C90G00
Public Service Commission

Operating Budget Data

($ in Thousands)

	FY 15 Actual	FY 16 Working	FY 17 Allowance	FY 16-17 Change	% Change Prior Year
Special Fund	$37,422	$38,211	$27,967	-$10,243	-26.8%
Deficiencies and Reductions	0	0	-40	-40	
Adjusted Special Fund	**$37,422**	**$38,211**	**$27,927**	**-$10,283**	**-26.9%**
Federal Fund	465	536	569	32	6.0%
Deficiencies and Reductions	0	0	-1	-1	
Adjusted Federal Fund	**$465**	**$536**	**$568**	**$31**	**5.8%**
Adjusted Grand Total	**$37,887**	**$38,747**	**$28,495**	**-$10,252**	**-26.5%**

- The fiscal 2017 allowance of the Public Service Commission (PSC) decreases by $10.3 million (26.5%) compared to the fiscal 2016 working appropriation, after accounting for a back of the bill reduction for health insurance.

- Special funds in PSC decrease by $10.3 million (26.9%) in the fiscal 2017 allowance, compared to the fiscal 2016 working appropriation, primarily due to the distribution schedule for Customer Investment Fund grants to non-State agencies.

- Federal funds in PSC increase by $31,115 (5.8%) in the fiscal 2017 allowance compared to the fiscal 2016 working appropriation.

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

For further information contact: Tonya D. Zimmerman Phone: (410) 946-5530

Personnel Data

	FY 15 Actual	FY 16 Working	FY 17 Allowance	FY 16-17 Change
Regular Positions	138.00	137.00	137.00	0.00
Contractual FTEs	6.09	8.60	10.00	1.40
Total Personnel	**144.09**	**145.60**	**147.00**	**1.40**

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	5.38	3.93%
Positions and Percentage Vacant as of 12/31/15	11.00	8.03%

- There are no changes in the number of regular positions in PSC in fiscal 2017. However, 2.0 positions were transferred from PSC to the Department of Budget and Management – Personnel Services and Benefits Division as part of a consolidation of personnel services during fiscal 2016.

- There is an increase of 1.4 contractual full-time equivalents (FTE) in PSC in fiscal 2017. One contractual FTE investigator is added to the Common Carrier Investigations Division related to the implementation of Chapter 204 of 2015 that increased the number of regulated for-hire vehicles and drivers in the State. The remaining increase (0.4 FTE) converts a part-time FTE to a full-time FTE for personnel activities in General Administration.

- The turnover expectancy for PSC decreases from 4.03% to 3.93% in fiscal 2017.

- As of January 1, 2016, PSC had a vacancy rate of 8.03% (11.0 positions). To meet the fiscal 2017 turnover expectancy, PSC would need to maintain 5.38 vacant positions.

Analysis in Brief

Major Trends

General Administration: After completing only 35% of work items subject to the 30-day deadline in fiscal 2014, PSC performance improved to 88% in fiscal 2015. PSC attributes this increase primarily to improvements in the application process for certification of solar renewable energy facilities. PSC also slightly increased the percent of consumer disputes resolved within 60 days (from 87% to 88%) between fiscal 2014 and 2015.

Engineering Investigations Division: In fiscal 2015, there were 10 accidents reported to PSC. After investigation, PSC found that none of these accidents were the result of a violation of PSC regulations.

Public Utility Law Judge Division: The Public Utility Law Judge Division issued decisions in 97% of nontransportation matters within 60 days of the close of record, 96% of nontaxicab transportation matters within 30 days of the close of record, and 100% of taxicab matters within 30 days of the close of record in fiscal 2015. The performance of the division exceeded the goals for each of these activities for the fourth consecutive year.

Issues

Implementation of Transportation Network Services Legislation: Under Chapter 204 of 2015, PSC is responsible for developing a regulatory structure for transportation network services (such as Uber Technologies, Inc.) and transportation network operators. The operators must receive a license before providing transportation network services. This licensing requirement begins in fiscal 2016 and is expected to greatly increase the work of the Common Carrier Investigations Division with increases in the number of passenger-for-hire driver's licenses to be issued (117.7%, or 9,352 licenses), passenger-for-hire vehicles to regulate (285.8% or 9,927 vehicles), and anticipated consumer complaints to resolve (73.9% or 85 complaints). Despite the anticipated substantial increase in work related to the implementation of this legislation, the fiscal 2017 allowance provides only 1 new contractual FTE, less than was expected in the fiscal note during the 2015 session or in the impact of the regulations proposed January 8, 2016.

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 (OREC). PSC is responsible for accepting, reviewing, and determining whether the ORECs will be granted to applicants. As of this writing, one application for an OREC has been received by the consultant reviewing the applications. A general application period was opened February 25, 2016. The general application period will last for 180 days, with the potential for 30-day extensions.

Recommended Actions

1. Concur with Governor's allowance.

Updates

Review of the Merger of Exelon Corporation and Pepco Holdings, Inc.: In August 2014, Exelon Corporation (Exelon), Pepco Holdings, Inc., 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 actions of Pepco and DPL. PSC conditionally approved the merger in May 2015. The approval was appealed by the Office of People's Counsel and other entities. However, the PSC order was affirmed on appeal. Washington, DC denied the merger initially, however, in October 2015, reopened the investigation based on a proposed settlement. If approved in Washington, DC, the terms of Maryland's approval may change. The decision by Washington, DC is pending 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. The key goals of PSC are to:

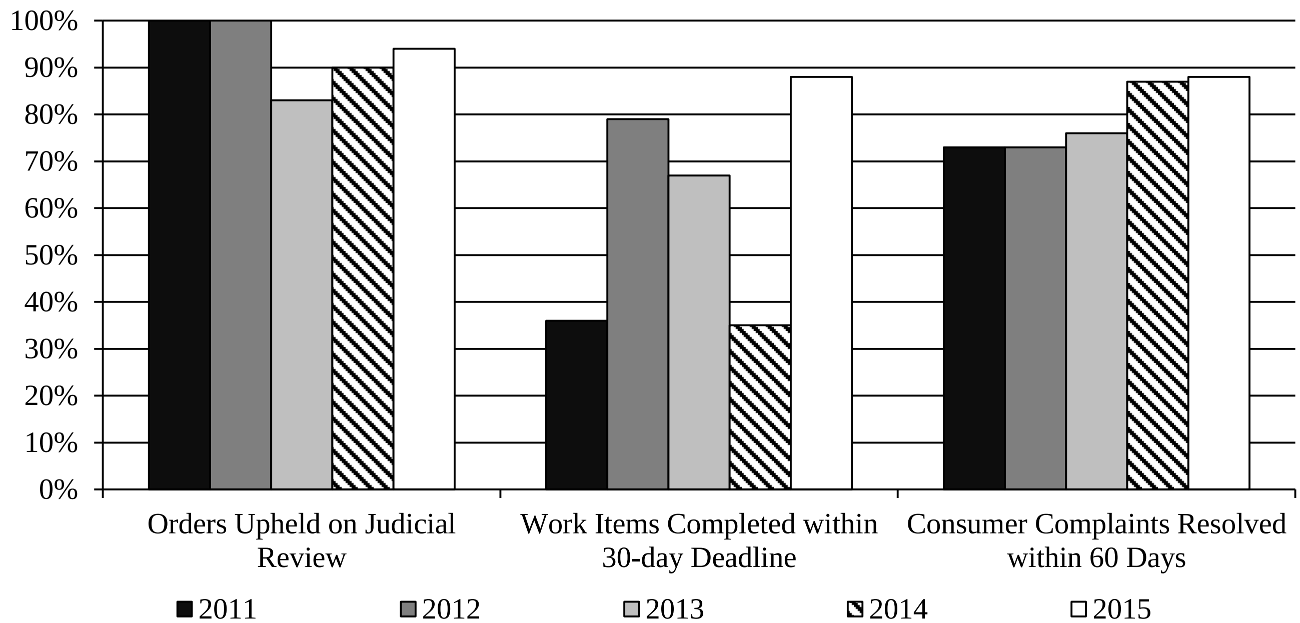
- ensure that gas and electric utility companies operate utility systems safely;
- ensure that public service companies deliver reliable services that are adequate to meet customer demand;
- conduct open and fair proceedings and render timely decisions in accordance with statutory mandates and applicable law;
- ensure that all Maryland consumers have adequate consumer protection;
- ensure that rates for public utility services are just and reasonable;
- ensure that telecommunications companies provide reliable services; and
- ensure that taxicabs and passenger-for-hire carriers engage in safe practices.

