C90G00
Public Service Commission

Operating Budget Data

($ in Thousands)

	FY 14 Actual	FY 15 Working	FY 16 Allowance	FY 15-16 Change	% Change Prior Year
Special Fund	$41,991	$45,930	$38,495	-$7,435	-16.2%
Deficiencies and Reductions	0	0	-430	-430	
Adjusted Special Fund	**$41,991**	**$45,930**	**$38,065**	**-$7,865**	**-17.1%**
Federal Fund	537	394	541	147	37.4%
Deficiencies and Reductions	0	0	-4	-4	
Adjusted Federal Fund	**$537**	**$394**	**$537**	**$143**	**36.4%**
Adjusted Grand Total	**$42,528**	**$46,324**	**$38,602**	**-$7,722**	**-16.7%**

Note: The fiscal 2015 working appropriation reflects deficiencies and the Board of Public Works reductions to the extent that they can be identified by program. The fiscal 2016 allowance reflects back of the bill and contingent reductions to the extent that they can be identified by program.

- The fiscal 2016 allowance for the Public Service Commission (PSC) decreases by $7.7 million, or 16.7%, after accounting for across-the-board reductions in fiscal 2016. A special fund decrease of $7.9 million is partially offset by an increase of $143,243 in federal funds.

- The fiscal 2016 allowance eliminates the remaining funds from an American Recovery and Reinvestment Act of 2009 (ARRA) grant, which was available for one quarter in fiscal 2015, a decrease of $77,234. Aside from that change, federal funds increase by $220,468 largely due to an anticipated higher reimbursement rate and a renewed ability to charge indirect costs in the Pipeline Safety program.

- The major changes in the fiscal 2016 allowance are due to the funding allocation plan for the Customer Investment Fund grants and in the area of consultant services largely due to a requirement in Chapter 3 of 2013 (the Maryland Offshore Wind Energy Act) to transfer funds for consultant services in fiscal 2015.

Note: Numbers may not sum to total due to rounding.

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Personnel Data

	FY 14 Actual	FY 15 Working	FY 16 Allowance	FY 15-16 Change
Regular Positions	139.00	139.00	140.00	1.00
Contractual FTEs	8.61	11.60	8.60	-3.00
Total Personnel	**147.61**	**150.60**	**148.60**	**-2.00**

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	5.35	3.85%
Positions and Percentage Vacant as of 12/31/14	8.50	6.12%

- The fiscal 2016 allowance for PSC adds 1.0 new regular position (a public service engineer) in the Engineering Investigations Division due to increased workload.

- The fiscal 2016 allowance for PSC has a net change of 3.0 contractual full-time equivalents (FTE). Four contractual FTEs in the General Administration Division, which were created with the availability of grant funds from ARRA, are eliminated. One contractual FTE for an administrative specialist in the Office of External Relations is added.

- As of December 31, 2014, PSC had a vacancy rate of 6.1%, or 8.5 positions. PSC advises that as of January 28, 2015, it has 8.0 vacant positions (or a vacancy rate of 5.8%). To meet its turnover expectancy of 3.85% for existing positions, PSC must maintain 5.4 vacant positions in fiscal 2016.

Analysis in Brief

Major Trends

General Administration: In fiscal 2014, PSC completed only 35% of work items within the 30-day deadline, a decrease of 32 percentage points from fiscal 2013, less than half of the 80% goal. PSC indicates that filing quality and position vacancies impacted the ability to complete timely reviews.

Engineering Investigations Division: In fiscal 2014, 11 accidents were reported with 0 attributed to violations of PSC regulations.

Hearing Examiners Division: For the third consecutive year, the Hearing Examiners Division met its goals for issuing timely decisions in nontransportation, taxicab, and nontaxicab matters.

Issues

Review of the Merger of Exelon Corporation and Pepco Holdings, Inc.: In August 2014, the Exelon Corporation (Exelon), Pepco Holdings, Inc. (PHI), the Potomac Electric Power Company (Pepco), and Delmarva Power & Light (DPL) submitted a joint application requesting authorization for Exelon to acquire the power to exercise substantial influence over the policies and action of Pepco and DPL, which results from the merger between Exelon and PHI. PSC is required to make a determination on its review of the transaction by April 1, 2015.

PSC Regulation of Certain Transportation Services: In August 2014, PSC affirmed an appealed proposed order that requires Uber Technologies, Inc. (Uber) to file an application for a motor carrier permit in order to continue to offer UberBLACK or UberSUV services in Maryland. In November 2014, PSC staff and Uber proposed a settlement, which is still under review as of this writing. In a separate case, PSC, among other actions, required the installation of electronic meters in taxicabs designed to improve operational data available from the meters and payment methods for passengers. PSC anticipates a minimal impact on the Common Carriers Investigations Division due to the changes.

Recommended Actions

1. Concur with Governor's allowance.

Updates

Offshore Wind Activities: Chapter 3 of 2013 (the Maryland Offshore Wind Energy Act) required PSC to issue regulations related to the new offshore wind renewable energy credit established in the legislation. The final regulations were published in the *Maryland Register* on September 5, 2014. The U.S. Department of Interior Bureau of Ocean Energy Management held the competitive lease sale for the Maryland offshore wind energy area on August 19, 2014. The two lease areas comprising the sale were won by US Wind, Inc. As of this writing, no applications for offshore wind projects have been submitted to PSC for review.

PSC Review of Energy Assistance Programs: In calendar 2012, PSC began a review of the energy assistance programs in Maryland. PSC staff, in conjunction with the Office of People's Counsel, submitted a recommendation for a revised energy assistance program during that year. During the 2014 session, the review was ongoing, and committee narrative in the 2014 *Joint Chairmen's Report* requested PSC in coordination with the Department of Human Resources (DHR) submit a report on the status or outcome of the review. PSC indicated that it was not planning on moving forward with the previous review, but that DHR was considering some program changes due to additional revenue.

Application to Become an Interstate Agent for Natural Gas Pipelines: Chapter 571 of 2013 required PSC to evaluate the process and criteria for becoming an interstate agent for natural gas pipelines, determine whether it would be in the public interest for PSC to apply to become an interstate agent, and apply to become an interstate agent by January 1, 2014, if it is determined to be in the public interest. PSC completed its review and decided it would be in the public interest to become an interstate agent. The application is pending before the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration as of this writing.

