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March 28, 2011

VIA ELECTRONIC DELIVERY

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. S7-18-08 -- Proposed Rule: Security Ratings

Ladies and Gentlemen:

I am Senior Vice President and General Counsel of Pepco Holdings, Inc. ("PHI"). I also serve as the General Counsel of Potomac Electric Power Company ("Pepco"), Delmarva Power & Light Company ("DPL") and Atlantic City Electric Company ("ACE,"), each of which is a wholly owned subsidiary of PHI (collectively, the "Utility Subsidiaries"). I am pleased to have the opportunity to share with the Securities and Exchange Commission (the "Commission") the views of PHI and the Utility Subsidiaries on the proposals set forth in Securities Act Release No. 33-9186, dated February 9, 2011 (the "Proposing Release"), and in particular the proposed amendment to the eligibility requirements for the use of Registration Statement on Form S-3 under the Securities Act of 1933, as amended (the "Securities Act").

I. The Use of Form S-3 by the Utility Subsidiaries of PHI.

PHI, a New York Stock Exchange listed company (symbol: POM), is a utility holding company primarily engaged in the power delivery business. It conducts this business exclusively through the Utility Subsidiaries.¹ Each of the Utility Subsidiaries is a regulated public utility that is engaged primarily in the transmission and distribution of electricity and, in the case of DPL, also the transportation and distribution of natural gas in its service territory, for which it is paid

¹ All of the outstanding common stock of Pepco is owned by PHI. All of the outstanding common stock of DPL and ACE is owned by Conectiv, LLC, a wholly owned subsidiary of PHI.

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tariff rates established by the applicable local public service commission.² Each of the utilities is also the default supplier of electricity, and in the case of DPL natural gas, to customers in its service territory who do not elect to purchase electricity or natural gas from a competitive supplier. Pepco's service territory consists of the District of Columbia and portions of Maryland. DPL's service territory consists of Delaware and portions of Maryland. ACE's service territory consists of a portion of New Jersey.

The business of each of the Utility Subsidiaries is highly capital intensive. As of December 31, 2010, the three companies had total plant, property and equipment, net of accumulated depreciation, of over \$10 billion, with projected capital expenditures over the next five years in excess of \$5 billion. To finance these capital requirements, each of the Utility Subsidiaries relies, in part, on access to the capital markets. The outstanding debt of the Utility Subsidiaries includes first mortgage bonds, medium term notes and senior notes, which in the case of Pepco and ACE, are secured by first mortgage bonds. The first mortgage bonds issued by each Utility Subsidiary are secured by a first lien mortgage on substantially all of the Utility Subsidiary's plant, property and equipment. Each of the Utility Subsidiaries also issues debt securities to repay maturing debt and to refinance existing debt at lower interest rates.

The common stock of PHI is registered under Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the common stock of each of the Utility Subsidiaries is registered under Section 12(g) of the Exchange Act. Accordingly, PHI and each of the Utility Subsidiaries are subject to the reporting requirements of Section 13(a) of the Exchange Act.³

PHI and the Utility Subsidiaries each are eligible to use Form S-3 for the registered offer and sale of their securities. Each company satisfies the Registrant Requirements set forth in General Instruction I.A of Form S-3. The aggregate market value of PHI common stock held by non-affiliates of PHI exceeds \$75 million, and accordingly PHI relies on the Transaction Requirement set forth in General Instruction I.B.1 as the basis for its eligibility to use Form S-3 for the offer and sale of its equity and debt securities. Each of the Utility Subsidiaries relies on the Transaction Requirement set forth in General Instruction I.B.2 for the offer and sale of its debt securities. In addition, as majority-owned subsidiaries of PHI, each of the Utility Subsidiaries is entitled to rely on General Instruction I.C.2 as the basis for its use of Form S-3,

² Pepco is regulated in Maryland by the Maryland Public Service Commission (the "MPSC") and in the District of Columbia by the District of Columbia Public Service Commission (the "DCPSC"). DPL is regulated in Maryland by the MPSC and in Delaware by the Delaware Public Service Commission (the "DPSC"). ACE is regulated by the New Jersey Board of Public Utilities (the "NJBP"). The electricity transmission operations of each of the Utility Subsidiaries are regulated by the Federal Energy Regulatory Commission ("FERC"), which also regulates DPL's interstate transportation and wholesale sale of natural gas.