Performance Analysis: Managing for Results

1. General Administration

The percent of work items completed within the 30-day deadline fell from 79% in fiscal 2012 to 35% in fiscal 2014, in part due to increased items subject to the deadline and the number of position vacancies, as shown in **Exhibit 1**. In fiscal 2015, PSC increased the percent of work items completed within the 30-day deadline to 88%, an increase of 53 percentage points, exceeding the goal of 80%. PSC was able to increase this even as the number of items subject to the deadline increased by more than 175%. PSC indicates that the increase was largely related to applications for certification of solar renewable energy facilities as part of the State's Renewable Portfolio Standard, and PSC was able to develop a more streamlined application process for these facilities late in fiscal 2014. PSC indicates that the improved process not only improves the speed of reviews but also allows the agency to handle further increases in applications for these facilities in the next few years. The new process reduces the documentation that applicants need to file and that must be reviewed and validated, and reduces the analysis that must be conducted by PSC engineers.

Exhibit 1
Administration
Fiscal 2011-2015



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.

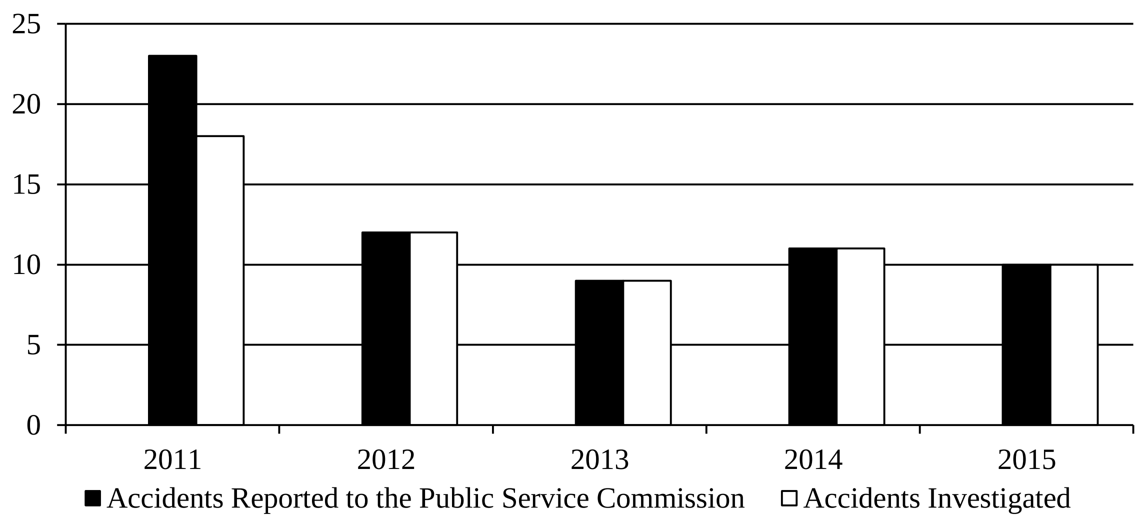
Source: Public Service Commission; Department of Budget and Management; Governor's Budget Books

PSC has a goal of resolving 80% of consumer disputes within 60 days. For the second consecutive year, PSC has exceeded this goal, as shown in Exhibit 1. PSC slightly improved performance in fiscal 2015, an increase from 87% in fiscal 2014 to 88% in fiscal 2015. In fiscal 2015, fewer complaints were received (11,683) than in fiscal 2014 (13,327). The number of complaints in fiscal 2015 was closer to recent history.

2. Engineering Investigations Division

Public service companies are required to report accidents that result in injury requiring hospitalization, property damage exceeding $50,000, or loss of life. The number of gas and electric accidents reported to PSC increased to 23 in fiscal 2011, an increase of 10 accidents from the prior year. In that year, the Engineering Investigations Divisions did not investigate all of the reported accidents. As shown in **Exhibit 2**, since that time, the number of accidents has fluctuated within a small range. In fiscal 2015, there were 10 accidents reported to PSC. From fiscal 2012 to 2015, the Engineering Investigations Division was able to investigate all reported accidents, and none of the accidents were found to be the result of a violation of PSC regulations.