Operating Budget Analysis

Program Description

The Public Service Commission (PSC) regulates natural gas, electric, energy suppliers, telephone, water, sewage disposal, and certain passenger transportation companies doing business in Maryland. PSC is authorized to hear and decide matters relating to (1) rate adjustments; (2) applications to exercise franchises; (3) acquisition of one public service company by another or authorization to exercise substantial influence over the policies and actions of a public service company providing electric or natural gas service; (4) approval of the issuance of securities; (5) promulgation of new rules and regulations; (6) quality of utility and common carrier service; and (7) issuance of Certificates of Public Convenience and Necessity. PSC sets utility rates, collects and maintains records and reports of public service companies, reviews plans for service, inspects equipment, audits financial records, handles consumer complaints, enforces rules and regulations, defends its decisions on appeal to State courts, and intervenes in relevant cases before federal regulatory commissions and federal courts. PSC is primarily funded by special funds obtained through assessments on public service companies. PSC's key goals are:

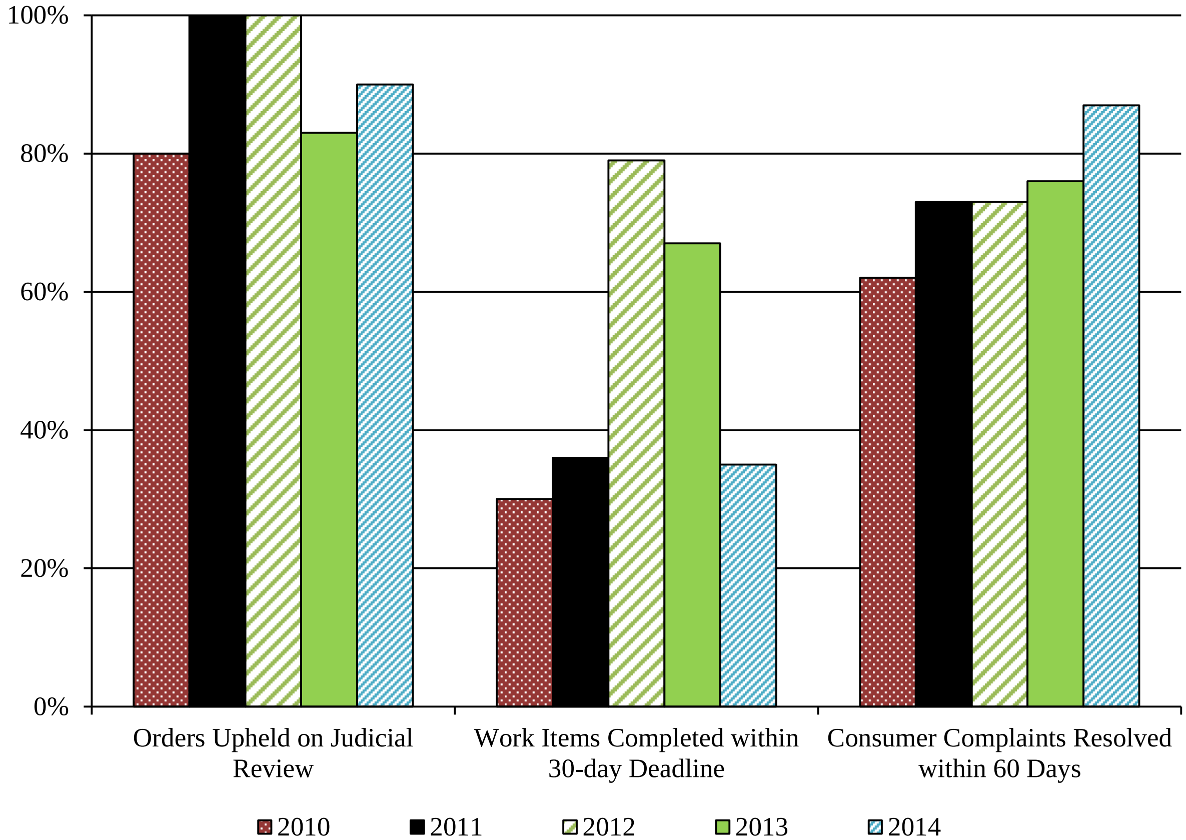
- to ensure that gas and electric utility companies operate utility systems safely;
- to ensure that public service companies deliver reliable services;
- to conduct open and fair proceedings and render timely decisions in accordance with statutory mandates and applicable law;
- to ensure that all Maryland consumers have adequate consumer protection; and
- to ensure that EmPOWER Maryland programs submitted by electric utilities are thoroughly reviewed, evaluated, and approved consistent with Section 7-211 of the Public Utilities Article.

Performance Analysis: Managing for Results

1. General Administration

As shown in **Exhibit 1**, after substantial improvement in the percent of work items completed within the 30-day deadline in fiscal 2012, subsequent performance has declined. In fiscal 2014, the percent of work items completed within the 30-day deadline fell to 35% (less than half of the 80% goal), a decrease of 32 percentage points. PSC indicates that there was a substantial increase in filings

Exhibit 1
Administration
Fiscal 2010-2014



Note: The Managing for Results submission indicated that, in fiscal 2013, two of seven orders were reversed on judicial review; subsequently, the Public Service Commission reported that one of the cases was settled and, as a result, only one of six orders was reversed on judicial review.

Source: Public Service Commission; Governor's Budget Books

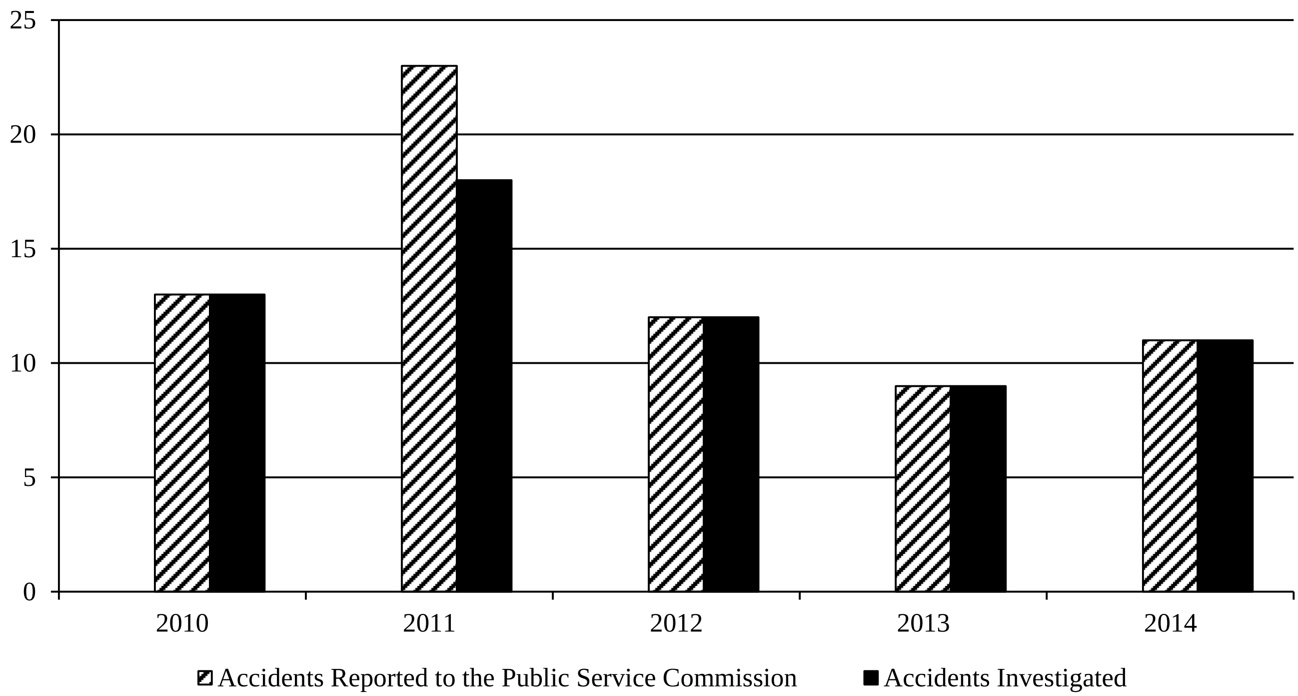
related to solar in fiscal 2014. That type of filing requires significant review, and a number of the filings were not of a quality to allow for final approvals within 30 days. In addition, PSC noted that position vacancies have limited the agency's ability to finalize the reviews. To improve performance, PSC worked with stakeholders and utilities to review the solar filing and approval process. This review led to changes in processes that reduced the volume of documentation required to be filed by applicants and verified and validated by reviewers. These changes also reduced the technical analysis required of PSC engineers when reviewing these filings. PSC explained that the changes have allowed for a substantial improvement in the approval rate for these filings which should allow PSC to accommodate a growth in the number of filings.

