Third Testimony of Nuclear Information and Resource Service
Presented by Timothy Judson, Executive Director
Before the Public Service Commission of Washington, DC
On January 12, 2015

Thank you Commissioners for the opportunity to address you again tonight. My name is Tim Judson, and I am testifying tonight on behalf of the Nuclear Information and Resource Service, where I am the executive director. NIRS is a national environmental nonprofit organization, headquartered in Takoma Park, Maryland.

Because Exelon is the largest nuclear power plant operator in the country, one of the potential risks DC residents could face as a result of Exelon's proposed acquisition of Pepco is the imposition of costs for decommissioning and cleanup of nuclear reactor sites. This would be a unique and unprecedented consequence for DC residents, for a few reasons:

- Pepco has never had an ownership stake in nuclear power plants, which has shielded DC residents from direct liability for costs associated with them.
- About one-third of Exelon's nuclear plants are at risk of early retirement because they are economically uncompetitive, and Exelon faces significant losses on their operation going forward.
- Early retirements could mean billions of dollars in decommissioning liabilities for Exelon, and the company would be in desperate need of ways to mitigate those liabilities.

- Exelon owns two nuclear reactors about 50 miles southeast Washington, DC, at the Calvert Cliffs Nuclear Power Plant in Lusby, Maryland.

Federal regulations require Exelon to maintain a trust fund for each nuclear plant to pay for its decommissioning. The minimum value of the funds is set by regulation, and the plant owners have to report on their status every two years. The funds were originally created by the utilities that owned the plants, and who charged ratepayers to build up the trusts like you would a pension or 401k. But since utility restructuring, merchant reactor owners have not put a dime into the funds -- relying entirely on the stock market (which has crashed twice) for the funds to grow. That was not the assumption when the funds were established, and many plants' decommissioning funds are not up to snuff. Exelon and other companies are getting away with it by relicensing the reactors for an extra 20 years (beyond the original 40), and by planning to defer decommissioning for up to 50 years after that, taking credit for estimated future growth of the funds. But if reactors close early, the shortfalls in their present value would translate into current liabilities.

There are three possibilities with respect to the risk decommissioning would pose to DC residents. One is the DC PSC's ability to effectively regulate a company as massive as Exelon, which could attempt to pad its rates in all sorts of ways to maximize revenues to the parent company. Exelon's incentives to do so only rise in relation to decommissioning liabilities, especially with the possible retirement of several reactors in the coming years. Managing that risk, in fact, forms one of the primary drivers behind Exelon’s overall business strategy, including the acquisition of Pepco.

Further, Exelon has a record of misreporting with respect to its decommissioning trust funds. In 2013, the Nuclear Regulatory Commission discovered that Exelon had underreported the value of decommissioning funds for eight of its nuclear plants for several years, concealing a total of $1 billion in shortfalls. Nuclear power licensees are required to maintain decommissioning funds at a minimum level, or they can be forced to make up shortfalls. A year later, NRC retracted its allegation that Exelon acted intentionally, and let the company off without levying hefty fines. But the case exposed Exelon’s ability to conceal matters from regulators averse to its interests through several years and successive reporting periods. It is perhaps more remarkable that NRC ever identified the problem.

Second, is the matter of protecting DC ratepayers from decommissioning liabilities. I believe it may be possible for ring-fencing provisions to prohibit attempts by Exelon to directly charge DC residents for decommissioning costs. I believe a ring-fencing provision in Maryland would be relatively meaningless, since the need to ensure a safe cleanup 10 or 20 years from now could easily trump a ring-fencing agreement made in 2015. But I think Exelon would have a very hard time arguing that DC ratepayers should bear such responsibility, at least directly.

Thirdly, however, DC ratepayers could be forced to pay to keep Calvert Cliffs (or other plants) open, per my previous testimony. One of Exelon's driving incentives NOT to close unprofitable nuclear reactors is to avoid decommissioning liabilities. This is a huge risk hanging over Exelon's head, and could deal severe blows to investor confidence and the corporation's stock price. So whether it were through trying to get DC PSC to authorize an above-market contract to prevent Calvert Cliffs from closing, or by exploiting its market power to raise the price of electricity, Exelon could force DC ratepayers to pay to keep Calvert Cliffs running while the plant's decommissioning fund grows.

Forcing ratepayers to subsidize nuclear is an indirect way of forcing them to pay for decommissioning, but in fact, it could actually cost ratepayers more to do that than decom would. For instance, Exelon is trying to force New York ratepayers to subsidize its Ginna reactor to the tune of $100 million per year or more. If Ginna were to run that way till the end of its license in 2029, that would be $1.5 billion, far more than the possible shortfall in the decommissioning fund. The situation could be worse with Calvert Cliffs, since it is three times larger than Ginna and the price increases Exelon is seeking for its nuclear plants would impose proportionally larger costs on Pepco ratepayers.

Thank you. I hope this information is helpful.