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January 2, 2024

The Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

**Re: PJM Interconnection, L.L.C.  
Atlantic City Electric Company  
Delmarva Power & Light Company  
PECO Energy Company  
Docket No. ER21-2965-000  
ER21-2965-001**

**Settlement Agreement**

Dear Secretary Bose:

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.602 (2023), Atlantic City Electric Company (“ACE”), Delmarva Power & Light Company (“Delmarva”) and PECO Energy Company (“PECO”), submit for filing, on behalf of the Parties thereto,<sup>1</sup> an executed

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<sup>1</sup> The Parties to the Settlement Agreement are: ACE; Delmarva; PECO; Delaware Municipal Electric Corporation; Maryland Office of People’s Counsel; New Jersey Division of the Rate Counsel; Old Dominion Electric Cooperative; and the Philadelphia Area Industrial Energy Users Group (each a “Party” and all collectively, the “Parties”). The Parties are authorized to state that the Maryland Public Service Commission and the Delaware Division of the Public Advocate, which intervened in this proceeding and participated in settlement discussions, do not oppose the proposed Settlement Agreement.

Settlement Agreement (“Settlement Agreement” or “Settlement”) and related documents.<sup>2</sup> Upon the Commission’s approval of this Settlement Agreement in accordance with Section 3.1 thereof, all issues in Docket Nos. ER21-2965-000 and ER21-2965-001 will be resolved. All parties to this proceeding have either executed the Settlement Agreement or agreed not to oppose it.

**I. INFORMATION SUBMITTED WITH THIS FILING**

This submission includes, along with this transmittal letter, the following documents:

- Explanatory Statement;
- Settlement Agreement;
- Exhibit A, W&S Allocator Cap; and
- Certificate of Service.

**II. COMMENTS**

Pursuant to Rule 602(f) of the Commission’s Rules of Practice and Procedure,<sup>3</sup> initial comments on the Settlement Agreement are due January 22, 2024, and reply comments are due February 1, 2024. Pursuant to Rule 602(f)(3),<sup>4</sup> any failure to file a comment constitutes a waiver of all objections to the Settlement Agreement.

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<sup>2</sup> Pursuant to Order No. 714, this filing is being submitting by PJM Interconnection, L.L.C. (“PJM”) on behalf of ACE, Delmarva and PECO as part of a filing package that conforms with the Commission’s regulations. PJM has agreed to make all filings on behalf of the PJM Transmission Owners in order to retain administrative control over the PJM Open Access Transmission Tariff (“OATT”).

<sup>3</sup> 18 C.F.R. § 385.602(f) (2023).

<sup>4</sup> 18 C.F.R. § 385.602(f)(3) (2023).

### III. SERVICE

Pursuant to Rules 602(d)<sup>5</sup> and 2010,<sup>6</sup> ACE, Delmarva and PECO have served, either by paper or electronic service, the Settlement Agreement and all related documents listed above on all parties listed on the official service list compiled by the Secretary in this proceeding and on all other persons required to be served by operation of Rule 602(d).

In addition, PJM has served a copy of this filing on all PJM Members and on all state utility regulatory commissions in the PJM Region by posting this filing electronically. In accordance with the Commission's regulations,<sup>7</sup> PJM will post a copy of this filing to the FERC filings section of its internet site, located at the following link:

<https://www.pjm.com/library/filing-order> with a specific link to the newly-filed document, and will send an e-mail on the same date as this filing to all PJM Members and all state utility regulatory commissions in the PJM Region<sup>8</sup> alerting them that this filing has been made by PJM and is available by following such link. If the document is not immediately available by using the referenced link, the document will be available through the referenced link within 24 hours of the filing.<sup>9</sup>

### IV. REQUESTED RELIEF

The Parties request that the Settlement be certified to the Commission for its approval, and that the Commission approve the Settlement Agreement without condition or modification.

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<sup>5</sup> 18 C.F.R. § 385.602(d) (2023).

<sup>6</sup> 18 C.F.R. § 385.2010 (2023).

<sup>7</sup> See 18 C.F.R. §§ 35.2(e) (2023) and 385.2010(f)(3) (2023).

<sup>8</sup> PJM already maintains, updates and regularly uses e-mail lists for all PJM members and affected state commissions.

<sup>9</sup> Also, a copy of this filing will be available on the Commission's eLibrary website located at the following link: <http://www.ferc.gov/docs-filing/elibrary.asp> in accordance with the Commission's regulations and Order No. 714.

In accordance with Section 3.1 of the Settlement Agreement, the Settlement Agreement will have an effective date of January 1, 2022 upon issuance of an order approving this Settlement Agreement without modification or condition, or if the Commission issues an order conditioning or modifying the Settlement Agreement, fifteen days after such order if no Party gives notice of termination pursuant to Section 3.1 of the Settlement Agreement.

Thank you for your assistance in this matter.