PSC has a goal of resolving 80% of consumer disputes within 60 days. After a small improvement in performance in fiscal 2013, PSC's performance increased by 11 percentage points in fiscal 2014. In fiscal 2014, PSC exceeded the goal by resolving 87% of consumer disputes within 60 days. The improvement occurred even as PSC experienced an increase in disputes filed in fiscal 2014, in part related to costs associated with the extreme cold winter weather in that year. PSC attributes the improved performance to full staffing in the Office of External Relations as well as process improvements and enhanced procedures with utilities. PSC also increased staff training opportunities.

2. Engineering Investigations Division

The number of reported accidents decreased from a high of 23 in fiscal 2011, to 9 in fiscal 2013, as shown in **Exhibit 2**. In fiscal 2014, however, the number of reported accidents increased to 11. PSC notes that the recent increase was in the range of normal but was impacted by increased tree trimming due to reliability standards.

Exhibit 2
Engineering Investigations Division
Fiscal 2010-2014



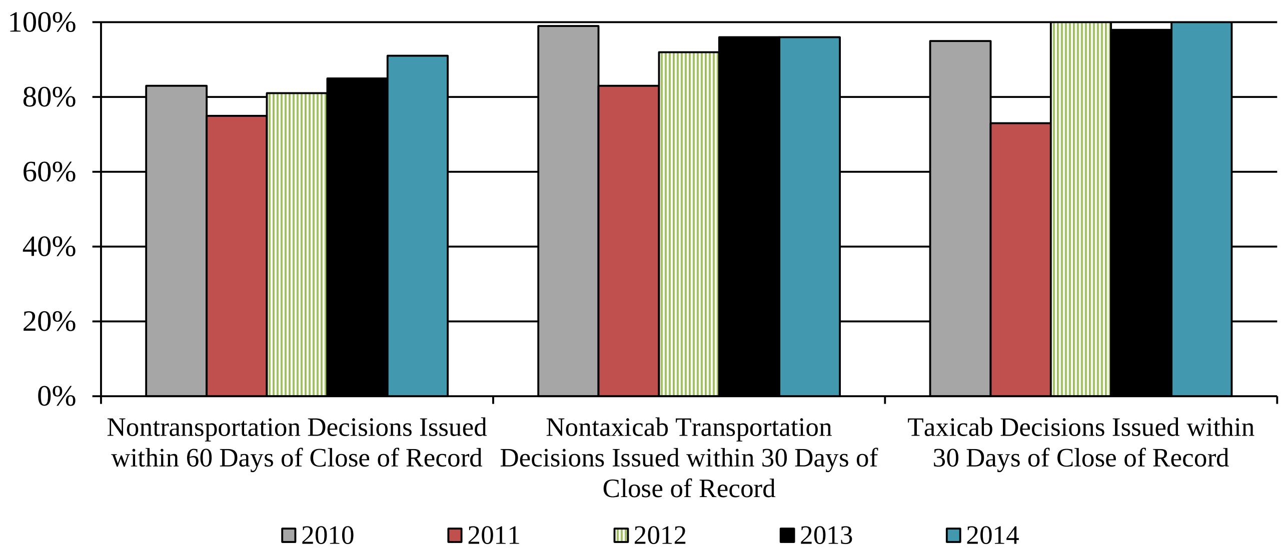
Source: Public Service Commission; Governor's Budget Books

After failing in fiscal 2011 to investigate all reported accidents for the first time in recent history, the Engineering Investigations Division has been able to complete investigations of all reported accidents in each subsequent year. PSC attributed the lower level of accidents investigated in fiscal 2011 to a vacant position, although it is notable that the number of accidents in that year was markedly higher than in all other recent years, more than double the number of accidents in fiscal 2014.

3. Hearing Examiners Division

The Hearing Examiners Division has a goal of issuing 80% of decisions in nontransportation matters within 60 days of the close of record and 90% of decisions in transportation matters within 30 days of the close of record. As shown in **Exhibit 3**, in fiscal 2014, for the third consecutive year, PSC met each of these goals. The Hearing Examiners Division maintained performance in nontaxicab matters and improved the timeliness of taxicab matters by 2 percentage points and nontransportation matters by 6 percentage points. PSC indicates that the improvement in nontransportation matters is related to the number of matters before Hearing Examiners that were settled by the parties, did not require lengthy evidentiary hearings, and had no complex or disputed issues. PSC states that, in general, factors that contribute to the length of time required to issue a proposed order are (1) the complexity of the issues; (2) the novelty of the issues; (3) the number of contested issues; (4) the number of parties; (5) the number of pages of pre-filed testimony and transcript length; (6) the number of briefs and total pages of briefs; and (7) caseload of the Hearing Examiner.

Exhibit 3
Hearing Examiners Division
Fiscal 2010-2014



Source: Public Service Commission; Governor's Budget Books

Proposed Budget

As shown in **Exhibit 4**, the fiscal 2016 allowance of PSC decreases by $7.7 million, or 16.7% compared to the fiscal 2015 working appropriation after accounting for across-the-board reductions in fiscal 2016. A special fund decrease of $7.9 million is partially offset by a federal fund increase of $143,234. The federal fund increase largely results from an anticipated higher reimbursement rate and a renewed ability to charge indirect costs in the federal Pipeline Safety program ($220,468).

Exhibit 4
Proposed Budget
Public Service Commission
($ in Thousands)

How Much It Grows:	Special Fund	Federal Fund	Total
Fiscal 2014 Actual	$41,991	$537	$42,528
Fiscal 2015 Working Appropriation	45,930	394	46,324
Fiscal 2016 Allowance	38,065	537	38,602
Fiscal 2015-2016 Amount Change	-$7,865	$143	-$7,722
Fiscal 2015-2016 Percent Change	-17.1%	36.4%	-16.7%

Where It Goes:	
Personnel Expenses	
Regular earnings including planned increments and annualization of fiscal 2015 cost-of-living adjustment (before cost containment)	$370
Employee and retiree health insurance	281
Employee retirement	196
One new public service engineer in Engineering Investigations Division	76
Social Security contribution	34
Workers' Compensation	33
Other fringe benefit adjustments	-22
Contractual employee payroll reduction due to eliminating four contractual full-time equivalents (FTE) associated with ARRA grant partly funded with special funds in fiscal 2015 partially offset by one new FTE in External Relations	-189
Section 21: Across-the-board elimination of increments	-194
Section 20: 2% pay reduction	-240
Customer Investment Fund	
Grants to non-State agencies based on funding allocation plan	-7,127

Where It Goes:	
Consultant Services	
Other consultant services adjustments	633
Offshore wind consultants required in Chapter 3 of 2013	-2,000
Cost Allocations	
Department of Information Technology services allocation	20
Statewide budget system	18
Department of Budget and Management paid telecommunications	-2
Statewide personnel system	-18
Administrative Expenses	
Implementation of Continuity of Operations Plans including offsite facility rental, equipment, and Internet service	394
Rent paid to Department of General Services	39
Travel for training	33
New car and equipment with federal funds for new position	19
End of funding association with the federal ARRA grant which expired in September 2014	-77
Other changes	-1
Total	**-$7,722**

ARRA: American Recovery and Reinvestment Act of 2009

Note: Numbers may not sum to total due to rounding. The fiscal 2015 working appropriation reflects deficiencies and the Board of Public Works reductions to the extent that they can be identified by program. The fiscal 2016 allowance reflects back of the bill and contingent reductions to the extent that they can be identified by program.

