed capital structure and cost rates for other components of capital results in an overall rate of return of 8.44%, which the Commission shall use in this case. The cost of service attached hereto as Appendix B, reflects the rate of return and other cost factors adopted by the Commission, as discussed above.

XI. RATE DESIGN

A. Class Cost of Service Studies

The remaining dispute among the parties, regarding rate design, concerns criticism of the Companies' methodology in preparing their class cost-of-service study ("CCOS study"). Staff, the CAD and WVEUG all criticize the Companies' CCOS study. The purpose of a cost-of-service study is to aid in the design of rates by providing a reasonable approximation of the cost responsibility for each customer class. Company Exhibit MP-A, Pre-filed direct testimony of Milorad Pokrajac, at 25. Mr. Pokrajac prepared a going-level cost-of-service study for each company, Mon Power and PE, as well as a combined study, based on present annualized revenues with adjustments to revenue and expense for known and measurable changes. Id. at 4. Additionally, Mr. Pokrajac prepared a combined cost-of-service study on a proforma level, reflecting proposed revenues required for the targeted ROR. Id. The studies were based on a twelve month historic test period ending December 31, 2005. Id.; Company Exhibit 1, at Vol. VII.

Mr. Pokrajac functionalized and classified the Companies' costs and allocated those costs to the various rate schedules. Tr. II at 194; Company Exhibit MP-A, at 18-20. Mr. Pokrajac used class contribution to twelve month coincidental peak allocation factors to allocate generation and transmission costs among rate schedules, and class non-coincident peak allocation factors to allocate primary and secondary distribution costs. The Companies argued that the Commission accepted these same approaches as fair and reasonable in the Companies' Case Nos. 94-0027-E-42T and 94-0035-E-42T. Company Exhibit MP-A, at 20.

The Companies argued that Mr. Pokrajac showed that certain schedules are earning significantly less than the Companies' average ROR over its entire service area, while other schedules are earning significantly more. Initial Brief of Companies at 102; Company Exhibit MP-2. Furthermore, the Companies argued that Mr. Pokrajac brought each schedule's ROR closer to equality (indexed ROR near 1.0), while maintaining reasonable, relative differences between the schedules. Initial Brief of Companies at 102-3; Company Exhibit MP-A at 5. The Companies asserted that Company Exhibit MP-3 illustrated the movement made to bring each schedule closer to a cost based ROR. Initial Brief of Companies at 103; Company Exhibit MP-A at 5.

Exhibit 25

ORDER NO. 89072

IN THE MATTER OF THE APPLICATION OF THE POTOMAC EDISON COMPANY FOR ADJUSTMENTS TO ITS RETAIL RATES FOR THE DISTRIBUTION OF ELECTRIC ENERGY	* * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND
		CASE NO. 9490

Before: Mindy L. Herman, Commissioner (Chair)[1]
Michael T. Richard, Commissioner
Anthony J. O'Donnell, Commissioner

Issued: March 22, 2019

[1] *See* Designation of Panel dated January 9, 2019, ML#223597, Case No. 9490 Docket (Dkt) Item No. 30.

years, it could have filed a rate case some time in the intervening 25 years since its last base rate case. It did not; thus, the Commission will treat the TCJA regulatory liability as it has in prior cases by returning it to customers.

The Commission accepts Staff's position that interest on Potomac Edison's regulatory liability should be compounded,[182] and will make an adjustment to account for the fact that Potomac Edison did not compound interest on its regulatory liability through September 30, 2018, in its initial refund. Accordingly, the total amount to be discharged in the second bill credit is comprised of two amounts: (i) the amount of the regulatory liability from October 1, 2018 through March 22, 2019, adjusted to account for compounded interest;[183] and (ii) the difference between the amount Potomac Edison paid out for the liability accrued through September 30, 2018, and the amount Potomac Edison should have paid out had it correctly computed compounded interest.

D. Cost of Capital

A company's cost of capital, or overall rate of return ("ROR"), consists of its ROE and return on the cost of debt.[184] The ROR is the rate at which the Company has an opportunity to attract capital on reasonable terms and earn a return on its investment in order to attract and retain investors in a competitive market.[185] In 1923, in *Bluefield*

[182] We did not accept Staff's adjustment to the TCJA regulatory liability related to OPEB smoothing since we accepted the Company's position on the issue.
[183] The amount reflected in Appendix A, $3,142,581, is based on the monthly regulatory liability amount of $535,930.58 per ML# 222778 (Case No. 9473); this amount includes interest through March 22, 2019; the amount discharged must include additional carrying costs through the date the credit is made to the first group of customers."
[184] The cost of capital is a utility's overall rate of return, which is the sum of the weighted returns the utility must earn on its stock (equity) and bonds (debt) to attract investors in those securities. Unlike return on debt, return on equity is not directly observable and must be estimated based on market data. Case No. 9299, *In the Matter of the Application of Baltimore Gas and Electric Company for Adjustment in its Electric and Gas Base Rates*, Order No. 85374, slip op at 42 (Feb. 2013).
[185] See *Bluefield Water Works and Improvement Co. v. PSC of West Virginia,* 262 U.S. 679 (1923); *Federal Power Commission v. Hope Natural Gas Co.,* 320 U.S. 591 (1944).

Waterwork & Improvement Co. v. West Virginia Public Service Commission,[186] the Supreme Court held that "[t]he return should be reasonable, sufficient to assure confidence in the financial soundness of the utility, and should be adequate under efficient and economical management, to maintain and support its credit and enable it to raise money necessary for the proper discharge of its public duties."[187] The Supreme Court later expanded upon *Bluefield*, stating, "[f]rom the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock."[188] The return to the equity owner should be "commensurate with the returns on investments in other enterprises having corresponding risks."[189]

While the cost of debt can be directly observed, the ROE is determined by comparison to other investments of comparable risk. Usually this is done by comparison to "proxy" companies based on characteristics reasonably similar to the utility in question and examining their ROEs as guidance for determining the appropriate ROE for the utility in question. The Commission looks to the analyses of the parties, which vary in methodology and approach.

Potomac Edison, Staff, and OPC all agree that the Company's proposed actual capital structure of 52.82% common equity and 47.18% long-term debt is appropriate for ratemaking purposes.[190] The parties also agree that the Company's embedded long-term

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[186] 262 U.S. 679 (1923).
[187] 262 U.S. at 693.
[188] 320 U.S. at 603.
[189] 320 U.S. at 603.
[190] PE Ex 8, Supplemental Direct Testimony of Joseph Dipre ("Dipre Supplemental") at 1.

debt cost rate is 4.335%.[191] However, the parties' ROE analyses differed, which led them to recommend varying RORs, as discussed below.

