PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005

ORDER AND OPINION

June 8, 2021

FORMAL CASE NO. 1156, IN THE MATTER OF THE APPLICATION OF POTOMAC ELECTRIC POWER COMPANY FOR AUTHORITY TO IMPLEMENT A MULTIYEAR RATE PLAN FOR ELECTRIC DISTRIBUTION SERVICE IN THE DISTRICT OF COLUMBIA, Order No. 20755

Before the Commission:

Willie L. Phillips, Chairman
Richard A. Beverly, Commissioner
Emile C. Thompson, Commissioner*

Appearances: Kim Hassan, Andrea H. Harper, Dennis P. Jamouneau, Wendy Stark, Nikki Hail, Nicholas Penn, Sherry Bellamy, Debra Ann Palmer, Keturah Brown, Colette Honorable for Potomac Electric Power Company; Sandra Mattavous-Frye, Karen R. Sistrunk, Laurence C. Daniels, Barbara Burton, Adrienne Mouton-Henderson, Anjali Patel, Travis R. Smith, Sr., Thaddeus J. Johnson, Timothy R. Oberleiton, John Adrange, Kevin Conoscenti, Jason Gray, Tamika Taylor, Bhaveera Mody, Amanda Drennen, Scott Strauss, Jeff Schwartz, John Coyle, Jason Gray, Amy McDonnell, Ken Holmboe, Adrienne Clair, Kayla Grant, Kristen Connolly McCullough, Eli Eilbott, Lee Ewing for Office of the People's Counsel; Frann G. Francis, Excetral K. Caldwell, Nicola Y. Whiteman for Apartment and Office Building Association of Metropolitan Washington; Brian Caldwell for the District of Columbia Government; Michael Engleman, Michael Converse for DC Water Sewer; Brian Petruska, Gabrielle Ulbig for Baltimore Washington Construction Public Employee Laborers' District Council; Lucas Aubrey, Logan J. Place, Bart Sheard for IBEW Local 1900; Brian R. Greene, Eric Wallace for Maryland DC Virginia Solar Energy Industries Association; Soyun Park, James Birkelund for Small Business Utility Advocate; and Brian Petruska for Mid-Atlantic Regional Organizing Coalition.

* Commissioner Thompson's term began April 12, 2021. Commission Thompson has personally reviewed the entire record in this base rate case.

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I. INTRODUCTION AND EXECUTIVE SUMMARY

1. By this Order, a majority of the Public Service Commission of the District of Columbia ("Commission") approves the Potomac Electric Power Company's ("Pepco" or the "Company") Enhanced Multiyear Rate Plan ("EMRP") application, as modified by the Commission herein.[1] Our approval of a modified version of Pepco's EMRP as a pilot program represents the Commission's introductory determination of an alternative form of regulation ("AFOR") for public utilities under our purview as prescribed by D.C. Code § 34-1504(d).[2]

2. Beginning with Pepco's June 2016 rate application (*Formal Case No. 1139*), the Commission expressed our intention to explore whether an alternative to the traditional "cost of service" ratemaking should be implemented in the District of Columbia ("District") to encourage service improvements, management innovation, operational efficiencies, and less frequent rate increase requests. Given the expenses of traditional utility regulation, as well as the deployment of distributed energy resources ("DERs") and grid modernization efforts in the District, the Commission indicated that it would allow Pepco to include in its next rate case a request for AFORs, including a multiyear rate plan ("MRP") proposal emphasizing that "our focus in considering any alternative mechanism will include a review of the benefits that accrue to customers as opposed to solely focusing on the utility."[3]

3. On May 30, 2019, Pepco filed an application requesting authority to increase existing electric distribution rates by $162 million through the implementation of a multiyear rate plan ("MRP") for the years 2020 through 2022.[4] Along with an MRP, Pepco proposed a series of

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[1] Commissioner Beverly dissented from the Commission's majority decision.

[2] D.C. Code § 34-1504(d) (2001) provides:

> (1) Notwithstanding any other provision of law, the Commission may regulate the regulated services of the electric company through alternative forms of regulation.
> (2) The Commission may adopt an alternative form of regulation if the Commission finds that the alternative form of regulation: (A) Protects consumers; (B) Ensures the quality, availability, and reliability of regulated electric services; and (C) Is in the interest of the public, including shareholders of the electric company.
> (3) Alternative forms of regulation may include: (A) Price regulation, including price freezes or caps; (B) Revenue regulation; (C) Ranges of authorized return; (D) Rate of return; (E) Categories of services; and (F) Price-indexing.

[3] *Formal Case No. 1139*, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service* ("*Formal Case No. 1139*"), Order No. 18846, ¶ 594, rel. July 25, 2017 ("Order No. 18846").

[4] *Formal Case No. 1156*, *In the Matter of the Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia* ("*Formal Case No. 1156*"), filed May 30, 2019 ("Pepco's Application").

Performance Incentive Mechanisms ("PIMs"), which will operate in tandem with the MRP.[5] On March 11, 2020, the Mayor declared a public health emergency and public emergency as a result of the COVID-19 pandemic.[6] On May 20, 2020, the Commission issued Order No. 20349 directing Parties to include in their surrebuttal testimony how and to what extent the COVID-19 pandemic-related events affect the evaluation of Pepco's MRP proposal. On June 1, 2020, Pepco submitted the EMRP in response to Commission Order No. 20349. Pepco's EMRP requests authority to increase existing electric distribution rates by $135.9 million over three years 2020 through 2022. Pepco's EMRP proposal includes, among other things, customer bill offset/credits, reconciliation and prudence review filings, a deferred accounting mechanism, a stay-out provision, and a reopener provision.

4. The Commission has reviewed all evidence and testimony presented, including the comments received at the virtual public hearing on September 29, 2020, in reaching its decision in this matter. Based on the record, the Commission approves a Modified EMRP, as a pilot, which authorizes Pepco to increase its electric distribution rates during the term of the EMRP with offsets as described in this Order, and as provided in the table below:

Table 1: Net Revenue Increases After Offsets/Credits

	Pepco Original MRP Rate Increase Application (millions) (effective May 30, 2019)	**Modified EMRP as Authorized (millions) (effective July 1, 2021)**	**Monthly Bill Impact for Average Residential Customer (annualized)**
2020	$ 84.9	-	-
2021	$ 40.4	$ 21.8	$ 1.07
2022	$ 36.4	$ 48.4	$ 2.33
2023	-	$ 38.4	$ 1.85
Total	**$ 161.8**	**$ 108.6**	**$ 5.25 (equates to a 6.4% increase of total bill)**

Specifically, the Modified EMRP that we are approving today includes, among other things: a cumulative revenue requirement of $108.6 million representing a 33% reduction in revenue requirements from Pepco's original $162.0 million MRP proposal; an authorized ROE of 9.275% with an overall ROR of 7.17% to recognize the reduction in financial risk and regulatory lag [7]; a total package of $11.4 million of Pepco shareholder-funded customer benefits including $7.8 million for residential and streetlight bill offsets and $3.6 million of CBRCs for residential

[5] A PIM is a mechanism that provides a financial incentive or penalty based on targets for utility performance in specified areas; *See Formal Case No. 1156*, Order No. 20273, ¶ 101, rel. December 20, 2019. PIMs are an important tool to align utility incentives with public policy goals, such as the District's clean energy and environmental goals.

[6] Mayor's Order No. 2020-46: Declaration of Public Health Emergency – Coronavirus (COVID-19), issued March 11, 2020; *see also* Mayor's Order No. 2020-45: Declaration of Public Emergency -Coronavirus (COVID-19), issued March 11, 2020.

[7] The vast majority of Pepco's cumulative rate increase over the term of the Modified EMRP is driven by utility infrastructure investments recently made or ongoing to meet the Commission directed reliability improvements.

customers[8]; an initiation of a $5 million small commercial customer energy efficiency program, encompassing rebates and loans; a set of tracking PIMs focused on the District's Climate and Clean Energy goals; and a stay-out provision which prohibits Pepco from filing a new MRP application until at least January 2, 2023, with rates to be effective no earlier than January 1, 2024.

5. The approved electric distribution rate increases represent a 33% reduction from the Company's initial request of $162 million. We do not grant any increase lightly, and we recognize that not all of Pepco's customers will welcome this increase. We are cognizant that any increase in distribution rates can have a significant impact on the lives of District residents, particularly low-income customers and senior citizens on fixed incomes. Specifically, the Commission heard extensive community comments regarding the COVID-19 impact on the economic situation of many District residents, particularly senior citizens, the disabled, and low-income residents whose incomes are still not low enough to qualify them for low-income discount programs, like the Commission's Residential Aid Discount ("RAD") program.[9] That's why in structuring these net rate increases, the Commission has taken steps to partially offset any rate increase in 2021 and 2022 through various customer bill offsets/credits in the Modified EMRP. The customer bill offsets/credits include the amortization of additional tax credits identified after mid-2018, a pause in the amortization of regulatory assets, $7.8 million of Pepco shareholder-funded residential and streetlight bill offsets, and $3.6 million of Customer Base Rate Credits ("CBRC") for residential customers. Additionally, the Commission has provided procedural mechanisms that will allow the Commission to monitor Pepco's financial performance and protect customers against Pepco over earning its authorized rate of return ("ROR") during the term of the EMRP.

6. The Commission is convinced that the Modified EMRP that is being adopted appropriately balances the interests of the Company/investors, its customers, and District citizens. It has been approximately seven years (2014) since District residential ratepayers have seen a net distribution rate increase. The Commission recognizes that the Company has undertaken approximately $905 million of beneficial capital improvements on the District's electrical distribution system over the 2018-2020 period and faces additional capital improvements costs of nearly $1 billion over the 2021-2023 period, which will require external financing. These capital improvements have been and continue to be made to improve the quality, availability, and reliability of electric service to consumers in the District. The Company is entitled to recover the necessary and prudent investments that it has made to the distribution system, and it is imperative that the Company maintain its investment-grade credit rating to secure financing to fund improvements at favorable interest rates, especially in uncertain capital market conditions. The Commission believes that adopting the Modified EMRP will strengthen Pepco's credit profile and help retain its investment-grade credit rating. A strong credit rating provides Pepco with financial flexibility and the opportunity to obtain capital at an optimal overall cost, thereby enabling the continued financing of significant investment projects underway, such as DC PLUG and Capital

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[8] Pepco's original proposed $29 million in shareholder funded rate offsets has been reduced due to the passage of time (the offset is not needed in 2020) and the lower approved total revenue requirements.

[9] By Order No. 20749, the Commission's recently expanded the eligibility criteria for RAD customers which provides additional financial assistance to our most vulnerable ratepayers to meet their electric bills during this COVID-19 health emergency. *Formal Case No. 1164, In the Matter of the Inquiry into the Impacts of the Covid-19 Pandemic on District Utilities and Consumers,* Order No. 20749, issued May 27, 2021.

Grid, which affect the quality, availability, and reliability of electric service in the District. These projects benefit customers because, among other things, they improve system resiliency and enhance hosting capacity for the District's grid modernization as climate changes. The Modified EMRP reduces the ROE from 9.7% to 9.275% accounting for the reduction in risk and regulatory lag which further reduces the revenue requirement and benefits all ratepayers.

7. The Modified EMRP also allows Pepco to initiate a $5 million small commercial customer energy efficiency program, encompassing rebates and loans. With the availability of rebates and loans, more small commercial customers will be able to take energy efficiency measures to help reduce the electricity usage in the District and facilitate the District achieving its climate and energy goals.

8. In addition, the Modified EMRP will allow Pepco to redeploy resources from rate case litigation during the term of the Modified EMRP and focus additional attention on: (1) continued enhancements to the interconnection process for renewable energy facilities,[10] project interconnection improvements, and the Company's emerging Climate Commitment Plan; and (2) pending DER initiatives currently in progress, including: targeted Non-Wires Alternative ("NWA") Request for Proposals ("RFP") process, battery energy storage pilot projects under development at Mt. Vernon Substation, Ward 8 Alabama Avenue Substation, and other projects. At the same time, the Modified EMRP mitigates customer net revenue increases during the current health emergency and reduces litigation costs, which are otherwise ultimately absorbed by District electric customers. Additionally, the Modified EMRP and Pepco's related energy infrastructure investments provide economic benefits to the District and foster continued grid modernization, grid reliability, grid resiliency, and energy infrastructure projects, such as continuing: (1) distribution automation and smart grid programs; (2) neighborhood reliability programs (Most Susceptible Neighborhood Reliability Program); (3) Area Reliability Programs[11]; (4) Harrison Substation upgrade; (5) upgrades/replacements on distribution transformers; (6) DC PLUG; and (7) the Capital Grid project.

9. The Modified EMRP is also accompanied by four (4) CleanEnergy Omnibus Amendment Act[12] and Climate goals-driven tracking PIMs, and a fifth tracking PIM focused on neighborhood reliability. The Commission believes that the PIMs will help foster Pepco's future efforts in helping the District to achieve its climate and clean energy goals as well as improving neighborhood reliability. These PIMs will be initially deployed as tracking PIMs, and ultimately evolve into a system of fully functional incentive and penalty mechanisms, as measurement systems and implementation procedures are collaboratively developed. In addition to the tracking PIMs, Pepco will continue to: (1) fund expenses related to the Residential Demand Response Direct Load Control program reducing peak electricity demand in the District; and (2) fund the

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[10] *See RM40-2020-01, In the Matter of the 15 DCMR Chapter 40, District of Columbia Generator Interconnection Rules.*

[11] For example, the Benning Area Reliability Program ("BARP"), and the 12th and Irving Reliability Program.

[12] CleanEnergy DC Omnibus Amendment Act of 2018, D.C. Law 22-257, effective March 22, 2019 ("CleanEnergy DC Act").

Green Power Connection program which facilitates the interconnection of renewable energy facilities.

10. During the first year of deployment for these tracking PIMs, the Commission reserves the ability to harmonize the PIMs, if needed, with other decisions issued from related case dockets. The Commission is directing the PIMs Working Group to reconvene within 90 days of the issuance of this Order to propose data measurement methodologies for the PIMs approved in this Order. In addition, the Working Group should develop additional financial/tracking PIMs for the future.

11. We reaffirm our commitment to using all the regulatory authority at our disposal to ensure that Pepco's reliability continues to improve in all areas of the District and that rates remain just and reasonable. Our decision also includes a stay-out provision that prohibits Pepco from filing a new MRP application until at least January 2, 2023, with rates to be effective no earlier than January 1, 2024. Finally, we believe the Modified EMRP that we are adopting today strikes the appropriate regulatory balance and results in just and reasonable rates for all Pepco customers in the District. The Commission finds that the Modified EMRP protects consumers, ensures the quality, availability, and reliability of regulated electric services, and is in the interest of the public, including shareholders of the electric company.

II. BACKGROUND

12. On May 30, 2019, Pepco filed an application requesting authority to increase existing distribution rates for electricity by $162 million through the implementation of an MRP for the years 2020 through 2022.[13] The increase would amount to $85 million for 2020, $40 million for 2021, and $37 million for 2022. Pepco requested authority to earn a 7.81% rate of return ("ROR"), including a return on equity ("ROE") of 10.3% under its MRP Application.[14] Pepco represents that, for a typical residential customer who uses 692 kWh per month, its Application will translate to an increase in electric bills of approximately $8.57 in 2020, $3.69 in 2021, and $3.19 in 2022.[15]

13. Pepco's MRP: (1) provides for three years of rates through 2022; (2) contains an annual adjustment/true-up mechanism; and (3) maintains an identical ROE to its traditional rate

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[13] *Formal Case No. 1156*, *In the Matter of the Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia* ("*Formal Case No. 1156*"), filed May 30, 2019 ("Pepco's Application"), at 4-6. Prior to the filing of the Application, Pepco conducted four workshops on September 19, 2018, October 30, 2018, January 29, 2019, and April 9, 2019 to discuss Performance Based Rates ("PBR"), AFORs, and PIMs.

[14] *Generally,* Pepco's Application; Pepco (C)-1 at 1.

[15] The Residential Aid Discount (RAD) Program provides qualified low-income customers with a credit equal to 100% of their Pepco distribution bill and certain surcharges such that they would not face a bill increase as a result of this Application under any ratemaking approach.

proposal. Pepco proposes five financial PIMs[16] with incentives and penalties on specific utility performance and a sixth metric reporting/tracking PIM (collecting and reporting Customers Experiencing Multiple Interruptions ((“CEMI-4 performance”) but without any incentive or penalty attached.

14. In the event the Commission rejects Pepco’s MRP Proposal, Pepco includes a traditional rate application that requests, if fully approved, an increase in base distribution rates of approximately $88.6 million using the traditional cost-of-service method based on a test period ending June 30, 2019.[17] Pepco requests authority to earn a 7.81% ROR, including an ROE of 10.3% under its Traditional Application.[18] Pepco also represents that its Traditional Application would translate to an increase in distribution rates of approximately $9.55 for a typical residential customer who uses 692 kWh per month.[19]

15. Pepco asserts that the primary drivers for the rate increase in either the MRP or traditional rate proposal include improving reliability, modernizing the distribution system, providing tools to assist customers in managing their energy usage, and advancing policy goals on reliability, resiliency, clean energy integration and addressing climate change, and addressing the Company earning less than the authorized ROE.[20] Both methodologies utilize a partially-forecasted test-year ending June 30, 2019, based on six (6) months of actual data and six (6) months of forecasted data, which was updated to actual on September 16, 2019.[21]

16. On June 13, 2019, the Commission issued a Public Notice and Order No. 19956, opening *Formal Case No. 1156,* and directing petitions for intervention, scheduling a Status Conference to discuss, among other things, a consensus procedural schedule and bifurcating the case.[22] On June 21, 2019, a Public Notice of Pepco’s Application was published in the *D.C. Register*.[23] On June 27, 2019, by Order No. 19966, the Commission granted intervenor status to the District of Columbia Government (“DCG”), U.S. General Services Administration (“GSA”), the District of Columbia Water and Sewer Authority (“DC Water”), Washington Gas Light

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[16] A PIM is a mechanism designed to provide an incentive for specific action by a utility. PIMs can often take the form of specific measurable metrics for a utility to track and report. In financial PIMs, if a utility exceeds a certain target, its ROE increases by a given amount, and if the utility underperforms, and it does not meet a certain target, its ROE decreases by a given amount.