Cost Containment

The fiscal 2016 allowance includes a 2% pay reduction. PSC's share of the reduction is $240,000 ($236,000 special funds and $4,000 federal funds). The fiscal 2016 allowance also includes an across-the-board reduction for the elimination of increments. PSC's share of this reduction is $193,699 in special funds. These actions are fully explained in the analysis of the Department of Budget and Management – Personnel.

Personnel

The fiscal 2016 allowance includes 1 new regular position in the Engineering Investigations Division for a public service engineer, an increase of $76,371. PSC explains that in recent years the workload of the engineers in the division has increased due to added federal and State requirements. In addition, PSC explains that due to gas pipeline infrastructure improvement legislation (Chapter 161 of 2013) staff must testify before PSC more frequently.

End of Federal American Recovery and Reinvestment Act Grant

PSC received a three-year State Electricity Regulator Assistance grant from the American Recovery and Reinvestment Act of 2009 (ARRA) totaling $893,591. These grants were provided to state public utility commissions to provide funding for new staff and training for existing staff to enhance the ability of the commissions to review electricity projects, expected as a result of other ARRA funding, in a timely and effective manner. The grant was initially set to expire September 30, 2013; however, PSC received a one-year extension of the ARRA grant until September 30, 2014. As a result of this extension, funding from the ARRA grant totaling $77,234 was included in PSC's fiscal 2015 appropriation for partial year funding of 4 contractual full-time equivalents (FTE), travel, and contractual services. Due to the expiration of the grant funding, the fiscal 2016 allowance contains no funding from the ARRA grant for PSC.

In fiscal 2015, because the ARRA funds were available for only one quarter of the year, special funds were used to support the payroll for the 4 contractual FTEs for the remainder of the year. The fiscal 2016 allowance eliminates these contractual FTEs (a special fund decrease of approximately $215,000 in addition to the federal fund decrease of approximately $58,000).

Customer Investment Fund

One of the conditions of PSC's approval of the merger of Constellation Energy Group (Constellation) and Exelon Corporation (Exelon) required a contribution of $113.5 million into a Customer Investment Fund (CIF) in three equal annual installments. PSC did not specify, in the initial order requiring the contribution, how the CIF would be used but noted that it would determine the allocation later. After a request for proposals process, in November 2012, PSC issued an order allocating the entire CIF with certain levels provided to a number of organizations and State agencies (Baltimore City; Baltimore County; the Fuel Fund; Comprehensive Housing Assistance, Inc.; the Department of Housing and Community Development (DHCD); and the Maryland Energy Administration (MEA)). PSC required the organizations receiving CIF allocations to work with PSC staff to develop a funding plan and to determine the amount of the organization's first allocation of CIF.

Section 17 of the Budget Reconciliation and Financing Act (BRFA) of 2012 requires that funds received by the State as a result of conditions of an approved merger between Constellation and Exelon be expended only as authorized by an Act of the General Assembly or specifically authorized in the State budget, with an exception for fiscal 2013. The CIF allocations for State agencies (DHCD and MEA) are provided in the budgets of those agencies. The CIF allocations for non-State entities appear as grant funds in the budget of PSC.

PSC's fiscal 2016 allowance contains the third year of allocations for non-State entities based on the funding plan developed by PSC staff and the organizations. Fiscal 2016 was expected to be the final year of the CIF. The fiscal 2015 working appropriation contains the full amount of the second year allocations for the non-State entities based on the funding plan. However, PSC reduced the fiscal 2015 disbursements to many of the entities in a December 29, 2014 order. As a result, a portion of the CIF allocations remain available for disbursement and would need to be appropriated in subsequent years if not spent in fiscal 2015. **PSC should comment on when these additional funds are expected to be disbursed and the plan to appropriate the funds.**

Exhibit 5 provides a list of organizations and programs (for the non-State entities) receiving these appropriations in fiscal 2015 and 2016, and the amounts of funds that remain available for disbursement based on the December 29 actions of PSC.

Exhibit 5
Customer Investment Fund Allocations for Non-State Entities
Fiscal 2015 and 2016

		2015 Working Appropriation	2016 Allowance	Funds Available for Disbursement
Baltimore County	Sustainable Dundalk Initiative	$100,000	$0	$0
Baltimore City	Case Management	1,050,532	1,062,872	525,266
Baltimore City	Energy Assistance	504,601	504,602	252,300
Baltimore City	Energy Efficiency	2,378,357	2,378,355	800,544
Baltimore City	Energy Efficiency Plus	6,452,921	7,188,522	2,297,145
Baltimore City	EM&V	409,156	409,157	0
Baltimore City	Baltimore Energy Challenge	1,000,593	1,000,591	390,384
Baltimore City	Co-generation	3,196,555	0	1,196,555
Baltimore City	Urban Heat Island Total	630,000	637,836	50,000
Baltimore City	Retrofits and Upgrades	6,000,000	2,643,110	1,617,749
Fuel Fund	Fuel Fund	3,882,820	2,653,796	2,110,008
Comprehensive Housing Assistance, Inc.	Energy Home Improvement Loan Fund	667,000	667,000	314,925
Total		**$26,272,535**	**$19,145,841**	**$9,554,876**

EM&V: Evaluation, measurement, and verification

Source: Public Service Commission; Department of Legislative Services

Consultant Services

Annually, PSC requires the services of consultants to assist in cases before PSC. These cases are often driven by activity outside of PSC (such as filings by utilities). In recent years, consultants have participated in cases such as the review of merger transactions between Exelon and Pepco Holdings, Inc. (PHI) (ongoing), Exelon and Constellation, and First Energy Corp. and Allegheny Energy, Inc. PSC has also used consultants in its work before the Federal Energy Regulatory Commission.

The Maryland Offshore Wind Energy Act of 2013 (Chapter 3), required a transfer of funds from the Strategic Energy Investment Fund (SEIF), specifically from a condition of the Exelon and Constellation transaction that required a contribution for offshore wind development, to PSC for consulting services related to the implementation of Chapter 3. Transfers totaled $1 million in fiscal 2014 and $2 million in fiscal 2015. The required contributions were appropriated in the PSC budget in those years. No further transfers are required by Chapter 3 and the SEIF monies for consulting services are eliminated in the fiscal 2016 allowance. Outside of that change, funding for consultant services increases by $633,339, providing total funding of $1.9 million in the fiscal 2016 allowance. The level of consultant funding in the fiscal 2016 allowance closely approximates the average of the three most recent years of actual expenditures.