Potomac Edison

Dylan D'Ascendis, Director at ScottMadden, Inc., testified for Potomac Edison regarding cost of capital. He developed his recommendation by applying several cost of common equity models including the Discounted Cash Flow ("DCF") model, the Risk Premium Model ("RPM"), and the Capital Asset Pricing Model ("CAPM") (both traditional and empirical) to a market data of a proxy group comprised of seventeen electric utility companies (the "Utility Proxy Group.") He also applied the DCF model, RPM, and CAPM to a proxy group of fifteen domestic, non-price regulated companies that he testified were comparable in risk to the Utility Proxy Group (the "Non-Price Regulated Proxy Group.")[192]

Mr. D'Ascendis selected companies for his Utility Proxy Group based on criteria that included (i) appearing in the Electric Utility Group of *Value Line's Standard Edition* ("Value Line"), (ii) having 70% or more of operating income derived from regulated electric operations during fiscal year 2017, (iii) not being involved in any major merger or acquisition at the time of preparation of testimony, (iv) not having cut or omitted common dividends during the five years ending 2017, (v) having Value Line and Bloomberg Professional Services ("Bloomberg") adjusted betas, (vi) having positive Value Line five-year dividends per share growth rate projections, and (vii) having Value Line, Reuters, Zacks, or Yahoo! Finance consensus five-year earnings per share growth rate

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[191] PE Ex 7, Direct Testimony of Joseph Dipre ("Dipre Direct") at 4.
[192] D'Ascendis Direct at 4.

projections.[193] Although Mr. D'Ascendis acknowledged that Potomac Edison is a pure-play transmission and distribution ("T&D") company, he included vertically-integrated electric companies in his proxy group because there are no pure-play T&D electric companies that operate in a single jurisdiction available. Mr. D'Ascendis found that during the five-year period ending 2017, the Utility Proxy Group achieved an average earnings rate on book common equity of 8.67%.[194]

Regarding his DCF analysis, Mr. D'Ascendis applied the single-stage growth DCF model. That model is based on the theory that the present value of an expected future stream of net cash flows during the investment holding period can be determined by discounting those cash flows at the cost of capital, or the investors' capitalization rate.[195] The DCF model is based on the premise that an investor buys a stock for an expected total return rate, which includes the cash flows received from dividends as well as market price appreciation. In applying this method, Mr. D'Ascendis used analysts' five-year forecasts of the growth in each of the Utility Proxy Group companies' earnings per share. His analysis included earnings growth estimates from several sources, including Value Line, Reuters, Zacks and First Call.[196] Applying the Constant Growth DCF Model to his Utility Proxy Group, Mr. D'Ascendis calculated a mean result of 8.66% and a median of 8.92%, which he averaged to yield 8.79%, which is the final result of his DCF common equity

[193] D'Ascendis Direct at 11. Seventeen companies met Mr. D'Ascendis's criteria, including ALLETE, Inc., Alliant Energy Corporation, Ameren Corporation, American Electric Power Company, Inc., Duke Energy Corporation, Edison International, El Paso Electric Company, Entergy Corporation, IDACORP, Inc., Eversource Energy, Northwestern Corporation, OGE Energy Corp., Otter Tail Corporation, Pinnacle West Capital Corporation, PNM Resource Inc., Portland General Electric Company, and Xcel Energy Inc.
[194] D'Ascendis Direct at 12.
[195] D'Ascendis Direct at 15.
[196] D'Ascendis Direct at 4, Table 2.

analysis.[197] He used the average of the median and the mean to consider all of the proxy company results, while mitigating the high and low outliers of those results.

Mr. D'Ascendis also performed an RPM analysis, which he stated is based on the principle that investors require greater returns for bearing additional risk.[198] The model assumes that investors require higher returns for common stock than for bonds, because common equity shareholders are subordinate to debt holders in any claim on a company's assets and earnings. Mr. D'Ascendis stated that according to RPM theory, "one can estimate a common equity risk premium over bonds (either historically or prospectively) and use that premium to derive a cost rate of common equity."[199]

Mr. D'Ascendis used two risk premium methods to calculate an appropriate common equity return. First, he applied the Predictive Risk Premium Model ("PRPM"), which estimates the risk-return relationship directly, by using monthly market returns in addition to expectations of the risk-free rate of bonds. Using this method, Mr. D'Ascendis calculated a mean PRPM common equity cost rate for the Utility Proxy Group of 10.30% and a median of 10.62%. As he did for the DCF analysis, he averaged the mean and the median to arrive at 10.46%. Second, he employed the RPM using a Total Market Approach, which derives the risk premium using known metrics as a proxy for risk. More specifically, using the Total Market Approach, Mr. D'Ascendis added a prospective public utility bond yield to an average of (i) an equity risk premium derived from a beta-adjusted total market equity risk premium, (ii) an equity risk premium based on the S&P Utilities Index, and (iii) an equity risk premium based on authorized ROEs for electric utility

[197] D'Ascendis Direct at 17.
[198] D'Ascendis Direct at 17.
[199] D'Ascendis Direct at 18.

companies.[200] Using the Total Market Approach, Mr. D'Ascendis calculated a common equity cost of 10.15%. He averaged the results of the Total Market Approach with the PRPM above to reach a final RPM common equity cost rate of 10.31% for the Utility Proxy Group.[201]

Mr. D'Ascendis also performed a CAPM analysis to estimate Potomac Edison's common equity requirement. CAPM theory defines risk as the co-variability of a security's returns with the market's returns as measured by the beta coefficient.[202] The model adds a risk-free rate of return to a market risk premium, which is adjusted proportionately to reflect the systematic risk of an individual security relative to the total market, as measured by the beta coefficient.[203]

In addition to the traditional CAPM, Mr. D'Ascendis also performed the empirical CAPM ("ECAPM"). Mr. D'Ascendis stated that the ECAPM compensates for the fact that the empirical Security Market Line described by the CAPM formula is not as steeply sloped as the predicted Security Market Line. Accordingly, Mr. D'Ascendis applied both the traditional CAPM and the ECAPM to the Utility Proxy Group companies and averaged the results. He calculated a mean CAPM/ECAPM result of 9.96%, a median CAPM/ECAPM of 9.72%, and averaged the two to yield 9.84%. Mr. D'Ascendis's indicated common equity cost rate using the CAPM/ECAPM was therefore 9.84%.[204]

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[200] D'Ascendis Direct at 20.
[201] D'Ascendis Direct at 29.
[202] D'Ascendis Direct at 29.
[203] The CAPM model is expressed in the following equation: $R_s = R_f + \beta(R_m - R_f)$, where R_s is equal to the return rate on the common stock; R_f is equal to the risk-free rate of return; R_m is equal to the return rate on the market as a whole; and β is equal to the adjusted beta coefficient (representing the volatility of the security relative to the market as a whole). D'Ascendis Direct at 30.
[204] D'Ascendis Direct at 33.