Exhibit 2
Engineering Investigations Division
Fiscal 2011-2015

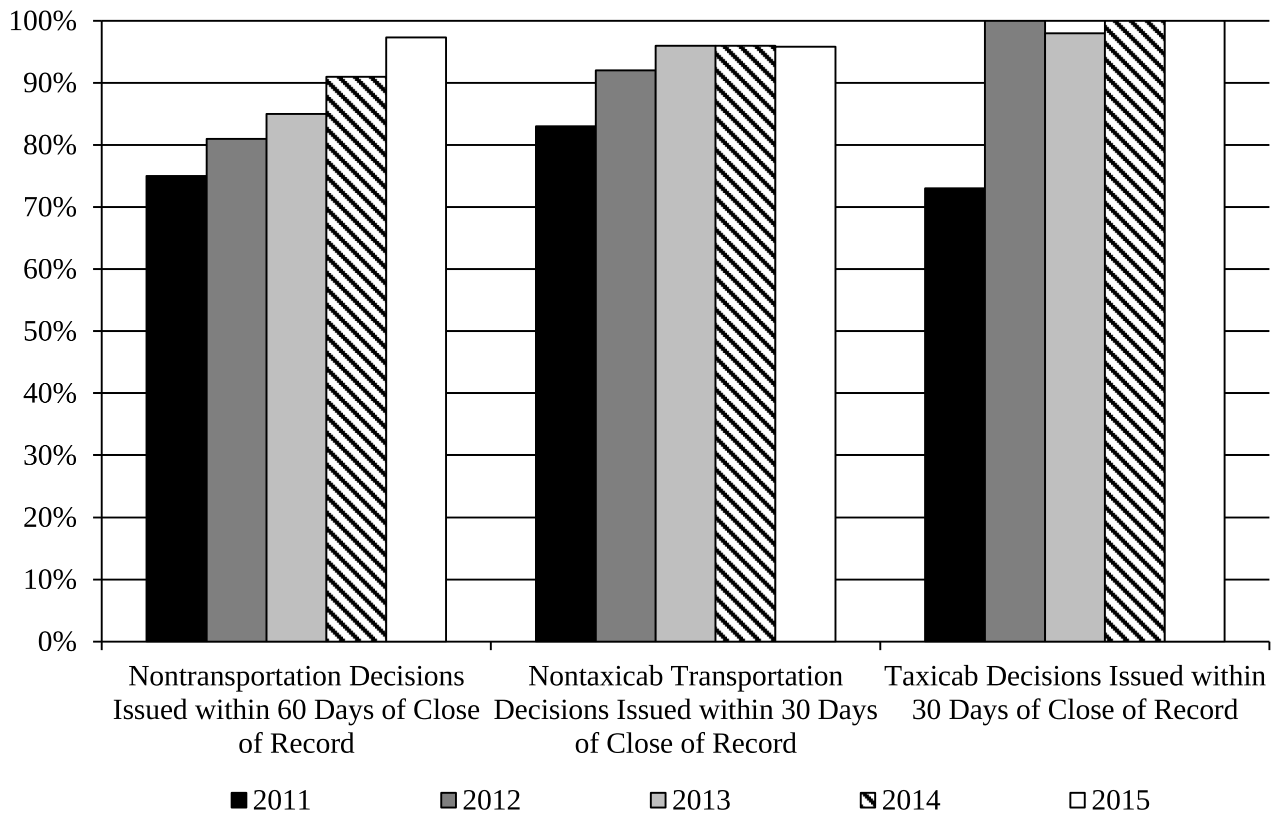


Source: Public Service Commission; Department of Budget and Management; Governor's Budget Books

3. Public Utility Law Judge Division

The Public Utility Law Judge 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**, the Public Utility Law Judge Division met these goals for the fourth consecutive year. The division's performance in nontransportation matters continued to improve in fiscal 2015 by reaching 97.0% of nontransportation matters decisions issued within 60 days of the close of record, just as it has in every year since fiscal 2011 when it failed to meet the goal. PSC attributes the improved performance to the filling of a vacant position in late fiscal 2014 and the resulting ability to balance caseloads with a full complement of Public Utility Law Judges. In transportation matters, the division maintained the previous year's performance in fiscal 2015 (96.0% of nontaxicab matters and 100% of taxicab matters).

Exhibit 3
Public Utility Law Judge Division
Fiscal 2011-2015



Source: Public Service Commission; Department of Budget and Management; Governor's Budget Books

Proposed Budget

As shown in **Exhibit 4**, the fiscal 2017 allowance of PSC decreases by $10.3 million (26.5%) compared to the fiscal 2016 working appropriation after accounting for a back of the bill reduction in health insurance. A decrease of $10.3 million in special funds is partially offset by an increase of $31,115 in federal funds. The federal fund increase (supported by federal Pipeline Safety funds) is largely the result of personnel cost increases in the Engineering Investigations Division.

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

How Much It Grows:	Special Fund	Federal Fund	Total
Fiscal 2015 Actual	$37,422	$465	$37,887
Fiscal 2016 Working Appropriation	38,211	536	38,747
Fiscal 2017 Allowance	27,927	568	28,495
Fiscal 2016-2017 Amount Change	-$10,283	$31	-$10,252
Fiscal 2016-2017 Percent Change	-26.9%	5.8%	-26.5%

Where It Goes:	
Personnel Expenses	
Employee retirement	$233
Employee and retiree health insurance	224
Reclassification to allow the agency to fill vacant positions at a higher salary	190
Turnover expectancy decreases from 4.03% to 3.93%	15
Social Security contributions	-12
Unemployment and workers compensation	-21
Regular earnings largely due to the fiscal 2016 transfer of 2.0 positions to DBM for shared personnel services and the budgeting of vacant positions at lower salaries	-268
Customer Investment Fund	
Grants to non-State agencies based on funding allocation plan	-10,566
Cost Allocations	
Human resources shared services	115
Statewide personnel system and Enterprise budget system allocations	9

Where It Goes:	
Retirement administrative fee and DoIT services allocation	-7
Statewide cost allocation no longer required	-81
Other Changes	
Legal services to align with recent experience	143
Contractual employee payroll primarily due to 1.4 new contractual full-time equivalents partially offset by other adjustments	61
Contractual employee health insurance required under the Affordable Care Act	55
Other adjustments	30
Replacement vehicles in the Engineering Investigations Division and Common Carrier Investigations Division	29
Maryland's share of costs for WMATC	26
Consultant services	-24
One-time costs associated with the implementation of the continuity of operations plan	-403
Total	**-$10,252**

DBM: Department of Budget and Management
DoIT: Department of Information Technology
WMATC: Washington Metropolitan Area Transit Commission

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

Across-the-board Reductions

The fiscal 2017 budget bill includes an across-the-board reduction for employee health insurance, based on a revised estimate of the amount of funding needed. The PSC share of these reductions is $41,458 in total funds ($40,214 in special funds and $1,244 in federal funds). There is an additional across-the-board reduction to abolish positions statewide, but the amounts have not been allocated by agency.

Personnel

The fiscal 2017 allowance increases spending on personnel by $360,511 compared to the fiscal 2016 working appropriation after accounting for a back of the bill reduction in health insurance. The largest increases occur in the areas of employee retirement ($232,738) and employee and retiree health insurance ($223,939).

During fiscal 2016, 2 positions were transferred, from PSC to the Department of Budget and Management (DBM) – Personnel Services and Benefits Divisions, as part of the consolidation of personnel services. This issue will be discussed further in the budget analysis of DBM – Personnel.

Although the positions were transferred, the funding remains in the fiscal 2016 working appropriation. The fiscal 2017 allowance for regular earnings decreases by $268,411 compared to the fiscal 2016 working appropriation, largely due to the transfer of these 2 positions. The decrease associated with the transfer of these two positions is partially offset by an increase of $114,860 in contractual services for the agency's share of these costs under the new shared services allocation.

Regular earnings also decrease because vacancies are budgeted at a lower salary level in the fiscal 2017 allowance. However, the fiscal 2017 allowance includes an increase of $189,607 for reclassification to allow the agency to fill positions at higher than budgeted salaries.

The fiscal 2017 allowance adds 1.4 contractual full-time equivalents (FTE) compared to the fiscal 2016 working appropriation, including making a part-time FTE a full-time FTE in General Administration and a new FTE in the Common Carriers Division, discussed later. These increases, along with minor adjustments in costs for existing contractual FTE, result in an increase of $61,182 compared to the fiscal 2016 working appropriation.

The fiscal 2017 allowance includes funds for employee increments in the budget of DBM. These funds will be distributed to agencies early in the fiscal year. The PSC share of the employee increments is $176,434 in special funds.

Customer Investment Fund

One of the conditions placed by PSC on the approval of the merger of Exelon Corporation (Exelon) and Constellation Energy Group (Constellation) required a contribution of $113.5 million into a Customer Investment Fund (CIF) in three equal annual installments. After a Request for Proposals process in November 2012, PSC issued an order allocating the entire CIF to various nonprofit organizations, State agencies, and local governments. PSC required the organizations receiving the CIF allocations to work with PSC staff to develop a funding plan.