Issues

1. Review of the Merger of Exelon Corporation and Pepco Holdings, Inc.

On April 30, 2014, Exelon and PHI announced a merger agreement. Under the merger agreement, Exelon will acquire PHI for approximately $6.8 billion. PHI will become an indirect wholly owned subsidiary of Exelon. PHI and Potomac Electric Power Company (Pepco) will maintain headquarters in Washington, DC and Delmarva Power & Light (DPL) will retain regional headquarters in Newark, Delaware. As a result of the merger, Exelon's current distribution holdings (ComEd in Illinois, Baltimore Gas and Electric, and PECO Energy Service in Pennsylvania) will expand to include Atlantic City Electric Company in New Jersey, DPL, and Pepco.

On August 19, 2014, Exelon, PHI, Potomac Electric Power Company (Pepco), and DPL filed a joint application with PSC requesting authorization for Exelon to acquire the power to exercise substantial influence over the policies and actions of Pepco and DPL, as required in Section 6-105 of the Public Utilities Article. The transaction also requires the approval of the District of Columbia Public Service Commission, New Jersey Board of Public Utilities, Virginia State Corporation Commission, and the Federal Energy Regulatory Commission, and other federal reviews including anti-trust review.

The Virginia State Corporation Commission and the Federal Energy Regulatory Commission have already granted approval of the transaction. In addition, in January 2015, Exelon and PHI reached a settlement with certain parties in the New Jersey Board of Public Utilities review of the merger, which, as of this writing, is pending approval by the New Jersey Board of Public Utilities.

Maryland Review

Section 6-105 of the Public Utilities Article provides specific items that PSC must review in transactions such as this, including:

- the impact on rates and charges;
- the impact on the continuing investment needs for maintenance of utility services, plant, and related infrastructure;
- the potential effects on employment;
- issues of reliability, quality of service, and quality of customer service;
- potential impact on community investment;

- whether ring fencing and code of conduct regulations need revision; and

- any other issues PSC deems relevant.

To grant the application, PSC must find that the transaction is "…consistent with public interest, convenience, and necessity including benefits and no harm to customers…" In recent Section 6-105 reviews, PSC has examined each aspect separately requiring companies to show that the transaction meets each of these requirements.

Merger Commitments

As part of the merger, Exelon committed to:

- a Customer Investment Fund totaling $100 million, of which $29 million would be for the benefit of the Maryland portion of the Pepco service territory and $11 million would be for the benefit of the Maryland portion of the DPL service territory, an average benefit of approximately $50 per customer (the use of the fund would be determined by PSC);

- improving reliability metrics and accepting a penalty for failure to meet the metrics;

- not seeking recovery in rates for certain costs related to the merger;

- not having an increase in outstanding debt from the merger;

- not having net reductions due to involuntary attrition as a result of the merger integration process for two years after consummation of the merger;

- making a good faith effort to hire at least 110 union workers in Maryland within two years of the merger closing date;

- honoring collective bargaining agreements already in existence;

- providing current and former Pepco and DPL employees, compensation and benefits that are at least as favorable in aggregate as those provided before the merger;

- maintaining supplier diversity programs;

- maintaining low-income customer assistance programs;

- providing charitable and traditional local community support of an annual average of at least $623,000 in Maryland for at least 10 years;

- maintaining and promoting existing energy efficiency and demand response programs; and

- a variety of measures relating to ring fencing, consenting to PSC jurisdiction, accounting practices, transactions between affiliates, and asset ownership.

Status

Written testimony in the review was due at various points in December 2014 and January 2015. Public hearings in the review occurred on January 6 through 8, 2015, in three locations in the DPL Maryland service territory (Chestertown, Wye Mills, and Salisbury) and January 13 and 14, 2015, in two locations in Pepco's Maryland service territory (Rockville and Largo). Hearings in the case occurred from January 26 through February 10, 2015.

PSC is required to complete this type of review within 180 days but is able to extend this deadline by an additional 45 days. As a result, PSC is required to make a determination by April 1, 2015.

Although the exact conditions of approval of the merger (if approval is granted and conditions are imposed) are unknown as of this writing due to the ongoing review, it is reasonable to expect that conditions could include the creation of a CIF. This type of fund was required by the Exelon and Constellation merger, as discussed earlier, and was committed to by the companies in this merger attempt. The BRFA of 2012 included a section (Section 17) that requires funds received by the State as a result of conditions of a merger between Exelon and Constellation be expended only as authorized through an act of the General Assembly or specifically authorized in the State budget bill and is not subject to transfer by budget amendment. **The Department of Legislative Services recommends a similar provision be added to the BRFA of 2015 related to conditions of an approved merger between Exelon and PHI.**

2. PSC Regulation of Certain Transportation Services

Background

Uber Technologies, Inc. (Uber) services allow a customer to request a transportation service using a technology application (App). When the customer requests service through the App, the request is sent to the closest driver. If the request is accepted the customer receives a confirmation including the driver's first name, photo, license plate number, and a driver rating (rated by previous Uber customers). The driver has a smart phone (received from Uber) with an App which is used to initiate the trip and calculate the fare. In addition to the company's regular fare schedule, Uber provides for "surge pricing" (an increased fare when the demand for services is greater than the available services). Uber keeps a portion of the fare and the remainder of the fare is provided to the driver.

Uber holds that it is not a transportation service provider but that it is instead a technology company. Uber argues that, because it is an information service provider, PSC is preempted from regulating the company's activities. Uber notes it does not own vehicles used in the service or employ drivers.

On May 16, 2013, PSC initiated a proceeding to review Uber's operations, to determine whether the Public Utilities Article and/or PSC regulations applied to Uber and to determine PSC's authority to regulate Uber's operations. PSC delegated the case to a hearing examiner. The hearing examiner issued a proposed order on April 24, 2014.

Proposed Order Related to Uber

In the proposed order the hearing examiner found that:

- motor vehicles are being used for transportation services;
- the company did not provide evidence that vehicles used in its service are operating with valid permits;
- the company exerts control over the operation at a level to be considered an owner even though the vehicles are not owned by Uber;
- control is exercised by Uber by influencing professional standards of the vehicle and driver;
- permits cannot be transferred between partner carriers and therefore those individuals with a permit are not operating under a valid permit when operating for Uber;
- the payment mechanism, the fares, and the distribution of the driver's share of the fare is generally controlled by Uber; and
- renumeration as defined in the Public Utilities Article for the service is received by Uber because the company receives a portion of the fare;

The hearing examiner concluded that PSC has the authority to regulate Uber as part of its implied and incidental powers related to its regulatory authority over passenger-for-hire carriers, drivers, and vehicles; and that PSC is not preempted from regulating the service. As a result, the hearing examiner stated that Uber must submit an application for a motor vehicle permit within 60 days of the final order to continue offering UberBLACK or UberSUV services.

Ruling on Uber Appeal

Following the release of the proposed order, Uber filed an appeal. A final ruling on the appeal was issued by PSC on August 6, 2014, which served as the final order. In the appeal, PSC agreed with the proposed order that PSC has regulatory authority over Uber as a provider of passenger for-hire services (and, therefore, a common carrier) and that the agency's authority is not preempted by federal telecommunications policy. As a result, PSC concludes (as the proposed order did) that Uber is required to have a motor vehicle permit. PSC required the permit application to be filed within 60 days of the order. In addition, PSC noted that Uber must file a schedule of rates, which must be just and reasonable, with PSC. PSC also directed its staff within 90 days to draft regulations for nontaxicab for-hire transportation services reflecting the changing nature of the industry and new technology.