³ The Exchange Act reporting responsibilities of the Utility Subsidiaries are the subject of a no-action letter issued by the Division of Corporation Finance. See *Pepco Holdings, Inc.* (Dec. 6, 2006).

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which likewise requires that the Utility Subsidiary satisfy the Transaction Requirement set forth in General Instruction I.B.2. Each of the Utility Subsidiaries meets the requirements of General Instruction I.B.2 because its debt securities qualify as “investment grade securities” as defined therein.

In addition, PHI and each of the Utility Subsidiaries are well-known seasoned issuers (“WKSIs”) as defined by Rule 405 under the Securities Act. Therefore, (i) PHI is eligible to file an automatic shelf registration statement in accordance with General Instruction I.D.1(a)(i) of Form S-3 and (ii) each of the Utility Subsidiaries is eligible to file an automatic shelf registration statement pursuant to General Instruction I.D.1(c)(iv) to Form S-3 because they meet the requirements of General Instruction I.B.2 of Form S-3.⁴ In 2007 and 2010, PHI and the Utility Subsidiaries filed joint automatic shelf registration statements on Form S-3.⁵

II. The Impact of the Proposed Amendment to Form S-3 on the Utility Subsidiaries.

In the Proposing Release, the Commission proposes to amend General Instruction I.B.2 to Form S-3 to delete as the Transaction Requirement that the non-convertible securities being offered and sold have an “investment grade” rating from at least one nationally recognized statistical rating organization. This would be replaced with a requirement that the registrant, as of a date within 60 days prior to the filing of the registration statement on Form S-3, has within the preceding three years issued in primary offerings registered under the Securities Act at least \$1 billion in aggregate principal amount of non-convertible securities, other than equity securities (the “Registered Debt Issuance Threshold”).⁶ In the Proposing Release, the Commission explains that this change is being re-proposed in response to Section 939A of The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”), which requires the Commission to (i) review any of its regulations that require the use of an assessment of a security’s credit-worthiness or that have a reference to or requirements regarding credit ratings and (ii) replace any such reference or requirement with a standard of credit-worthiness that the Commission determines to be appropriate to the regulation.

⁴ PHI qualifies as a WKSI under paragraph 1(i)(A) of the definition as an issuer that satisfies the Registrant Requirements of General Instruction I.A of Form S-3 and has a public float in excess of \$700 million. Each of the Utility Subsidiaries qualifies as a WKSI under paragraph 1(ii)(C) of the definition as an issuer that is a majority-owned subsidiary of a WKSI issuing securities in reliance on the Transaction Requirement of General Instruction I.B.2 to Form S-3.

⁵ See Registration Statement on Form S-3, SEC File Nos. 333-169477, 333-169477-01, 333-169477-02 and 333-169477-03 (Sept. 20, 2010); Registration Statement on Form S-3, SEC File Nos. 333-145691, 333-145691-01, 333-145691-02 and 333-145691-03.

⁶ This proposal is substantially similar to the Commission’s 2008 proposal to remove references to credit ratings from its regulations. See *Security Ratings*, SEC Rel. No. 33-8940 (July 1, 2008) (the “Proposing Release”). In 2009, the SEC reopened the comment period on this release for an additional 60 days. See *References to Ratings of Nationally Recognized Statistical Rating Organizations*, SEC Rel. No. 33-9069 (Oct. 5, 2009).

While each of the Utility Subsidiaries is a frequent participant in the capital markets, none has issued at least \$1 billion in debt securities within the last three years.⁷ Thus, if the proposed amendment to Form S-3 were to be adopted, none of the Utility Subsidiaries would be eligible to use Form S-3, nor would they qualify as WKSIs. This would force the Utility Subsidiaries to use Form S-1 for the registration of their debt securities offerings. While under the terms of Form S-1, each of the Utility Subsidiaries (because each is an Exchange Act reporting company that meets the requirements of General Instruction VII of Form S-1) would be permitted to satisfy a substantial portion of the Form S-1 disclosure requirements through incorporation by reference, it would lose many of the other benefits of the use of Form S-3. For example:

- The Utility Subsidiary would not be eligible to effect offerings on a delayed basis under Rule 415(a)(1)(x), and instead would be required to file a new registration statement for each new offering.
- Because the Utility Subsidiary could not file automatic shelf registration statements, each new registration statement would need to be declared effective by the Commission.
- Each of the Utility Subsidiaries would not have the convenience and economic efficiency of combining its Securities Act registration statement with the Form S-3 registration statement of PHI.
- Each of the Utility Subsidiaries would lose the flexibility of registering additional securities or classes of securities by filing a post-effective amendment to Form S-3.
- The Utility Subsidiaries would not be eligible to use free writing prospectuses in connection with their securities offerings in most circumstances.
- None of the Utility Subsidiaries would be eligible to incorporate by reference Exchange Act reports filed after the effective date of a particular registration statement, but would instead be required to file a prospectus supplement or post-effective amendment to specifically incorporate by reference any Exchange Act report filed during an ongoing offering.

Depriving the Utility Subsidiaries of the ability to use Form S-3, and correspondingly WKSI status and reliance on Rule 415, would severely limit their efficient access to the capital markets by means of registered offerings. They would no longer have the flexibility in the

⁷ Within the past three years, Pepco has issued registered debt securities in the aggregate principal amount of \$500 million, while DPL and ACE have each issued registered debt securities in the aggregate principal amount of \$250 million.

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context of a public offering to respond on short notice to favorable market conditions and financing opportunities when they arose. The result would be to drive transactions into the private placement market if the Utility Subsidiaries were to determine that a delay in the offering would risk missing a market window. By so constraining access to the public markets, each of the Utility Subsidiaries will lose a financing alternative pursuant to which it might have been able to realize better terms such as a lower interest rate, a longer term or less restrictive covenants.⁸ This, in turn, could increase the Utility Subsidiaries' cost of capital, making it more expensive for the Utility Subsidiaries to deliver safe, reliable and affordable regulated utility services to the detriment of both its customers and PHI's shareholders.

PHI is one of the largest power distribution companies in the Mid-Atlantic region of the United States. Its common stock is included in the Standard & Poor's 500 Index. At June 30, 2010, the aggregate market value of the PHI common stock held by non-affiliates was \$3.5 billion. PHI is currently covered by 11 brokerage or research firms whose sell-side securities analysts provide recommendations to clients. PHI itself, however, is a holding company with no revenues or earnings other than what it receives in dividends from its operating subsidiaries and no significant assets other than the stock of its operating subsidiaries. Accordingly, the public disclosures made by PHI concern, and the focus of investors and the securities analysts is on, the business and operations of PHI's operating subsidiaries, which consist primarily of the Utility Subsidiaries. Given the size of each of the Utility Subsidiaries, it is virtually certain that each would be eligible to use Form S-3 under the Transaction Requirement of General Instruction I.B.1 if it were a standalone company.⁹ PHI does not see why in these circumstances the Utility Subsidiaries should be deprived of the ability to use Form S-3 merely because they are subsidiaries of PHI.

III. Evaluation of the Proposed Amendment to Form S-3.

In the view of PHI and the Utility Subsidiaries, the proposed amendment to Form S-3 does not appear to be consistent with the directive of Section 939A of the Dodd-Frank Act. Under this statutory provision, agencies are directed to replace references to credit ratings in their regulations with a "standard of credit-worthiness . . . as appropriate for such regulations."¹⁰ Instead, the Commission proposes to amend General Instruction I.B.2 to replace the current credit quality requirement with the Registered Debt Issuance Threshold, a volume requirement. However, there is no direct correlation between the dollar amount of a company's financing

⁸ Somewhat ironically, the amendment to Form S-3, to the extent that it drives the Utility Subsidiaries and other similarly situated issuers into the private placement market, would make it more difficult for those companies to return to the public markets at any time in the future.

⁹ As of December 31, 2010, Pepco, DPL and ACE had a net book value of \$1.4 billion, \$2.0 billion and \$700 million, respectively.

¹⁰ See The Dodd-Frank Wall Street Reform and Consumer Protection Act, Section 939A.

transactions and its credit-worthiness.¹¹ At the same time, there is no legislative history with respect to the Dodd-Frank Act suggesting that issuers relying on General Instruction I.B.2 to register securities offerings on Form S-3 present credit quality concerns or that any such concerns could be alleviated by substitution of a debt issuance threshold.