Section 17 of the Budget Reconciliation and Financing Act (BRFA) of 2012 required that funds received by the State as a result of conditions of an approved merger between Exelon and Constellation be expended only as authorized by an Act of the General Assembly or specifically authorized in the State budget. These funds were not allowed to be added by budget amendment. The CIF allocations for non-State entities appear as grants funds in the budget of PSC. The CIF allocations for State agencies are provided in the budgets of those agencies.

Although initial funding plans were developed that completed funding for all programs by the end of fiscal 2016, PSC has periodically reviewed the programs and altered the disbursements. As a result of these alterations, funding remains available for some programs in fiscal 2017.

The fiscal 2017 allowance provides $8.6 million to non-State entities through the grant for the CIF, a decrease of $10.6 million compared to the fiscal 2016 working appropriation. However, neither the fiscal 2017 allowance nor the fiscal 2016 working appropriation accurately reflect the current spending plans for these grant programs. In December 2015, PSC revised the disbursement schedule for fiscal 2016, generally increasing the funding available in fiscal 2017. Due to the timing of this revision, these adjustments are not reflected in the fiscal 2017 allowance. In addition, the fiscal 2016 working appropriation both overstates for some programs and understates for other programs the disbursements anticipated in fiscal 2016, due to revisions in the disbursement schedule from fiscal 2015 and 2016. **Exhibit 5** provides information on the actual fiscal 2014 and 2015 spending in the programs, the planned fiscal 2016 disbursements, and the amount of funding that remains available to programs. As shown in this exhibit, $9.2 million remains available to programs in fiscal 2017, which is $570,253 more than is included in the fiscal 2017 allowance. **PSC should comment on the plans for increasing the fiscal 2017 allowance to allow programs to fully expend the remaining funding given that this funding cannot be increased by budget amendment.**

Exhibit 5
Customer Investment Fund Allocations for Non-State Entities

		2014 Actual	2015 Actual	2016 Working Appropriation	2016 Planned Disbursements	Funds Available for Disbursement	Total Allocation
Baltimore County	**Sustainable Dundalk Initiative**	$250,000	$100,000	$0	$0	$0	$350,000
Baltimore City	**Case Management**	1,073,436	525,266	1,062,872	715,334	872,804	3,186,840
Baltimore City	**Energy Assistance**	804,601	252,300	504,602	252,300	504,601	1,813,800
Baltimore City	**Energy Efficiency**	2,378,357	1,577,813	2,378,355	1,577,813	1,601,086	7,135,071
Baltimore City	**Energy Efficiency Plus**	5,447,372	4,155,777	7,188,522	7,188,520	2,297,146	19,088,812
Baltimore City	**EM&V**	409,156	409,156	409,157	204,578	204,578	1,227,468
Baltimore City	**Baltimore Energy Challenge**	1,118,596	610,209	1,000,591	610,209	780,768	3,119,782
Baltimore City	**Co-generation**	2,000,000	2,000,000	0	1,196,555	0	5,196,555
Baltimore City	**Urban Heat Island Total**	530,000	580,000	637,836	516,890	87,973	1,714,863
Baltimore City	**Retrofits and Upgrades**	1,750,000	4,382,251	2,643,110	2,000,000	2,260,859	10,393,110
Fuel Fund	**Fuel Fund**	8,334,145	3,882,820	2,653,796	2,654,239	0	14,871,205
Comprehensive Housing Assistance, Inc.	**Energy Home Improvement Loan Fund**	666,000	352,075	667,000	441,667	540,258	2,000,000
Total CIF for Non-State entities		**$24,761,663**	**$18,827,667**	**$19,145,841**	**$17,358,105**	**$9,150,072**	**$70,097,506**
Fiscal 2017 Allowance						$8,579,819	
Unappropriated Funds						**$570,253**	

CIF: Customer Investment Fund
EM&V: Evaluation, measurement, and verification

Source: Public Service Commission; Department of Legislative Services

Issues

1. Implementation of Transportation Network Services Legislation

The Common Carrier Investigations Division enforces laws related to the safety, insurance, and service provisions required for passenger for-hire carriers; taxicab companies and drivers in Baltimore City, Baltimore County, Cumberland, and Hagerstown; and drivers of intrastate passenger for-hire vehicles with a capacity of less than 16 passengers. Under Chapter 204 of 2015, PSC is responsible for developing a regulatory structure for transportation network services (such as Uber Technologies, Inc.) and transportation network operators (or partners or drivers). The chapter established a new type of license that PSC issues (a transportation network operator's license). These licenses (either temporary or permanent) must be obtained before an individual may provide transportation network services. To issue a temporary license, the applicant must provide all information required for the application, and PSC must be satisfied with the applicant's criminal history records check and driving record. The transportation network company may submit the information on the operator's behalf. A permanent license may be issued after submission of a satisfactory supplemental criminal background check. Those requirements may not go into effect before April 1, 2016, if certain conditions are met. A transportation network company can request a waiver of the supplemental criminal background check requirement under certain conditions.

PSC has taken several steps to implement this legislation. PSC has revised the application to operate as a carrier of passengers to allow for transportation network services. PSC has issued permits for two companies (Lyft and Uber's subsidiary Raiser). PSC has added an application for a transportation network operator and vehicle permit. PSC indicates it began accepting applications on October 1, 2015.