On September 5, 2014, Uber submitted a motion to stay enforcement of the order pending the proposed regulations and also submitted a request for rehearing in the case. On November 25, 2014, PSC staff and Uber submitted a joint motion for approval of a settlement agreement to PSC. The settlement would resolve the request for rehearing and an appeal pending before the Maryland Court of Special Appeals in a related matter. Among the terms, under the settlement agreement:

- Drinnen, LLC (Drinnen) would replace Uber in the August 6, 2014 order;
- Drinnen would file for a motor carrier permit, reveal the identity of drivers who accept trip requests from Uber to PSC, file a schedule of times, rates, and charges (including a range of maximum and minimum rates and surge pricing), only use drivers in Maryland who have Maryland passenger-for-hire drivers' licenses, and use vehicles with Maryland operating permits (unless drivers from neighboring states transport passengers across State lines);
- definitions of broker, surge pricing, and digital platform could be incorporated into a regulation revision under discussion; and
- regulation revisions proposed by PSC staff would allow for surge pricing and digital platforms to connect riders and drivers and include certain other information.

Office of the People's Counsel (OPC), which was not a party to the settlement, filed comments on the settlement. While generally agreeing on the reasonableness of the terms, OPC expressed the need for certain clarifications in the settlement. Some of these concerns included (1) Uber's ability to act on behalf of Drinnen; (2) whether Drinnen is currently registered in the State; (3) the name the services would be operated under; (4) the effective termination date of the agreement; (5) surge pricing and other concerns related to rate filings; and (6) public safety standards related to UberX which is not part of this particular case.

As of this writing, the proposed settlement is still under review. **PSC should comment on the planned timeline for a determination on the settlement.**

Other Common Carrier Changes

In a separate proceeding that began in 2010, PSC reviewed the taxicab industry in Baltimore City and Baltimore County. In July 2014, PSC found that limits and flaws in available data prevent PSC from adequately determining whether revenues of common carriers are sufficient to provide transportation services. PSC ordered that all taxicabs be equipped with meters with the ability to compile extractable operating statistics, post flat fares and extras (which could compute a per-mile charge for travel outside the taxicab's jurisdiction), print receipts, print stored aggregate operating statistics, and accept debit and credit cards with a rear-seat payment system by December 31, 2014.

PSC also ordered improved financial reporting beginning with 2014 data and the establishment of a workgroup to develop requirements for an electronic portal for future reporting. PSC also required its staff to develop and propose a process to evaluate applications for an additional 25 wheelchair accessible cabs (20 in Baltimore City and 5 in Baltimore County). PSC also set an annual usage requirement (12,000 miles) beginning with calendar 2015 for taxicabs. Taxicabs driving less than this amount would be subject to show cause orders and permit revocation. Finally, PSC required that taxicab associations report all affiliated permits and that PSC staff investigate and revoke unassociated permits.

On October 28, 2014, PSC staff proposed a lottery process for issuing the additional permits for wheelchair-accessible cabs.

PSC should comment on the status of implementation of these changes.

Impact on Common Carrier Investigations Division

Due to the ongoing nature of the Uber case (with a proposed settlement currently pending before PSC), there is no impact as of yet as a result of the initial decision in the case. No application has been filed. **PSC should comment on the impact on the agency if the settlement is accepted or an application is otherwise filed.**

Currently, PSC anticipates minimal impact as a result of the altered taxicab requirements. While PSC noted that more inspections may occur as a result of the changes, other technological changes within the agency are expected to mitigate the impact.

Recommended Actions

1. Concur with Governor's allowance.

Updates

1. Offshore Wind Activities

Background

Chapter 3 of 2013 (the Maryland Offshore Wind Energy Act) includes a number of requirements for PSC. These requirements specify the process for an offshore wind project application, evaluation criteria, offshore wind renewable energy credit (OREC) establishment, and establishment of regulations to implement these requirements. PSC was required to adopt regulations by July 1, 2014, that:

- establish an application process and timeframes, including a notification period following the receipt of an application; the opening of an application period to allow other projects to be proposed after receipt of an initial application; and a requirement for a determination on the application (180 days from the end of the application period);

- detail the application requirements as specified in the statue, which include cost benefit analysis requirements; the proposed financing; a proposed OREC schedule; a decommissioning plan; commitments in a variety of matters (such as contributions of certain funds, applying for grants, rebates, tax credits, and loan guarantees, and to pass along 80% of the value of the those funds received); and a plan for small business engagement;

- specify the evaluation criteria to be used by PSC, including those related to the price impacts, impacts on capacity prices, congestion prices, and locational marginal price;

- establish limitations on when PSC can approve a project or must not approve a project including requirements related to seeking minority investors for the project (if investors are being used in the project); providing positive net economic, environmental, and health benefits; the maximum price impacts for customers; and the maximum OREC price;

- specify requirements for an order of approval such as that it must contain the OREC price schedule, the length of the OREC schedule, the number of ORECs to be sold each year, limitations on OREC payments until after generation has begun, hold harmless provisions for cost overruns for ratepayers and purchasers of ORECs, and a statement that debt from the project is not debt of the State;

- establish OREC obligations, including a mechanism to adjust the obligations based on prior year shortfalls and allow for an extension of the OREC schedule beyond the initial term for up to two five-year terms under certain conditions and at certain price calculations;

- establish an escrow account for the purchase of ORECs; and

- detail the requirements for the offshore wind project to sell energy, capacity, and ancillary services related to the OREC creation into the markets operated by PJM Interconnection, LLC.

Chapter 3 also required PSC to contract with independent consultants to evaluate the application for a proposed offshore wind project and calculate the net benefits to the State of a proposed offshore wind project.

Regulations

PSC initiated a rulemaking process to develop the required regulations on April 8, 2014. Prior to that date, PSC staff submitted a draft set of proposed regulations and recommended evaluation criteria and a process for the evaluation and selection of offshore wind applications. The proposed regulations were printed in the *Maryland Register* on July 11, 2014, and the notice of the final adoption of the regulations was published in the *Maryland Register* on September 5, 2014.

Application Process

Under the adopted regulations, after receiving an initial application, the Executive Secretary of PSC has to determine within 30 days whether the application is administratively complete. If not, the applicant is informed of the missing items/information and is provided the opportunity to submit the items (when the additional information is submitted there would be a subsequent review for administrative completeness). If/when the initial application is administratively complete, the application period is opened for 180 days with one or more extensions of up to 30 days provided. Any applications submitted during the period must also be reviewed for administrative completeness and have any missing information submitted before the close of the application period. PSC must complete its review of the application(s) within 180 days of the close of the application period, unless an extension is mutually agreed upon.

The application review will occur in stages including (1) a review for meeting minimum threshold criteria; (2) a qualitative evaluation; and (3) a quantitative evaluation. The regulations detail the information that must be included in the application and specify the evaluation criteria including the minimum threshold criteria. Factors to be considered in the qualitative evaluation include the project team qualification, project characteristics, financial plan, demonstration of site control, project schedule, operations and maintenance plan, and decommissioning plan. Factors to be considered in the quantitative evaluation include the rate impacts and economic impacts of the project from construction, operations, maintenance, and equipment purchases.