As stated in the Proposing Release, the Commission has derived the proposed Registered Debt Issuance Threshold from the WKSI definition under which it serves as an alternative for issuers that do not meet the public equity float test. As explained by the Commission, this alternative was selected as a replacement for an investment-grade credit rating because it “would generally correspond with a wide following in the marketplace.”¹² Because information about such issuers “is generally readily available,” the Commission concludes that replacing the investment grade requirement with this standard derived from the WKSI definition is appropriate.¹³ While it is within the Commission’s authority under the Securities Act to so amend the Form S-3 eligibility requirements, PHI would submit that the proposed change is not of the nature contemplated by Section 939A of the Dodd-Frank Act. By not adhering more closely to the Dodd-Frank mandate, the Commission would, in PHI’s and the Utility Subsidiaries’ view, penalize companies like the Utility Subsidiaries whose securities qualify as “investment grade securities” and presumably could satisfy an alternatively crafted “standard of credit-worthiness,” but do not satisfy the Registered Debt Issuance Threshold.

Aside from the language of the Dodd-Frank Act, PHI and Utility Subsidiaries believe that the proposed amendment to Form S-3 does not adequately take account of the circumstances of the Utility Subsidiaries under the rationale the Commission cites in support of the Registered Debt Issuance Threshold. As discussed above, the Commission observes that issuers of debt in this quantity “generally have their Exchange Act filings broadly followed and scrutinized by investors and the markets.”¹⁴ As discussed above, however, because PHI does not have any business activities apart from the operations of its subsidiaries, which consist primarily of the Utility Subsidiaries, the Utility Subsidiaries receive essentially the same investor and market scrutiny as is accorded PHI.

IV. Alternative Criteria for Determining Form S-3 Eligibility.

PHI and the Utility Subsidiaries urge the Commission to substitute the Registered Debt Issuance Threshold with a Form S-3 eligibility requirement that would more appropriately

¹¹ Indeed, the Commission itself acknowledges that if the proposed amendment were adopted, it would result in non-investment grade issuers becoming eligible to use Form S-3. Proposing Release, at 16-17.

¹² *Id.* at 14.

¹³ *Id.*

¹⁴ *Id.*

accommodate holding company subsidiaries issuing investment grade debt securities.¹⁵ Among the approaches the Commission might consider are one or more of the following:

A. Securities Offerings Approved by a State Public Utility Commission or FERC.

Each of the Utility Subsidiaries are subject to extensive regulation at the state level by the state public utility commissions and at the federal level by FERC. This regulation covers virtually every aspect of its operations, ranging from the rates it is permitted charge for the transmission, distribution and supply of electricity and the transportation and supply of natural gas to its financing activities. This regulation substantially contributes to the creditworthiness of the debt obligations issued by the Utility Subsidiaries. Rate regulation, for example, ensures that the utility is able to earn sufficient revenue to recover its cost of service and a reasonable rate of return on its invested capital. In order to issue equity securities or debt securities, each of the Utility Subsidiaries must obtain public service commission or FERC approval.¹⁶ These approval requirements are designed to ensure that its ability to perform its public utility function is not jeopardized by an unsound financial structure. PHI understands that public utilities in other jurisdictions are subject to similar regulation.

For the foregoing reasons, PHI and the Utility Subsidiaries urge the Commission to allow a public utility subsidiary of a holding company to use Form S-3 for the issuance of debt securities for cash where, in addition to the subsidiary's satisfaction of the Registrant Requirements set forth in General Instruction I.A, (i) the holding company meets the public equity float test set forth in Transaction Requirement I.B.1 and (ii) the issuance of securities by the subsidiary has been approved by any state public utility commission or FERC. These requirements, in the view of PHI and the Utility Subsidiaries, would achieve the Commission's objective of ensuring that the issuer of the securities has a broad investor and market following and is closely aligned with the "standard of credit-worthiness" prescribed by Section 939A of the Dodd-Frank Act.

¹⁵ PHI is a member of the Edison Electric Institute ("EEI"), a trade association of shareholder owned electric companies. PHI and the Utility Subsidiaries note EEI's comment that the implementation of the Registered Debt Issuance Threshold would have a disproportionate impact on shareholder owned public utilities. PHI and the Utility Subsidiaries strongly agree with EEI's position that any amendment to Transaction Requirement I.B.2 should be drafted so as not to preclude currently eligible public utility subsidiaries of public holding companies from continuing to use Form S-3.