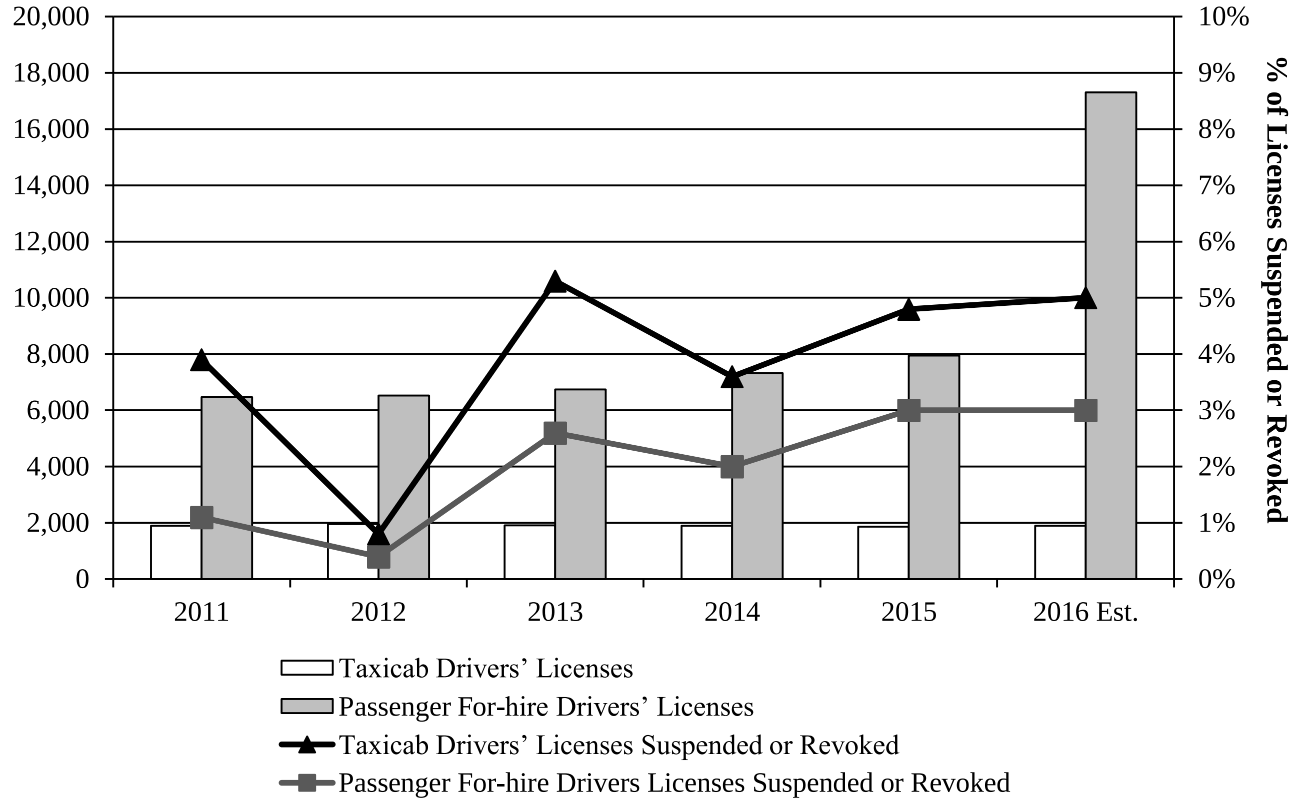
Proposed regulations to implement the legislation were published in the *Maryland Register* on January 8, 2016.

Increased Division Workload

Passenger-for-hire and Taxicab Licenses

The additional requirements related to licensing transportation network operators is expected to substantially impact the work of the Common Carrier Investigations Division. As shown in **Exhibit 6**, the number of passenger-for-hire driver's licenses is expected to increase from 7,948 in fiscal 2015 to 17,300 in fiscal 2016, an increase of 117.7%. PSC does not anticipate the increased number of licensees to result in a higher percentage of licenses being suspended or revoked compared to fiscal 2015. However, the number of suspended or revoked licenses is expected to increase.

Exhibit 6
Passenger-for-hire and Taxicab Licenses
Fiscal 2011-2016 Est.

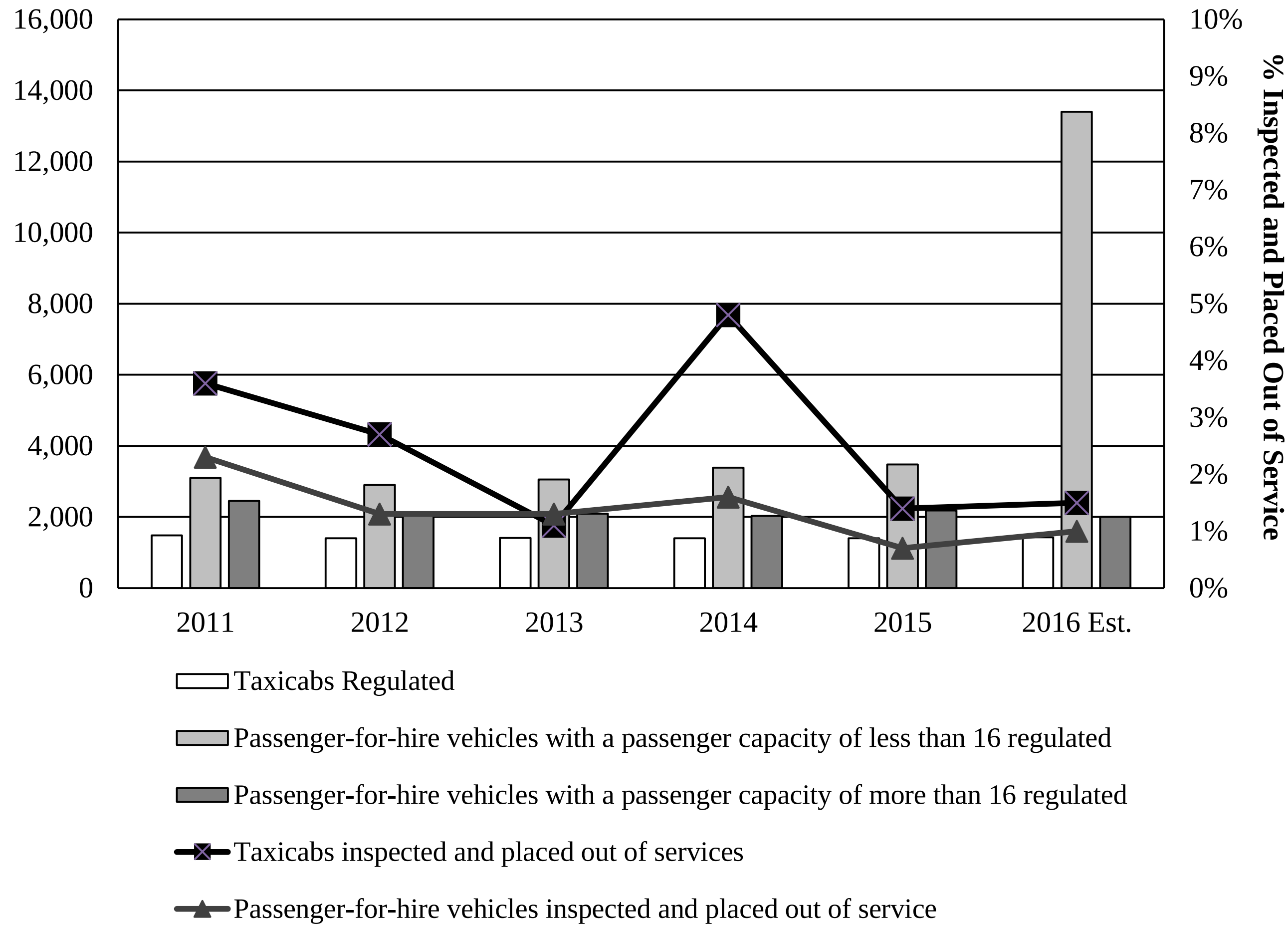


Source: Public Service Commission; Department of Budget and Management; Governor's Budget Books

Passenger-for-hire and Taxicab Vehicles

As shown in **Exhibit 7**, a similar impact is expected on the number of passenger-for-hire vehicles with a passenger capacity of less than 16 regulated by PSC. The number of these vehicles regulated by the division is expected to increase from 3,473 in fiscal 2015 to 13,400 in fiscal 2015, an increase of 285.8%. PSC does not anticipate that this will result in a significantly higher percentage of these vehicles being placed out of service after inspection (an increase of 0.3 percentage points), although the number of vehicles placed out of service is expected to increase compared to fiscal 2015. However, the fiscal 2015 rate of passenger-for-hire vehicles placed out of service was lower than each year since fiscal 2011.

Exhibit 7
Passenger-for-hire and Taxicab Vehicles Regulated
Fiscal 2011-2016 Est.