Respectfully submitted,

/s/ Richard L. Roberts

Richard L. Roberts

Steptoe LLP

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Washington, DC 20036

(202) 429-6756

rroberts@steptoe.com

*Counsel for Atlantic City Electric Company,  
Delmarva Power & Light Company and PECO  
Energy Company*

cc: Hon. Andrea McBarnette  
All Parties

**CERTIFICATE OF SERVICE**

Pursuant to Rule 2010, 18 C.F.R. § 385.2010, I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. on this 2nd day of January, 2024.

/s/ Jeannette Crooks  
Jeannette Crooks  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036  
jcrooks@steptoe.com

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

|                                |   |                           |
|--------------------------------|---|---------------------------|
| PJM Interconnection, L.L.C.    | ) | Docket Nos. ER21-2965-000 |
| Atlantic City Electric Company | ) | ER21-2965-001             |
| Delmarva Power & Light Company | ) |                           |
| PECO Energy Company            | ) |                           |
|                                | ) |                           |
|                                | ) |                           |
|                                | ) |                           |

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**EXPLANATORY STATEMENT**

The Parties submit this Explanatory Statement in support of the enclosed Settlement Agreement (“Settlement” or “Settlement Agreement”) that resolves Docket Nos. ER21-2965-000 and ER21-2965-001 (collectively the “Proceeding”). As set forth in the Settlement Agreement the Parties are Atlantic City Electric Company (“ACE”), Delmarva Power & Light Company (“Delmarva”), PECO Energy Company (“PECO”), Delaware Municipal Electric Corporation (“DEMEC”), Maryland Office Of People’s Counsel (“MD OPC”), New Jersey Division of the Rate Counsel (“NJ Rate Counsel”), Old Dominion Electric Cooperative (“ODEC”) and the Philadelphia Area Industrial Energy Users Group (“PAIEUG”) (each a “Party” and collectively, the “Parties”). The Parties are authorized to state that the Maryland Public Service Commission and the Delaware Division of the Public Advocate, which intervened in this proceeding and participated in settlement discussions, do not oppose the proposed Settlement Agreement.<sup>10</sup>

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<sup>10</sup> This Explanatory Statement is provided solely to comply with Rule 602(c)(1)(ii) of the Commission’s Rules of Practice and Procedure and is not intended, and does not, alter any of the provisions of the Settlement Agreement or Formula Rate. In the event of any inconsistency between the Explanatory Statement and the Settlement Agreement or Formula Rate, the Settlement Agreement and Formula Rate shall control.

## **I. Background**

On September 29, 2021,<sup>11</sup> pursuant to Section 205 of the Federal Power Act (“FPA”)<sup>12</sup> and Section 35.13 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “the Commission.”),<sup>13</sup> ACE, Delmarva and PECO submitted proposed tariff revisions modifying the Companies’ transmission formula rates, contained in the PJM Interconnection, L.L.C., (“PJM”) Open Access Transmission Tariff (“OATT”), Attachment H-1A, Attachment H-3D, and Attachment H-7A (“Formula Rates”), to revise the Transmission Wages and Salary (“W&S”) Allocator to include certain labor it receives and will receive from its affiliated Exelon utility services companies.<sup>14</sup>

On October 20, 2021, MD OPC, the NJ Rate Counsel, ODEC, PAIEUG and DEMEC filed protests opposing ACE, Delmarva and PECO’s September 29, 2021 filing.

On December 16, 2021, the Commission issued an order accepting ACE, Delmarva and PECO’s proposed Tariff revisions for filing, suspending them for a nominal period, to become

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<sup>11</sup> On September 29, 2021, ACE, Delmarva and PECO filed a letter in Docket No. ER21-2965. Pepco explained that due to size limitations, its filing was entered into e-Tariff in two parts. Part 1 was assigned Docket No. ER21-2965-000 and Part 2 was assigned Docket No. ER21-2965-001.

<sup>12</sup> 16 U.S.C. § 824d.

<sup>13</sup> 18 C.F.R. § 35.13.

<sup>14</sup> The Exelon affiliated service companies are Exelon Business Services Company (“EBSC”) for PECO, and EBSC and PHI Service Company (“PHISCO”) for ACE and Delmarva. EBSC and PHISCO are collectively referred to herein as the “Service Companies”.

effective January 1, 2022, subject to refund, and establishing hearing and settlement judge procedures.<sup>15</sup>

On December 22, 2021, the Acting Chief Administrative Law Judge designated Judge Andrea McBarnette as the Settlement Judge.<sup>16</sup> Judge McBarnette convened multiple settlement conferences through which the Parties sought to settle their disputes. As a result of these efforts, the Parties have reached an agreement on the terms and conditions of a settlement that would resolve all issues in this Proceeding.

## **II. Items Included in the Settlement Package**

Along with this Explanatory Statement, the Parties include the following items representing the complete settlement package:

- Transmittal letter;
- Settlement Agreement;
- Exhibit A, W&S Allocator Cap; and
- Certificate of Service.