[17] Pepco’s Application; Pepco (D)-1 at 1.

[18] *Generally*, Pepco’s Application; Pepco (C)-1 at 1.

[19] Pepco’s Application at 8.

[20] Pepco’s Application, Exhibit (B) at 50. According to Pepco, its June 30, 2019 unadjusted earned ROE is only 5.81%, which is significantly below the authorized ROE of 9.525%.

[21] Pepco (2B) (McGowan Supplemental Direct); Pepco (2C) (Wolverton Supplemental Direct); Pepco (2D) (Ziminsky Supplemental Direct); and Pepco (2F) (Blazunas Supplemental Direct).

[22] *Formal Case No. 1156*, Order No. 19956, rel. June 13, 2019 (“Order No. 19956”).

[23] 66 *D.C Reg.* 7573-7577 (June 21, 2019).

Company ("WGL"), the Apartment and Office Building Association of Metropolitan Washington ("AOBA"), the International Brotherhood of Electrical Workers, Local Union 1900 ("IBEW"), the Baltimore-Washington Construction and Public Employees Laborers' District Council ("BWLDC"), the Small Business Utility Advocates ("SBUA"), and the Maryland DC Virginia Solar Energy Industries Association ("MDV-SEIA").[24] The Office of the People's Counsel of the District of Columbia ("OPC") is a party as of right.[25]

17. On June 28, 2019, Commission Staff convened a Status Conference. On July 8, 2019, Pepco filed the Status Conference Report, which included Pepco's proposed procedural schedule and a joint proposed procedural schedule from OPC, AOBA, and DCG.[26]

18. On August 9, 2019, by Order No. 20204, the Commission directed Pepco to hold technical conferences on the mechanics of the proposed MRP Annual Reconciliation Filing ("ARF") and the Bill Stabilization Adjustment ("BSA") framework that are part of its Application. The Commission scheduled a two-day technical conference providing Parties and interested persons an opportunity to provide comments on identifying alternative ratemaking approaches, including PIMs, that further the Commission's PowerPath DC (formerly MEDSIS) goals and the District's energy-related objectives, such as climate change, renewable development, development of new consumer solutions, grid resiliency and other energy-related objectives laid out in the Clean Energy DC Plan. The Commission also directed the Parties "to identify how any PIMs they support or propose advance the PowerPath DC Vision and District's goals as part of their submission and subsequent testimony."[27] Also, the Order adopted an 18-month procedural schedule to review and consider Pepco's Traditional one-year cost of service proposal alongside the Company's MRP proposal and PIMs.[28]

19. On September 16, 2019, Pepco filed Supplemental Direct testimony with actual data for the previously forecasted numbers during the test year. The Supplemental Direct

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24 *Formal Case No. 1156*, Order No. 19966, rel. June 27, 2019.

25 *See* D.C. Code §34-804 (2001) (OPC is a party, as of right, in any Commission investigation, valuation, or reevaluation, concerning any public utility operating in the District of Columbia). In this case, the Direct Testimony of OPC, Pepco or an intervenor is designated (for example) as "OPC ( ) (name of witness)"; while Rebuttal Testimony is cited as "Pepco (3-) (name of witness)"; a post-hearing initial brief is "AOBA Br."; and a post-hearing reply brief is "DCG R.Br."

26 *Formal Case No. 1156*, Minutes from the June 28, 2019, Status Conference as well as the Parties' Telephonic Conference on July 1, 2019, filed July 8, 2019 ("Status Report"). Attached to the minutes were Attachment 1 (Pepco's Proposed Procedural Schedule) and Attachment 2 (OPC/AOBA/DCG's Proposed Procedural Schedules). SBUA supported OPC/AOBA/DCG proposed schedule. The other intervenors took no position on either of the proposed schedules. *See* Status Report at 6.

27 *Formal Case No. 1156,* Order No. 20204, ¶ 32, rel. August 9, 2019 ("Order No. 20204").

28 *Formal Case No. 1156,* Order No. 20204, Attachment A.

testimony lowered the MRP filing request to $160 million and the traditional ratemaking proposal test year request to $85 million.[29]

20. The Commission convened the two-day AFOR Technical Conference on October 17 -18, 2019. As a result of the technical conference and filed comments, the Commission issued Order No. 20273 establishing an overarching framework for evaluating AFORs and creating a PIMs specific working group.[30] In that Order, the Commission stated that the AFORs represent a fundamental change from cost of service regulation and offers the potential of increased benefits for both ratepayers and the utility.[31] The Commission held that a properly constructed MRP could produce reasonable rates and set forth the types of information that a utility should consider when formulating an AFOR application inclusive of the directives from D.C. Code § 34-1504(d).[32] Other requirements outlined in the Order included structuring the MRP to align with the District's public policy goals related to public safety, conservation of natural resources, and the preservation of environmental quality, including mitigating effects on global climate change. In the same Order, the Commission noted that the framework is a starting point for an evolving evaluation process for AFOR proposals (*i.e.,* Pepco's MRP), which can be reviewed and modified in the future as the public interest requires.[33] The Order sets forth a broad range of general guidelines for the MRP and PIMs, directed the Parties to address the guidelines in their filed testimony, and extended the procedural schedule.[34] In addition, the Order directed Pepco, OPC, and DCG to convene and facilitate three workshops to discuss PIMs.[35]

21. On January 2, 2020, OPC, AOBA, DCG, DC Climate Action,[36] and GSA filed a joint motion for partial summary judgment ("Partial Summary Judgment Motion") regarding the Company's proposed treatment of the Non-Protected Property-Related Estimated Deferred Income Tax ("NPP EDIT") and Non-Protected, Non-Property-Related EDIT ("NPNP EDIT") arguing that the Company's proposal in its Application was contrary to the Commission-approved Non-Unanimous Full Settlement Agreement and Stipulation approved in *Formal Case Nos.*

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[29] *Formal Case No. 1156*, Potomac Electric Power Company's Supplemental Direct Testimony, filed September 16, 2019.

[30] *Formal Case No. 1156*, Order No. 20273, rel. December 20, 2019. The working group was inclusive of non-Party participants and was to convene for three meetings to continue discussion on what are achievable PIMs in this rate case as it relates to the policies and goals the Commission adopted in Order No. 20273.

[31] *Formal Case No. 1156*, Order No. 20273, ¶¶ 88-89.

[32] *Formal Case No. 1156*, Order No. 20273, ¶¶ 7, 92, 96, 98.

[33] *Formal Case No. 1156*, Order No. 20273, ¶ 95.

[34] *Formal Case No. 1156*, Order No. 20273, ¶ 103.

[35] *Formal Case No. 1156*, Order No. 20273, ¶ 116. The PIMs meetings were held on January 28, 2020, February 25, 2020, and June 10, 2020, with a Final Report filed on June 22, 2020.

[36] Although not a party in *Formal Case No. 1156*, DC Climate Action was a party in *Formal Case Nos. 1150 and 1151* and was a signatory to the *Formal Case No. 1150/1151* Settlement Agreement.

1150/1151, Order No. 19433.[37] Subsequently, Pepco filed Second Supplemental Direct Testimony on January 21, 2020.[38] On February 5, 2020, the Commission issued Order No. 20293, which, among other things, granted the Partial Summary Judgment Motion and directed Pepco to revise its Application and work papers consistent with the Non-Unanimous Full Settlement Agreement and Stipulation within 15 days, and the Commission again revised the procedural schedule.[39]

22. On February 19, 2020, BWLDC filed Direct Testimony.[40] Pepco filed additional Supplemental Direct Testimony on February 20, 2020.[41] OPC, DCG, AOBA, and GSA each filed Direct Testimony on March 6, 2020.[42] OPC filed additional Direct Testimony on March 9, 2020.[43]

23. On March 11, 2020, Mayor Bowser declared a public emergency and public health emergency due to the COVID-19 pandemic.[44] On April 8, 2020, Pepco, OPC, AOBA, and DCG filed Rebuttal Testimony.[45] Pepco's Rebuttal Testimony supported its MRP proposal and lowered the MRP request to $147.2 million and decreased the traditional test year revenue request to $76.7 million.

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[37] *Formal Case No. 1156*, Joint Motion for Partial Summary Judgment and Related Relief filed January 2, 2020.

[38] *Formal Case No. 1156*, Potomac Electric Power Company's Second Supplemental Direct Testimony, filed January 21, 2020.

[39] *Formal Case No. 1156,* Order No. 20293, ¶¶ 25, 26, and Attachment A, rel. February 5, 2020.

[40] *Formal Case No. 1156*, Baltimore Washington Construction & Public Employees Laborers' District Council's Direct Testimony of Steve Lanning and Direct Testimony & Exhibits of Scott Hempling, filed February 19, 2020.

[41] *Formal Case No. 1156*, Potomac Electric Power Company's Supplemental Direct Testimony, filed February 20, 2020.

[42] *Formal Case No. 1156*, the Office of the People's Counsel's for the District of Columbia's Direct Testimony, filed March 6, 2020; *Formal Case No. 1156*, the District of Columbia Government's Direct Testimony, filed March 6, 2020; *Formal Case No. 1156*, the Apartment and Office Building Association of Metropolitan Washington's Direct Testimony, filed March 6, 2020; *Formal Case No. 1156*, the United States General Services Administration's Direct Testimony, filed March 6, 2020.

[43] *Formal Case No. 1156*, the Office of the People's Counsel's for the District of Columbia's Direct Testimony, filed March 9, 2020.

[44] Mayor's Order 2020-045, Declaration of Public Emergency: Coronavirus (COVID-19), issued March 11, 2020, https://mayor.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/MO.DeclarationsfPublicEmergency03.11.20.pdf; Mayor's Order 2020-0046, Declaration of Public Health Emergency; https://mayor.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/MO.DeclarationsfPublicHealthEmergency03.11.20.pdf. Since the issuance of these declarations, the Mayor has issued several extensions of the noted emergencies.

[45] *Formal Case No. 1156*, Potomac Electric Power Company's Rebuttal Testimony, filed April 8, 2020; *Formal Case No. 1156,* the Office of the People's Counsel's for the District of Columbia's Rebuttal Testimony, filed April 8, 2020; *Formal Case No. 1156*, the Apartment and Office Building Association's Rebuttal Testimony, filed April 8, 2020; *Formal Case No. 1156*, the District of Columbia Government's Rebuttal Testimony, filed April 8, 2020.

24. On April 13, 2020, after the submission of Rebuttal Testimony, OPC, AOBA, DCG, and BWLDC filed a Joint Emergency Motion to Suspend Rate Case During Pendency of the COVID-19 Crisis ("Emergency Motion to Suspend").[46] On April 20, 2020, Pepco filed its response to the Emergency Motion to Suspend.[47] On May 20, 2020, by Order No. 20349, the Commission, among other things, denied the Emergency Motion to Suspend and directed the Parties to include in their Surrebuttal Testimony "how and to what extent the COVID-19 pandemic related events affect the evaluation of Pepco's MRP proposal."[48] On June 1, 2020, in response to Order No. 20349, Pepco, OPC, AOBA, DCG, GSA, and BWLDC each filed Surrebuttal Testimony.[49] Pepco's Surrebuttal Testimony offered an Enhanced MRP Proposal ("EMRP") as an alternative package to the original MRP Proposal. Pepco's EMRP is structured as a three-year proposal requesting a $135.9 million increase covering 2020, 2021, and 2022. Pepco's proposal includes, among other things, offset/credits, annual reconciliation filings, a deferred accounting mechanism, stay-out provision, and a reopener provision. Specifically, Pepco represents that, if fully approved, the EMRP Proposal, with certain rate offsets, would result in no increase in distribution rates in CY2020 and CY2021, and a $7.97 increase in CY2022 for a typical residential SOS customer.[50]

25. On June 8, 2020, OPC, AOBA, and BWLDC filed a Joint Emergency Motion to Strike Pepco's Surrebuttal Testimony Pertaining to the Company's New MRP Proposal and for Summary Judgment on Pepco's Multiyear Rate Plan Application ("Emergency Motion to

[46] *Formal Case No. 1156*, the Office of the People's Counsel's for the District of Columbia's Joint Emergency Motion to Suspend Rate Case During the Pendency of the COVID-19 Crisis, filed April 13, 2020.

[47] *Formal Case No. 1156*, Potomac Electric Power Company's Response to Joint Emergency Motion to Suspend, filed April 20, 2020.

[48] *Formal Case No. 1156*, Order No. 20349, ¶ 11, rel. May 20, 2020 ("Order No. 20349"). On the same date, District of Columbia Councilmember Kenyan McDuffie, the Chair of the Committee on Business and Economic Development, sent a letter to Chairman Phillips requesting that the Commission investigate the impact of the COVID-19 pandemic on District of Columbia consumers and the public. On April 15, 2020, the Commission opened *GD2020-01-M* authorizing Pepco and WGL to create a regulatory asset account to record the incremental costs related to COVID-19 that were prudently incurred beginning March 11, 2020, to ensure that District of Columbia residents would continue to have essential utility services during the public health emergency. In addition, on May 28, 2020, the Commission opened *Formal Case No. 1164*, to investigate the impact of the COVID-19 crisis on public utilities and District ratepayers.

[49] *Formal Case No. 1156*, the Potomac Electric Power Company's Surrebuttal Testimony, filed June 1, 2020; *Formal Case No. 1156*, Office of the People's Counsel's for the District of Columbia's Surrebuttal Testimony, filed June 1, 2020; *Formal Case No. 1156*, the Apartment and Office Building Association of Metropolitan Washington's Surrebuttal Testimony, filed June 1, 2020; *Formal Case No. 1156*, the District of Columbia Government's Testimony, filed June 1, 2020; and *Formal Case No. 1156*, the Baltimore Washington Construction & Public Employees Laborers' District Council's Surrebuttal Testimony, filed June 1, 2020.

[50] Pepco (5F) at 7:13-18 and Table 1 (Blazunas Surrebuttal). Pepco indicates that the residential bill would increase in 2022 by $7.97. Additionally, after the Rider ERR credit expires in 2023, the total residential bill increase for two years would equal $13.22.

Strike").[51] On June 10, 2020, GSA filed comments supporting the Emergency Motion to Strike.[52] On June 12, 2020, Pepco filed a response opposing the Emergency Motion to Strike.[53] On June 16, 2020, DCG filed comments in support of the Emergency Motion to Strike and moved for clarification and additional procedures.[54] By Order No. 20368, the Commission denied the Emergency Motion to Strike and directed the Commission's General Counsel to convene a virtual status conference with the Parties to discuss a proposed procedural schedule that would permit additional discovery and supplemental testimony addressing Pepco's EMRP.[55] The virtual status conference was held on June 22, 2020. By Order No. 20375, the Commission denied DCG's motion for alternative relief and adopted a new procedural schedule.[56]

26. OPC, AOBA, DCG, and GSA filed Supplemental Testimony addressing Pepco's EMRP on July 27, 2020.[57] On July 28, 2020, Pepco filed an Errata to its previously filed Rebuttal Testimony.[58] On July 28, 2020, DCG filed a Supplement to its Supplemental Testimony.[59] On July 31, 2020, Pepco filed a Motion to File Supplemental Testimony, accompanied by the Supplemental Testimony and Exhibits.[60] On August 11, 2020, Joint Movants filed a Joint Protest of Pepco's July 31, 2020, Motion to File Supplemental Testimony and a Joint Motion to Dismiss MRP Enhanced Proposal, to Direct Withdrawal of Pepco's Rate Case Application, and for

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51 *Formal Case No. 1156,* Office of the People's Counsel for the District of Columbia's Joint Emergency Motion to Strike Pepco's Surrebuttal Testimony Pertaining to the Company's New MRP Proposal and for Summary Judgment on Pepco's Multiyear Rate Plan Application, filed June 8, 2020.

52 *Formal Case No. 1156,* United States Government Service Administration's Comments in Support of the Emergency Motion to Strike, filed June 10, 2020.

53 *Formal Case No. 1156*, Response of Potomac Electric Power Company in Opposition to the Joint Emergency Motion to Strike, filed June 12, 2020.

54 *Formal Case No. 1156*, District of Columbia Government Response to Joint Emergency Motion to Strike Pepco's Surrebuttal Testimony and for Summary Judgement on Pepco's Multiyear Rate Plan and Motion for Relief in the Alternative ("DCG's Motion for Relief"), filed June 16, 2020.

55 *Formal Case No. 1156,* Order No. 20368, ¶ 16, rel. June 18, 2020.

56 *Formal Case No. 1156,* Order No. 20375, ¶ 10, rel. July 8, 2020.

57 *Formal Case No. 1156*, the Office of the People's Counsel's for the District of Columbia's Supplemental Surrebuttal Testimony, filed July 27, 2020; *Formal Case No. 1156*, the Apartment and Office Building Association's Supplemental Surrebuttal Testimony, filed July 27, 2020; *Formal Case No. 1156*, the District of Columbia Government's Supplemental Testimony, filed July 27, 2020; and, *Formal Case No. 1156*, the United States General Services Administration's Supplemental Surrebuttal Testimony, filed July 27, 2020.

58 *Formal Case No. 1156*, the Potomac Electric Power Company's Errata to Rebuttal Testimony, filed July 28, 2020 ("Errata").

59 *Formal Case No. 1156*, District of Columbia Government's Supplement to Supplemental Testimony, filed July 28, 2020.

60 *Formal Case No. 1156,* the Potomac Electric Power Company's Motion to File Supplemental Testimony Regarding the Company's July 28, 2020 Errata Filing, accompanied by the Supplemental Testimony, filed July 31, 2020.