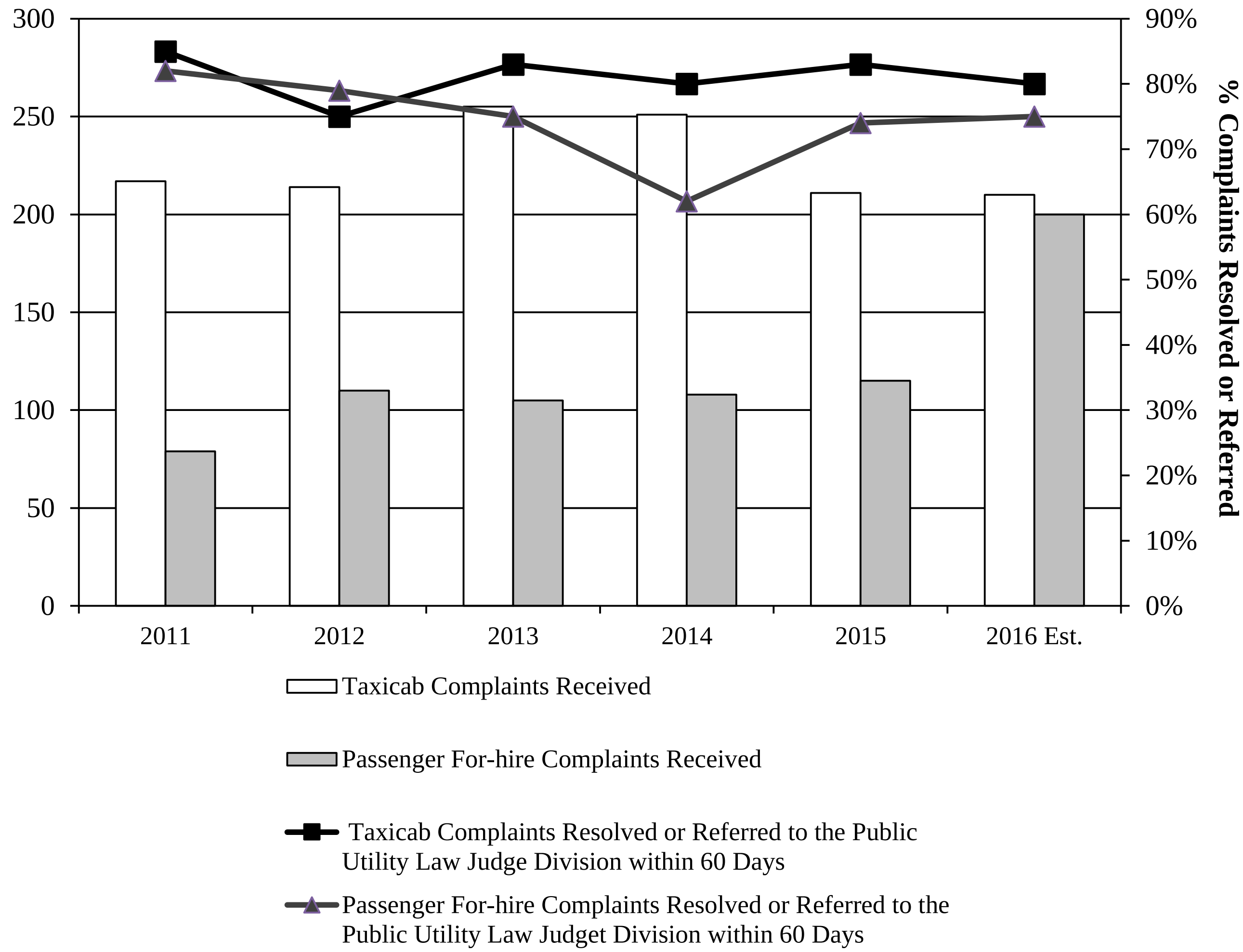


Source: Public Service Commission; Department of Budget and Management; Governor's Budget Books

Passenger-for-hire and Taxicab Complaints

PSC also expects an increase in passenger-for-hire complaints in fiscal 2016, an increase from 115 to 200 (73.9%), as shown in **Exhibit 8**. PSC does not expect the increased number of complaints to impact the division's ability to resolve or refer these complaints to the Public Utility Law Judge Division within 60 days.

Exhibit 8
Passenger-for-hire and Taxicab Complaints
Fiscal 2011-2016 Est.



Source: Public Service Commission; Department of Budget and Management; Governor's Budget Books

Fiscal 2017 Funding

The fiscal 2017 allowance for the Common Carrier Investigations Division increases by $154,999 compared to the fiscal 2016 working appropriation, after accounting for a back of the bill reduction in health insurance. An increase of $81,777 occurs in areas related to payroll for contractual employees, primarily due to the addition of one new contractual full-time equivalent for an investigator position related to the implementation of Chapter 204. Other increases occur among personnel costs for regular positions ($44,500), the replacement of one vehicle ($16,356), and other operating expenses ($12,366).

The fiscal note for Chapter 204 indicated that PSC would need 1.5 regular positions to implement this legislation, including hiring 1.0 administrative specialist and a part-time assistant staff counsel. In the proposed regulations published in the *Maryland Register* on January 8, 2016, the agency estimated the need for 3.0 administrative specialists, 1.0 staff attorney, and 1.0 field investigator. PSC also estimated in the proposed regulations that it would require an additional $180,000 of operating expenses associated with the implementation of these changes.

The fiscal 2017 allowance does not include any new regular positions to implement the legislation or provide any substantial increases in operating expenses. **PSC should explain how it will handle the anticipated significant increase in workload with only 1 new contractual FTE For-hire Investigator and a limited increase in operating expenses.**

2. Offshore Wind Activities

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 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 statute that 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 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 the ORECs to be sold each year, limitations on the OREC payments until after generation has begun, hold harmless provisions for cost overruns for ratepayers and purchasers of the ORECs, and a statement that debt from the project is not debt of the State;

- establish the 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 the ORECs; and

- detail 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 (PJM).

On August 19, 2014, the U.S. Department of Interior, Bureau of Ocean Energy Management held a competitive lease sale for nearly 80,000 acres off the coast of Maryland for offshore wind development, split into two lease areas. US Wind Inc. won the lease sale in each of the two lease areas, with a bid of $8.7 million. The lease was executed December 1, 2014. The lease provides a preliminary term of 1 year, a site assessment term of 5 years, and an operations term of 25 years.

PSC promulgated regulations as required, with the final regulations published in the *Maryland Register* on September 5, 2014.

Application Process

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. On October 1, 2014, the Board of Public Works approved a PSC contract with Levitan & Associates, Inc. to provide application review services related to offshore wind projects. The contract extends until October 5, 2017; with a total cost of $1.3 million.

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. 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.

In practice, applications are initially received and reviewed for administrative completeness by the consultant. The consultant also determines whether the application meets the minimum threshold criteria, which includes complying with the relevant statute, the OREC price schedule being less than 20 years and beginning no earlier than January 1, 2017, that the price does not exceed the level specified in statute, and the application contains evidence of site control or demonstration of a feasible plan to obtain site control. PSC is not involved in the process until after the application period is closed.