In addition to applying the common equity models to the Utility Proxy Group, Mr. D'Ascendis used a comparable earnings model, by applying the DCF, RPM, and CAPM models to Non-Price Regulated Proxy Group. Mr. D'Ascendis argued that non-price regulated firms operating in the competitive marketplace provide an “excellent proxy” as long as they are comparable in total risk to the Utility Proxy Group.[205] He derived the selection criteria for this proxy group by using the beta coefficients and related statistics derived from Value Line regression analyses of weekly market prices from the most recent five years. He required that the companies (i) be covered by Value Line; (ii) be domestic, non-price regulated companies; (iii) their beta coefficients must lie within plus or minus two standard deviations of the average unadjusted beta of the Utility Proxy Group; and (iv) the residual standard errors of the Value Line regressions must lie within plus or minus two standard deviations of the average residual standard error of the Utility Proxy Group.[206] Mr. D'Ascendis’s selection criteria resulted in a proxy group of fifteen domestic, non-price regulated firms. Applying the common equity models to the Non-Price Regulated Proxy Group resulted in the following: 12.20% (DCF), 11.54% (RPM), and 10.99% (CAPM). The average of the mean and median of these models is 11.56%, which Mr. D'Ascendis used as the indicated common equity cost rates for the Non-Price Regulated Proxy Group.[207]

Utilizing the multiple common equity models and multiple proxy groups, Mr. D'Ascendis calculated an indicated cost of common equity rate of 10.10%. He then applied three adjustments to reflect the relative risk differences between Potomac Edison

[205] D'Ascendis Direct at 33.
[206] D'Ascendis Direct at 34.
[207] D'Ascendis Direct at 36.

and the Utility Proxy Group. First, he applied an adjustment for business risk. Mr. D'Ascendis stated that business risk reflects the uncertainty associated with owning a company's common stock without the company's use of debt and/or preferred stock financing. Business risks faced by utilities include the regulatory environment, environmental compliance requirements, and service territory economic growth.[208] Mr. D'Ascendis testified that Potomac Edison faces increased business risk compared to the Utility Proxy Group because of its smaller relative size and its perceived regulatory risk.[209] He stated that "smaller companies are generally less able to cope with significant events that affect sales, revenues and earnings."[210] He also testified that investors generally demand higher returns from smaller firms to compensate for the diminished marketability and liquidity of their securities. Mr. D'Ascendis applied a business risk premium of 0.30% as a result.

Mr. D'Ascendis also applied a credit risk adjustment. He testified that Potomac Edison's long-term credit rating of Baa2 is two notches lower than the Utility Proxy Group's average long-term issuer rating of A3.[211] Accordingly, Mr. D'Ascendis applied a credit risk adjustment of 0.27% to reflect Potomac Edison's increased credit risk relative to the Utility Proxy Group companies. Finally, Mr. D'Ascendis made an adjustment to account for flotation costs, representing the cost of issuing new common stock, including underwriting fees and out-of-pocket expenses for printing, legal, and registration. Mr. D'Ascendis argued that flotation costs should be recovered through an adjustment to common equity cost rates even when there has not been an issuance during the test year,

[208] D'Ascendis Direct at 6.
[209] D'Ascendis Direct at 38.
[210] D'Ascendis Direct at 38.
[211] D'Ascendis Direct at 44.

because the ROE models he used do not reflect flotation costs, and the costs are permanently unavailable for investment in utility rate base. Mr. D'Ascendis therefore included an adjustment of 0.12% to reflect flotation costs.[212] Adding the three adjustments to the 10.10% unadjusted cost of common equity yields a cost of common equity rate of 10.79%, which Mr. D'Ascendis then rounded up to 10.80%, representing his final recommended ROE for Potomac Edison.[213]

The results of Mr. D'Ascendis's cost of capital analysis are presented below:

Table 1: Potomac Edison ROE Analysis

Discounted Cash Flow Model	8.79%
Risk Premium Model	10.31%
Capital Asset Pricing Model	9.84%
Comparable Earnings Model (Non-Price Regulated Proxy Group)	11.56%
Indicated Cost of Common Equity Before Adjustments	10.10%
Business Risk Adjustment	0.30%
Credit Risk Adjustment	0.27%
Flotation Cost Adjustment	0.12%
Indicated Cost of Common Equity after Adjustments	10.79%
D'Ascendis's Final Recommended Cost of Common Equity	10.80%

Company witness Dipre, Senior Advisor, Strategy-Long Term Planning & Forecasting for FirstEnergy Services Company, testified regarding Potomac Edison's capital structure. He testified that the Company proposes to utilize its actual capital structure for purposes of developing cost of capital, including the appropriate cost of

[212] D'Ascendis Direct at 47.
[213] D'Ascendis Direct at 48.

equity. He further testified that as of June 30, 2018, Potomac Edison's actual capital structure consists of 52.82% common equity and 47.18% long-term debt.[214] He stated that the Company does not have any preferred stock or short-term debt, and that the Company's embedded long-term debt is 4.335%.[215] Potomac Edison submitted that the calculation of the Company's actual capital structure was done in the same manner as the Commission approved in the last several rate cases, including the most recent decision in Case No. 9484.[216]

Using the capital structure provided by Mr. Dipre and the cost of equity proposed by Mr. D'Ascendis, the Company proposed an overall rate of return of 7.75%, as shown in the table below:

Table 2: Potomac Edison Rate of Return Analysis

Component	Capital Ratio	Cost	Weighted Cost Rate
Long-Term Debt	47.18%	4.335%	2.05%
Common Equity	52.82%	10.80%	5.70%
Rate of Return	100%		7.75%

Staff

Staff witness VanderHeyden, Director of the Commission's Electricity Division, provided testimony regarding cost of capital on behalf of Staff. He listed five criteria of a fair common equity return, including: (i) capital attraction, whereby the return is set high enough to attract the capital needed by the utility to maintain and upgrade its distribution system; (ii) management efficiency, where a higher return is awarded to utility

[214] Dipre Supplemental at 1-2.
[215] Dipre Direct at 3.
[216] Potomac Edison Initial Brief at 38.

management for efficient operation of the distribution system; (iii) rate stability, such that ROE awards make gradual movement; (iv) consumer rationing, which acknowledges that an artificially high or low ROE could interfere with the optimal consumption of electric service; and (v) fairness to investors, which, in addition to (i) above, recognizes the concerns of investors who have already made investments.[217]

In developing his proxy group, Mr. VanderHeyden looked to companies with similar risk to Potomac Edison. He noted that Potomac Edison is solely a distribution company that does not own generation assets in its Maryland rate base.[218] He acknowledged, however, that there are few, if any, companies that are organized as stand-alone electric distribution companies for the proxy group. Mr. VanderHeyden therefore used all of the companies in Value Line's Electric East, Central, and West groups. He then removed Evergy, Inc., because it was recently formed from a merger. He retained all companies that pay a dividend and for which Value Line provided a financial strength rating of at least B++. He then removed FirstEnergy, the corporate parent of Potomac Edison.