Additional Relief ("Motion to Dismiss").[61] DCG and IBEW filed letters in support of the Motion to Dismiss on August 12, 2020, and August 13, 2020, respectively.[62] On August 18, 2020, Pepco filed a response in opposition to the Motion to Dismiss.[63] On August 19, 2020, the Joint Movants of the Motion to Dismiss filed a reply to Pepco's Response.[64] On August 20, 2020, DCG filed a letter in support of the Joint Movants' Reply.[65]

27. By Order No. 20617, the Commission granted Pepco's Motion to file Supplemental Testimony regarding Pepco's Errata, accepted the Supplemental Testimony correcting the forecasted demand billing determinants, held in abeyance the Motion to Dismiss, and directed Pepco to hold a virtual technical conference to discuss the forecasted billing determinants and associated work papers.[66] The virtual technical conference was held on September 10, 2020.

28. On September 24, 2020, Order No. 20632 denied the Joint Motion to Dismiss, concluding that the better course of action was to decide this proceeding on the merits.[67] The Commission amended the procedural schedule to allow for discovery regarding Pepco's Errata filing and the related Supplemental Testimony and responsive testimony. The Commission also permitted Pepco to respond to the Parties' responsive testimony.[68] On October 9, 2020, OPC and

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[61] *Formal Case No. 1156,* the Office of the People's Counsel for the District of Columbia, the Apartment & Office Building Association of Metropolitan Washington, the General Services Administration, the District of Columbia Water and Sewer Authority, Baltimore Construction and Public Employees Laborers' District Council, the Maryland DC Virginia Solar Energy Industries Association, and Small Business Utility Advocates Joint Protest of Pepco's July 31, 2020 Motion to file Supplemental Testimony and Joint Motion to Dismiss MRP Enhanced Proposal, to Direct Withdrawal of Pepco's Rate Case's Application, and for Additional Relief, filed August 11, 2020.

[62] *Formal Case No. 1156*, District of Columbia Government's Letter in Support of Joint Motion to Dismiss, filed August 12, 2020; and *Formal Case No. 1156*, International Brotherhood of Electrical Workers, Local Union 1900's Letter in Support of Joint Motion to Dismiss, filed August 13, 2020.

[63] *Formal Case No. 1156*, Potomac Electric Power Company's Response to Joint Protest and Motion to Dismiss, filed August 18, 2020.

[64] *Formal Case No. 1156*, Office of the People's Counsel for the District of Columbia's Reply, on behalf of the Joint Movants, to Pepco's Response, filed August 19, 2020.

[65] *Formal Case No. 1156,* District of Columbia Government's Letter in Support of Joint Movants' Reply, filed August 20, 2020.

[66] *Formal Case No. 1156,* Order No. 20617, ¶¶ 12,14, rel. August 21, 2020 ("Order No. 20617").

[67] *Formal Case No. 1156*, Order No. 20632, ¶ 21, rel. September 24, 2020 ("Order No. 20632"). The Commission also rejected the Motion to Dismiss' claim that the MRP Enhanced Proposal should be dismissed for failing to comply with the AFOR Order.

[68] *Formal Case No. 1156*, Order No. 20632, ¶ 24 and Attachment A.

AOBA filed Second Supplemental Testimony.[69] Pepco filed its Fourth Supplemental Testimony on October 14, 2020.[70]

29. The Commission held one virtual community hearing in this proceeding on September 29, 2020. Virtual evidentiary hearings were held on October 26-27, 2020.[71] Pepco, OPC, AOBA, DCG, GSA, and BWLDC each filed post-hearing briefs on December 9, 2020,[72] and post-hearing reply briefs were filed by Pepco, OPC, AOBA, DCG, GSA, BWLDC, and IBEW on December 23, 2020.[73] The record in this proceeding closed on December 23, 2020.

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69 *Formal Case No. 1156*, the Office of the People's Counsel for the District of Columbia's Second Supplemental Testimony, filed October 9, 2020; and, *Formal Case No. 1156*, the Apartment and Office Building Association's Second Supplemental Testimony, filed October 9, 2020.

70 *Formal Case No. 1156*, the Potomac Electric Power Company's Fourth Supplemental Testimony, filed October 14, 2020.

71 *Formal Case No. 1156*, Transcripts of the Virtual Evidentiary Hearing convened on October 26, 2020, and October -27, 2020, filed October 27, 2020, and October 28, 2020, respectively. Transcripts of the Commission's Evidentiary Hearings are cited as "Tr.___,"..___,".._.

72 *Formal Case No. 1156*, the Potomac Electric Power Company's Initial Brief, filed December 9, 2020 ("Pepco's Brief"); *Formal Case No. 1156*, the Office of the People's Counsel for the District of Columbia's Initial Brief, filed December 9, 2020 ("OPC's Brief"); *Formal Case No. 1156*, the Apartment and Office Building Association of Metropolitan Washington's Initial Post-Hearing Brief, filed December 9, 2020 ("AOBA's Brief"); *Formal Case No. 1156*, District of Columbia Government's Initial Brief, filed December 9, 2020 ("DCG Brief"); *Formal Case No. 1156*, General Services Administration's Initial Brief, filed December 9, 2020 ("GSA's Brief"); and *Formal Case No. 1156*, the Baltimore Washington Construction and Public Employees Laborers' District Council's Initial Brief, filed December 9, 2020 ("BWLDC's Brief").

73 *Formal Case No. 1156*, Potomac Electric Power Company's Reply Brief, filed December 23, 2020 ("Pepco's Reply Brief"); *Formal Case No. 1156*, the Office of the People's Counsel for the District of Columbia's Reply Brief, filed December 23, 2020 ("OPC's Reply Brief"); *Formal Case No. 1156*, the Apartment and Office Building Association of Metropolitan Washington's Reply Brief, filed December 23, 2020 ("AOBA's Reply Brief"); *Formal Case No. 1156*, District of Columbia Government's Reply Brief, filed December 23, 2020 ("DCG Reply Brief"); *Formal Case No. 1156*, the General Services Administration's Reply Brief, filed December 23, 2020 ("GSA's Reply Brief"); Baltimore Washington Construction and Public Employees Laborers' District Council's Initial Brief, filed December 23, 2020 ("BWLDC's Reply Brief"); and *Formal Case No. 1156*, the International Brotherhood of Electrical Worker's Reply Brief, filed December 23, 2020 ("IBEW's Reply Brief"). On November 10, 2020, to correct typographical and other errors, Pepco, OPC, and DCG filed motions to correct the transcript of the Commission hearings held October 26th and October 27th, 2020. The Commission, after review, finds that all of the requested corrections are reasonable, and will clarify the record of these proceedings. No party objects. Accordingly, the motions to correct the transcripts of the Commission hearings are **GRANTED.**

III. ALTERNATIVE FORMS OF REGULATION ("AFOR")/ RATEMAKING PARADIGM

A. Statutory Overview

1. Applicable Requirements for AFOR

30. Pursuant to D.C. Code § 34-1504(d), the Commission has the authority to adopt AFORs, provided the Commission finds that the AFOR: (1) protects consumers; (2) ensures the quality, availability, and reliability of regulated services; and (3) is in the interest of the public, including the electric company's shareholders.[74]

31. The Commission must also evaluate Pepco's Rate Application according to the standard outlined in D.C. Code § 34-808.02, which requires that the Commission "consider the public safety, the economy of the District, the conservation of natural resources, and the preservation of environmental quality, including effects on global climate change and the District's public climate commitments."[75]

2. Commission Framework for AFOR

32. By Order No. 20273, the Commission established the overarching framework principles for AFORs in the District. The Commission stated that AFORs represents a fundamental change from cost-of-service regulation and offers the potential of increased benefits for both ratepayers and the utility. In the same Order, we noted that the framework is a starting point for an evolving evaluation process for AFOR proposals (*i.e.,* Pepco's MRP/PIMs), which can be reviewed and modified in the future as the public interest requires.[76] The Commission also proposed broad general guidelines for considering and developing PIMs.[77] The Commission makes clear that Order No. 20273 is a policy decision which sets principles and guidelines rather than bright-line requirements.[78]

3. Parties' Positions on Adoption of AFOR

33. **Pepco.** The Company asserts that the Commission should move away from the traditional form of regulation and adopt the Company's proposed MRP because the current traditional regulatory process does not provide proper alignment of the Company's investments

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74 D.C. Code §§ 34-1504(d) (2) (2001). The Commission notes that D.C. Code § 34-1504(d) (3) provides a non-exhaustive list of AFORs that the Commission may consider.

75 D.C. Code § 34-808.02 (2001).

76 *Formal Case No. 1156*, Order No. 20273, ¶ 95.

77 *Formal Case No. 1156*, Order No. 20273, ¶ ¶ 101, 103.

78 *Formal Case No. 1156*, Order No. 20632, ¶ 21.

and performance with District policy goals and customer expectations.[79] Pepco notes that the Company is proposing an MRP because: (1) it provides benefits to customers, including improved transparency and regulatory efficiency, lowers administration costs after the adoption of an MRP, and increases Company accountability; (2) it permits stakeholders to better understand the investments the Company is making to address changing customer needs and jurisdictional policy goals; (3) given the level of investments required going forward, an MRP will reduce the frequency of rate cases required to support the Company's investment plans; and (4) the level of investments required presently has outpaced the level of new revenues resulting in ROEs significantly below authorized levels.[80] Pepco asserts the expected benefits from the prospective MRP, which contain certain PIMs, include increased transparency into planned utility investments, alignment of District policy goals and customer expectations, improved timing of utility cost recovery, providing the Company with the opportunity to earn its ROE, streamlining the regulatory process, a reduction in the number of rate case proceedings, and greater rate predictability to customers.[81] According to Pepco, unlike traditional ratemaking, which is retrospective in nature, an MRP allows the Company to manage investments on a forward-looking basis. Because investments that drive reliability, resiliency, and sustainability occur over multiple years, it becomes increasingly difficult for Pepco to continue to fund these costs when there is uncertainty regarding what can be recovered and when.[82]

34. Pepco indicates that both its MRP and EMRP provide baseline revenue and cost information that clearly explains the process for projected revenues and expenses and provides an appropriate level of transparency and reporting into the utility's operational and capital plans ensuring that the plans will be maintained during the duration of the AFOR.[83] The EMRP revenues are based upon the historical operating revenues as of June 30, 2019, and the annual additions to Plant in Service and O&M expenses are projected from the adjusted June 30, 2019, balances using an escalation factor or an index approach.[84] For the MRP, Pepco used a Long Range Plan to project plant additions and O&M costs.[85] Furthermore, both the MRP and the EMRP contain a reconciliation mechanism where Pepco will be required to file construction projects and O&M

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[79] Pepco's Initial Brief at 21.

[80] Pepco's Initial Brief at 16-22.

[81] Pepco's Initial Brief at 22-23.

[82] Pepco's Initial Brief at 23.

[83] Pepco (C) at 4:2-9; Pepco (C)-2 (Wolverton Direct) regarding Pepco's Original MRP; Pepco's EMRP revenue requirements model reflected in Exhibit Pepco (6C)-1 assumes that operating revenue is flat, *i.e.*, does not change throughout the EMRP periods (2020, 2021, and 2022). It also lists the cost information through 2022 with an annual escalator.

[84] Pepco (C) at 6:9-16 (Wolverton Direct) regarding Pepco's Original MRP; Pepco (6C) at 6:21-8:1 (Wolverton Surrebuttal) regarding Pepco's EMRP.

[85] Pepco (C) at 6:8-11; 11: 6-16 (Wolverton Direct).

budgets giving customers information about the Company's plans during the EMRP period.[86] Also, Pepco indicates in its testimony how the MRP and EMRP align with the Commission's AFOR Order.[87]

35. **OPC.** OPC supports the continued use of traditional cost of service ratemaking.[88] OPC Witness DeCourcey states that he does not believe that there is a benefit to using Pepco's proposed AFOR/MRP because the proposed MRP: (1) fails to achieve its stated goals; (2) adds complexity; (3) reduces transparency; (4) fails to demonstrably benefit customers; (5) could create harm to customers (including increased costs); (6) is inconsistent with Commission policy; and (7) does not align with the District's goals.[89] As a result, OPC recommends that Pepco's MRP be rejected and the Company's traditional cost of service application be adopted. Witness DeCourcey further states that in the event the Commission decides instead to move forward with an AFOR, he recommends that the Commission implement a pilot program in which rates are set on a multi-year basis but are based on vetted historical costs.[90] In relation to the reduction in transparency, witness DeCourcey contends the MRP would create unequal access to information because Pepco proposes to replace the detailed review of well-documented historical cost and revenue data for its test year with one-time access to its Long Range Plans ("LRPs") based on proprietary forecasts developed by the Company.[91] Lastly, witness DeCourcey rejects Pepco's claim that adopting the MRP would reduce the regulatory burden since the Company would still have to annually adjudicate its ARF.[92]

36. **AOBA.** AOBA supports AFORs, including MRP with PIMs, but finds Pepco's proposal deficient. AOBA witness B. Oliver asserts that Pepco's proposed AFOR lacks some of the most basic objectives of AFORs because the proposal does not reduce the cost of regulation, increase rate stability and/or predictability for ratepayers, or limit the overall costs that the Company can expect to recover or the dollar amounts that may be billed to each rate class.[93] Witness B. Oliver further claims that Pepco's MRP is not transparent and does not provide a meaningful opportunity to review the prudence of Pepco's actual expenditures.[94] Witness B.

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86 Pepco (C) at 36:5-9 (Wolverton Direct) regarding Pepco's Original MRP; *See* Commission Exhibit 12 regarding Pepco's EMRP.

87 *See* Pepco (3B) at 7, Table 3) (McGowan Second Supp. Direct); Pepco (3C) at 4:10-12:1 (Wolverton Second Supp. Direct); Pepco (2J) at 4:13-6:21 (Zarakas Supp. Direct).

88 OPC (C) at 3:12-17 (DeCourcey Direct).

89 OPC (C) at 2:16-3:10 (DeCourcey Direct).

90 OPC (C) at 3:19-4:6 (DeCourcey Direct).

91 OPC (C) at 27:18-28:7 (DeCourcey Direct).

92 OPC (C) at 32:15, 33:7-9, and 34:5 (DeCourcey Direct).

93 AOBA (A) at 8:17-21 (B. Oliver Direct).

94 AOBA (A) at 10:7-10 and 67:8-12 (B. Oliver Direct).

Oliver argues that because Pepco has not met the basic criteria for implementation of an MRP, AOBA is not recommending approval at this time.[95]

37. **DCG.** DCG does not support Pepco's MRP because the MRP: (1) does not provide appropriate incentives for cost containment or protect customers from unreasonable risks; (2) shifts risk to customers because it (a) exacerbates existing information asymmetries by relying on cost forecasts, which are not anchored in comprehensive grid modernization or distribution system plans, and (b) lacks transparency in its proposed cost variance reporting; (3) does not sufficiently advance or align with the District's public policy goals, such as grid modernization, the adoption of DERs, and the development of NWAs; (4) does not adequately qualify, quantify, or measure benefits it would provide to its customers; and (5) incorporates PIMs that do not advance the energy goals of the District, as they target only those activities that the Company is already required to perform under Commission regulations.[96] For the above reasons, DCG witness Lane concurred with OPC, AOBA, and GSA that Pepco's MRP proposal and PIMs should be rejected.[97]

38. **GSA.** GSA asserts that Pepco has not demonstrated that the MRP would significantly improve regulatory efficiency or provide material benefits to ratepayers. GSA witness Goins asserted that while Pepco's MRP would most likely reduce the frequency of rate cases and regulatory lag incentive to control costs, GSA did not believe that rate case frequency and regulatory lag were problems that necessitate adopting Pepco's MRP. GSA also notes that Pepco has not proposed eliminating the BSA if the Commission approves its MRP.

4. Commission Decision on AFOR

39. In Order No. 18846, the Commission said it would consider any AFOR proposal should it: (1) include a baseline revenue and cost evaluation, which is equivalent to a historical test year; (2) provide an explanation on how to project revenues and expenses; and (3) include a mechanism for Parties to reconcile any forecasted components to subsequent actuals for the same test year.[98] Both of Pepco's proposals meet these minimum requirements and we re-affirm our decision that Pepco's MRP and EMRP rate proposals will be considered on the merits within the overarching AFOR principles established in Order No. 20273, D.C. Code §34-1504(d), and D.C. Code §34-808.02.[99]

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[95] AOBA (A) at 8:3-7 (B. Oliver Direct).

[96] DCG (A) at 4:3-5:5 and 62:1-23 (Lane Direct).

[97] GSA (A) at 10:6-11:3 (Goins Direct).

[98] *Formal Case No. 1139,* Order No. 18846, ¶ 594.

[99] *Formal Case No 1156*, Order No. 20273, ¶ 87; *see also* Order No. 20632, ¶ 21 (Order No. 20273 sets out "principles" and guidelines" rather than bright-line requirements"). In any event, we affirm that Pepco's EMRP meets the Commission's AFOR framework. *See* Pepco (3B) at 7, Table 3) (McGowan Second Supp. Direct); Pepco (3C) at 4:10-12:1 (Wolverton Second Supp. Direct); Pepco (2J) at 4:13-6:21 (Zarakas Supp. Direct).

B. Pepco's Multiyear Rate Plan ("MRP")

1. Original MRP

40. Pepco's proposal consists of an MRP with PIMs. According to Pepco, it's MRP: (1) provides for three years of rates for 2020, 2021, and 2022; (2) provides projected costs/revenue requirement calculations to be performed with internal forecast for structure and O&M and a ratemaking adjustment ("RMA") for O&M inflation index; (3) contains an annual adjustment/true-up mechanism to be filed annually on May 15th; (4) maintains an ROE of 10.3%, which is identical to its Traditional rate proposal; (5) provides an Earning Sharing Mechanism ("ESM") with a deadband and an asymmetric ESM to automatically share over-earnings but requires a request for approval to share under-earnings; (6) provides PIMs; (7) provides a smoothing mechanism; (8) provides a Rate Deferral Mechanism ("RDM"); (9) provides a deferred accounting mechanism (ability to request deferral for a minimum of $1 million revenue requirement related to external events during an MRP period); and (10) provides a reopener provision.[100]

41. More specifically, witness Wolverton indicates that the MRP included the 2018 actual District per books data.[101] In describing the MRP, witness Wolverton's Rebuttal states that the MRP supports a cumulative revenue requirement through 2022 of $147.2 million[102] that would be implemented through a rate increase of $77.3 million when the Commission's decision is issued, an increase of $36.8 million on January 1, 2021, and an increase of $33.1 million on January 1, 2022. The increases incorporate a smoothing adjustment.[103] The proposal provides for an ROE of 10.3%, with the base year December 31, 2019, and projections based on LRP and forecasts including step increases using forecasted costs.[104]

42. Pepco states that the MRP uses a "bridge year" to transition from a historical test year to a future test year, and the base year for the Traditional is 2018 with the bridge year of

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[100] Pepco (B) at 32:3-33:10 (McGowan Direct).