## **III. Summary of the Settlement**

The Settlement addresses ACE, Delmarva and PECO's proposal to include direct labor costs incurred by the Service Companies in calculating the W&S allocators in ACE, Delmarva and PECO's transmission rate templates and resolves numerous disputes between the Parties. A summary of the provisions of the Settlement is included below.

Article I provides the definitions applicable to the Settlement.

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<sup>15</sup> *PJM Interconnection, L.L.C.*, 177 FERC ¶ 61,201 (2021).

<sup>16</sup> *PJM Interconnection, L.L.C.*, Order of Chief Judge Designating Settlement Judge, Docket Nos ER21-2965-000 & ER21-2965-001 (Dec. 22, 2021).



Section 2.1 provides that the Companies shall make one-time payments in the form of credits to ACE, Delmarva and PECO's network integration transmission service ("NITS") customers in the next Annual Update following FERC's approval of the Settlement Agreement. Section 2.1 also provides that PECO will make a payment to PAIEUG thirty days following FERC's approval of the Settlement Agreement.

Section 2.2 sets forth non-monetary settlement terms. Specifically, Section 2.2.1 provides that with respect to the functionalization of Plant and Operations and Maintenance ("O&M"), including Administrative and General ("A&G") at the TSO North Facility: (a) the full purchase price of the building at the TSO North Facility, but not the parcels of land, shall be accounted for as either general or common plant; (b) all capital or O&M costs related to the renovations or operations of the TSO North Facility for transmission purposes will be recorded as transmission only; (c) all capital or O&M costs to renovate or operate portions of the TSO North facility for non-transmission purposes or for overall use of the building will be recorded as either common or general and associated expenses will be included as A&G expenses, unless the renovations or operations relate to a specific non-transmission function; (d) whether costs subject to subparts (b) and (c) of Section 2.2.1 are to be functionalized is dependent on whether those costs would not be incurred but for NITS or Regional Transmission Expansion Plan ("RTEP") transmission purposes; (e) the Companies will account for changes in the classification of any portion of the TSO North Facility in accordance with the ultimate use of such portion of the Facility, but will not be required to change the classification of the purchase price of the building set forth in section 2.2.1(a); (f) interested parties shall have the right, through the Annual Update process to challenge the Companies' functionalization of TSO North employees; and (g) the Companies shall true-up rates to implement the terms of this Section 2.2.1 for the period

beginning January 1, 2023 and ending at the end of the Rate Year that is the subject of the first Annual Update following FERC Approval of the Settlement.

Section 2.2.2 provides that ACE, Delmarva and PECO's W&S Allocator shall be subject to a cap of 200 basis points above each Company's respective 2022 Baselines, effective beginning Rate Year 2023 and ending Rate Year 2026. Each year, the Cap will be compared to each Company's actual annual service company transmission non-TSO labor percentage. If the cap is exceeded, the transmission W&S allocator for that Company, in that year, will be reduced by the number of basis points by which the cap is exceeded. The 2022 Baselines shall be subject to review and challenge in the 2022 Rate Year True-Up and the deadline for challenges shall be extended in accordance with Section 2.2.2(d). The cap shall be calculated each applicable year as shown on Exhibit A to the Settlement Agreement.

Section 2.2.3 provides that this Settlement does not affect the rights of interested parties to seek discovery and challenge the inputs to the Formula Rate Template in accordance with the Formula Rate Protocols.

Section 2.2.4 provides that labor costs will not be included in the calculation of the W&S allocators unless the costs are also includable as inputs into the formula rate to determine the Companies' annual transmission revenue requirements for NITS or RTEP projects. This section also provides that non-wage and salary costs including payroll taxes, pensions and benefits shall not be included in the W&S allocators. Data, including the dollar amount of labor that is directly assigned or allocated from the Service Companies to the Companies will be provided in footnotes to pages 354 to 355 of the Companies FERC Form No. 1 reports.

Section 2.3 provides that the Settlement resolves all issues set for hearing in Docket Nos. ER21-2965 and all sub-dockets thereto. This Settlement does not foreclose any of the Parties'

rights with respect to issues not explicitly addressed in the Settlement, nor shall it be deemed to bind any Party (except in any proceeding to enforce this Settlement or as otherwise expressly provided for in the Settlement), in any future proceeding, and shall not be deemed precedential, or prejudicial to any Party's rights.

Section 3.1 sets forth that upon Commission approval of the Settlement, the Settlement becomes effective as of January 1, 2022. This section also sets forth what constitutes Commission approval of the Settlement.