To this proxy group, Mr. VanderHeyden applied the DCF and CAPM methods and averaged the results. He also used the Internal Rate of Return ("IRR") method, which uses a series of calculations of net present value ("NPV") to determine the discount rate that would cause the NPV of a series of cash flows over a period to equal zero. Mr. VanderHeyden's use of the IRR method yielded a result of only 6.94%. Mr. VanderHeyden excluded this result from his final recommended ROE because the IRR return was close to Potomac Edison's cost of debt, which is illogical given that equity

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[217] Staff Ex 26, Direct Testimony of Phillip VanderHeyden ("VanderHeyden Direct") at 4-5.
[218] VanderHeyden Direct at 9.

investors require a premium for equity risk.[219] Mr. VanderHeyden testified that the low IRR result was driven by the current elevated price of the proxy group stocks.

In his DCF analysis, Mr. VanderHeyden used the constant growth model. He used the adjusted closing stock prices from the companies in the proxy group as reported by Yahoo! Finance for the six months prior to the filing of Potomac Edison's base rate case. He then utilized the annual earnings growth as projected for each proxy group company by Value Line for the period ending in 2021-2023 as well as Yahoo! Finance's reported dividends for the 12 months ending September 30, 2018. He added the earnings growth rates for each proxy group company to each company's respective dividend yield to obtain an individual DCF return. However, Mr. VanderHeyden removed from this result the companies with stock symbols ED, ETR, and IDA because their calculations indicated a ROE of less than 7%, which he testified was unrealistically low.[220] Similarly, he removed the company with stock symbol AGR because of its unrealistically elevated level of 16.84%. Using this approach, Mr. VanderHeyden calculated a DCF return on common equity of 9.51%.[221]

In his CAPM analysis, Mr. VanderHeyden used a mix of current and projected 30-year U.S. Treasury rates to determine the risk-free rate. He used Value Line to determine the betas for the stocks of each company in his proxy group. He also used an equity risk premium derived from the historical market return as provided by Duff and Phelps. Applying the CAPM method to his proxy group, he calculated an ROE of 9.04%.[222] Mr. VanderHeyden observed that his CAPM result for Potomac Edison is lower

[219] VanderHeyden Direct at 11.
[220] VanderHeyden Direct at 16.
[221] VanderHeyden Direct at 13, 17.
[222] VanderHeyden Direct at 18.

than the CAPM result in his previous rate case, and testified that there has been a reduction in the projected long-term treasury rate and the proxy group's betas, resulting in a reduction in the CAPM ROE result when compared to the proxy group from that prior case. Mr. VanderHeyden contended that this is mainly due to a reduction in the anticipated increase in long-term interest rates when compared with the anticipated rate of increase projected last year.

Mr. VanderHeyden then averaged the CAPM ROE of 9.04% with his DCF ROE of 9.51% to reach a mean of 9.28%. He lowered the 9.28% ROE to 9.25% to account for the impact of certain mergers and corporate transactions within the proxy group. The 9.25% return on common equity is Staff's final recommendation on ROE. Accounting for Potomac Edison's cost of long-term debt, Mr. VanderHeyden recommended that the Company's rate of return be 6.93%.[223]

Mr. VanderHeyden compared his cost of capital results to Potomac Edison's and observed that his recommendation included several similarities with Mr. D'Ascendis's. For example, Mr. VanderHeyden stated that he used all of the same companies used in Mr. D'Ascendis's proxy group, with the exception of a few Mr. VanderHeyden excluded because their DCF results were too low.[224] Mr. VanderHeyden noted that he and Mr. D'Ascendis also used the constant growth model of the DCF, and used earnings growth rather than dividend, cash flow, or book value growth estimates in their respective DCF calculations.

Mr. VanderHeyden testified that he saw several deficiencies with Potomac Edison's cost of capital analysis. First, he criticized Mr. D'Ascendis's use of the ECAPM,

[223] Staff Ex 27, Surrebuttal of Phillip VanderHeyden ("VanderHeyden Surrebuttal") at 28.
[224] VanderHeyden Direct at 25.

noting its results are 86 basis points above the corresponding CAPM method and well above the range of returns ordered by the Commission in the last several years. He stated that the ECAPM is not widely accepted in the financial community and that using it to reflect returns form the entire stock market is unnecessary because regulated utilities like Potomac Edison, with monopoly service territories, are inherently more stable than unregulated companies. Second, Mr. VanderHeyden questioned Mr. D'Ascendis's use of projected Value Line and Bloomberg S&P 500 market returns of 16%, stating that those returns are well in excess of the historic mean annual return. Third, Mr. VanderHeyden faulted Mr. D'Ascendis's use of the PRPM and Total Market Approach, arguing that he did not provide a foundation for why it was needed. Mr. VanderHeyden observed that Mr. D'Ascendis did not provide the median of his Total Market Approach, which would have lowered the result by 67 basis points and is inconsistent with Mr. D'Ascendis's other cost of capital calculations.[225] Fourth, Mr. VanderHeyden objected to Mr. D'Ascendis's use of a Non-Price Regulated Proxy Group, noting that the Commission has previously found inclusion of such proxy groups inappropriate for setting the ROE of a monopoly distribution company.[226]

Finally, Mr. VanderHeyden criticized Mr. D'Ascendis's three adjustments to his recommended ROE. He noted that the Commission has rejected adjustments for flotation costs in the last several rate cases, and argued that flotation costs should be awarded only upon the submission of verifiable costs of issuing new stock.[227] Mr. VanderHeyden stated that Potomac Edison's evidence of flotation costs relates only to its issuance of stock

[225] VanderHeyden Direct at 34.
[226] VanderHeyden Direct at 38, citing Order No. 83907.
[227] VanderHeyden Direct at 23, citing Proposed Order of the Hearing Examiner, Case No. 9424 (January 4, 2017) at 155-56.

through its former parent Allegheny Power in the year 2003, well outside the test year. He therefore recommended against inclusion of flotation costs. Mr. VanderHeyden also opposed any adjustment for business risk or credit risk, arguing that Potomac Edison is a stable distribution company with in a low-risk environment. Mr. VanderHeyden concluded that if Mr. D'Ascendis's non-utility results and ECAPM results were excluded and his adjustments were denied, the average of Mr. D'Ascendis's DCF and CAPM methods would provide a ROE of 9.25%.