[101] Pepco (C) at 4:2-9; Pepco (C)-2 (Wolverton Direct). The Original MRP Proposal included 2019 as a bridge year between the 2018 historical costs and forecasted years, and the MRP period was 2020 through 2022.

[102] Pepco (5C) at 2:1-2 (Wolverton Rebuttal). When the Original MRP Proposal was filed, the cumulative revenue requirement was approximately $162 million. PEPCO (C): Wolverton Direct at 3, Table 2. As discussed further below, the Company proposed to use the term of the Original MRP Proposal to smooth the rate increases by shifting some of the increase to 2021-2022. PEPCO (C): Wolverton Direct at 31:4-9, Table 22.

[103] Pepco (5C) at 39, Table 4 (Wolverton Rebuttal). A Smoothing Adjustment is a mechanism that operates to more evenly smooth out any rate increase so as to spread out the rate increases over the term of the MRP to reduce the increase in distribution rates for customers by reducing the revenue requirements by a single percentage point.

[104] Pepco (C) at 4:11-14 (Wolverton Direct).

2019.[105] The bridge year is based on budgeted information and 2020-2022 forecast years from the 2018 LRP 5-year forecast for 2019-2023.[106]

43. Pepco asserts that the Company used the same methodology as it did in *Formal Case Nos. 1103 and 1139* to determine distribution-related cost of service in this case.[107] Pepco details how the Company calculated its O&M expenses by starting with Pepco Holdings, Inc.'s ("PHI") LRP, which is Pepco's process for establishing targets for budgets and planning and includes projection of O&M expenses through 2022.[108] Pepco indicates that the Company used a stair-step approach for projecting O&M expenses and asserts that it is an approach that matches utility costs and revenue in a transparent manner that facilitated review and provided control incentives by setting rates in accordance with utility-specific forecasts.[109]

44. The distribution revenues for each year of the MRP are primarily determined on the basis of Pepco's distribution customers and the BSA revenue per customer as approved in *Formal Case Nos. 1150/1151*.[110] Pepco explains that the distribution revenue forecast was developed through econometric modeling to show the growth of customer base and sales.[111] Pepco also receives other revenues based on the actual calendar year 2018 from late payments, rent from electric property, interconnection fees, reconnection fees, and other miscellaneous revenues.[112] Witness Wolverton calculated the Company's rate base, allocated Pepco's projected costs to distribution and the District, and determined the various RMAs included in the MRP.

45. Pepco Witness Blazunas states that the proposal also contains an RDM that would defer the impact of the rate adjustments in 2021 and 2022 with a recovery of the deferred amount

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105 Pepco (C) at 6:9-16 (Wolverton Direct).

106 Pepco (C) at 4:2-9 (Wolverton Direct).

107 Pepco's Initial Brief at 82, *citing* Pepco (C) at 16:6-8 (Wolverton Direct).

108 Pepco (L) at 2, n.3; 8:2-9:5; and 10:4-15 (Barnett Direct). Operating income represents revenues less expenses, including O&M expense, depreciation and amortization expense, other taxes, and income taxes. PEPCO (C) at 10:9-11 (Wolverton Direct). Pepco claims that its projected O&M costs for the MRP term are reasonable. *See* Pepco Brief at 84-86, Section III.C.2.

109 Pepco (J) at 16:8-10 and 16:13-17 (Zarakas Direct).

110 Pepco (C) at 10:13-16 (Wolverton Direct.). For customer classes included in the BSA, customer growth is the only driver of changes in revenue. PEPCO (L) at 32:1-2 (Barnett Direct). For the few customer classes still based on volumetric rates, Pepco used electric energy sales models to prepare energy sales forecasts. PEPCO (L) at 32:1-9 (Barnett Direct).

111 Pepco (C) at 10:18-23 (Wolverton Direct); PEPCO (L) at 31:14-22 (Barnett Direct). The primary variables included in the econometric models Pepco maintained to explain customer growth are regional economic variables - in particular, total nonfarm employment in the District, as published by the US Bureau of Labor Statistics. Forecasts of employment prepared by IHS Economics serve as the basis for future employment growth used in the forecast of customer counts.

112 Pepco (C) at 11:3-4 (Wolverton Direct).

over three years beginning January 1, 2023. While customers' base distribution rates will reflect the approved rate adjustments for rate years ("RY") 2 and 3, customers will receive a credit for the period January 1 through June 30 of each rate year equal to the impact of the rate adjustments for that same period of each rate year.[113] In Supplemental Direct Testimony Pepco witnesses Blazunas and McGowan note that given the timing of the procedural schedule, the Company was proposing an RDM as an alternative designed to mitigate the impact of the rate increase on customers' bills.

46. Pepco witnesses McGowan argues that the ARF will provide an annual side-by-side reconciliation of actual versus projected calendar year results in the MRP, and will "ensure customer rates properly reflect the cost of providing service and the expectations of the MRP."[114] Furthermore witness Wolverton states that the ARF filing: (1) provides for actual versus forecasted costs at the Pepco-DC distribution level that includes variance explanations for all accounts, which exceed a dollar and percent threshold; (2) allows for challenges limited to significant variances in the filing; and (3) provides a specified period from the date of the filing to end of discovery.[115]

47. In addition, the MRP proposal includes an ESM, that: (1) provides certainty of earnings around a narrow interval relative to the determined ROE; (2) excludes an adjustment for actual earned ROE for the annual reporting period if it is within +/- 25 basis points of the projected ROE for that period; (3) provides for actual earned ROE if it exceeds 25 basis points of the projected ROE; 75% of the excess would be provided to customers on the next rate-effective date; and (4) requires that if the actual earned ROE is below 25 basis points of the projected ROE, Pepco will file a request with the Commission to allow the Company to recover 75% of the amount below 25 basis points from customers on the next rate-effective date.[116]

48. Pepco witness Wolverton describes the smoothing adjustment in the MRP as a mechanism to more evenly spread out the rate increases over the MRP and reduce the 2020 rate increase to customers by reducing the revenue requirements by a single percentage factor of the 2022 revenue requirements.[117] Pepco's MRP proposal lessens the additional years of revenue requirements when transitioning from a historical test year to an MRP.[118] By applying the

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[113] Pepco (2F) at 2:7–14 (Blazunas Supplemental Direct).

[114] Pepco (B) at 33:1-3 and 33:13-15 (McGowan Direct).

[115] Pepco (C) at 36:5-9 (Wolverton Direct). Pepco (C)-5 provides a summary of the schedules Pepco would provide in the ARF which includes the following items: 1) Jurisdictional Cost of Service Study ("JCOSS"), 2) RMA Summary, 3) Revenue Requirement by RMA (Rev Req RMA), 4) Individual RMA Worksheets, 5) Capital Structure, 6) Tax Factors; 7) PIMs actual performance versus target report. ARF filing is due May 15 and discovery ends on July 31. *See* Pepco's Initial Brief at 139.

[116] Pepco's Initial Brief at 140-141.

[117] Pepco (C) at 30:13-15 (Wolverton Direct). The MRP Enhanced Proposal does not require a smoothing adjustment because with the offsets there are no overall distribution rate increases until January 1, 2022 and there is substantial mitigation of the rate increases in 2022.

[118] Pepco (C) at 30:18-31:3 and 31:4-7 (Wolverton Direct).

smoothing adjustment, Pepco asserts that the RY1 MRP revenue increase is $77.3 million as opposed to $92.3 million.[119]

49. Pepco witness Wolverton testified that the Company proposes a Deferred Accounting Mechanism which would allow Pepco to request deferral treatment for unforeseen costs and external factors beyond Pepco's control (*i.e.,* acts of God, cyber security events, changes in regulations, and new regulations) that could drive up costs. Witness Wolverton's proposed deferral treatment for those events that have at least $1 million impact in a given year on the jurisdictional revenue requirement. In addition, witness Wolverton proposes that Pepco earn a return equivalent to its authorized ROR or accrue a return at the same rate on the sum deferred as a regulatory asset or liability until the amounts are reflected in customer rates.[120] Witness Wolverton explains that if an unforeseen event occurs, the Company will submit a filing within 90 days of the event describing the unforeseen costs and the external factors. Witness Wolverton proposes a process that would include 30 days for discovery and 60 days for a decision from the Commission with any approved costs being incorporated in the next rate case.[121] In addition, witness Wolverton notes that Pepco's deferred accounting mechanism uses projected storm expense to cover normal storm activity thereby mitigating customer rate impacts.[122] Further, Pepco expresses willingness to withdraw the Rider RDM if Parties do not favor the RDM proposal.[123]

50. According to witness McGowan, Pepco's proposed MRP also includes a reopener provision allowing any Party to file a petition to reopen and review the MRP if shown that there is a problem that cannot be resolved through another avenue under the MRP. The reopener is designed to protect customers and Pepco from impacts not originally accounted for, and will allow the Parties to modify the MRP to mitigate the unforeseen circumstance(s) or exit the MRP by replacing it with a new Traditional rate case filing.[124] In the event of a reopener filing, witness McGowan proposes that the requesting Party should include a recommended timeline and procedural schedule, and if the Commission decides to terminate the MRP, that rates be frozen until a replacement filing is determined by the Commission.[125] Witness Wolverton states that Pepco views the reopener as a last resort and that the deferral accounting mechanism and the ARF

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[119] Pepco (2B) at 9:15-21 (McGowan Supplemental Direct); PEPCO (2F) at 2:6-10 (Blazunas Supplemental Direct). Pepco (5C)-1, page 1 of 35, lines 30 and 33.

[120] Pepco (C) at 32:15–33:10 (Wolverton Direct).

[121] Pepco (C) at 33:18–34:6 and 34:16 (Wolverton Direct).

[122] Pepco (C) at 35:8 and 33:14 (Wolverton Direct).

[123] Pepco (4F) at 24:13-7 (Blazunas Rebuttal). Pepco did not file Rider RDM in its new tariff.

[124] Pepco (B) at 45:16–45:23 (McGowan Direct). The term reopener can be used interchangeably with the term off-ramp to protect a utility and customer with mitigating unforeseen circumstances.

[125] Pepco (B) at 45:11(McGowan Direct).

should be sufficient to address variances and external events.[126] In his Supplemental Direct Testimony, witness Wolverton contends that any reopener would be done as a petition and be subject to the Commission's review for approval or denial.[127] Furthermore, witness McGowan notes that the MRP includes a stay-out provision preventing the Company from filing another rate case until early 2022.[128]

2. Pepco's Original Performance Incentive Mechanisms ("PIMs") Proposal

51. **Pepco**. The Company's original MRP proposes five financial PIMs with incentives and penalties on specific utility performance: System Average Interruption Duration Index ("SAIDI") and System Average Interruption Frequency Index ("SAIFI"), Customer Service Level, Call Abandonment Rate, and Approval to Install that focuses on DER interconnection review timeframes.[129] Pepco also proposed a sixth tracking-only PIM to collect and report CEMI-4 performance.[130]

52. Witness Velasquez states that the current regulatory process does not provide proper alignment of the Company's investments and performance with District policy goals and customer expectations.[131] Witness Velasquez asserts that certain PIMs will increase transparency into planned utility investments, create alignment with District policy goals and customer expectations, improve the timing of utility cost recovery, streamline the regulatory process, reduce the number of rate case proceedings, and provide greater rate predictability to customers.[132] Witness Velasquez links the importance of the improved timing of utility cost recovery process and the Company's need to invest in grid modernization and infrastructure required to facilitate the District achieving its policy goals of climate action, transportation electrification, and increased resilience under the proposal, even though these investments are not included in the current capital plan through 2022.[133]

53. Pepco witness McGowan explains that the Company's approach to developing PIMs was a result of hiring the Brattle Group to research different types of PIMs and reviewing the experience of other jurisdictions. The Company received input from stakeholders through a

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[126] Pepco (C) at 44:16 (Wolverton Direct).

[127] Pepco (3C) at 10:3 (Wolverton Additional Supplemental Direct).

[128] Pepco (B) at 24:3-11 (McGowan Direct).

[129] Pepco's Initial Brief at 155-159.

[130] Pepco's Initial Brief at 155, 159. The CEMI-4 PIM is tracking only and does not include an incentive or penalty.

[131] Pepco (A) at 8:8 (Velasquez Direct).

[132] Pepco (A) at 8:20-21, 9:6, and 9:13 (Velasquez Direct).

[133] Pepco (A) at 8:21 (Velasquez Direct).

series of workshops that discussed performance-based ratemaking and PIMs.[134] Pepco witness McGowan states that the Company proposes five PIMs (SAIFI, SAIDI, service level, abandonment rate, and interconnection review timeframe) that include a financial reward or penalty based on performance, and one tracking metric (CEMI-4) that does not include a reward or penalty.[135] The following table sets out the Company's goals and metrics for performance.

Table 2: Pepco's Proposed PIMs and Tracking Metric[136]

Category	Goal	Metric	Target	Penalty/ Reward
Operational	Reliability	SAIFI	Extend Merger Condition 54 2020 target thru 2022 (0.58)	-10 bps / +10 bps
Operational	Reliability	SAIDI	Average of Best 3 Years Performance (69 mins)	-10 bps / +10 bps
Operational	Cust. Service	Service Level	1st Quartile performance (historical)	-2.5 bps / +2.5 bps
Operational	Cust. Service	Abandonment Rate	1st Quartile performance (historical)	-2.5 bps / +2.5 bps
Policy	DER	Interconnection Review Timeframe	Average ATI – 5 days	-5 bps / +10 bps
Operational	Reliability	CEMI-4	Tracking Only	N/A

54. Witness McGowan states that the proposed PIMs will have penalties, rewards, and deadbands. Each year, the Company will report on the performance of each PIM relative to the target in its ARF. Only performance outside the deadband will receive an incentive adjustment in the form of an increase or decrease in ROE. According to witness McGowan, Pepco proposes a maximum limit on the incentive adjustment related to PIMs of plus or minus 25 basis points.[137]

55. According to witness McGowan, Pepco's proposed PIMs provide benefits by: (1) aligning Pepco's performance to policy goals; (2) encouraging achievement of the specific objective; (3) providing performance incentives that are reasonable, transparent, measurable, and verifiable; and (4) improving utility performance and removing the incentive to chase cost savings. Witness McGowan notes that the Company's proposal is meaningful and balanced, and there are no industry standards to setting financial risks and rewards for PIMs.[138] Witness McGowan's Supplemental Direct Testimony suggests that Pepco will agree to be held accountable for meeting

[134] Pepco (B) at 40:5-13 (McGowan Direct).

[135] Pepco (B) at 38:7 (McGowan Direct).

[136] Pepco (B) at 39 (McGowan Direct).

[137] Pepco (B) at 40:15–40:23 (McGowan Direct).

[138] Pepco (B) at 42:5 (McGowan Direct).

or exceeding the PIMs targets for 2020 and throughout the MRP if the Commission approves the proposed PIMs as filed, including the targets, metrics, and ROE penalty and reward adjustments.[139]

56. In Supplemental Direct Testimony, Pepco witness Hevert contends that PIMs do not reduce the risk profile of the Company.[140] However, according to witness Hevert, a reduction in the Company's authorized ROE due to the presence of its proposed incentives will put downward pressure on the Company's financial profile because it is possible the Company may successfully meet its PIM objectives yet under-earn its ROE.[141]

3. Parties' Position on Original MRP and PIMs

57. **OPC.** OPC asks the Commission to reject Pepco's MRP. However, if the Commission considers the MRP, OPC recommends that the Commission require: (1) the plan's projected costs/revenue requirement calculation use an indexed-based approach applied to total revenue requirements; (2) no annual reconciliation filing; (3) no ESM; (4) no deferred accounting mechanism; and (5) the reopener (off-ramp) to be limited to exigent, extraordinary circumstances.[142]

58. OPC witness DeCourcey argues that the Commission should reject Pepco's deferral mechanism. Witness DeCourcey contends that Pepco has not characterized what costs should or should not be recoverable through Pepco's proposed deferral mechanism. Moreover, witness DeCourcey states that there is no benefit to customers because customers will pay for every cost, and all the Company is doing is pushing off the cost subject to deferral into the future, risking rate shock in a subsequent proceeding.[143]

59. Witness DeCourcey requests that the Commission reject Pepco's Reopener Provision because it is poorly defined and so broad that a wide range of costs could be construed to be permitted. Specifically, witness DeCourcey argues that: (1) Pepco does not identify what problem could warrant the reopener, although Pepco witness Wolverton explains that the purpose is to protect from an "unintended outcome of the MRP," including, for example, new legislation that materially increases costs; (2) Pepco does not explain why both the deferral mechanism and the reopener mechanism are needed; (3) Pepco does not define the dollar impact that would be considered material in the context of the provision; and (4) witness McGowan indicates at his deposition that Pepco could trigger the reopener if it incurred a "significant and material" penalty

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[139] Pepco (2B) at 6:17 and 14.14 (McGowan Direct).

[140] Pepco (2G) at 14:5-18 (D'Ascendis Supplemental Direct). Witness Hevert was replaced by Witness D'Ascendis who adopted Hevert's testimony. *See* Cost of Capital Section at fn. 497.

[141] Pepco (2G) at 16:9-12 (D'Ascendis Supplemental Direct).

[142] OPC's Initial Brief at 122-124.