Section 4.1, 4.2, and 4.3 state that the Settlement constitutes a negotiated agreement and shall be inadmissible as evidence in any proceeding except a proceeding to enforce the Settlement; that the settlement discussions among the Parties are privileged and confidential; and that each Party shall cooperate with and not take any action inconsistent with the Settlement. Section 4.1 also states that the Settlement is inadmissible as evidence and does not constitute precedent. Section 4.4 discusses waiver requirements, and Sections 4.6 through 4.11 contain miscellaneous provisions regarding Settlement interpretation, successors and assigns, authorization, and notices. Section 4.12 states that nothing in the Settlement shall be construed as affecting Section 205 or Section 206 filing rights.

Section 4.5 discusses the standard of review to be applied for any proposed modification to the Settlement after it has become effective. Unless the Parties otherwise agree in writing, any modification to the Settlement Agreement proposed by one of the Parties after the Settlement Agreement has become effective in accordance with Section 3.1 shall, as between them, be subject to the "public interest" application of the just and reasonable standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the Mobile-Sierra doctrine), as

clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County, Washington*, 544 U.S. 527 (2008) and refined in *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 588 U.S. 165, 174-75 (2010). The standard of review for any modifications to the Settlement Agreement requested by a non-Party or initiated by the Commission acting *sua sponte* will be the most stringent standard permissible under applicable law. See *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 588 U.S. at 174-75.

#### **IV. Required Information**

In accordance with the Chief Administrative Law Judge's December 15, 2016 Amended Notice to the Public on Information to be Provided with Settlement Agreements and Guidance on the Role of Settlement Judges, the Parties provide the following information:

**A. Does the settlement affect other pending cases?**

The Settlement by its terms shall have no effect on other cases currently pending before the Commission.

**B. Does the settlement involve issues of first impression?**

The Settlement does not involve issues of first impression.

**C. Does the settlement depart from Commission precedent?**

The Settlement does not depart from Commission precedent.

**D. Does the settlement seek to impose a standard of review other than the ordinary just and reasonable standard with respect to any changes to the settlement that might be sought by either a third party or the Commission acting *sua sponte*?**

Section 4.5 of the Settlement provides that the standard of review for any modifications to the Settlement requested by a non-Party or initiated by the Commission acting *sua sponte* will be the most stringent standard permissible under applicable law.<sup>17</sup>

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<sup>17</sup> See *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 588 U.S. at 174-75.

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

|                                |   |             |               |
|--------------------------------|---|-------------|---------------|
| PJM Interconnection, L.L.C.    | ) | Docket Nos. | ER21-2965-000 |
| Atlantic City Electric Company | ) |             | ER21-2965-001 |
| Delmarva Power & Light Company | ) |             |               |
| PECO Energy Company            | ) |             |               |

**SETTLEMENT AGREEMENT**

This Settlement Agreement (“Settlement Agreement”) is made pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. § 385.602 (2023), by and among Atlantic City Electric Company (“ACE”), Delmarva Power & Light Company (“Delmarva”), PECO Energy Company (“PECO”), Delaware Municipal Electric Corporation (“DEMEC”), Maryland Office Of People’s Counsel (“MD OPC”), New Jersey Division of the Rate Counsel (“NJ Rate Counsel”), Old Dominion Electric Cooperative (“ODEC”) and the Philadelphia Area Industrial Energy Users Group (“PAIEUG”) (each a “Party” and collectively, the “Parties”).<sup>1</sup> The Parties enter into this Settlement Agreement to address: (1) the Companies’ proposals to include certain direct labor costs incurred by Exelon Business Services Company (“EBSC”) and PHI Services Company (“PHISCO”) (collectively, “Service Companies”) in calculating the wages and salary (“W&S”) allocators in the Companies’ Formula Rate Templates, and (2) the treatment of certain other costs and issues identified in Sections 2.2 through 2.4 below. When this Settlement Agreement becomes effective pursuant to Section 3.1, the Settlement Agreement will resolve this proceeding in its entirety.

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<sup>1</sup> The Parties are authorized to state that the Maryland Public Service Commission and the Delaware Division of the Public Advocate, which intervened in this proceeding and participated in settlement discussions, do not oppose the proposed Settlement Agreement.