OPC

David C. Parcell, Principal and Senior Economist of Technical Associates, Inc., testified on behalf of OPC regarding Potomac Edison's cost of capital. He testified that the Supreme Court decisions of *Bluefield Water Works and Improvement Co. v. Public Serv. Comm'n of West Virginia*[228] and *Federal Power Comm'n v. Hope Natural Gas Co.*[229] set forth the three economic and financial parameters of comparable earnings, financial integrity, and capital attraction.[230] He further stated that those cases support the opportunity cost principle that "a utility and its investors should be afforded an opportunity (not a guarantee) to earn a return commensurate with returns they could expect to achieve on investments of similar risk."[231]

Mr. Parcell testified regarding the recent trends in economic conditions in the country as well as their impact on capital costs. He asserted that one impact of the Great Recession has been a reduction in actual and expected investment returns, as evidenced by a decline in short-term and long-term interest rates. He argued that regulatory

[228] 262 U.S. 679 (1923).
[229] 320 U.S. 591 (1942).
[230] OPC Ex 12, Direct Testimony of David C. Parcell ("Parcell Direct") at 5.
[231] Parcell Direct at 5.

agencies have recognized this decline in capital costs by authorizing lower ROEs for regulated utilities in each of the last several years.[232] Mr. Parcell acknowledged that the Federal Reserve has raised the Federal Funds rate on eight occasions between December of 2015 and September 2018, but he maintained that even with the tapering and eventual ending of the Federal Reserve's Quantitative Easing program, interest rates have remained low. He testified that even though the rates on U.S. Treasuries and public utility securities have increased since the beginning of 2018, government and utility long-term lending rates remain near historically low levels, reflecting lower capital costs.

Mr. Parcell used three common equity models to develop his recommended ROE, including the DCF, CAPM, and Comparable Earnings. He selected companies for his proxy group pursuant to the following criteria: (i) market cap of $10 billion to $25 billion or greater, (ii) common equity ratio of 40% or greater, (iii) Value Line Safety rank of 1 or 2, (iv) S&P stock ranking of A or B, (v) S&P and Moody's bond ratings of BBB or A, (vi) currently pays dividends, and (vii) not involved in mergers or acquisitions.[233] Mr. Parcell used a second proxy group that consisted of the companies chosen by Company witness D'Ascendis for his proxy group.

Like cost of capital witnesses for Potomac Edison and Staff, Mr. Parcell utilized the Constant Growth DCF model. Applying the DCF model to his proxy groups, Mr. Parcell calculated rates between 6.9% and 8.9%. He narrowed the range to 8.4% to 8.9% to represent the current DCF-derived ROE for the proxy groups.[234] Mr. Parcell also completed a CAPM analysis. Using this method, he calculated a ROE range of 6.6% to

[232] Parcell Direct at 8.
[233] Parcell Direct at 16-17.
[234] Parcell Direct at 20.

7.0% for the proxy groups.[235] Mr. Parcell observed that the CAPM results were lower than his DCF results and his Comparable Earnings method. He posited two reasons for this. First, he stated that risk premiums are currently lower than was the case in prior years. Second, he stated that the level of interest rates on U.S. Treasury bonds has been lower in recent years, which pushed the CAPM results downward.

Mr. Parcell also based his recommended ROE on the Comparable Earnings method, which is based on the prospective return available to investors from alternative investments of similar risk.[236] For this method, Mr. Parcell examined realized ROEs for the groups of proxy utilities as well as unregulated companies and evaluated investor acceptance of these returns by referencing the resulting market-to-book ratios. Mr. Parcell stated that a market-to-book ratio greater than one (i.e., greater than 100%) reflects a situation where a company is able to attract new equity capital without dilution. Mr. Parcell examined the ROEs of the proxy group of utilities as well as the S&P 500 Composite group for the sixteen-year period 2002-2017. He also examined projected ROEs for 2018, 2019, and 2021-2023. Mr. Parcell found that historic ROEs of 9.5% to 10.0% have been adequate to produce market-to-book ratios of 139% to 158% for the utilities.[237] He determined that projected ROEs for 2018, 2019, and 2021-2023 within the range of 9.5% to 10.8% achieved market-to-book ratios of 190% or greater. For the S&P 500 Composite group, he found that this group's average ROEs ranged from 12.4% to 13.4%, with average market-to-book ratios between 242% and 275%. Mr. Parcell noted, however, that the S&P 500 group is riskier than the utility proxy group. Mr. Parcell concluded his Comparable

[235] Parcell Direct at 23.
[236] Parcell Direct at 23.
[237] Parcell Direct at 25.

Earnings method analysis by stating that a range of 9.0% to 10.0% reflects the actual and prospective ROEs for the proxy groups.[238]

Analyzing the results of his three common equity methods, Mr. Parcell found an overall range of 6.6% to 10.0%, which he narrowed to 6.8% to 9.5% when using mid-point values. Mr. Parcell concluded that a ROE range of 8.9% to 9.5% with a mid-point of 9.2% would provide a fair and just return for the Company.[239] Mr. Parcell accepted Potomac Edison's actual capital structure and embedded cost of debt calculated by Company witness Dipre. Using those figures and his recommended ROE, Mr. Parcell determined that Potomac Edison's cost of capital (rate of return) is a range of 6.75% to 7.06%, with a mid-point of 6.90%.

Mr. Parcell provided a number of criticisms of Potomac Edison's cost of capital calculations. Mr. Parcell observed that his DCF conclusion is similar to Mr. D'Ascendis's 8.79% calculation. However, over all, Mr. Parcell testified that Mr. D'Ascendis's ROE recommendations were "beyond the mainstream of authorized ROE's for electric utilities throughout the U.S. in recent years."[240] Mr. Parcell challenged Mr. D'Ascendis's use of the Risk Premium Model, noting that the PRPM in particular was relatively new and untried and has not been accepted or endorsed by any regulatory agency. Mr. Parcell also questioned the Total Market Approach, arguing that Mr. D'Ascendis's use of total stock returns over the 1926-2017 period created several problems. For example, the 1926-2017

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[238] Parcell Direct at 26.

[239] Although Mr. Parcell did not expressly reduce his recommended ROE as a result, he observed that if the Commission approves either Potomac Edison's proposed Storm Damage Accrual Mechanism or its EDIS, the Company will have significantly reduced its risk. He testified that the EDIS in particular would permit Potomac Edison to recover reliability costs without going through the process of filing a general rate proceeding, reduce regulatory lag, and transfer risk from the Company to customers. Parcell Direct at 28-29.

[240] Parcell Direct at 30.

period was heavily influenced by the Great Depression, World War II, and the high inflation/interest rate environment of the 1970s and 1980s, making comparisons regarding investor expectations during those periods inapplicable to the current period. Mr. Parcell also criticized Mr. D'Ascendis's CAPM analysis because it used forecasted yields on U.S. Treasury and utility bonds as the risk-free rate rather than the current yield. He noted that the 30-year Treasury bonds currently yield well below the 3.69% used by Mr. D'Ascendis in his risk-free rate. Addressing the ECAPM analysis, Mr. Parcell charged that Mr. D'Ascendis arbitrarily ignored the actual betas of the proxy utilities and improperly assigned hypothetical betas to them. Mr. Parcell questioned the use of a Non-Price Regulated Proxy Group, arguing that unregulated companies face different risks and operational characteristics than utilities.[241]