[143] OPC (C) at 24:11–25:4 (DeCourcey Direct).

for failing to achieve a PIM.[144] Lastly, witness DeCourcey argues that Pepco did not explain why it needs risk-protective provisions that would be in addition to others that it has proposed, such as the ESM.[145]

60. **OPC's Alternative MRP Proposal.** OPC proffers an alternative to Pepco's MRP should the Commission decide to implement an MRP. According to OPC, the MRP should be based on a revenue requirement tied to historical results indexed to inflation.[146] OPC's historical starting point for the MRP removes all post-test year adjustments.[147] However, OPC identifies several contested ratemaking adjustments and recommends that they be reflected in the historical starting point of OPC's proposed alternative MRP.[148]

61. OPC does not recommend incorporating reconciliations or adjustments like ESM or the ARF.[149] However, OPC suggests that any reopener provision be limited to exigent, extraordinary circumstances.[150] Witness DeCourcey notes that OPC's MRP contains an escalation methodology (using 2.17%).[151] and recommends these incremental revenue increases: $42.8 million on January 1, 2021, and $12.6 million on January 1, 2022, with a cumulative revenue increase of $55.4 million.[152]

62. OPC witness DeCourcey indicates in his Surrebuttal and Supplemental Testimony, that as a result of the COVID-19 pandemic, OPC no longer supports the adoption of the limited reopener mechanism if the Commission adopts any MRP. OPC's alternative proposal requires

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144 OPC (C) at 26:13–27:9 (DeCourcey Direct).

145 OPC (C) at 26:13–19 (DeCourcey Direct).

146 OPC's Initial Brief at 122.

147 OPC (2C) at 19:4-10 (DeCourcey Supplemental Direct). OPC historical starting point is consistent with Pepco's starting point with the EMRP.

148 OPC (B)-7 at 1 of 2 (Ramas Direct). OPC recommends removing/adjusting the following contested adjustments:(1) Remove Benning Road Remedial Study Costs Regulatory Asset (RMA-5, OPC-19) Revenue Requirement Impact $(505k); (2) Remove Benning Environmental Regulatory Asset (RMA-20, OPC-20) Revenue Requirement Impact $(523k); (3) Revise EDIT to Settlement Agreement (RMA-26, OPC-8) Revenue Requirement Impact $(1.934m); (4) Revise PHISCO Non-Property Deferred Income Tax Adjustment (RMA-29, OPC-9) Revenue Requirement Impact $(1.671m): (5) Remove Charge for EBSC Residual Income Taxes (OPC-14) Revenue Requirement Impact $(225k); (6) Remove Out of Period Service Company Cost Allocations (OPC-15) Revenue Requirement Impact $(690k); and (7) Reduce Manhole Inspection Cost Adjustment (RMA-41, OPC-16) Revenue Requirement Impact $(2.245m).

149 OPC (C) at 57:9-13 (DeCourcey Direct).

150 OPC (C) at 53:1-6 (DeCourcey Direct).

151 OPC (C) at 56:7-12 (DeCourcey Direct).

152 OPC (3B)-1, page 1 of 2.

modifications.[153] Specifically, OPC proposed revenue escalation rate of 2.17% is too high because inflation expectations are lower now than they were when witness DeCourcey proposed the escalation rate. Therefore, OPC recommends continuing the traditional rate regulation and considering an MRP in the next case.[154]

63. **OPC PIMs.** OPC witness Dismukes recommends that the Commission reject the proposed PIMs and the proposed MRP. However, if the Commission accepts the MRP or some variation thereof, it should still reject Pepco's proposed PIMs due to design failures such as: (1) the PIMs afford the Company too much performance latitude, particularly relative to the status quo; (2) the PIMs set financial returns for activities that should be part of the Company's obligation; (3) the PIMs did not adequately reflect beneficial performance improvements; and (4) the PIMs shifts performance risk away from the Company and onto ratepayers because the PIMs (a) does not set a high-performance bar for the Company, as most are at or very close to the Company's current performance levels, and (b) the Company has, in many instances, wide latitude to vary its performance without incurring any financial or other regulatory penalties.[155] In addition, witness Dismukes opposes Pepco's PIMs because if approved, they will provide Pepco with an opportunity to receive financial incentives beyond its allowed ROR to provide core utility services (*i.e.,* assurance of reliability and resiliency, customer service, efficiency, and clean energy integration).[156]

64. **AOBA.** AOBA requests that the Commission reject Pepco's MRP. Although Witness B. Oliver supports AFORs, including MRP with PIMs, he does not believe that Pepco's proposal achieves the basic objectives of AFORs because they do not reduce the cost of regulation nor increase rate stability or predictability for ratepayers, or limit the overall costs that the Company can expect to recover, or the dollar amounts that may be billed to each rate class.[157] Witness B. Oliver opines that a well-structured MRP must require Pepco to work within Commission-approved levels of expenditures without rate adjustments during the period of the plan and that Pepco's proposed PIMs inappropriately reward the Company for activities or accomplishments that either should be expected of Pepco in the normal course of business and/or provide District ratepayers little or no incremental benefits.[158] Nonetheless, witness Oliver states that if the Commission considers the MRP, AOBA recommends that the Commission require that: (1) the plan's projected costs/revenue requirement calculation be internally forecasted for all costs; (2) no ARF would be necessary; (3) an ESM for over-earning only with 80/20 sharing of the first 100 basis points of over-earnings, and 100% to customers for less than 100 basis points; (4) a deferred accounting only be allowed for rate adjustments to address changes in law, regulatory

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[153] OPC's Initial Brief at 123.

[154] OPC (C) at 53:18-20 (DeCourcey Direct)

[155] OPC (A) at 64:1–5, 80:4–19, and 84:13–85:3 (Dismukes Direct).

[156] OPC (A) at 9:15–10:6 (Dismukes Direct).

[157] AOBA (A) at 8:17-21 (B. Oliver Direct).

[158] AOBA (A) at 15:15-19 (B. Oliver Direct).

policies or force majeure; and (5) a reopener provision be allowed only under the most extreme circumstances.[159] AOBA recommends the MRP revenue requirement be no more than $119.6 million.[160]

65. With respect to the proposed Deferred Accounting Mechanism, witness Oliver contends that although the need for regulatory asset treatment of certain costs may be necessary and appropriate, the Company's proposal for deferral of recovery of revenues intended to recover costs necessary for its provision of service during its initial MRP period is unreasonable, inappropriate, and unjustifiably amplifies the cost burdens future ratepayers would be required to bear.[161]

66. AOBA recommends that Pepco be required to operate within the revenue levels approved by the Commission for the entire MRP period without interim rate adjustments, whereby Pepco, not ratepayers, would absorb the risk of uncertainties in its cost forecasts. Witness B. Oliver notes that under AOBA's proposal, Pepco would be free to track unforeseen cost increases that it believed were beyond its influence and control and present those for consideration in the Company's next MRP or base rate proceeding – but no regulatory assets would be created before the Commission's review and acceptance of such costs. If and when the Commission reviews and accepts a request for a regulatory asset for recovery of unforeseen costs beyond the Company's control, the Commission would maintain the discretion to grant interest or a return on such amounts from the time they were incurred by the Company if it deems such to be appropriate.[162]

67. As to Pepco's reopener provisions, witness B. Oliver recommends that only under the most extreme circumstances should rate determinations in an MRP case be reopened. In addition, AOBA asserts that the entirety of the Company's cost should be re-examined to avoid a single-issue ratemaking.[163]

68. **AOBA PIMs.** AOBA recommends rejection of Pepco's PIMs. Witness Oliver asserts that Pepco's proposed PIMs cannot be relied upon to ensure that District ratepayers will benefit from the Company's achievement of targeted levels of performance because they are structured in a manner that fails to properly associate the value of changes in performance with the cost of incentives provided.[164] AOBA asserts that Pepco's proposed PIMs are policy or operational. With respect to the proposed operational PIMs, two address service reliability, and

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159 AOBA (A) at 73:9-74:2 (B. Oliver Direct).

160 AOBA (B) at 49:1-11 (T. Oliver Direct).

161 AOBA (A) at 9:11–16 (B. Oliver Direct).

162 AOBA (A) at 72:18–73:8 and 70:13–20 (B. Oliver Direct).

163 AOBA (A) at 41:1–5 (B. Oliver Direct).

164 AOBA (A) at 15:8–13 (B. Oliver Direct).

two address customer service.[165] The proposed policy PIM relates to Pepco's support of DERs.[166] Witness Oliver asserts that the PIMs Pepco proposes will inappropriately reward the Company for activities or accomplishments that either: (1) should be expected of the Company as part of its normal course of business; or (2) provide District ratepayers little or no incremental benefit.[167] Witness Oliver recommends that the Commission reject Pepco's proposed PIMs until Pepco can demonstrate a more direct tie between the performance rewards it would receive and the benefits ratepayers would experience from the achievement of targeted performance levels. Witness B. Oliver argues that Pepco's proposed PIMs are biased in their structure and can be expected to impose substantial additional costs on District ratepayers for little or no material improvements in service.[168]

69. **DCG.** DCG argues for the rejection of Pepco's MRP. However, if the Commission considers the MRP, DCG states that the Commission should amend Pepco's proposal to require that: (1) the plan's projected costs/revenue requirement calculation be an index-based approach for "business-as-usual" costs included in the revenue requirement for a historical test year; (2) the cost forecast should be limited to large and unusual investments that support District policy goals; (3) there be no reconciliation of index-based forecasts, but allows cost forecasts limited to reconciliation downwards only; (4) the ESM is for over earnings only and has a larger deadband to incentivize Pepco to seek costs savings where possible; and (5) trackers for limited setoff costs outside of utility control and one-time extraordinary costs be established.[169]

70. **DCG PIMs.** Witness Lane asserts that Pepco's MRP proposal falls far short of addressing/achieving the District's aggressive goals regarding GHG reductions, transportation electrification, renewable energy development, grid modernization, and other District goals. Witness Lane contends that the proposed PIMs focus on core responsibilities of the utility rather than providing innovative solutions to advance the District's clean energy goals.[170] Witness Lane notes that Pepco has not proposed any PIMs related to the goals of reduced GHG emissions, microgrids, modernization of the electric grid, or electrification of public transportation.[171] Witness Lane contends that PIMs should be used only to incent behavior the utility would otherwise not take, meaning there is a disincentive or lack of incentive to achieve the desired outcome. Witness Lane, therefore, recommends that Pepco's PIMs be rejected or made penalty-only.[172]

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[165] AOBA's Brief at 52.

[166] AOBA's Brief at 52-53.

[167] AOBA (A) at 15:15–19 and 16.5 (B. Oliver Direct).

[168] AOBA (A) at 23:7–11 and 16:5 (B. Oliver Direct).

[169] DCG (A) at 44:2-19 (Lane Direct).

[170] DCG (A) at 26:5–16 (Lane Direct).

[171] DCG (A) at 36:8–10 (Lane Direct).

[172] DCG (A) at 54:12–14 (Lane Direct).

71. DCG witness Lane's Rebuttal Testimony concurs with the recommendations of OPC, AOBA, and GSA in favor of rejecting Pepco's proposed PIMs. Witness Lane believes that Pepco's PIMs should be rejected because they: (1) do not advance the energy goals of the District; (2) target activities that the Company is already required to perform under Commission regulations; (3) have not been quantified by Pepco as to incremental benefits to ratepayers; (4) do not satisfy the criteria for PIMs that the Commission outlined in Order No. 20273; and (5) should be modified, if approved, to penalty-only PIMs under which Pepco would face a financial penalty for failing to meet the applicable benchmark standards. [173] Witness Lane states that PIMs should be used to advance the energy goals of the District and should not reward an action that the Company is already required to perform as an essential element of its provision of utility service or under Commission regulations.[174]

72. DCG witness Lane notes that Pepco has added a new feature to its EMRP and now includes a GHG reduction tracking metric, which she argues is a business-as-usual reporting process[175] and does not create a goal specific to the District.[176] In her Supplemental Surrebuttal Testimony, DCG witness Lane recommends "that Pepco establish a GHG emissions goal specific to the District of Columbia" that is a tracking metric with reward or penalty to enable the development of a baseline for future GHG PIM reduction.[177]

73. **GSA.** GSA argues that the MRP does not protect consumers because: (1) it reduces or eliminates the protections built into the traditional test year ratemaking approach; (2) it maintains information asymmetry advantages enjoyed by the utility; and (3) it abandons a one rate increase per case in favor of three rate increases at once, locking in significant increases for three years in a row. Furthermore, GSA believes the MRP does not protect consumers because it contains features such as: (1) regulatory pre-approval of projects and costs and limited opportunity through reconciliation to evaluate prudence; (2) an ESM that allows Pepco to lock in over earnings; (3) a deferral mechanism that automatically allows Pepco to defer almost any unexpected costs for future recovery; (4) an undefined MRP re-opener provision; and (e) PIMs that would unreasonably reward Pepco for doing what it is already required to do.[178]

74. GSA contends that the MRP is not necessary to advance the economy of the District or the District's public goals because Pepco has an obligation to provide safe and reliable service to its customers regardless of what cost recovery mechanism is approved.[179] According to GSA,

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[173] DCG (2A) at 8:18, 9:4, and 10:6 (Lane Rebuttal).

[174] DCG (2A) at 11:3-5 (Lane Rebuttal).

[175] DCG (4A) at 18:9 (Lane Supplemental Surrebuttal).

[176] DCG (4A) at 19:6 (Lane Supplemental Surrebuttal).

[177] DCG (4A) at 19:7-12 (Witness Courtney Lane Supplemental).

[178] GSA's Brief at 12-17.

[179] GSA's Brief at 18.

Pepco provides no evidence that an MRP is better suited than the traditional cost of service model to meet these basic obligations. Pepco has been making significant reliability investments in its distribution system, and it has been achieved through the traditional cost-of-service ratemaking model.[180] GSA states that Pepco has not demonstrated either empirically or qualitatively that an MRP is necessary to address the District's initiatives, or the need to change the regulatory paradigm from traditional cost of service regulation.[181] GSA argues that "abandoning traditional ratemaking should not be based on an assumption that an MRP is necessary for consumers to make energy-related investment and energy usage decisions that contribute to the District's energy and environmental goals."[182] GSA notes that Pepco is already using other forms of AFORs such as: (1) six months' worth of forecasted data in rate case applications; (2) BSA decoupling mechanism; and (3) DC PLUG.[183]

75. GSA contends that the MRP primarily benefits Pepco and that Pepco's claimed customer benefits of the MRP are unsupported.[184] GSA states that the MRP purports to benefit both customers and Pepco and argues that the benefits to Pepco far outweigh those to customers.

76. In addition, GSA indicates that the incremental benefits Pepco claims the MRP provides have not been quantified or adequately explained.[185] GSA notes that Pepco recognizes that an MRP is not the only way to provide greater transparency into its future plans.[186] GSA does not agree that the MRP will produce customer benefits that are qualitative, quantitative, and measurable and argues that this claim is overstated and under-supported.[187]

77. GSA supports rejection of Pepco's MRP because Pepco has not demonstrated that the MRP will significantly improve regulatory efficiency or provide material benefits to ratepayers.[188] However, if the Commission considers the MRP, GSA asserts that the Commission should require that: (1) for the ARF the Commission should adopt Maryland's MRP Pilot Proposal after-the-fact prudency review; (2) an ESM provide 25 basis points deadband, over-earning sharing 90/10 after 25 basis points; (3) deferred accounting be established, provided use of an approved regulatory asset subject to additional review in the next MRP; (4) re-opener should be restricted to exogenous factors; (5) Pepco's proposed PIMs and their reward/penalty mechanism be rejected or

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180 GSA's Brief at 18.

181 GSA's Brief at 19.

182 GSA's Brief at 19.

183 GSA's Brief at 20-22.

184 GSA's Brief at 22.

185 GSA's Brief at 23.

186 GSA's Brief at 24.

187 GSA's Brief at 23-24.

188 GSA (A) at 10:7 (Goins Direct).

modified to penalty-only; (6) the rate increase be capped at 2 times the system average for classes with negative ROR, and any earnings sharing should go to classes with at least a 0.9 unitized ROR; and (7) customer charge increases for class R be reduced to 25% or less.[189]

78. **GSA PIMs.** Witness Goins advises that a PIM's rewards and penalties should, to the extent possible, reflect the value of service gains or losses associated with exceeding or falling short of the PIM's benchmark. Witness Goins notes that Pepco's filing includes no such analysis of incremental benefits versus costs.[190] He observes that performance areas in Pepco's proposed PIMs are already covered by existing rules and regulations and that the reward/penalty structure in Pepco's traditional PIMs (the reliability and customer service PIMs) is atypical since similar PIMs in other states usually do not include rewards.[191] Witness Goins recommends that PIMs, as proposed, should not be approved in this case, but if the Commission decides to include PIMs in an MRP, a penalty-only structure would be consistent with similar traditional PIMs in other states.[192] In the Supplemental Surrebuttal Testimony, GSA witness Goins does not oppose the tracking performance metrics. He suggests that penalty-only PIMs would provide a stronger incentive for Pepco to meet Commission-approved performance and reliability standards.[193]

79. **BWLDC PIMs.** BWLDC raises the issue of PIMs in the Amended Joint Response of the Parties to *Formal Case No. 1156*, Order No. 20632.[194] On day one of the evidentiary hearing, BWLDC questions Pepco witness McGowan on whether the witness understood a PIM proposed by BWLDC that was "a reduction on Pepco's return of equity by $100,000 if the Commission finds that Pepco has failed to investigate or resolve credible allegations that any of Pepco's contractors are not complying with the DC minimum wage."[195] Pepco witness McGowan rejects the proposed PIM as inappropriate and indicates that the terms of the contracts have remedies for when a contractor violates the wage laws and therefore a PIM was not necessary.[196]

80. BWLDC proposes a PIM that addresses labor conditions of Pepco's construction contractors and traffic control subcontractors.[197] BWLDC's PIM proposes that Pepco is not to employ any construction contractors who break the law, and, to satisfy this requirement, Pepco is

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189 GSA (A) at 11:7 to 13:8 (Goins Direct).

190 GSA (A) at 31:18–32:15 (Goins Direct).

191 GSA (A) at 32:3 and 32:9 (Goins Direct).

192 GSA (A) at 32:1 and 32:21 (Goins Direct).

193 GSA (3A) at 9:17 (Goins Supplemental Surrebuttal).

194 *Formal Case No. 1156*, Order No. 20632.