¹⁶ Under the Federal Power Act, FERC has jurisdiction over the issuance of long-term and short-term debt by public utilities to the extent such issuances are not regulated by the public services commissions in the states in which the public utility is organized and operating. As a result, (i) Pepco's long-term financing activities are regulated by the DCPS and the MPSC and its short-term financing activities are regulated by FERC, (ii) DPL's long-term financing activities are regulated by the DPSC and the MPSC and its short-term financing activities are regulated by FERC and (iii) ACE's long-term and short-term financing activities are regulated the NJBPU.

B. Wholly Owned Subsidiaries Eligible to Rely on Form 10-K General Instruction I.

The Commission might consider allowing a wholly owned subsidiary of a holding company to use Form S-3 for the issuance of debt securities for cash if (i) the holding company meets the public equity float test set forth in Transaction Requirement I.B.1 and (ii) the subsidiary satisfies the requirements of General Instruction I to Form 10-K. Under this Form 10-K instruction, a wholly owned subsidiary of an Exchange Act reporting company that during the preceding 36 calendar months has not experienced a material default with respect to its indebtedness or a long-term lease may file an abbreviated Form 10-K.¹⁷ This provision is a recognition that in the case of a wholly owned subsidiary the investor and market following is focused primarily on the parent company. As a Form S-3 eligibility requirement, this suggested alternative is unquestionably a “standard of credit-worthiness” and is consistent with the Commission’s reasoning in support of the proposed Registered Debt Issuance Threshold.¹⁸

V. Amendment to Rule 415 as an Alternative Solution.

As discussed above, one of the most significant disadvantages the Utility Subsidiaries would suffer if the proposed amendment to Form S-3 were to be adopted would be the inability to rely on Rule 415 to effect registered offerings on a delayed basis. If the amendment to Form S-3 is adopted as proposed, this adverse consequence could be eliminated if the Commission simultaneously were to amend Rule 415 to include securities registered on Form S-1 which are to be offered and sold on an immediate, continuous or delayed basis, where the registrant is permitted to incorporate by reference its Exchange Act reports pursuant to General Instruction VII to Form S-1. This change would diminish, but would not completely eliminate, the adverse impact of the proposed amendment on the Utility Subsidiaries and other similarly situated companies.

¹⁷ The Commission has also utilized this standard in establishing the disclosure requirements of Forms 10-Q and 8-K. See Form 10-Q, General Instruction H; Form 8-K, Instruction 5 to Item 5.07.

¹⁸ The Proposing Release solicits comment on a number of alternative criteria, including whether a “grandfather” provision or lower Registered Debt Issuance Threshold would address the concerns of issuers that would be harmed by the proposed rulemaking. It is PHI’s and the Utility Subsidiaries’ view that although either of these possibilities would improve the current proposal, neither would be sufficient to mitigate the concerns expressed herein with respect to PHI and the Utility Subsidiaries, or to the utility industry more generally. PHI and the Utility Subsidiaries are concerned that a grandfather provision could impair future flexibility as well as create inequities. While grandfathering would protect the status quo, it could place a company in the position where it could not undertake a necessary or prudent business reorganization without risking the grandfathered status of one or more of its subsidiaries. Further, over time there could arise the situation where among similarly situated companies some companies are grandfathered and some are not based solely on their status on the effective date of the grandfather provision. Similarly, a lower Registered Debt Issuance Threshold would not ensure Form S-3 eligibility for the Utility Subsidiaries or prevent eligibility concerns from taking precedence over the efficient allocation of capital in future financing decisions.

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VI. Conclusion.

For the reasons set forth herein, PHI and the Utility Subsidiaries respectfully request that the Commission reconsider the proposed adoption of the Registered Debt Issuance Threshold as the means to satisfy its obligation under the Dodd-Frank Act to replace the use of credit ratings as a Form S-3 eligibility requirement. In the view of PHI and the Utility Subsidiaries, any of the alternatives addressed in this letter would better accomplish the required change without penalizing its Utility Subsidiaries and other similarly situated companies.

Very truly yours,



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