During the application period, the consultant conducts an independent qualitative and quantitative analysis, as specified in regulations, for each application that is determined administratively complete. After the close of the application period, the consultant notifies PSC of a recommendation that PSC open proceedings to consider an application. Once the proceedings are opened by PSC, the applicant submits the application to the executive secretary. PSC has 180 days to review the application, unless extended by mutual consent, to approve, conditionally approve, or deny the application.

An application was received in January 2016 and a general application period was opened February 25, 2016. The application period is expected to close August 23, 2016. Given the timing of the application period and the PSC review following the application period, it would be at least a year before a determination on the application would occur.

Funding Requirements

Consultant Services

Chapter 3 required transfers of $1.0 million in fiscal 2014 and $2.0 million in fiscal 2015 to PSC from the Strategic Energy Investment Fund (SEIF) for consultant services needed to carry out the Act. Specifically, the funds were to be from the Offshore Wind Development funds, deposited into the SEIF, which were from a contribution required as a condition of the merger approval between Exelon and Constellation. The funds were transferred in those years. However, only $2.4 million of the $3.0 million were spent or encumbered. Chapter 3 allows funds transferred but not used to carry forward into the next fiscal year, except that funds not encumbered by June 30, 2019, are to be returned to the SEIF.

Of the transferred funds, nearly $1.0 million was spent or encumbered in fiscal 2014, and $1.4 million was spent or encumbered in fiscal 2015. PSC indicates some of the fiscal 2015 encumbered funds are available if needed for the consultants to assist in the OREC application review process to conduct review activities during fiscal 2016 and 2017. PSC indicates the encumbered funds should support the review of up to five applications. If additional funds are required, $603,263 remains available from the transfers required in Chapter 3. Neither the fiscal 2016 working appropriation nor fiscal 2017 allowance contain specific funds from the Offshore Wind Development Fund for consultant services. As noted earlier, funds from the Exelon and Constellation merger may only expended as authorized through the budget bill or other acts of the General Assembly, and cannot be brought in by budget amendment.

Administrative Costs

Chapter 3 also authorizes PSC to conduct a special assessment for staff and administrative costs associated with implementing the Act, in any year during which an OREC obligation exists. Given the timing of the application process, which is not likely to result in a decision on an application until calendar 2017, it is unclear when the OREC obligation would begin. **PSC should comment on the anticipated timing of any special assessment and the amount of funds and staff anticipated to be needed to carry out the Act.**

Recommended Actions

1. Concur with Governor's allowance.

Updates

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

On April 30, 2014, Exelon and Pepco Holdings, Inc. (PHI) announced a merger agreement. Under the agreement, Exelon would acquire PHI for approximately $6.8 billion. PHI would become an indirect wholly owned subsidiary of Exelon. As a result of the merger, Exelon's current distribution holdings (ComEd in Illinois, Baltimore Gas and Electric, and PECO Energy Service in Pennsylvania) would expand to include Atlantic City Electric Company in New Jersey, Delmarva Power & Light (DPL), and the Potomac Electric Power Company (Pepco). The merger requires approvals from multiple states including New Jersey, Delaware, Maryland, and Washington, DC, as well as federal regulatory approvals. In October 2015, the U.S. Energy Information Administration noted that the merger, if approved, would, as measured by the number of customers, create the largest electric utility holding company in the United States. The number of Exelon customers would increase from 6.7 million to 8.5 million.

On August 19, 2014, Exelon, PHI, 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.

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 changes;
- the impact on the continuing investment needs for maintenance of utility services, plan, and related infrastructure;
- the potential effects on employment;
- issues of reliability, quality of service, and quality of customer service;
- potential impacts 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 the public interest, convenience, and necessity including benefits and no harm to customers…" PSC examines each aspect separately requiring companies to show that the transaction meets each of the requirements.

On May 15, 2015, PSC announced a decision to approve the merger (in a 3-2 vote) with 46 conditions. The conditions include:

- a Most Favored Nations Clause, that requires benefits to be raised if merger terms on a per distribution customer basis in other states are higher than in Maryland, to promote fairness;

- a $100 per residential customer rate credit ($50 within 60 days of the merger closing and $50 within 12 months of the first payment);

- a commitment to forgive debt for all residential customer accounts receivable over two years old at merger closing, including those who purchased electricity from third-party suppliers;

- a commitment to pursue the development of an Arrearage Management Plan for limited-income customers;

- a contribution of $43.2 million for energy efficiency programs including a set aside for limited-income and multifamily housing programs ($31.5 million in the Pepco service territory, of which $18.3 million is for Montgomery County and $13.2 million for Prince George's County, and $11.7 million in the DPL service territory);

- a contribution of $14.4 million for a Green Sustainability Fund in Prince George's ($6.0 million) and Montgomery ($8.4 million) counties to be available for 20 years to finance qualifying projects such as renewable energy, storage, resiliency, and clean transportation, and provide periodic updates to the Maryland Energy Administration;

- a contribution of $4.0 million for energy workforce development programs ($1.7 million in Montgomery County, $1.24 million in Prince George's County, and $1.06 million for selected public institutions of higher learning in the DPL Maryland service territory);

- a contribution of $350,000 for expenses of the organization that represents the interests of PJM consumers (Consumer Advocates of PJM States Inc.);

- a commitment to set milestones to enhance and accelerate EmPOWER Maryland plans, including penalties for failing to meet PSC approved goals for DPL, Pepco, and BGE.

- construction of 10 megawatts (MW) of solar or certain other renewable generation in the DPL territory (including at least 5 MW of solar), with 5 MW of solar in both Montgomery and Prince George's counties;

- a commitment to certain reliability performance metrics within certain budgets, and agreement to accept penalties for failing to achieve standards and higher than approved reliability expenditures;

- a commitment to file for a new proceeding related to grid modernization initiatives and to fund a PSC consultant ($500,000) to advise PSC on these issues;

- a commitment to develop a microgrid project in both Montgomery and Prince George's counties;

- a commitment to honor existing collective bargaining agreements, to honor pension and retiree health benefit obligations, not to have a net reduction in employment due to involuntary attrition for two years after the merger, and to make a good faith effort to hire 110 union workers within two years of the merger closing;

- an affirmation of a previous commitment to fund up to $3.5 million for a sediment study; and

- an effort to coordinate with the Department of Natural Resources, Montgomery and Prince George's counties, and the Maryland-National Capital Park and Planning Commission for a pilot to grant a limited nonexclusive license to access certain portions of the Pepco transmission line property for public recreational and transportation use.

PSC required Exelon, PHI, DPL, and Pepco to report in writing by May 26, 2015, whether the companies accepted the conditions. The companies provided this notification. The Office of People's Counsel, among other entities, appealed the merger approval to the Circuit Court of Queen Anne's County. The appeal was denied and the order affirmed.

Other Merger Reviews

New Jersey approved the merger in February 2015, and Delaware approved the merger in June 2015. These approvals were in addition to approvals by the Virginia Corporation Commission and the Federal Energy Regulatory Commission.