195 Tr. October 26th Evidentiary Hearing at 108:11-16.

196 Tr. October 26th Evidentiary Hearing at 109:2-4.

197 BWDLC's Brief at 29.

to perform annual audits of its contractors and file a report with the Commission.[198] BWLDC proposes a downward adjustment of Pepco's ROE by no more than 25 basis points, or the dollar value of the contract in which the violation occurred, for any violation of the law which had been previously identified but not remedied.[199]

81. In addition, BWLDC recommends that the Commission create a "good jobs" advisory group represented by a variety of stakeholders to develop a Memorandum of Understanding ("MOU") establishing local employment and diverse hiring targets for construction projects that are supported by an AFOR or that require a siting application from the Commission.[200] BWLDC also recommends that the MOU address wage and benefits standards necessary to compensate workers equitably.[201] Lastly, BWLDC asserts that the data collected by the advisory group should be used to inform future PIMs.[202]

82. **IBEW.** IBEW states that there are deficiencies in Pepco's Application for implementation of an MRP and urges the Commission to reject the Application and Pepco's proposed PIMs.[203] IBEW argues that Pepco's Application proposed PIMs do not align with the District's public policy goals. IBEW notes that the customer service PIMs that Pepco proposes are much more stringent than the current EQSS standards. Answering customer calls within 30 seconds is currently at a required level of 70%, but the PIMs propose a 90% target with a 3% deadband. Pepco has had to have mandatory overtime for its call center employees to reach a 12-month average of 91.5% answering rate. IBEW believes the Company standard of 90% of calls answered in 30 seconds leads to call center employees ending calls quickly instead of fully addressing customer concerns.[204]

83. In addition, IBEW explains that the Commission should also reject the Service Level (call response times) and Abandonment Rate (calls dropped from the queue) PIMs because "it is unclear how the elevated benchmarks will affect Pepco's workforce and, if implemented, Pepco's call center workers may be adversely impacted."[205] IBEW asserts that the adoption of Service Level PIMs may: (1) have unforeseen consequences on the workforce, and (2) encourage Pepco to degrade working conditions to obtain future monetary incentives. IBEW contends that Pepco has not explained what actions it will implement to ensure workers are adequately equipped

198 BWDLC's Brief at 29.

199 BWDLC's Brief at 29.

200 BWDLC's Brief at 29.

201 BWDLC's Brief at 29.

202 BWDLC's Brief at 29.

203 IBEW's Reply Brief at 2.

204 IBEW's Reply Brief at 2-4.

205 IBEW's Reply Brief at 2.

to reach Pepco's goals.[206] IBEW has concerns that because the call center is understaffed and the Service Levels are already above the District's EQSS standards set for the abandonment rate, they fear that there will be increased pressure on workers and potentially subject them to discipline.[207] IBEW argues that any PIM related to Service Levels or Abandonment Rate is of no value because the Company meets the District's requirements and IBEW believes that it will only encourage Pepco to place greater pressure on its already overburdened workforce.[208] IBEW recommends that the elevated Customer Service Standards be explored through rulemaking.[209]

C. Pepco's Enhanced Multiyear Rate Plan ("EMRP")

1. Overview

84. **Pepco**. By Order No. 20349, the Commission directed the Parties to include in their Surrebuttal Testimony "how and to what extent the COVID-19 pandemic related events affect the evaluation of Pepco's MRP proposal."[210] In response, Pepco filed what the Company describes as an EMRP Proposal as a non-severable, integrated package, with interdependent elements designed to operate as a whole, as an alternative package to the original MRP Proposal to address how and to what extent the COVID-19 pandemic-related events affect the evaluation of Pepco's MRP.[211] Witness McGowan asserts that the individual elements are not severable as they all need to operate in unison if the EMRP Proposal is to work.[212] The witness notes that Pepco developed the EMRP to address concerns raised by other Parties, the Commission, and the public. Pepco asserts that the EMRP is flexible and provides options not available in a Traditional rate case and that will eliminate the overall distribution rate impact to customers in the near term while providing the Company with the certainty of revenues and cash flow during the later term of the plan.[213]

85. Witness McGowan states that the EMRP reflects areas of potential alignment with the Parties and Pepco in addressing the impact of COVID-19.[214] Pepco recognizes that the economic recovery will not happen quickly and that the Company wants to provide certainty to

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206 IBEW's Reply Brief at 3.

207 IBEW's Reply Brief at 4.

208 IBEW's Reply Brief at 4.

209 IBEW's Reply Brief at 5-8.

210 *Formal Case No. 1156*, Order No. 20349, ¶ 11.

211 Pepco (5B) at 6:10-2, 15:11-14, 20:16:19 (McGowan Surrebuttal); Pepco (5F) at 2:22-3:3 (Blazunas Surrebuttal).

212 Pepco (5B) at 15:19-22 (McGowan Surrebuttal).

213 Pepco (5B) at 7:13–8:12 (McGowan Surrebuttal). Pepco's EMRP provides for the same PIMs as the MRP. However, the financial PIMs were converted to tracking only. In addition, Pepco included a new GHG tracking PIM

214 Pepco (5B) at 15:9-10 (McGowan Surrebuttal).

customers over a period of time by: (1) suspending service disconnections; (2) extending the suspensions of disconnection and waiving of late fees; (3) working with customers to use customer assistance programs, including installment arrangements and budget billing; (4) using of customer assistance programs including waiver of late fees; (5) educating consumers on federal and local energy assistance; (6) supporting COVID-19 relief efforts in the amount of an $825,000 charitable donation; and (7) providing health and childcare benefits to support employees who do essential work.[215] McGowan states that the pandemic will have long-term effects, and the Commission should consider the flexibility and optionality an MRP can provide and that COVID-19 does not materially impact the MRP proposal.[216] McGowan further states that Pepco developed the EMRP to eliminate the overall distribution rate impact to customers in the near term while providing the Company with certainty of revenues and cash flow during the later term of the plan.[217] Witness McGowan notes that Pepco's use of an integrated package with a number of innovative options results in no overall distribution rate increase until January 1, 2022, and substantial reduction of the overall distribution rate increase (by approximately $63.3 million) to customers during 2022.[218]

86. Pepco revises its revenue requirements to use a historical test period cost of service, as adjusted, and an escalation of the historical costs where appropriate. Pepco also adopts a number of RMAs that OPC and AOBA proposed, which eliminate or modify certain RMAs. Pepco's EMRP is structured as a three-year proposal covering 2020, 2021, and 2022. In general, the Company's EMRP methodology uses a "starting period" based on a historical test period (12-months ending June 30, 2019—the same period used to develop its Traditional revenue requirements) with post-test-year items removed. Pepco applies escalators to the major starting period components of the calculation to develop the EMRP-2020, EMRP-2021, and EMRP-2022 revenue requirement. Pepco's EMRP calculates distribution rates revenue requirements of $135.9 million over a three-year period. The multi-year rate plan results in the following revenue requirements: 2020–$69.6 million; 2021–$104.5; and 2022–$135.9 million before offsets.

87. Pepco's proposal includes Economic Relief Rider ("Rider ERR") offsets/credits, Residential Rate Assistance of $29 million, deferral of $60 million of capital expenditures to be placed in service in 2023 or later, a reconciliation process similar to the process in Maryland Order No. 89482 including an Annual Informational Filing, and final reconciliation and prudency review,[219] a pause in regulatory asset amortization for two years, acceleration of the MD Subtraction Modification Tax Benefit, acceleration of Tax Cuts and Jobs Act ("TCJA") refunds

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215 Pepco (5B) at 3:18–5:4 (McGowan Surrebuttal).

216 Pepco (5B) at 5:17–6:5 (McGowan Surrebuttal).

217 Pepco (5B) at 7:13–8:12 (McGowan Surrebuttal).

218 Pepco (5B) at 6:10-2, 15:11-14, 20:16:19 (McGowan Surrebuttal); Pepco (5F) 2:22-3:3 (Blazunas Surrebuttal).

219 *See* Commission Exhibit 12.

through December 2022, a stay-out provision, a deferred accounting mechanism, and a reopener provision.[220]

88. Witness McGowan states that the EMRP includes a deferral of $60 million of Capital Projects expenditures.[221] He states that the specific projects will be identified once there is certainty around the impact of the COVID-19 pandemic. McGowan went on to note that any portion of the $60 million in capital spending projects, not eliminated or deferred, will be excluded from the reconciliation filing at the end of the EMRP term.[222] Moreover, McGowan notes that Pepco's recovery in a future rate case for such capital investment is limited to the remaining net book value of those assets, which would be already in service and benefitting customers.[223] Pepco argues that it has a strong incentive under the EMRP to be cost-efficient since the Company will be foregoing approximately $145 million in cash flow.[224] According to the Company, it plans on making informed decisions on which capital projects to defer or eliminate because the projects will come from Pepco's Construction Report, which the Parties have had an opportunity to probe. Pepco notes that the Parties will have an opportunity to challenge the prudence of the projects undertaken that Pepco seeks recovery in the reconciliation process and the next base rate case.[225] Pepco maintains that there is transparency into the Company's capital spending plans under the EMRP.[226]

89. Pepco states that, if fully approved, the EMRP Proposal, with certain rate offsets, would result in no rate increase in 2020 and 2021, and an increase in monthly distribution bill of approximately $7.97 in 2022 for a typical residential SOS customer.[227]

90. Witness McGowan states that the EMRP provides other assistance programs that Pepco believes are reasonable for Residential and Small Commercial customers that would be available for at least a 12-month period depending on how quickly they can be implemented, noting some may require IT system changes including: (a) *Deposits Held*: for those residential customers with deposits, at the customer's request, the deposit will be applied to any overdue balances to reduce the customer's Accounts Receivables balances and/or installment plan payments. Such customers will not be billed new deposits for up to 12 months and after the 12-month period Pepco will allow deposits to be billed through the dunning process only; (b) *Arrearage Management Program* ("AMP"): Pepco proposes that the Commission temporarily modify the AMP program,

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[220] Pepco (5B) at 8:15–21 (McGowan Surrebuttal). Pepco proposed the entirety of the Accelerated Additional Subtraction Modification regulatory liability to be used as an offset to the revenue increase in 2022.

[221] Pepco's Brief at 63, 67.

[222] Pepco's Brief at 63.

[223] Pepco's Brief at 63.

[224] Pepco's Brief at 65.

[225] Pepco's Brief at 65.

[226] Pepco's Brief at 67.

for a period of 12 months to remove the Residential Aid Discount ("RAD") program registration requirement for eligibility and expand the customer income eligibility to a maximum of 150% of the District Department of Energy and the Environment ("DOEE") income guidelines for RAD customers; (c) *RAD*: Pepco proposes that the Commission temporarily modify the RAD program to increase the existing annual funding cap from $5.75 million to $14.55 million for a period of 12 months in order to accommodate a potential increase in eligible customers; (d) *Installment Plan:* Pepco proposes to adjust the terms of the flexible Installment Plan program to offer residential customers Installment Plans that extend beyond the 12-month period. Based on the customers' needs, Installment Plans can be extended an additional 12 months, for a total installment period of 24 months, with no upfront fees or payments required; and (e) *Marketing and Promotion of Energy Assistance Programs*: Pepco proposes to temporarily increase marketing and promotion of the Low-Income Home Energy Assistance Program ("LIHEAP") and RAD program through Company channels. The Company will also market and promote the availability of the extended installment plans, along with existing programs such as Budget Billing.[228]

91. Witness McGowan states the following EMRP programs are targeted to assist small commercial customers: (a) *Deposits Held*: For those small commercial customers with deposits, at the customer's request, the deposit will apply to any overdue balances to reduce the customer's Accounts Receivables balances and/or installment plan payments. Such customers will not be billed new deposits for up to 12 months, and after the 12-month period, Pepco will allow deposits to be billed through the dunning process only; (b) *Installment Plan*: Pepco proposes to adjust the terms of the Flexible Installment Plan program to offer small commercial customers Installment Plans that extend beyond the 12-month period with a possibility of extending an additional 12 months, for a total installment period of 24 months, with no upfront fees or payments required; (c) *Budget Billing*: Pepco proposes that the Commission waive Section 8(a) of Pepco's General Terms and Conditions in order to offer budget billing/average payment plans to small commercial customers; (d) *House of Worship and Non-Profit Customer Credit*: Pepco proposes to offer a limited reduction to the distribution rate for District Houses of Worship and nonprofit organizations engaged in human services activities. The metered demand for these customers will be reduced up to 7 kW monthly for a 12-month period. To be eligible for the limited rate change, the entity must: 1) provide proof of 501(c)(3) tax-exemption status or proof that the entity qualifies to meet the 501(c)(3) requirements; and 2) engage in human services activities; (e) *Small Commercial Customer Bill Deferral*: Small commercial customers, such as restaurants, small retail, and other small customers, will be able to defer the distribution portion of their bills for a period of two months and to pay that balance at a later date and/or over an 18-month period; and (f) *Supplemental Energy Efficiency Rebates and Loans*: Pepco proposes supplemental energy efficiency rebates and loans, as applicable, to incentivize energy efficiency for small commercial customers with a maximum demand under 150 kW and accelerate the availability of these programs in light of the current pandemic (this includes Small Commercial Customer Energy Advance Program and Supplemental Energy Efficiency Program).[229]

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[228] Pepco's Brief at 46.

[229] Pepco's Brief at 47-48.

2. Billing Offsets

92. Witness Wolverton notes that to mitigate the effect of customer rate increases, the Company proposes four customer benefits (billing offsets) as follows:

a. Residential and MMA Customer Rate Assistance - Under the EMRP, Residential and MMA customers will receive approximately $29 million[230] of distribution rate assistance to offset distribution rate increases during the 2020-2022 period. The Company will not recover the approximately $29 million of distribution rate assistance from customers.[231] This will be accomplished by continuing the expiring CBRC for residential class customers from April 2021 through December 2021, reducing the monthly fixed customer charge for those customers by $1.37 per month at an overall value of $3.6 million. In addition, Pepco will provide an approximately $25.2 million offset to the distribution rate increases for Residential and MMA customers during 2020-2022.

b. Pause Regulatory Asset Amortization for 2021 and 2022 - To reduce the amount of operating expense included in customer rates, under the EMRP, the Company would cease amortization of DC regulatory assets during 2021 and 2022 and resume amortization starting January 1, 2023, effectively extending the recovery period for all DC regulatory assets by two years.[232]

c. Accelerate the Amortization of the Additional Subtraction Modification Regulatory Liability in 2022. Under the EMRP, the amortization of the Additional Subtraction Modification Regulatory Liability would accelerate those benefits provided to customers in their entirety by December 31, 2022, rather than over 36.42 years, remaining book lives.[233]

d. Accelerate the Amortization of Non-Protected Property Related TCJA Excess Deferred Income Tax ("EDIT") Liability through December 31, 2022 - The EMRP would also accelerate the amortization of the Non-Protected Property Related TCJA EDIT Liability so that those benefits would be provided to all customers in their entirety by December 31, 2022, rather than over the currently approved ten-year period projected to end in 2027.

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[230] Pepco's subsequent proposal reduced this offset to a lower amount. This is provided in two parts with $3.6 million (based on a reduction in the monthly residential fixed charge) associated with an effective extension of the CBRC monthly credit for the months of April 2021 through December 2021. The second part of $25.2 million will offset proposed distribution rate increase for residential and MMA customers during 2020 and 2021 and $0.3 million of rate assistance for Street Lighting customers.

[231] Pepco's Brief at 39-40.

[232] Pepco's Brief at 40-41.

[233] Pepco's Brief at 41.

93. A summary of Pepco's EMRP revenue requirements and proposed billing offsets are provided in the following table.[234]

Table 3: Pepco's Proposed EMRP Net Revenue Increases with Offsets ($ in millions)

Line #	Description	MRP 2020		MRP 2021	MRP 2022	2023	Total
1	Cumulative Gross Revenue Increase	$ 15.6	*	$ 104.5	$ 135.9	$ 135.9	
2	Offsets						
3	Rate Assistance	$ (5.4)		$ (20.1)	$ -		$ (25.5)
4	Pause in Regulatory Asset Amortization	-		(14.7)	(12.0)		(26.7)
5	Accel MD Subtraction Modification Tax Benefit	-		-	(27.6)		(27.6)
6	Accel Non-Protected Property TCJA EDIT Refunds	(10.2)		(69.7)	(23.2)		(103.1)
7	Total Offsets	$ (15.6)		$ (104.5)	$ (62.8)	$ -	$ (183.0)
8	Cumulative Net Revenue Increase	$ 0.0		$ 0.0	$ 73.1	$ 135.9	
9	Incremental Net Revenue Increase	$ 0.0		$ (0.0)	$ 73.1	$ 62.8	

*$15.6m prorated portion for 10/1/20–12/31/20 of the $69.6m annualized 2020 cumulative revenue requirements
Pepco shareholders will absorb $29M of unrecovered spending - $25.5M for Rate Assistance (primarily residential with $0.3M to Street Light class) and $3.6M for CBRC Extension

94. Pepco states that the COVID-19 Rate Assistance: (1) is only available in 2021 and only if the Company's EMRP approach is used; (2) will be applied to the remaining balance after application of the other offsets; and (3) will be reduced and the actual amount available is less than $29 million due to delays in the proceeding.[235]

95. During the hearings, when asked about whether the Company has considered any proposals to help alleviate rate shock when the EMRP offsets expire, Pepco witness McGowan states that additional customer benefits are available to further phase in the revenue requirement that occurs in 2023.[236] The Company could offset 25% of the revenue requirement in 2023, thus delaying by one additional year the time when the full requested revenue requirement would apply. Under this approach, the revenue requirement offset would be 47% in 2022, 25% in 2023, and 0% in 2024. He states that there are three potential offsets available, that would provide the additional 25% of offsets in 2023: (1) Accelerate Remaining NPNP EDIT Balances; (2) Pause 2023 Regulatory Asset Amortization for one year; and (3) Rate Deferral: $9.0 million. The RDM would allow $9 million of rate increases in 2023 to be deferred and spread out over an extended period of time beginning in 2024. He further states that the additional 25% of offsets in 2023 does not

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[234] *See* Commission Exhibit 17. (Pepco's Response to Staff Data Request 26-28).