## ARTICLE I

- 1.1 “Annual Update” has the meaning set forth in the Formula Rate Protocols.
- 1.2 “ACE Formula Rate Protocols” means the provisions contained in Attachment H-1B of the PJM OATT.
- 1.3 “ACE Formula Rate Template” means the provisions contained in Attachment H-1A of the PJM OATT.
- 1.4 “Baseline” means the percentage amount calculated for the year 2022 in accordance with Section 2.2.2 and used to calculate the cap on the transmission W&S allocator set forth in that section.
- 1.5 The “Companies” means ACE, Delmarva and PECO.
- 1.6 “Delmarva Formula Rate Protocols” means the provisions contained in Attachment H-3E of the PJM OATT.
- 1.7 “Delmarva Formula Rate Template” means the provisions contained in Attachment H-3D of the PJM OATT.
- 1.8 “FERC Approval” has the meaning set forth in Section 3.1.
- 1.9 “Formula Rate Protocols” means the ACE Formula Rate Protocols, the Delmarva Formula Rate Protocols and the PECO Formula Rate Protocols.
- 1.10 “Formula Rate Templates” means the ACE Formula Rate Template, the Delmarva Formula Rate Template and the PECO Formula Rate Template.
- 1.11 “PECO Formula Rate Protocols” means the provisions contained in Attachment H-7C of the PJM OATT.
- 1.12 “PECO Formula Rate Template” means the provisions contained in Attachment H-7A of the PJM OATT.
- 1.13 “PJM OATT” means the PJM Open Access Transmission Tariff.
- 1.14 “Settlement Effective Date” means the date this Settlement Agreement becomes effective in accordance with Section 3.1 of the Settlement Agreement.
- 1.15 “TSO North” means the consolidated transmission control center operated by

EBSC to serve ACE, Delmarva and PECO.

- 1.16** “TSO North Facility” means the building including its contents and associated land of the 300 building at Kennett Square.

## **ARTICLE II**

- 2.1** *Black Box Monetary Settlement Terms.* The Companies shall make one-time payments as follows in the form of credits to network integration transmission service (“NITS”) customers in the next Annual Update following the date of FERC Approval of this Settlement Agreement: \$250,000 to Delmarva’s transmission customers and \$115,000 to ACE’s transmission customers. In addition, PECO shall make a payment of \$250,000 to PAIEUG thirty days after the date on which FERC approves this Settlement Agreement in accordance with Section 3.1. PAIEUG will provide payment instructions to PECO.

**2.2** *Other Settlement Terms*

- 2.2.1** *Functionalization of Plant and Operations and Maintenance (“O&M”), including Administrative and General (“A&G”) at the TSO North Facility.*  
Effective January 1, 2023, the following shall apply.

(a) The full purchase price of the building which includes structures and improvements, roads and roadways of approximately \$9.9 million, but not the parcels of land of approximately \$3 million, at the TSO North Facility, shall be accounted for as either general or common plant.

(b) All capital or O&M costs specifically related to the renovations or the operations of the TSO North Facility for transmission purposes will be recorded to one or more distinct projects as transmission only.

(c) All capital or O&M costs to renovate or operate portions

of the TSO North Facility for non-transmission purposes or for overall use of the building will be recorded to one or more distinct projects as either common or general and any associated expenses shall be included as A&G expenses, unless the renovations or operations relate to a specific non-transmission function.

(d) The test for determining whether costs subject to subparts (b) and (c) are to be functionalized as transmission costs is whether those costs would not be incurred but for NITS or Regional Transmission Expansion Plan (“RTEP”) transmission purposes.

(e) The TSO North Facility may change its operating function as its use may evolve over time. If the classification of any portion of the TSO North Facility is no longer appropriate, the Companies will account for such change in accordance with the ultimate use of such portion of the Facility, provided that no change will be required under this section 2.2.1(e) to the classification of the purchase price of the building as set forth in section 2.2.1(a).

(f) Interested parties shall have the right to challenge the Companies’ functionalization of TSO North Facility employees in the Annual Update process in accordance with the Formula Rate Protocols.

(g) In the first Annual Update following FERC Approval, the Companies shall true-up rates to implement the terms of this Section 2.2.1 for the period beginning January 1, 2023 and ending at the end of the Rate Year that is the subject of the Annual Update.

**2.2.2** *Cap on Transmission W&S Allocator.* The percentage amount of the Companies’ respective W&S allocators shall be subject to a cap, as set forth in this Section 2.2.2 and Exhibit A.



(a) The cap shall be effective beginning Rate Year 2023 (*i.e.* the true-up filed in May 2024 based on 2023 actuals) and ending Rate Year 2026 (*i.e.* the true-up filed in May 2027 based on 2026 actuals).

(b) The amount of the cap shall be 200 basis points above each Company's respective 2022 Baselines. The calculation of the 2022 Baselines for each Company is explained and illustrated in Exhibit A to this Settlement Agreement.

(c) Each year during which the cap is in effect, the cap as established utilizing the Baselines for each Company will be compared to each Company's actual annual service company transmission non-TSO labor percentage for that year (as calculated in accordance with Exhibit A). If, for any year, the cap is exceeded, the transmission W&S allocator for that Company in that year will be reduced by the number of basis points by which the cap is exceeded.

(d) The data used to calculate the Companies' respective 2022 Baselines (but not the 2022 Baselines' formulaic methodology itself) shall be subject to review and challenge for errors in the 2022 Rate Year True-up which were filed in the 2023 Annual Updates. In the event that the Commission does not accept this Settlement by the deadline for informal or formal challenges to the 2023 Annual Update for the 2022 True-up, the Companies agree to extend those deadlines solely for the purpose of addressing any disputes of the inputs into the 2022 Baseline cap calculation agreed to in this Settlement.