Mr. Parcell also challenged Mr. D'Ascendis's three adjustments to his ROE. First, he objected to Mr. D'Ascendis's request for flotation costs. He testified that Potomac Edison has not demonstrated that FirstEnergy has or intends to issue new common equity for the purpose of infusing equity into Potomac Edison. Additionally, Mr. Parcell opposed the adjustment for business risk, arguing that Potomac Edison failed to demonstrate that a small electric utility should receive a higher ROE than a large one.[242] In particular, Mr. Parcell noted that many of the proxy electric utilities have multiple subsidiaries that operate in different jurisdictions, but that these individual utility subsidiaries do not raise their equity capital directly from investors, but instead do so as part of a consolidated entity. In that regard, FirstEnergy operates one of the largest investor-owned electric systems in the U.S. Mr. Parcell also challenged the notion that smaller utilities are riskier than larger

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[241] Parcell Direct at 35.
[242] Parcell Direct at 36.

ones, since both categories are fully regulated.[243] Finally, Mr. Parcell opposed any financial adjustment for Potomac Edison relating to the Company's lower credit rating. Mr. Parcell argued that Potomac Edison's credit rating has been negatively influenced by the ratings of its parent, FirstEnergy, relating to FirstEnergy's high-risk, unregulated operations. Mr. Parcell concluded that Potomac Edison's ratepayers should not be penalized for FirstEnergy's higher risk operations that are unrelated to Potomac Edison.

Party Responses

In his rebuttal testimony, Mr. D'Ascendis objected to much of the methodology and conclusions of the Staff and OPC witnesses. He argued that they relied too heavily on the DCF model, which understated the required return for investors.[244] In particular, he claimed that the market-to-book ratios of the proxy groups are considerably higher than their historical averages, causing a downward bias in the DCF analysis. He claimed that the 50% weight Staff and OPC witnesses attributed to the DCF skewed the result and he further argued that their failure to use other common equity methods, such as ECAPM, rendered their conclusions inaccurate. Mr. D'Ascendis criticized the proxy group selection criteria used by Staff and OPC, arguing that they improperly omitted the percentage of net operating income and assets attributable to regulated electric operations.[245]

Regarding Staff's cost of equity analysis, Mr. D'Ascendis faulted Mr. VanderHeyden for misapplication of the CAPM. Specifically, he argued that Mr. VanderHeyden erred by (i) failing to consider the ECAPM, and (ii) using historical

[243] Parcell Direct at 37. Mr. Parcell noted, for example, that water utilities, which are often the smallest of regulated utilities, tend to have the lowest authorized ROEs—a fact that contradicts Mr. D'Ascendis's theory that smaller size should result in upward adjustments to authorized returns.
[244] D'Ascendis Rebuttal at 2.
[245] D'Ascendis Rebuttal at 16.

measures for his market return rather than projected market risk premiums.[246] Mr. D'Ascendis also contended that Mr. VanderHeyden should have included other cost of equity models, such as the RPM and Comparable Earnings model. He further argued that Mr. VanderHeyden failed to reflect the greater investment risk of Potomac Edison compared to his utility proxy group. Mr. D'Ascendis further claimed that Mr. VanderHeyden should have included a flotation adjustment. Mr. D'Ascendis argued that flotation costs should be recovered on a perpetual basis because the benefits of that capital extend indefinitely, and that it is immaterial whether Potomac Edison experienced actual flotation costs during the test year.[247]

Regarding OPC's cost of equity analysis, Mr. D'Ascendis asserted that OPC's ROE recommendation, in conjunction with the agency's request for a 9% decrease in distribution rates, offended notions of gradualism.[248] He observed that the U.S. Energy Information Administration showed an increase in electricity prices of 50.8% over the period 1994-2015, which made OPC's request for a rate decrease "counterintuitive," and which, if approved, would put negative pressure on Potomac Edison's credit rating. Mr. D'Ascendis also disagreed with Mr. Parcell's heavy weighting of his DCF results as well as his application of the CAPM. Mr. D'Ascendis argued that Mr. Parcell's CAPM calculation of 6.80% demonstrated that the result was "unreasonable on its face" and that the low result stemmed from incorrect inputs in Mr. Parcell's calculations.[249] Mr. D'Ascendis criticized Mr. Parcell's Comparable Earnings analysis, claiming that

[246] D'Ascendis Rebuttal at 21-22.
[247] D'Ascendis Rebuttal at 30-31.
[248] D'Ascendis Rebuttal at 39.
[249] D'Ascendis Rebuttal at 41. In particular, Mr. D'Ascendis argued that Mr. Parcell (i) incorrectly relied on a historical risk-free rate, when both ratemaking and the cost of capital are prospective; (ii) incorrectly calculated the market risk premium; and (iii) failed to incorporate an ECAPM analysis. D'Ascendis Rebuttal at 42-43.

Mr. Parcell's supposition that a direct relationship between market-to-book ratios and the rate of earnings on book common equity is not supported.[250] Mr. D'Ascendis also faulted the proxy group selected for Mr. Parcell's Comparable Earnings method, arguing that it was not sufficiently broad-based and should have excluded utilities, to avoid circularity. Finally, Mr. D'Ascendis argued that Mr. Parcell should have adjusted his ROE upward to account for Potomac Edison's smaller size. He disputed Mr. Parcell's argument that Potomac Edison should be viewed as part of the larger FirstEnergy company, claiming that ratemaking principles dictate that Potomac Edison be evaluated as a stand-alone entity based on its operations in Maryland only.

In his surrebuttal testimony, Mr. Parcell argued that the authorized ROE for electric utilities has continued to decline over the past several years, with the most recent ROEs well below 10.0%. His calculations of mean average and median by year since 2013 are:

Table 3: Mean and Median ROEs by Year[251]

Year	Average	Median
2013	9.82%	9.82%
2014	9.76%	9.75%
2015	9.60%	9.53%
2016	9.68%	9.60%
2017	9.68%	9.60%
2018(2Q)	9.58%	9.50%

Mr. Parcell also dismissed Mr. D'Ascendis's criticism of his proxy group selection, noting that he applied all of his ROE analyses to both his proxy group as well as Mr. D'Ascendis's proxy group, so that his ROE findings and conclusions reflect the proxy groups for both

[250] D'Ascendis Rebuttal at 54.
[251] Parcell Surrebuttal at 3.

the Company and OPC. Mr. Parcell disagreed with the notion that the DCF model underestimates the investor required return, arguing that Mr. D'Ascendis's attempt to "reprice" stock values in order to develop a DCF cost rate "in line with what he thinks the results should be" was improper and contrary to the principle of efficient markets.[252] Mr. Parcel also disagreed with Mr. D'Ascendis's claim that his CAPM analysis should have used forecasted yields on Treasury bonds rather than current yields. Mr. Parcell argued that analysts should not use prospective stock prices as the basis for the dividend yield because the use of prospective stock prices is speculative. Mr. Parcell disagreed that he should have incorporated the ECAPM, which he argued overstates the cost of equity for companies with betas below that of the market.[253] Finally, Mr. Parcell disagreed that Potomac Edison's ROE should be adjusted upward to reflect its smaller size as compared to the proxy group. He contended that most of the proxy electric utilities have multiple subsidiaries in multiple jurisdictions, yet raise capital directly from investors as consolidated entities.