[235] October 26 Tr. at 136:14-137:2.

[236] Pepco's response to Bench Question No. 4.

alter or modify the EMRP.[237] If the Commission provides the additional 25% offsets in 2023, the Commission can direct the Company to file an application in 2022, requesting the above benefits be provided to customers through a sur-credit, effective January 2023. The Commission would allow parties to comment on the application before it makes a final decision based on comments by the parties and an assessment of the economic conditions at that time.[238]

3. Reconciliation

96. Pepco states that the EMRP's reconciliation process uses the Maryland Public Service Commission's three-step reconciliation process approved by Maryland Order No. 89482[239] for use with MRPs.[240] Pepco contends that Maryland's mechanism is asymmetric, provides cost-control incentives, and is not a formula rate.[241] Pepco explains that under the Maryland reconciliation process, the Commission was trying to strike a balance of achieving increased transparency and accountability by requiring that the utility's costs be evaluated by: (a) an "annual information filing" comparing projected data to actuals; (b) a "consolidated reconciliation and prudency review" in a subsequent rate case; and (c) a "final reconciliation and prudency review" after the conclusion of the term of the rate plan.[242] Pepco claims that the same benefits will be achieved in the District as in Maryland such as making rates more predictable for customers, making revenues more predictable for the utilities, spreading changes over multiple years, and decreasing administrative burdens by staggering filings over several years for more transparency in utilities' planning processes.[243] Pepco states that the annual filing will only compare forecasted data to actuals and will not include a sharing request.[244] Pepco also asserts that the proposed annual information filing process only provides for downward rate adjustments since there is no potential to obtain an under-earning until after the EMRP has ended.[245] More specifically, Pepco proposes a reconciliation process for the EMRP that consists of an annual information filing that does not provide for a sharing mechanism or dead-band but includes a

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[237] Pepco (2B), at 8 -13 (McGowan Supplemental Direct).

[238] Pepco's response to Bench Question No. 4.

[239] *Maryland Case No. 9618, In the Matter of the Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company* ("*MD Case No. 9618*"), Order No. 89482, issued February 4, 2020 ("Order No. 89482").

[240] Pepco's Brief at 69.

[241] Pepco's Brief at 73.

[242] Pepco's Brief at 69.

[243] Pepco's Brief at 69-70.

[244] Pepco's Brief at 70.

[245] Pepco's Brief at 69.

comparison of revenue requirement line items with supporting schedules as well as an additional schedule for capital additions variances.[246]

97. The EMRP also includes a Consolidated Reconciliation and Prudency Review which provides that if Pepco files its next rate case prior to the end of 2022, the Company will be required to include as part of that filing a "consolidated reconciliation" of all costs available through the end of the historic test year used in the new rate case.[247] Any adjustments made will be part of the new rate case and subject to prudency review.[248]

98. The EMRP provides for a final reconciliation and prudency review at the end of the EMRP period. The reconciliation covers all three EMRP years and includes any investments and costs during the EMRP period that were not already included. Pepco is required to submit the Final Reconciliation filing within 120 days of the end of the EMRP term.[249]

4. Deferred Accounting Mechanism

99. Pepco's EMRP includes a deferred accounting mechanism. Pepco states that the mechanism is proposed to address unforeseen costs due to external factors beyond Pepco's control during the term of the EMRP. Pepco indicates that the mechanism is expected to increase or decrease the Company's District distribution jurisdictional revenue requirement by at least $1.0 million in an EMRP year.[250] Pepco will be required to file a request for deferral within 90 days of identifying an event describing the external factors and unforeseen costs.[251] The Company explains that the mechanism will benefit and protect customers because it allows for one-time costs to be collected over a multi-year period, reducing bill impacts in any one year, and is intended to avoid the need to employ the reopener mechanism.[252] Pepco asserts that the Deferred Accounting provisions are defined and asserts that the criteria to trigger the deferral mechanism is significant. The Commission will have the ultimate approval authority over the use of the deferral mechanism under any particular circumstance.[253] In addition, Pepco clarifies that the Company is not seeking to create regulatory assets without review and approval by the Commission.[254]

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[246] Pepco's Brief at 70.

[247] Pepco's Brief at 71.

[248] Pepco's Brief at 71.

[249] Pepco's Brief at 71-72.

[250] Pepco's Brief at 75.

[251] Pepco's Brief at 75.

[252] Pepco's Brief at 75.

[253] Pepco's Brief at 75.

[254] Pepco's Brief at 75.

5. Reopener Provisions

100. Pepco states the EMRP includes specific criteria that establish the circumstances under which the reopener could be triggered, including catastrophic weather events, major changes in federal or local laws and/or regulations, or other exogenous factors that are entirely beyond the Company's control.[255] Pepco notes that any petition for reopener "would include justification and demonstration of why and how such exogenous factors may reasonably lead the Commission to determine that Pepco's electric distribution rates are not just and reasonable and/or cause irreparable financial harm to the utility."[256] Pepco claims that the Commission would review any reopener petition and ultimately make a decision based on the merits of the application before it.[257] Pepco states that the Company views the reopener as a provision of last resort, to be employed only in situations that may not be resolved through a deferred accounting request or the EMRP's reconciliation processes.[258]

6. Parties' Position on the EMRP

101. **OPC.** OPC opposes Pepco's EMRP. OPC asserts that Pepco's EMRP proposal is not just, reasonable, or in the public interest before the COVID-19 pandemic started and is even more harmful to consumers now.[259] OPC claims that there is no basis for continuing to evaluate the original MRP since it was designed prior to the COVID-19 pandemic, and Pepco has not adapted that proposal to the pandemic.[260] Witness Dismukes states that the COVID-19 pandemic has had and will continue to have devastating social and economic impacts on the District. OPC argues, contrary to Pepco's position, that the EMRP does not meet the Commission's criteria for AFOR and does not meet or advance the District's policy goals.[261] In addition, OPC contends that this is an inappropriate time to implement dramatic changes to long-standing regulatory regimes and recommends that the Commission should set rates using traditional ratemaking.[262] OPC claims that both of Pepco's MRP proposals erode oversight, reduce flexibility, and increase customer costs.[263] OPC argues that there is no reason to adopt any MRP since the mitigation measures (offsets and deferrals) proposed within the EMRP are still available with a traditional

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255 Pepco's Brief at 76.

256 Pepco's Brief at 76.

257 Pepco's Brief at 76.

258 Pepco's Brief at 76.

259 OPC's Brief at 92,124.

260 OPC's Brief at 93.

261 OPC's Reply Brief at 9, 11-12; s*ee also*, OPC (3A) at 3:7–13 (Dismukes Surrebuttal).

262 OPC's Reply Brief at 9.

263 OPC's Reply Brief at 9.

rate-setting approach.[264] OPC contends that Pepco's proposal fails to show a specific need to modernize the ratemaking paradigm, arguing that the District's regulatory paradigm is already modernized. OPC notes that the Commission's oversight of Pepco's business is effective as measured by numerous reliability and performance metrics and the Commission allows multiple AFORs in the current regulatory process such as partially forecasted test years, the ability to recover post-test year expenses, the BSA/decoupling mechanism, and through the DC PLUG program special rate treatment for investments in undergrounding.[265]

102. OPC asserts that Pepco does not provide any support for the Company's contentions that the EMRP will reduce customer costs, reduce regulatory burdens, increase accountability, or better align Pepco's operations with the District's policy objectives.[266] Moreover, according to OPC, Pepco's case for approval of an EMRP is based on the Company's misrepresentation that it is providing pandemic relief by offering a short-term rate "freeze," alleging that a customer's total bill charge would be lower than a decade ago.[267] However, OPC argues that those claims are false and that excessive distribution service rates will be implemented immediately upon approval and that the impact will be blunted by customer-funded rate offsets (accelerated return of monies owed to them by Pepco) and a delay/pause in the collection of certain amortized amounts owed to Pepco in the future.[268] Pepco's mitigation measures subject customers to an enormous increase and, as offsets expire, expose customers to that rate increase.[269] OPC asserts that the Commission must first determine a fair and reasonable revenue requirement for Pepco before considering offsets.[270]

103. With respect to the EMRP, OPC recognizes that the EMRP offers a modified reconciliation mechanism by abandoning the ARF proceedings, the ESM and related ROE deadbands, and replaces them with a three-part reconciliation structure: "(1) an 'annual information filing' comparing projected data to actuals; (2) a 'consolidated reconciliation and prudency review' in a subsequent rate case; and (3) a 'final reconciliation and prudency review' after the conclusion of the term of the rate plan."[271] OPC notes the change in methodology and rejects Pepco's claim that the EMRP will be administratively efficient and streamline the regulatory process. OPC states that acceptance of an EMRP will require annual review of the

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264 OPC's Reply Brief at 9-10.

265 OPC's Reply Brief at 15-17.

266 OPC's Brief at 142.

267 OPC's Brief at 125.

268 OPC's Brief at 125.

269 OPC's Brief at 125.

270 OPC's Brief at 125.

271 OPC's Brief at 143.

reconciliation filing (Annual, Final, and Consolidated Reconciliation Filing and prudency review), increasing regulatory burdens and administrative costs on the Commission and Parties.[272]

104. According to OPC, the EMRP is not a rate "freeze" but is a significant increase in base distribution service rates, mitigated temporarily (through January 2021 and partially through year 2022 and disappear January 2023) by customer-funded offsets.[273] OPC asserts that "MRP approval will result in an immediate and substantial increase in base distribution rates to the detriment of both residential and commercial customers."[274] Specifically, OPC witness Ramas concludes that of the $182.9 million in proposed offsets, most are dollars already owed to District ratepayers – a $27 million offset associated with acceleration of the amortization of the MD Additional Subtraction Modification Regulatory Liability and a $103.1 million offset associated with the acceleration of NPNP EDIT Regulatory Liability balance.[275] In addition, OPC asserts that Pepco's proposed $26.7 million Pause in Regulatory Asset Amortization delays but does not avoid cost recovery. OPC states that although there may be a short-term benefit to customers, they will pay a "high price" for the near-term rate relief because the regulatory asset balance will be twice the amount it would have been without the pause.[276] OPC contends that the EMRP's Customer Assistance programs will also put upward pressure on future rates because Pepco is proposing regulatory asset treatment for the programs.[277] OPC witness Ramas notes that the regulatory asset includes estimated program costs of: (1) $6.4 million for the modifications to the AMP; (2) $1.0 million for the House of Worship and Non-Profit Customer Credit; (3) $2.0 million for the Energy Efficiency 0% interest loans to purchase energy efficiency products; and (4) $3.0 million for the supplemental energy efficiency incentive program.[278] OPC alleges that Pepco has proposed a carrying charge associated with the regulatory assets for the deferred amounts and that under the EMRP, ratepayers are paying for the majority of the reduction. Although the EMRP provides some near-term relief, OPC argues that customers are funding their own mitigation.

105. According to OPC, as evidenced by Pepco's proposed tariff, the EMRP proposal subjects small commercial customers to immediate increases to their bills regardless of proposed offsets.[279] Specifically, Time Metered General Service – Low Voltage ("MGT-LV") customers

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[272] OPC's Brief at 142-149.

[273] OPC's Brief at 128.

[274] OPC's Brief at 129. OPC asserts that once the offset period ends, District customers will face an enormous increase in their distribution service charges.

[275] OPC's Brief at 130.

[276] OPC's Brief at 131.

[277] OPC's Brief at 131.

[278] OPC's Brief at 131.

[279] OPC's Brief at 132-133.

and General Service Time Metered Low Voltage ("GT-LV") customers volumetric charges will increase nearly 60% to 70%, respectively.[280]

106. OPC states that once the offset period ends, District customers will face an enormous increase in their distribution service charges resulting in a cumulative increase (without offsets) in distribution revenues of $104 million effective Spring 2021, and $135.9 million effective January 1, 2022.[281] OPC notes that there is a timing issue and that a portion of the year 2020 shareholder-funded offsets ($5.4 million) will no longer be needed, thus lowering by 21% the shareholder-funded portion of the offsets.[282] If approved, during 2021, the offsets proposed in the EMRP would cover the entirety of the proposed $104.5 million rate hike. However, for 2022, there will be a partial offset mitigating the rate hike, and Pepco's revenue requirement would increase by $72.6 million.[283] OPC avers that this equates to a 25.9% increase in the distribution charge paid by customers.[284] OPC asserts that if the EMRP is approved as filed, as of January 1, 2023, residential customers' distribution service charge increases an additional 13.55%.[285] From January 1, 2022, to January 1, 2023, the average residential customer's distribution service charge will increase by a combined 39.45%.[286]

107. According to OPC, the Commission can choose to use mitigation measures with the Traditional test year approach in order to offset the customer impacts of a potential rate increase. OPC asserts that the Commission can at any time consider acceleration of the amortization period for the offsets associated with the new Additional Subtraction Regulatory Liability and NPP EDIT because they are amounts that Pepco owes to ratepayers and could be addressed with a shorter amortization period that results in the balance being fully amortized by December 31, 2022.[287] OPC states that with respect to the NPP EDIT, it will not be opposed to accelerating amortization in order to offset the impacts of potential rate increases during the pandemic.[288] OPC notes that there will be available $106.5 million to use as offsets.[289] OPC suggests that if rates are set at a more reasonable and equitable level, then certain offsets will not

[280] OPC's Brief at 132-133. Pepco does not consider these as rate increases because it based its bill impact analysis on changes to Pepco's revenue (rather than customers' bills). Pepco claims the changes to be tariffed and are a function of the BSA.

[281] OPC's Brief at 135.

[282] OPC's Brief at 136.

[283] OPC's Brief at 137.

[284] OPC's Brief at 137.

[285] OPC's Brief at 137.

[286] OPC's Brief at 137.

[287] OPC's Brief at 140.

[288] OPC's Brief at 141.

[289] OPC's Brief at 141.

be necessary such as the $5.4 million for offset in 2020, and $19.8 million in 2021 residential and MMA rate assistance.[290]

108. According to OPC, the EMRP is based on preliminary spending that may differ substantially from those used to set rates. Witness DeCourcey explains that the EMRP's spending plans are divorced from Pepco's current business reality and are not binding because they are based on cost projections that will not form the basis of Pepco's rates.[291] OPC contends that Pepco's plan allows the Company to increase costs without limit during the EMRP period and that Pepco does not justify its proposed escalation rates, which OPC believes will be applied in an unreasonable manner.[292] According to OPC, Pepco's proposed spending forecast (operational and financial) does not account for impacts caused by the pandemic because the Company does not have a basis to develop/determine the impact.[293] Moreover, OPC argues that the inaccurate forecasts (due to the pandemic's negative effect on economic activity and energy consumption) create ratepayer risks that are not addressed under the EMRP.[294] OPC contends that the EMRP does not preserve the Commission's ability to conduct prudency reviews.[295] However, OPC states that the EMRP provides the Company with some flexibility to respond to changing circumstances. Pepco gets time to gather data and analysis for use in LRP with no cap in spending during the EMRP while imposing additional risks on ratepayers by reducing regulatory transparency and rate certainty with possible significant rate shock at the end of the EMRP period.[296] Similarly, OPC maintains that the EMRP does not create cost certainty for customers but provides an illusory rate certainty for the limited EMRP period and rate shock at the end of the period.[297]

109. OPC argues that Pepco's amendments to the Construction Budget for the EMRP are unsupported, unreasonable, inconsistent with Commission precedent, and would undermine transparency.[298] OPC's primary issue with the Construction Budget is that Pepco departed from "best practices" and does not conduct a load forecast to develop the EMRP budget.[299] In addition, Pepco does not identify with specificity the projects that will be eliminated or deferred at this

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290 OPC's Brief at 141.

291 OPC's Brief at 149-152.

292 OPC's Brief at 149, 153-155.

293 OPC's Brief at 155-156.

294 OPC's Brief at 156-157.

295 OPC's Brief at 158.

296 OPC's Brief at 158-159.

297 OPC's Brief at 159; *see also* OPC's Reply Brief at 14-15.

298 OPC's Brief at 160; *see also* OPC's Reply Brief at 17-18.

299 OPC's Brief at 161; OPC's Reply Brief at 19-24.

time.[300] OPC argues that there is no record evidence to determine that the revisions to the construction budget are just and reasonable.[301]

110. Likewise, OPC argues that Pepco's proposed 9.70% ROE under the EMRP is unreasonable and unsupported. OPC argues that the EMRP exacerbates the shifting of risk from the Company to customers and will warrant a reduction in the ROE, especially in light of the current COVID-19 impact on the market.[302] OPC argues that Pepco's requested 9.70% ROE under the EMRP fails to align with certain AFOR principles, in that there is no discussion on how the AFOR impacts its financial integrity and credit worthiness, how any risk of over-earning a ROE will be mitigated for the benefit of customers, and how the AFOR avoids any unreasonable shifting of risk to utility customers.[303]

111. According to OPC, Pepco's proposed customer assistance programs do not adequately address the needs of District consumers and should not be approved as a condition of adopting the Company's EMRP. OPC notes that Pepco's package of customer assistance programs appears to be an altruistic gesture but are not because they are conditioned on the Commission approving the Company's MRP.[304] OPC recommends rejection of Pepco's proposal because it is not in the public interest, is self-serving, and harmful to consumers.[305]

112. OPC recommends a secondary alternative option that includes a Traditional cost of service rate case outcome, accompanied by tax-credit revenue requirements offsets.[306] OPC recommends a modest Traditional $21 million revenue increase that can be covered by offsets. Additionally, there is an option of pausing the regulatory asset amortization to provide for some revenue requirement offsets in lieu of some of the tax credit offsets.[307] OPC states that the Commission will need to determine the revenue increase, the corresponding customer class-specific revenue requirements, and timing of the increase before determining which offsets are necessary to ensure no net increase in base distribution rates by customer class during 2021.[308] OPC's recommendations include delaying the start of the amortization period for new regulatory

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[300] OPC's Brief at 161.