**2.2.3** *No effect on Rights Under Protocols.* Nothing in this Settlement Agreement affects the rights of interested parties to seek discovery and challenge the inputs to the Formula Rate Templates in accordance with

the Formula Rate Protocols.

**2.2.4** *Implementation Rules for Calculation of the W&S Allocators.* In

calculating the W&S allocators in accordance with the Formula Rate Templates, the following implementation rules shall apply:

(a) No labor cost will be included in the calculation of the W&S allocators unless those costs are also includable as inputs into the formula rate to determine the Companies' annual transmission revenue requirements for RTEP projects or NITS. This rule does not predetermine that any particular labor cost included as an input to the Companies' Formula Rates is properly included in the calculation of the Companies' W&S allocators and the interested parties may seek discovery and challenge the inputs in accordance with the Annual Update procedures.

(b) Non-wage and salary costs including payroll taxes, pensions and benefits shall not be included in the W&S allocators. The Companies will provide, in footnotes to pages 354 to 355 of their FERC Form 1s, data that will include the dollar amount of labor that is directly assigned or allocated from the Service Companies to the Companies.

**2.3** *Effect of Settlement.* This Settlement Agreement addresses the Companies' proposal in Docket No. ER21-2965 and resolves that docket in its entirety. Except as provided in Section 2.2.1, the Settlement Agreement does not address whether any particular Service Companies costs may be included in calculating the W&S allocators, or in the Companies' NITS transmission rates as a general matter. This Settlement Agreement does not foreclose any of the Parties' rights with respect to issues not explicitly addressed in the Settlement Agreement, nor shall it be deemed

to bind any Party (except in any proceeding to enforce this Settlement Agreement or as otherwise expressly provided for in the Settlement Agreement), in any future proceeding, and shall not be deemed precedential or prejudicial to any Party's rights.

### **ARTICLE III**

**3.1** *Effectiveness of Settlement Agreement.* Upon FERC Approval of this Settlement Agreement as set forth in this Section 3.1, the provisions of the Settlement Agreement shall be effective as of January 1, 2022. FERC Approval of this Settlement Agreement will occur if (a) FERC accepts or approves this Settlement Agreement without condition or modification by Final Order, or (b) FERC accepts or approves this Settlement Agreement with condition(s) or modification(s) by Final Order, if no Party files notice with FERC within fifteen (15) days of the acceptance or approval of the Settlement Agreement stating that it objects to such condition(s) or modification(s). If any Party files such notice, the Settlement Agreement shall be null and void and of no force or effect, and the Parties shall be deemed to have reserved all of their respective rights and remedies in this proceeding. For purposes of this Settlement Agreement, an order shall be deemed to be a "Final Order" as of the date rehearing is denied by FERC, either by order or by operation of law, or if rehearing is not sought, the date on which the right to seek rehearing from the FERC expires.

### **ARTICLE IV**

**4.1** *No Precedent.* This Settlement Agreement is submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2023), and is inadmissible as evidence in any proceeding except a proceeding involving a claim

of breach of, or an effort to enforce, this Settlement Agreement. No element of this Settlement Agreement constitutes precedent or should be deemed a “settled practice” as that term was interpreted in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980). It is further understood and agreed that this Settlement Agreement constitutes a negotiated agreement with multiple elements of consideration and, except as explicitly set forth herein, no Party shall be deemed to have approved, accepted, agreed or consented to any principle or position in this proceeding.

**4.2** *Settlement Discussions.* The discussions between and among the Parties that have produced this Settlement Agreement have been conducted with the explicit understanding, pursuant to Rules 602 and 606 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.602 and 385.606 (2023), that all offers of settlement and discussions relating thereto shall be privileged and confidential, shall be without prejudice to the position of any Party or participant presenting any such offer or participating in any such discussion, and are not to be used in any manner in connection with this proceeding, any other proceeding, or otherwise, except to the extent necessary to enforce its terms.

**4.3** *Further Assurances.* All Parties shall cooperate with, and shall not take any action inconsistent with: (i) the filing of this Settlement Agreement with the Commission, and (ii) efforts to obtain Commission acceptance or approval of this Settlement Agreement without change or condition. No Party shall take any action that is inconsistent with the provisions of this Settlement Agreement.

**4.4** *Waiver.* No provision of this Settlement Agreement may be waived except through a writing signed by an authorized representative of the waiving Party or Parties.

Waiver of any particular provision of this Settlement Agreement shall not be deemed to waive any other provision or provisions hereof.