In August 2015, Washington, DC rejected the merger contending that the companies did not prove that the merger was in the public interest. Following the denial, Exelon, the Mayor of Washington, DC, and other parties submitted a merger settlement to the Washington, DC PSC. In October 2015, the Washington, DC PSC agreed to reopen the investigation of the merger. The net impact of the settlement terms is expected to bring a higher per distribution customer benefit in Washington, DC than in Maryland, which would trigger the Most Favored Nations Clause. Similar clauses were included in merger terms in other states (Delaware and New Jersey). The final decision on the Washington, DC PSC review is expected in the first quarter of calendar 2016, but has not been made as of this writing. The Most Favored Nations Clause impacts would be resolved following an approval of a final order in Washington, DC.

Budgetary Impact

Section 21 of the BRFA of 2015, requires that any money received by the State as a result of the conditions of an approved merger be expended only as authorized in the budget bill. The impacts of the merger on the State budget, if ultimately approved by all jurisdictions, is likely to be more limited than the merger between Exelon and Constellation. The structure of the conditions requires the CIF and Green Sustainability Funds largely be distributed to the counties directly, with the exception of the CIF in the DPL territory. Similarly, the workforce development funds, with the exception of the DPL territory, are administered by the county government. Potential impacts on the State budget are:

- funds to support a PSC consultant related to grid modernization initiatives ($500,000);
- funds related to the sediment study;
- funds to the public institutions of higher education in the DPL service territory for workforce development programs ($1.06 million in total); and
- potentially the CIF programs in DPL as determined by PSC.

Until the merger has been approved by all jurisdictions, no funding would be expected.

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 2015					
Legislative Appropriation	$0	$44,812	$391	$0	$45,203
Deficiency Appropriation	0	0	0	0	0
Cost Containment	0	0	0	0	0
Budget Amendments	0	1,118	101	0	1,219
Reversions and Cancellations	0	-8,508	-27	0	-8,535
Actual Expenditures	**$0**	**$37,422**	**$465**	**$0**	**$37,887**
Fiscal 2016					
Legislative Appropriation	$0	$37,975	$532	$0	$38,507
Budget Amendments	0	236	4	0	240
Working Appropriation	**$0**	**$38,211**	**$536**	**$0**	**$38,747**

Note: The fiscal 2016 working appropriation does not include deficiencies or reversions. Numbers may not sum to total due to rounding.

Fiscal 2015

In total, the fiscal 2015 expenditures of PSC were $7.3 million less than the legislative appropriation. The fiscal 2015 special fund expenditures of PSC were $7.4 million lower than the legislative appropriation. An increase of $1.0 million was for consultant services to assist in the review of the Exelon and PHI merger. An increase of $118,292 resulted from the fiscal 2015 cost-of-living adjustment (COLA). These increases were more than offset by cancellations totaling $8.5 million. The majority of the cancellation ($7.4 million) results from deferring CIF grants to non-State entities until future years. A cancellation of $574,028 from the Offshore Wind Development Fund was due to lower than anticipated consultant services contract cost. The remaining cancellations were largely because three planned contractual FTE were not hired and lower than expected contractual services costs.

Federal fund expenditures of PSC were $73,535 higher than the legislative appropriation. An increase of $98,450 was the result of a higher than anticipated reimbursement of federal Pipeline Safety funds. An increase of $2,447 was for the federal fund share of the fiscal 2015 COLA. These increases were partially offset by cancellations totaling $27,362 as a result of not hiring a planned contractual FTE.

Fiscal 2016

The fiscal 2016 appropriation of PSC has increased by $240,000 ($236,000 in special funds and $4,000 in federal funds) to restore a 2% pay reduction.

Object/Fund Difference Report
Public Service Commission

Object/Fund	FY 15 Actual	FY 16 Working Appropriation	FY 17 Allowance	FY 16 - FY 17 Amount Change	Percent Change
Positions					
01 Regular	138.00	137.00	137.00	0.00	0%
02 Contractual	6.09	8.60	10.00	1.40	16.3%
Total Positions	**144.09**	**145.60**	**147.00**	**1.40**	**1.0%**
Objects					
01 Salaries and Wages	$ 13,962,898	$ 14,606,446	$ 15,008,415	$ 401,969	2.8%
02 Technical and Spec. Fees	280,777	306,851	430,597	123,746	40.3%
03 Communication	159,514	154,495	145,747	-8,748	-5.7%
04 Travel	53,763	113,841	109,707	-4,134	-3.6%
07 Motor Vehicles	165,844	149,359	175,081	25,722	17.2%
08 Contractual Services	2,871,158	2,316,620	2,446,924	130,304	5.6%
09 Supplies and Materials	72,936	80,840	79,438	-1,402	-1.7%
10 Equipment – Replacement	105,058	31,330	37,316	5,986	19.1%
11 Equipment – Additional	14,679	294,535	9,202	-285,333	-96.9%
12 Grants, Subsidies, and Contributions	19,161,725	19,609,410	8,988,094	-10,621,316	-54.2%
13 Fixed Charges	1,038,371	1,083,336	1,105,665	22,329	2.1%
Total Objects	**$ 37,886,723**	**$ 38,747,063**	**$ 28,536,186**	**-$ 10,210,877**	**-26.4%**
Funds					
03 Special Fund	$ 37,422,049	$ 38,210,626	$ 27,967,390	-$ 10,243,236	-26.8%
05 Federal Fund	464,674	536,437	568,796	32,359	6.0%
Total Funds	**$ 37,886,723**	**$ 38,747,063**	**$ 28,536,186**	**-$ 10,210,877**	**-26.4%**

Note: The fiscal 2016 working appropriation does not include deficiencies or reversions. The fiscal 2017 allowance does not include contingent reductions.

Fiscal Summary
Public Service Commission

Program/Unit	FY 15 Actual	FY 16 Wrk Approp	FY 17 Allowance	Change	FY 16 - FY 17 % Change
01 General Administration and Hearings	$ 30,406,885	$ 30,741,437	$ 19,853,844	-$ 10,887,593	-35.4%
02 Telecommunications, Gas, and Water Division	436,808	427,262	545,385	118,123	27.6%
03 Engineering Investigations	1,807,119	1,997,222	2,124,718	127,496	6.4%
04 Accounting Investigations	630,019	665,634	695,493	29,859	4.5%
05 Common Carrier Investigations	1,564,479	1,506,346	1,665,049	158,703	10.5%
06 Washington Metropolitan Area Transit Commission	252,630	382,141	408,275	26,134	6.8%
07 Electricity Division	428,448	509,018	563,733	54,715	10.7%
08 Public Utility Law Judge Division	808,443	816,129	849,995	33,866	4.1%
09 Staff Attorney	892,556	985,779	1,083,798	98,019	9.9%
10 Energy Analysis and Planning Division	659,336	716,095	745,896	29,801	4.2%
Total Expenditures	**$ 37,886,723**	**$ 38,747,063**	**$ 28,536,186**	**-$ 10,210,877**	**-26.4%**
Special Fund	$ 37,422,049	$ 38,210,626	$ 27,967,390	-$ 10,243,236	-26.8%
Federal Fund	464,674	536,437	568,796	32,359	6.0%
Total Appropriations	**$ 37,886,723**	**$ 38,747,063**	**$ 28,536,186**	**-$ 10,210,877**	**-26.4%**

Note: The fiscal 2016 working appropriation does not include deficiencies or reversions. The fiscal 2017 allowance does not include contingent reductions.