In his surrebuttal testimony, Mr. VanderHeyden disagreed with Mr. D'Ascendis's contention that Mr. VanderHeyden gave undue weight to the DCF analysis, noting that if he had provided greater weight to his lower CAPM result of 9.04%, his overall ROE recommendation would have been lower than the 9.25% he provided.[254] Mr. VanderHeyden also rejected the claim that the DCF method would understate investors' required return due to stock price volatility. He observed that he removed the results from companies ED, ETR, and IDA due to unrealistically low DCF results, which

[252] Parcell Surrebuttal at 4.
[253] Parcell Surrebuttal at 10.
[254] VanderHeyden Surrebuttal at 4.

helped prevent understatement of the final DCF result. Mr. VanderHeyden also argued that there was nothing improper about using a historic equity risk premium in his CAPM analysis, because historic data provides certainty as compared to prospective data.[255] In that regard, Mr. VanderHeyden referenced the IHS Markit estimate that stock returns will be less than 3% over the next three years,[256] making his historic return of 12.06% appear generous towards the Company. Additionally, Mr. VanderHeyden asserted that Mr. D'Ascendis's 16% market return lies at the "extreme end" of the historic average and market projections.[257] Regarding the ECAPM, Mr. VanderHeyden argued that the method is not widely accepted or used by the financial community, is insufficiently supported academically, and is unduly complicated and speculative.[258] In contrast, surveys of investment professionals demonstrate that the DCF and CAPM methods are the dominant methods used. Mr. VanderHeyden further stated that he used these two methods because they take different approaches and use different data points. The DCF, for example, is specific to a particular company and does not use data from the broader market. In contrast, the CAPM uses market information regarding the relative risk and price movements of the subject company and compares that to an index of companies representing the overall stock market. Mr. VanderHeyden argued that the risk premium method discussed by Mr. D'Ascendis is a simplified precursor to the CAPM. Mr. VanderHeyden stated that he did not use the risk premium method because of concern that it would overweight the relative risk approach of the CAPM as against the direct approach of the DCF.[259]

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[255] VanderHeyden Surrebuttal at 10.
[256] VanderHeyden Surrebuttal at 11.
[257] VanderHeyden Surrebuttal at 12.
[258] VanderHeyden Surrebuttal at 17.
[259] VanderHeyden Surrebuttal at 19.

Mr. VanderHeyden opposed the three upward adjustments Mr. D'Ascendis applied to his final ROE. Mr. VanderHeyden observed that the District of Columbia Public Service Commission ("D.C. Commission") found that a "small size adjustment" should apply only to a company in a competitive industry and that an adjustment for a regulated utility was improper in view of the utility's monopoly as a distribution company in the utility's service territory.[260] Mr. VanderHeyden also opposed Mr. D'Ascendis's inclusion of flotation costs. Mr. VanderHeyden stated that the Commission's policy is to approve flotation costs only when the utility demonstrates that they were incurred during the test year or that the utility would incur flotation costs during the rate effective period. Because Potomac Edison did not make this demonstration, flotation costs should be denied.[261]

Commission Decision

The Supreme Court set forth the fundamental elements for determining a fair return on the investments of a regulated utility in the cases *Bluefield Waterwork* and *Hope Natural Gas*.[262] In those cases, the Court found that a return on equity should be (i) comparable to returns investors expect to earn on investments of similar risk, (ii) sufficient to ensure confidence in the company's financial integrity, and (iii) adequate to maintain and support the company's credit and to attract capital. After having reviewed and considered the witnesses' testimony in view of the *Bluefield* and *Hope* decisions, the Commission finds that an ROE of 9.65% for Potomac Edison's electric operations represents a fair and appropriate return.

[260] VanderHeyden Surrebuttal at 22.
[261] VanderHeyden Surrebuttal at 25.
[262] *Bluefield Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 693 (1923); and *Fed. Power Comm'n v. Hope Natural Gas Co*., 320 U.S. 591, 603 (1944).

The Commission observes that the witnesses used different methodologies and assumptions to estimate Potomac Edison's cost of equity. That is not a criticism. As Staff witness VanderHeyden explained regarding the calculation of a fair return: "This information is not tabulated in a book or posted on the Internet; it is observed by analyzing the returns expected by investors based on several methods of analysis."[263] The determination of a fair ROE therefore requires a degree of discretion from the cost of capital expert. For example, he or she must choose which model or models to employ, how to assemble the most representative proxy group, and whether or how to exclude outliers from the analysis, to name just a few of the parameters.

The ROE witnesses in this proceeding used various analyses to estimate the appropriate return on equity for Potomac Edison's electric distribution operations, including the DCF model, the CAPM (including the traditional and empirical versions), risk premium methodologies, and comparable earnings models. Although the witnesses argued strongly over the correctness of their competing analyses, the Commission is not willing to rule that there can be only one correct method for calculating a ROE. Neither will the Commission eliminate any particular methodology as unworthy of basing a decision.[264] The subject is far too complex to reduce to a single mathematical formula.[265] That conclusion is made apparent, in practice, by the fact that the expert witnesses used discretion to eliminate outlier returns that they testified were too high or too low to be considered reasonable, even when using their own preferred methodologies.

[263] VanderHeyden Direct at 6.
[264] For the reasons discussed below, the Commission places less weight on the ECAPM and the Company's comparable earnings method based on the Non-Price Regulated Proxy Group. Nevertheless, the Commission will not preclude a party from submitting such studies or declare categorically that these methodologies should receive no weight.
[265] *See* Case No. 9326, Order No. 86060 at 76. "We find all of these analytical tools helpful and will not rely on any one to the exclusion of the others in making our decision."

Utilizing the cost of capital methodologies discussed above, the parties provided a range of ROE recommendations, as shown below.

Table 4: Summary of Party ROE Calculations

Method and Adjustments	Potomac Edison	Staff	OPC
DCF	8.79%	9.51%	8.65%
CAPM	9.41%	9.04%	6.80%
ECAPM	10.27%	N/A	N/A
Risk Premium Model	10.31	N/A	N/A
Comparable Earnings Model	11.56%	N/A	9.5%
Flotation Adjustment	12 bp	N/A	N/A
Merger Adjustment	N/A	-0.03%[266]	N/A
Business Risk	0.30%	N/A	N/A
Credit Risk	0.27%	N/A	N/A
ROE Recommendation	**10.80%**	**9.25%**	**9.20%**
Rate of Return	**7.75%**	**6.93%**	**6.90%**

OPC recommended the lowest ROE of 9.20%. Nevertheless, part of OPC witness Parcell's recommendation included a CAPM result of 6.80%. The Commission views this result as abnormally low, especially compared to the results of the same CAPM methodology conducted by Potomac Edison and Staff witnesses. The Commission also observes that Mr. Parcell testified that a ROE range of 8.9% to 9.5% for Potomac Edison would provide a fair and just return for the Company, with the 9.5% acknowledging the results of his comparable earnings analysis.[267] Potomac Edison witness D'Ascendis

[266] *See* VanderHeyden Direct at 17 and 21.
[267] Parcell Direct at 28-29.

provided the highest recommended ROE of 10.80%. Nevertheless, his DCF and CAPM analyses resulted in a significantly lower 8.79% and 9.41% returns, respectively.