- 4.5** *Modifications/Standard of Review.* Unless the Parties otherwise agree in writing, any modification to this Settlement Agreement proposed by one of the Parties after the Settlement Agreement has become effective in accordance with Section 3.1 shall, as between them, be subject to the “public interest” application of the just and reasonable standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the *Mobile-Sierra* doctrine), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008) and refined in *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 174-75 (2010). The standard of review for any modifications to this Settlement Agreement requested by a non-Party or initiated by the Commission acting *sua sponte* will be the most stringent standard permissible under applicable law. *See NRG Power Mktg., LLC v. Maine Pub. Utils. Comm’n*, 558 U.S. at 174-75.
- 4.6** *Successors and Assigns.* This Settlement Agreement is binding upon and for the benefit of the Parties and their successors and assigns.
- 4.7** *Captions and References to Sections.* The captions in this Settlement Agreement are for reference only and are not a part of this Settlement Agreement and do not in any way limit or amplify the terms and provisions of this Settlement Agreement and shall have no effect on its interpretation. Unless otherwise indicated, references to “Sections” in this Settlement Agreement refer to sections in this Settlement Agreement.

- 4.8** *Ambiguities Neutrally Construed.* This Settlement Agreement is the result of negotiations among, and has been reviewed by, each Party and its respective counsel. Accordingly, this Settlement Agreement shall be deemed to be the product of each Party, and no ambiguity shall be construed in favor of or against any Party based on authorship of this Settlement Agreement.
- 4.9** *Authorization.* Each person executing this Settlement Agreement on behalf of a Party represents and warrants that he or she is duly authorized and empowered to act on behalf of, and to authorize this Settlement Agreement to be executed on behalf of, the Party that he or she represents.
- 4.10** *Notices.* All notices, demands, and other communications hereunder shall be in writing and shall be delivered to each Party's "Corporate Official" as found on the Commission's website at <http://www.ferc.gov/docs-filing/corp-off.asp> or the representative(s) of each Party included on the official service list in Docket No. ER21-2965. Notices will also be provided to the persons on the Commission's official service list in the referenced dockets.
- 4.11** *Counterparts.* This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
- 4.12** *Section 205 and 206 Filings.* Nothing contained herein shall be construed as affecting in any way the rights of any of the Companies unilaterally to make an application of any type to the Commission to modify prospectively, in whole or in part, their Formula Rate Templates and/or Formula Rate Protocols under section 205 of the Federal Power Act ("FPA"), or to oppose any filing made or action taken under section 206 of the FPA. Nothing contained herein shall be construed as

affecting in any way the right of any Party, or any other entity, to unilaterally make an application of any type to the Commission to modify, in whole or in part, a Company's Formula Rate Template and/or Formula Rate Protocol under section 206 of the FPA, or to oppose any filing made under section 205 of the FPA.

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to  
be duly executed.

**ATLANTIC CITY ELECTRIC COMPANY**

By: Andrew M. Peay Date: 12/22/23  
Title: Vice President Regulatory Strategy & Policy

**DELMARVA POWER & LIGHT COMPANY**

By: Andrew M. Peay Date: 12/22/23  
Title: Vice President Regulatory Strategy & Policy

**PECO ENERGY COMPANY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**DELAWARE MUNICIPAL ELECTRIC CORPORATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_



IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed.


**ATLANTIC CITY ELECTRIC COMPANY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**DELMARVA POWER & LIGHT COMPANY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**PECO ENERGY COMPANY**

By:  Date: 12/20/23  
Title: Vice President Regulatory Strategy + Policy

**DELAWARE MUNICIPAL ELECTRIC CORPORATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have caused this Settlement Agreement to be duly executed.

**ATLANTIC CITY ELECTRIC COMPANY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_


**DELMARVA POWER & LIGHT COMPANY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**PECO ENERGY COMPANY**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**DELAWARE MUNICIPAL ELECTRIC CORPORATION**

By:  Date: 12/20/2023  
Title: President & CEO

**MARYLAND’S OFFICE OF PEOPLES’ COUNSEL**

By: Gary Alexander Date: 12/19/2024  
Title: Assistant People's Counsel

**NEW JERSEY DIVISION OF THE RATE COUNSEL**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**OLD DOMINION ELECTRIC COOPERATIVE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_


**PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**MARYLAND'S OFFICE OF PEOPLES' COUNSEL**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**NEW JERSEY DIVISION OF THE RATE COUNSEL**

By:  \_\_\_\_\_ Date: 21-Dec-2023  
Title: Counsel for New Jersey  
Division of the Rate Counsel

**OLD DOMINION ELECTRIC COOPERATIVE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

MARYLAND'S OFFICE OF PEOPLES' COUNSEL

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

NEW JERSEY DIVISION OF THE RATE COUNSEL

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

OLD DOMINION ELECTRIC COOPERATIVE

By:  Date: December 24, 2024  
Title: Attorney for Old Dominion Electric Cooperative

PHILADELPHIA AREA INDUSTRIAL ENERGY  
USERS GROUP

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**MARYLAND'S OFFICE OF PEOPLES' COUNSEL**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**NEW JERSEY DIVISION OF THE RATE COUNSEL**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**OLD DOMINION ELECTRIC COOPERATIVE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

**PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP**

By: Chair Meriange Date: 12/21/23  
Title: Counsel to PAIEUG

# **Exhibit A**

**Delmarva Power & Light Company**  
**W&S ALLOCATOR CAP - Below the Cap**

I. **Proxy Baseline Calculation (See Note 1)**

A                      B                      C                      D = B + C                      E                      F = D + E                      G = D/F                      H = B/F                      I = C/F

**Summary of Costs (January - December 2022)**

| Company      | Transmission TSO | Transmission Non-TSO | Total Transmission | Distribution & Customer | Total Non A&G | W&S Allocator | Transmission TSO | Transmission Non-TSO |
|--------------|------------------|----------------------|--------------------|-------------------------|---------------|---------------|------------------|----------------------|
| DPL          | \$ -             | \$ 4,243,271         | \$ 4,243,271       | \$ 32,187,498           | \$ 36,430,769 | 11.65%        | 0.00%            | 7.19%                |
| EBSC         | \$ 2,108,445     | \$ 1,289,693         | \$ 3,398,138       | \$ 1,691,928            | \$ 5,090,065  | 66.76%        | 3.57%            | 2.18%                |
| PHISCO       | \$ -             | \$ 994,119           | \$ 994,119         | \$ 16,529,359           | \$ 17,523,478 | 5.67%         | 0.00%            | 1.68%                |
| <b>Total</b> | \$ 2,108,445     | \$ 6,527,084         | \$ 8,635,528       | \$ 50,408,785           | \$ 59,044,313 | <b>14.63%</b> | 3.57%            | 11.05%               |

BASELINE Service Company Transmission Non-TSO Labor % ==> **3.87%** (See Note 3)

II. **Cap Calculation (See Note 4)**

A                      B                      C                      D = B + C                      E                      F = D + E                      G = D/F                      H = B/F                      I = C/F

**Summary of Costs (For Illustrative Purposes)**

| Company      | Transmission TSO | Transmission Non-TSO | Total Transmission | Distribution & Customer | Total Non A&G | W&S Allocator | Transmission TSO | Transmission Non-TSO |
|--------------|------------------|----------------------|--------------------|-------------------------|---------------|---------------|------------------|----------------------|
| DPL          | \$ -             | \$ 4,243,271         | \$ 4,243,271       | \$ 32,187,498           | \$ 36,430,769 | 11.65%        | 0.00%            | 7.13%                |
| EBSC         | \$ 2,108,445     | \$ 1,789,693         | \$ 3,898,138       | \$ 1,691,928            | \$ 5,590,065  | 69.73%        | 3.54%            | 3.01%                |
| PHISCO       | \$ -             | \$ 994,119           | \$ 994,119         | \$ 16,529,359           | \$ 17,523,478 | 5.67%         | 0.00%            | 1.67%                |
| <b>Total</b> | \$ 2,108,445     | \$ 7,027,084         | \$ 9,135,528       | \$ 50,408,785           | \$ 59,544,313 | <b>15.34%</b> | 3.54%            | 11.80%               |

EBSC Transmission Non-TSO Labor Illustrative Additional Amount (Impacts Cell D25) ==> **\$ 500,000** (See Note 4)

Service Company Transmission Non-TSO Labor % ==> **4.68%**

Agreed-Upon Cap (BASELINE + 200 BASIS POINTS) ==> **5.87%** (See Note 5)

Adjustment if Non-TSO Impact exceeds Cap ==> **0.00%** (See Note 6)

Capped Transmission W&S Allocator ==> **15.34%** (See Note 6)

**Notes**

- 1 - The Actual 12-month calendar year 2022 W&S allocator data has been used for purposes of establishing the actual baseline ratio.
- 2 - The Service Company Transmission Non – TSO Labor ratio is defined as: Service Company Transmission Non – TSO Labor / Total Non-A&G Labor (Utility + Service Companies).
- 3 - During each year in the cap period, the respective year’s Service Company Non – TSO Labor ratio will be compared to the same ratio for the 2022 baseline year.
- 4 - For each of the years 2023 - 2026, the table will be populated with actual results. For illustrative purposes, the Company has populated the table such that all inputs match the baseline table data, with the exception of the Service Company Transmission Non-TSO costs (cell D25), which has been increased for illustrative purposes by the amount included in cell J29.
- 5 - The Service Company Non – TSO Labor ratio cap will be 200 basis points higher than the Companies’ respective baseline ratio.
- 6 - If a respective rate year’s Service Company Non – TSO Labor ratio is equal to or less than the baseline ratio including the 200 basis points cap, no adjustment will be made to the W&S Allocator. If a respective rate year’s Service Company Non – TSO Labor ratio is more than the baseline ratio including the 200 basis points cap, the W&S Allocator shall equal the Capped Transmission W&S Allocator.