The Board of Public Works approved a PSC contract with Levitan & Associates, Inc. on October 1, 2014, to provide application review services to PSC related to offshore wind projects. The contract totals $1.3 million with a term of three years. As of this writing, no application has been submitted. However, PSC held a technical conference on January 8, 2015, to provide a screening of the website and portals that will be used for the submission of applications and to review the application requirements checklist and the OREC price schedule bid form.

Offshore Wind Lease

On August 19, 2014, the U.S. Department of Interior, Bureau of Ocean Energy Management (BOEM) held a competitive lease sale for nearly 80,000 acres for offshore wind development, which was split into two lease areas. Three companies participated in the auction. US Wind Inc. won the lease sale in each of the two lease areas with a bid of $8.7 million. The company initially will receive a one-year lease to provide time to submit a site assessment plan for BOEM approval. Following approval of this plan, the company has four and a half years to submit a construction and operations plan for BOEM approval. After receipt of that plan, BOEM will conduct an environmental review. If the plan is approved the company will receive an operations term of 25 years.

2. PSC Review of Energy Assistance Programs

In January 2012, PSC initiated a review of Maryland's energy assistance programs as a result of concerns that arose from the *Fiscal 2011 Electric Universal Service Program Annual Report*, particularly whether the energy assistance programs are currently fulfilling (or could fulfill) the intended purposes and whether the programs are appropriately funded. The review was expected to address issues related to:

- the scope, causes, and trends over time of arrearages and inability to pay bills;
- the goals of the program as developed and recommendations on changes to the goals;
- the sources of funding;
- the eligibility criteria;
- the coordination with other government programs;
- the logistical, mechanical, and technological issues that need to be addressed to improve program efficiency;
- the relative impact on customer bills between increasing bill assistance contributions and writing off greater proportions of uncollectibles; and
- the best practices of other states.

PSC Staff Proposal

As part of the review, PSC staff worked with OPC to develop consensus recommendations, referred to as the Affordable Energy Plan (AEP), which would drastically change the energy assistance program in Maryland. The AEP was designed as a percentage of income payment plan (PIPP), and would be available for both natural gas and electric customers. Under a PIPP, a certain percent of a household's income is deemed affordable and is subtracted from a customer's actual (or estimated) energy bill for a year to determine the benefit amount. Under the proposal, the affordable level of the energy was defined as 6% of the household income. The credit would be fixed at the time of the benefit eligibility determination and be based on the estimated energy usage of the household for one year. The proposal also contained an arrearage forgiveness program for pre-program participation arrearages only. Under the arrearage forgiveness program, the household would pay an additional 1% of the household income, for each existing electric and natural gas arrearage, in addition to the 6% required spending on the energy bill. After a set amount of time the amount of the arrearage not paid with this additional spending would be retired. The program also included some funding for crisis intervention and options for energy conservation. The estimated cost of the new program was $250 million. Legislation would be required to implement the AEP.

Committee narrative in the 2012 *Joint Chairmen's Report* (JCR) requested that DHR and PSC submit an update to the committees on (1) the outcome of PSC's review; (2) operational changes resulting from the review; and (3) statutory changes to the program or funding level as a result of the review. DHR's response included a discussion of changes to the existing energy assistance program that could be implemented within existing resources instead of the PSC staff proposal. These included altering the arrearage assistance program to an arrearage forgiveness program that would reduce by one-twelfth the arrearage along with each timely arrearage co-payment paid with the monthly bill and a two-tier bill assistance program that would provide a higher benefit if customers are willing to receive energy conservation services.

Status

The outcome of the review was still pending during the 2014 session and committee narrative in the 2014 JCR requested PSC to submit a report on the status or outcome of the review. PSC indicated in its submission that the SEIF from the Regional Greenhouse Gas Initiative carbon dioxide emission allowance auction proceeds has become more certain due to a permanent change in allocation of these funds in the BRFA of 2014. In addition, the recent auction proceeds have been much higher, which led to DHR expressing an interest in examining ways to enhance its energy assistance programs, beyond the proposals noted earlier (designed to be budget neutral). The higher than expected revenue, DHR's interest in program enhancements, and the concern about the cost of the AEP led to a PSC decision to not advocate for the AEP.

3. Application to Become an Interstate Agent for Natural Gas Pipelines

PSC has authority over intrastate natural gas and other hazardous liquids pipelines. Unless otherwise approved to act as the interstate agent, interstate pipeline safety is managed by the U.S. Department of Transportation (DOT) Pipeline and Hazardous Materials Safety Administration (PHMSA).

Chapter 571 of 2013 required PSC by December 1, 2013, to:

- evaluate the process and criteria that would be used by the Secretary of DOT to review an application for certification or agreement related to interstate natural gas pipelines located within the State; and

- determine whether it is in the public interest for the PSC to apply for this certification or agreement.

If PSC determined that it was in the public interest to apply for the certification, PSC was required to apply by January 1, 2014. Chapter 571 also authorized PSC to charge an owner of interstate gas pipelines a fee to recover the cost of the inspections, less federal grants, if PSC enters into the agreement to become the interstate agent for natural gas pipelines. PSC was required to report to the General Assembly on its findings.

Interstate Agent Requirements

In May 2014, PSC submitted the required report to the General Assembly. PSC explained that if it were to become the interstate agent for pipeline safety, the agency would be required to (1) investigate reported safety-related conditions; (2) monitor operator's actions to remedy the safety-related conditions; (3) provide status reports to PHMSA; (4) assume responsibility for and carry out inspections as agreed upon with PHMSA's Eastern Region Director; (5) follow PHMSA's guidelines on incident coordination and investigation; (6) follow requirements and formats for reports; (7) maintain inspection and accident records; and (8) handle inquiries and release information in consultation with PHMSA.

PSC noted that to be considered as an interstate agent, a State agency must meet certain standards including: (1) being certified and having full intrastate jurisdiction over pipeline safety; (2) maintaining intrastate safety as the first priority; (3) having no adverse impact on intrastate safety; (4) commitments in additional areas (such as damage prevention and outreach activities); and (5) continuing to meet the terms of the agreement. Eight states currently act as interstate agents (Arizona, Connecticut, Iowa, Michigan, Minnesota, New York, Washington, and West Virginia). PSC also highlighted another state (Nevada) that applied to become an interstate agent in 2010 but was denied.

PSC Findings

PSC determined that becoming an interstate agent would provide the agency a greater role in citizen safety and as a result would be in the public interest. PSC cited benefits of become an interstate agent including:

- enhanced emergency response performance;

- better oversight;

- increased transparency;
- larger, better trained State staff; and
- more comprehensive understanding of gas pipelines throughout the State.

As a result of finding it was in the public interest to become an interstate agent, PSC applied to become an interstate agent. As of this writing, PSC's application is currently pending before PHMSA.

Impact of Becoming an Interstate Agent

According to the report to the General Assembly, PSC currently has five staff working in pipeline safety, but believed an additional two engineers would be required to fulfill the agreement if the agency were to become an interstate agent. PSC indicates that it could take as long as two years for the two additional engineers to be qualified to conduct inspections. Funding for the activities not reimbursed by PHMSA would be covered by a new authority provided in Chapter 571 to assess a fee on interstate pipeline operators. The fiscal 2016 allowance adds one additional position in the Engineering Investigations Division, which could reduce the number of additional engineers required.