Considering all the cost of capital evidence presented by the parties in this proceeding, the Commission finds that a return on equity of 9.65% is just and reasonable and will be sufficient to meet Potomac Edison's capital needs. That award recognizes that Potomac Edison is a stable distribution company that does not own generation in its Maryland rate base and that operates in a low-risk environment.[268] Additionally, the Commission's award recognizes that even with the ending of the Federal Reserve's Quantitative Easing program, interest rates have remained low, with government and utility long-term lending rates remaining near historically low levels. In making this award, the Commission observes that the 9.65% return awarded today lies within the range of ROEs recommended by the parties (9.20% to 10.80%). Additionally, the 9.65% award fits within the range of mean average and median ROEs approved by public utility commissions in the last few years, as shown in Table 3 above.

In considering the array of evidence presented on cost of capital, the Commission concludes that Potomac Edison's comparable earnings method (based on its Non-Price Regulated Proxy Group) should be given little weight. The Commission has previously found that including unregulated companies in the proxy group produces results that are "significantly out of line" for a regulated distribution company and "justifies rejection of the non-utility returns."[269] Non-utility companies are significantly riskier than regulated distribution utilities and should require markedly higher returns than regulated entities. For that reason, the Commission held that "[r]eliance on a non-utility proxy group, containing

[268] VanderHeyden Direct at 9.
[269] *Balt. Gas & Elec. Co.*, 102 MD PSC 75, 105 (2011).

companies fully subject to market risk, is an inappropriate basis for calculating the ROE of a regulated monopoly electric [or] gas distribution company."[270] Similarly, the Commission finds that the ECAPM result should be given little weight. As Staff witness VanderHeyden observed, the ECAPM is not widely accepted by the financial community in determining ROEs.[271] In Case No. 9424, the law judge observed that the ECAPM is "rarely, if ever … cited in professional literature" and Commission witnesses have generally not used it as a primary method.[272]

The Commission further finds that the adjustments proposed by Potomac Edison for business risk, credit risk, and flotation costs should be rejected. Regarding business risk, the Commission finds that Potomac Edison's size as a relatively small electric distribution utility does not justify an upward adjustment in ROE. The Company has submitted evidence that small, unregulated companies may face greater risk than medium to large companies. However, that elevated risk does not extend to regulated utilities, which have the benefit of a monopoly service territory and a captive customer base. As Staff witness VanderHeyden stated: "[I]f a company in a competitive industry increases its prices, the company faces the risk of losing customers to competitors. But because a utility is a monopoly as the sole distribution company in its service territory, the utility does not face the risk of losing customers if the utility increases its prices."[273]

The D.C. Commission recently addressed this issue and reached a similar result, finding: "Regulation provides a safety valve for those small regulated utilities that significantly diminishes their risk relative to larger regulated companies. That safety valve

[270] *Balt. Gas & Elec. Co.*, 102 MD PSC 75, 105 (2011).
[271] VanderHeyden Surrebuttal at 12-13.
[272] Case No. 9424, Proposed Order at 152.
[273] VanderHeyden Surrebuttal at 23.

protects small companies from competition and allows small companies to increase their rates without facing competitive pressures."[274] Finally, empirical studies confirm that industrial betas tend to decrease with firm size but regulated utility betas do not.[275] Accordingly, Potomac Edison's request for an upward adjustment to reflect enhanced risk due to its relatively small size is denied.

The Commission also denies Potomac Edison's request for flotation costs. The Commission has granted flotation costs only where the utility has demonstrated that it incurred verifiable costs of issuing new stock during the test year or will incur such flotation costs during the rate effective period.[276] In Case No. 9336, BGE made a similar argument to that proposed by Potomac Edison now—namely, that flotation costs should be recovered on a perpetual basis because the benefits of that capital extend indefinitely. The Commission held: "BGE has merely presented argument that investors are entitled to an adjustment for flotation on an ongoing basis whether or not the Company actually incurs such costs. We reject that argument."[277]

Finally, the Commission finds that Potomac Edison's testimony that the Company should receive an upward adjustment to its ROE based on credit risk should be given little weight. The Commission has not generally included an upward adjustment in ROE to reflect the lower credit rating of a regulated utility from the proxy group with which it is compared. Furthermore, Staff and OPC presented evidence that Potomac Edison is a stable

[274] District of Columbia Public Service Commission, Case No. 1137, Order No. 18712 at 28 (March 3, 2017).
[275] VanderHeyden Surrebuttal at 23, citing Wong, Annie, "Utility Stocks and the Size Effect: An Empirical Analysis," Journal of the Midwest Finance Association at 95-101 (1993).
[276] *Pepco*, 107 Md. PSC 701, 755 (2017). For example, the Commission approved the recovery of flotation costs in Case Nos. 9336 (Pepco), 9311 (Pepco), and 9285 (Delmarva Power).
[277] *In the Matter of the Application of Baltimore Gas and Electric Company for Adjustments to its Electric and Gas Base Rates*, Case No. 9406, Order No. 87591 at 156 (June 3, 2016).

distribution company in a low-risk environment that should not be granted an additional upward adjustment due to financial risk.

Considering all the evidence related to cost of capital provided in this proceeding, the Commission finds that a cost of equity award of 9.65% complies with the standards established by *Hope* and *Bluefield,* is comparable to returns investors expect to earn on investments of similar risk, is sufficient to ensure confidence in Potomac Edison's financial integrity, and will enable the Company's investors to receive a fair return commensurate with risk. Additionally, the ROE is adequate to maintain and support Potomac Edison's credit and to attract needed capital.

Given that no party objected to the actual capital structure proposed by Potomac Edison witness Dipre, the Commission accepts for purposes of determining rate of return that the Company's capital structure consists of 52.82% common equity and 47.18% long-term debt. Additionally, the Company's embedded long-term debt cost rate is 4.335%. Potomac Edison's weighted average cost of capital for electricity is therefore as follows:

Table 5: Authorized Return

Type of Capital	Ratios	Cost Rate	Weighted Cost Rate
Long-Term Debt	47.18	4.335%	2.05%
Common Equity	52.82%	9.65%	5.10%
Total	100%		7.15%

E. <u>Cost of Service</u>

The purpose of a cost of service study ("COSS") is to determine the costs a customer class imposes upon a utility. The purpose of a jurisdictional cost of service study ("JCOSS") is to determine the costs a jurisdiction imposes upon a utility, if the utility is