Appendix 1

Current and Prior Year Budgets

Current and Prior Year Budgets
Public Service Commission
($ in Thousands)

	General Fund	Special Fund	Federal Fund	Reimb. Fund	Total
Fiscal 2014					
Legislative Appropriation	$0	$43,350	$425	$0	$43,775
Deficiency Appropriation	0	-268	-6	0	-275
Budget Amendments	0	260	408	0	668
Reversions and Cancellations	0	-1,351	-290	0	-1,641
Actual Expenditures	**$0**	**$41,991**	**$537**	**$0**	**$42,528**
Fiscal 2015					
Legislative Appropriation	$0	$44,812	$391	$0	$45,203
Cost Containment	0	0	0	0	0
Budget Amendments	0	1,118	2	0	1,121
Working Appropriation	**$0**	**$45,930**	**$394**	**$0**	**$46,324**

Note: Numbers may not sum to total due to rounding.

Fiscal 2014

In total, PSC's fiscal 2014 expenditures were $1.2 million less than the legislative appropriation. PSC's fiscal 2014 special fund expenditures were $1.4 million lower than the legislative appropriation. Increases in special funds totaling $259,889 occurred by budget amendment largely as a result of employee compensation changes including the COLA provided in January 2014 ($162,608), increments provided to employees in April 2014 ($45,678), and the annual salary review ($11,403). The remaining increase occurred as a result of the availability of For-Hire Enforcement Fund balance for the purchase of three vehicles in the Common Carrier Investigations Divisions ($40,200). These increases were more than offset by deficiency appropriations which reduce the funding for the retirement reinvestment ($190,095) and health insurance ($78,274), and cancellations totaling $1.4 million. The cancellations occurred largely in consultant services including those related to the CIF and offshore wind activities, as well as for contractual FTEs.

PSC's fiscal 2014 federal fund expenditures were $112,209 higher than the legislative appropriation. Increases in federal funds totaling $408,410 occurred by budget amendment with the majority the result of a one-year extension of funds available from the ARRA which was not anticipated in budget development ($231,702). Other increases were the result of:

- federal Pipeline Safety Funds that were advanced to PSC and a higher than anticipated reimbursement rate used to support equipment purchases ($75,183), salaries and wages ($51,491), fixed charges ($36,051), and other administrative expenditures ($9,884); and

- the federal share of the fiscal 2014 COLA ($4,099).

These increases are partially offset by the federal fund share of reductions related to the retirement reinvestment ($4,543) and health insurance ($1,701) and cancellations ($289,957). The cancellations related largely from contractual FTEs due to fewer than expected hires ($209,856). The remaining cancellations resulted from lower than expected travel related to the ARRA and deferred expenditures for equipment from the Pipeline Safety funds.

Fiscal 2015

PSC's fiscal 2015 appropriation has increased by $1.1 million in total funds ($1.1 million in special funds and $2,447 in federal funds). Increases totaling $120,739 in total funds ($118,292 in special funds and $2,447) result from the fiscal 2015 COLA. The remaining increase ($1.0 million in special funds) is available for consultant services to assist in the review of the transaction between Exelon and PHI.

Object/Fund Difference Report
Public Service Commission

Object/Fund	FY 14 Actual	FY 15 Working Appropriation	FY 16 Allowance	FY 15 - FY 16 Amount Change	Percent Change
Positions					
01 Regular	139.00	139.00	140.00	1.00	0.7%
02 Contractual	8.61	11.60	8.60	-3.00	-25.9%
Total Positions	**147.61**	**150.60**	**148.60**	**-2.00**	**-1.3%**
Objects					
01 Salaries and Wages	$ 13,248,705	$ 13,925,957	$ 14,894,999	$ 969,042	7.0%
02 Technical and Spec. Fees	271,415	564,020	306,851	-257,169	-45.6%
03 Communication	128,024	128,297	154,495	26,198	20.4%
04 Travel	70,763	99,935	113,841	13,906	13.9%
07 Motor Vehicles	184,079	148,187	149,359	1,172	0.8%
08 Contractual Services	2,334,031	3,587,724	2,316,620	-1,271,104	-35.4%
09 Supplies and Materials	75,228	81,432	80,840	-592	-0.7%
10 Equipment – Replacement	114,552	31,330	31,330	0	0%
11 Equipment – Additional	15,330	4,000	294,535	290,535	7263.4%
12 Grants, Subsidies, and Contributions	25,083,567	26,729,190	19,609,410	-7,119,780	-26.6%
13 Fixed Charges	1,002,008	1,023,452	1,083,336	59,884	5.9%
Total Objects	**$ 42,527,702**	**$ 46,323,524**	**$ 39,035,616**	**-$ 7,287,908**	**-15.7%**
Funds					
03 Special Fund	$ 41,990,833	$ 45,929,938	$ 38,494,796	-$ 7,435,142	-16.2%
05 Federal Fund	536,869	393,586	540,820	147,234	37.4%
Total Funds	**$ 42,527,702**	**$ 46,323,524**	**$ 39,035,616**	**-$ 7,287,908**	**-15.7%**

Note: Numbers may not sum to total due to rounding. The fiscal 2015 working appropriation reflects deficiencies and the Board of Public Works reductions to the extent that they can be identified by program. The fiscal 2016 allowance reflects back of the bill and contingent reductions to the extent that they can be identified by program.

Fiscal Summary
Public Service Commission

Program/Unit	FY 14 Actual	FY 15 Wrk Approp	FY 16 Allowance	Change	FY 15 - FY 16 % Change
01 General Administration and Hearings	$ 35,544,395	$ 38,575,843	$ 30,889,895	-$ 7,685,948	-19.9%
02 Telecommunications, Gas, and Water Division	455,746	452,913	437,156	-15,757	-3.5%
03 Engineering Investigations	1,575,921	1,767,407	2,039,547	272,140	15.4%
04 Accounting Investigations	633,638	644,140	677,876	33,736	5.2%
05 Common Carrier Investigations	1,482,993	1,474,825	1,530,603	55,778	3.8%
06 Washington Metropolitan Area Transit Commission	240,476	375,227	382,141	6,914	1.8%
07 Electricity Division	383,530	458,499	518,190	59,691	13.0%
08 Hearing Examiner Division	651,666	761,961	828,645	66,684	8.8%
09 Staff Attorney	880,598	950,550	1,001,396	50,846	5.3%
10 Energy Analysis and Planning Division	678,739	862,159	730,167	-131,992	-15.3%
Total Expenditures	**$ 42,527,702**	**$ 46,323,524**	**$ 39,035,616**	**-$ 7,287,908**	**-15.7%**
Special Fund	$ 41,990,833	$ 45,929,938	$ 38,494,796	-$ 7,435,142	-16.2%
Federal Fund	536,869	393,586	540,820	147,234	37.4%
Total Appropriations	**$ 42,527,702**	**$ 46,323,524**	**$ 39,035,616**	**-$ 7,287,908**	**-15.7%**

Note: Numbers may not sum to total due to rounding. The fiscal 2015 working appropriation reflects deficiencies and the Board of Public Works reductions to the extent that they can be identified by program. The fiscal 2016 allowance reflects back of the bill and contingent reductions to the extent that they can be identified by program.