[301] OPC's Brief at 162.

[302] OPC's Brief at 167-172.

[303] OPC's Brief at 168-172.

[304] OPC's Brief at 173.

[305] OPC's Brief at 173.

[306] OPC's Brief at 32,121.

[307] OPC's Brief at 138-141.

[308] OPC's Brief at 138-141.

assets, modifying the amortization for the Accelerated Additional Subtraction Modification,[309] and accelerating the NPP under the TCJA and EDIT. OPC is optimistic that the Settlement Agreement signatories would be open to this mitigation measure under a Traditional approach.[310]

113. In addition, OPC challenges the notion that the reconciliation and prudence reviews under the EMRP will address errors in Pepco's capital spending program.[311] OPC has concerns that the prudency reviews are after the fact and that Pepco may increase its O&M and capital spending over Commission-approved levels, resulting in rate shock at the end of the EMRP.[312] OPC also asserts that Pepco incorrectly uses a start date of January 1, 2018, for the amortization of NPP EDIT regulatory liability rather than the date that the *Formal Case No. 1150/1151* Settlement went into effect.

114. **AOBA.** AOBA asserts that nothing in Pepco's filed Surrebuttal Testimony provides criteria for how and to what extent the evaluation of the Company's May 30, 2019, Application should be affected by pandemic-related events.[313] According to AOBA, Pepco fails to proffer any evidence to suggests that the EMRP will provide measurable, quantitative, and qualitative benefits to customers.[314] Specifically, AOBA argues, contrary to Pepco's assertions, that there are no regulatory cost savings by adopting an MRP proposal and that the regulatory costs would initially increase due to annual reconciliations and after-the-fact prudence reviews.[315] Moreover, AOBA states that the unreliability *(i.e.*, the multiple errors and questionable practices) of Pepco's data and analyses undercuts its claims of regulatory-related cost savings with an MRP proposal.[316]

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[309] Pepco has proposed the entirety of this Accelerated Additional Subtraction Modification regulatory liability to be used as an offset to customer charges in 2022. In OPC's response to Staff 2.3, PSC Exhibit No. 40. OPC stated that Commission could modify this timing to reduce revenue requirements by (a) transferring the full balance to 2021, (b) splitting the balance between 2021 and 2022, or (c) adopting a different amortization period. The option chosen would be based on the revenue requirement approved, by customer class, and effective date.

[310] *See* Commission Exhibit 40.

[311] OPC (3C) at 26:12-27:5 (DeCourcey Supp.).

[312] OPC (3C) at 31:15 (DeCourcey Supp.).

[313] AOBA's Brief at 17.

[314] AOBA's Brief at 29.

[315] AOBA's Brief at 29.

[316] AOBA's Brief at 30. According to AOBA, Pepco fails to demonstrate control of the quality of its rate filings. AOBA asserts that Pepco's presentations raise substantial concerns regarding the Company's management and control of the quality of its rate filings, in light of learning of significant errors in prior Pepco rate filings that have cost the Company approximately $30 million in revenue collections and compliance rate computation errors. AOBA's Reply Brief at 26-27.

115. AOBA asserts that "multiyear plan proposals are heavily dependent on trust in the reasonableness of and reliability of the data and forecasts on which they are premised."[317] AOBA argues that the EMRP is deceptive and is an attempt to continue with excessive capital and operating expenditures while providing an illusion of rate relief.[318] AOBA contends that in the context of known and potential impacts of the COVID-19 pandemic on Pepco's forecasts, operations, planning, and finances, this is not the time to be entering into a ratemaking process that is heavily reliant on forecasted data.[319] According to AOBA, Pepco uses accounting gimmicks to avoid significant reductions of its aggressive increases in its ROE, capital spending planned and budgeted O&M expenses. AOBA asserts that Pepco just defers costs in the future past the recovery period of the MRP proposals instead of adjusting its expenditures downward.[320] AOBA states that such cost deferrals ensure that District ratepayers will experience significant rate increases on January 1, 2023, without further action by the Commission.[321] AOBA notes that the significant increases will be compounded by: (1) COVID-19 cost deferrals; (2) recovery of BSA deferred revenue balances that have grown rapidly as a result of COVID-19 restrictions on business activity; (3) scheduled increases in union contract costs; and (4) other inflationary pressures on the Company's expenditures.[322] AOBA argues that "the record does not exist to support the Commission's adjustment of Pepco's [EMRP] revenue requirements and all of the changes to the Company's proposed cost deferrals, revenue offsets, and rate designs that such adjustments to Pepco's revenue requirement would require."[323] Thus, AOBA continues to have significant concerns with Pepco's forecasted billing determinants and rate design process over the MRP term.[324]

116. AOBA's overall observation is that the EMRP does not provide a "rate freeze" because all customer classes will experience changes in distribution base rate charges in each rate year and in 2023.[325] According to AOBA: (1) the cumulative rate increases for most of the

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317 AOBA's Brief at 22, 30.

318 AOBA's Brief at 6.

319 AOBA's Brief at 30; AOBA (4A) at 59:14 (B. Oliver Supplemental Surrebuttal).

320 AOBA's Brief at 6.

321 AOBA's Brief at 6, 23.

322 AOBA's Brief at 6-7.

323 AOBA's Brief at 2.

324 AOBA (4A) at 59:3, and 9:10 (B. Oliver Supplemental Surrebuttal).

325 AOBA's Brief at 24. AOBA asserts the Pepco no longer claims a rate freeze, but that Pepco now characterizes the EMRP as providing "no overall distribution rate increase until January 1, 2022." AOBA's Reply Brief at 14. For example, AOBA notes that that Pepco's proposed MRP Enhanced rates would impose an immediate 76% increase in kWh charges for Rate Schedule GT-LV customers and a 17.6% increase in the average distribution bill for GT-LV customers if implemented in 2020. If Pepco's MRP Enhanced Rates are not implemented until sometime in 2021, GT-LV customers would experience an immediate 83.5% increase in their kWh charges and an

District's rate classes after the proposed Rider ERR credits expires range from 30% to 51%.; (2) customers served under rate schedules MGT-LV and GT-LV would immediately have double-digit base rate increases and in 2023 their base rate charges would rise by 42.7% and 51.0%, respectively, compared to current rates; (3) Pepco's residential customers will experience net reductions in their base rate charges in RY1 and RY2, despite having a current negative rate of return, but residential base rates will increase by approximately 50% between the end of 2021 (RY2) and the beginning of calendar year 2023.[326]

117. AOBA challenges Pepco's assertion that the EMRP will "provide $29 million of non-recoverable [revenue] offsets and approximately $145 million in negative cashflow to fund the offsets."[327] AOBA argues that these offsets are premised on an assumption that Pepco would receive its entire revenue increase for each EMRP year, for which AOBA contends must be heavily discounted diminishing the claimed financial benefit.[328] AOBA warns the Commission that Pepco's proposed offsets come with known and quantifiable additional rate increases in future years.[329] With respect to the $145 million negative cash-flow, AOBA reminds the Commission that it is an estimate dependent on an assumption that the entirety of the EMRP revenue increase would be approved. AOBA argues that given the Commission's determinations in the last number of rate cases, approval of all or even most of the revenue increase is unlikely.[330]

118. According to AOBA, "the uncertainties regarding COVID-19 impacts undermine the very premise of multi-year ratemaking proposals that are heavily dependent on forecasted data."[331] AOBA contends that the uncertainties associated with Pepco's forecast of costs and usage increase the potential to shift risks from the Company to its ratepayers.[332] AOBA contends that Pepco's MRP proposals are further eroded by uncertainties with respect to: (1) future levels of business activity in the District; (2) future electric service requirements in the District; and (3) the future health of the District's economy.[333]

119. AOBA contends that Pepco makes no revisions to the Company's Capital Projects for 2021 and 2022, and thus this proceeding lacks an evidentiary record to support the

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average increase per customer of nearly 19%. In the context of the economic hardships imposed by the Covid-19 pandemic, these are substantial rate increases. AOBA's Reply Brief at 14-15.

326 AOBA's Brief at 24-25.

327 AOBA's Reply Brief at 15, *citing* Pepco's Brief at 23.

328 AOBA's Reply Brief at 15.

329 AOBA's Reply Brief at 16.

330 AOBA's Reply Brief at 16.

331 AOBA's Brief at 30.

332 AOBA's Brief at 30; s*ee also* AOBA's Reply Brief at 7.

333 AOBA's Reply Brief at 8.

reasonableness and appropriateness of the adjustments to capital projects that Pepco will ultimately offer as part of its EMRP.[334] According to AOBA, the $60 million revision to Pepco's forecasted capital additions offered as part of the EMRP is not tied to any assessment of costs and benefits of projects to be deferred and not associated with any assessment of the levels of expenditures necessary to maintain service reliability or quality in regards to COVID-19 impacts on the District's electric service.[335] Therefore, AOBA states that "Pepco's offered deferral of $60 million of capital projects to be placed in service before the end of 2022 is arbitrary and its actual value to ratepayers is insignificant."[336]

120. AOBA states that it will be some time before the District's economy will return to pre-COVID-19 levels of activity. AOBA indicates that if Pepco is truly concerned about the COVID-19 impact on customers and the economy, the Company would have worked within its existing funding or at most sought a modest increase.[337] According to AOBA, "Pepco's response to COVID-19 is a 'carpet bag' full of accounting tricks that are designed to allow the Company essentially its full initial request with an increase in the Company's authorized ROE and no substantial reductions in its forecasted capital spending and/or its projected Operating and Maintenance ("O&M") costs . . . [with the only concession being that Pepco] would recover costs for portions of its initially proposed expenditures after the end of its initially requested three-year multi-year plan."[338] AOBA contends that the EMRP effectively provides Pepco with a 4-year rate plan with significant increases occurring after the three-year EMRP period.[339] AOBA states that effective January 1, 2023, rate increases resulting from Pepco's proposed "revenue offsets" and deferrals of cost recovery make a "Balloon Payment" due for ratepayers at the expiration of the EMRP.[340] AOBA asserts that any effort to move forward with an MRP proposal while under the COVID-19 pandemic is fool-hearted and not well reasoned. Moreover, AOBA alleges that a pandemic constitutes an extraordinary event that would require the use of an off-ramp as described in Order No. 20273, which allows for exit from an MRP.[341]

121. Further, AOBA argues that the ESM is inappropriately biased in favor of Pepco, shifts risk to ratepayers, and is inconsistent with Order No. 20273, which requires that AFORs avoid unreasonable shifting of risk to utility customers.[342] According to AOBA, the structure of

[334] AOBA's Reply Brief at 6.

[335] AOBA's Reply Brief at 6.

[336] AOBA's Reply Brief at 6-7.

[337] AOBA's Reply Brief at 3.

[338] AOBA's Reply Brief at 4.

[339] AOBA's Reply Brief at 4.

[340] AOBA's Reply Brief at 4.

[341] AOBA's Brief at 30.

[342] AOBA's Brief at 31.

the proposed ESM and ARF "provide an incentive for Pepco to over-estimate its costs, and in doing so, improve the likelihood that the Company will be permitted to gain an effective increase in its authorized earnings."[343] The proposed ESM is biased in favor of Pepco and provides a disproportionate share of any over-earnings.[344] AOBA asserts that the over-estimates of cost make it more likely that the Company will show over-earnings in its ARF and increase the potential that Pepco's ESM will provide enhanced earnings for the Company.[345] Even though Pepco witness Wolverton describes the ARF, AOBA points out that Pepco has not set forth any language in a tariff that specifies the procedures and calculations on which such reconciliations would be performed.[346] AOBA argues that the lack of tariff provisions constitutes sufficient grounds for the denial of Pepco's MRP proposals.[347]

122. Likewise, AOBA contends that Pepco has not proposed tariff language for computation of the proposed billing determinants and base rate charges by rate class on an annual basis during the MRP period.[348] AOBA argues that because Pepco relies on forecasted data, there is no certainty with regards to the changes in Pepco's projected billing determinants within the three-year MRP period.[349] AOBA avers that this undermines the rate-setting process and under no circumstance should last-minute changes in billing determinants be permitted if the Commission is to set just and reasonable rates.[350] Also, AOBA argues that Pepco cannot continue to rely on its commercial customers for its earnings and that the affordability of service for commercial customers and the impact on commercial customers' budgets cannot be of secondary importance to the Commission or Pepco.[351]

123. AOBA further argues that there is no guarantee that the billing determinants, rates, and charges presented by Pepco's revised EMRP rate designs will be representative of the rates anticipated in the Company's compliance rate designs since Pepco indicates that final billing determinants and rate designs will be determined later.[352] AOBA contends that "[g]iven [Pepco's] admitted errors in its compliance rates in past proceedings, Pepco's proposals for revisions to billing determinants prior to its computation of compliance rates, as well as on an annual basis thereafter, [does not provide a] sufficient evidentiary foundation to be deemed just and reasonable

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[343] AOBA's Brief at 31.

[344] AOBA's Brief at 31.

[345] AOBA's Brief at 31.

[346] AOBA's Brief at 32.

[347] AOBA's Brief at 32.

[348] AOBA's Brief at 32.

[349] AOBA's Brief at 32.

[350] AOBA's Brief at 33.

[351] AOBA's Brief at 25-26.

[352] AOBA's Reply Brief at 5.

by this Commission."[353] Therefore, AOBA argues that because Pepco is not confident in its ability to forecast billing determinants with reasonable accuracy for the term of the EMRP, the Company should not be pursuing a multi-year ratemaking paradigm.[354]

124. AOBA argues that Pepco should be required to operate with substantially less than the levels of increased revenues it has requested for the EMRP.[355] In addition, AOBA does not believe a determination should be made regarding the necessity and appropriateness of Pepco's proposed revenue offsets, and cost deferrals, and/or ERR Credits until a determination is made for the appropriate overall level of revenue increase for Pepco.[356] AOBA questions the value and need for the revenue offsets and/or cost deferrals if the revenue request is reduced or rejected.[357] AOBA reiterates that it is not suggesting denial of any increase but under the current economic environment any increase should be trimmed to fund only "bare bones" necessities.[358] AOBA claims that Pepco's Rider ERR proposal is inequitable and creates large year-to-year changes in applicable charges for several rate classes.[359] According to AOBA, the ERR credits that Pepco proposes to apply fail to yield reasonable or equitable results because some classes exceed the total revenue increases the Company will apply to those classes, while other classes would continue to experience double-digit RY3 increases in their charges for distribution service.[360] AOBA asserted that allocation of ERR credits consistent with the Class Cost of Service Study ("CCOSS") is meaningless because rates by class do not reasonably align revenues with allocated cost, and it is inappropriate to allocate revenue credits based on allocation methods used in the CCOSS.[361] AOBA notes that at the expiration of the proposed ERR credit in 2022, customers in many classes would see large automatic increases as of January 2, 2023.[362] AOBA argues that "these changes fail to reflect any sense of gradualism or continuity in ratemaking."[363]

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[353] AOBA's Reply Brief at 5.

[354] AOBA's Reply Brief at 5.

[355] AOBA's Reply Brief at 9.

[356] AOBA's Reply Brief at 9-10.

[357] AOBA's Reply Brief at 10. AOBA argues that Pepco's RDM Rider is inappropriate and should not be used even if the EMRP is rejected because it was proposed to deal with the a shortened MRP period based on the procedural schedule. AOBA's Reply Brief at 33-34.

[358] AOBA's Reply Brief at 11.

[359] AOBA's Reply Brief at 30.

[360] AOBA's Reply Brief at 30.

[361] AOBA's Reply Brief at 31.

[362] AOBA's Reply Brief at 31.

[363] AOBA's Reply Brief at 31.

125. **DCG.** DCG also opposes Pepco's EMRP and recommends rejection.[364] DCG argues that the EMRP does not cure the deficiencies identified in its original MRP, does not comply with the Commission's principles for AFOR, and shifts substantial risk to ratepayers without advancing the District's clean energy policy and goals.[365] According to DCG, the EMRP does not provide appropriate incentives to the Company for cost control or protect customers from unreasonable rates.[366] DCG also argues that the EMRP does not protect ratepayers against the potential impacts of the COVID-19 pandemic.

126. DCG opposes Pepco's proposal to adopt Maryland's reconciliation process because it is in essence a Formula Rate Plan which incents a utility to reduce costs to increase profits.[367] DCG argues that the EMRP's reconciliation for overspending puts the burden on the Commission and the Parties to show imprudence because it significantly undermines cost containment incentives by allowing Pepco to recover cost overruns with the exception of those found to be imprudent.[368] DCG recommends that there be no reconciliation of revenues with costs allowed over the course of the EMRP or at the end of the EMRP and suggests that rates be reset with a new test year.[369]

127. In addition, DCG contends that Pepco's annual cost escalation rate of 2.5% for plant additions and O&M expenses for the 12 months ended June 30, 2019, is unsupported and will allow Pepco to build rate base by overstating its costs/revenue requirement through an arbitrary escalation rate and overspend the costs that are allowed in a rate case.[370]

128. DCG also asserts that the EMRP does not sufficiently advance the District's policy goals. More specifically, DCG contends that the EMRP's GHG tracking metric and supplemental energy efficiency rebates for small commercial customers will not adequately advance the District's policy goals for grid modernization, adoption of DER, and development of NWAs.[371]

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[364] DCG's Brief at 26.

[365] DCG's Brief at 28.

[366] DCG's Brief at 28-29.

[367] DCG's Brief at 28. DCG (4A) at 6:13-20. *See also,* AFOR Order, ¶ 85 ("DCG explains that both MRPs and formula rate plans feature formulas but 'formula rate plans formulaically ensure that revenues track costs, often measured as deviations in return on equity (ROE) from the utility's target ROE . . . Importantly, in contrast, MRPs do not adjust revenues to equal costs during the plan.' DCG states that 'Because revenues do not increase in lock step with costs, the utility has an incentive to reduce costs to increase its profits for the duration of the rate plan. At the end of the MRP term, these cost reductions can then be passed on to ratepayers when rates are reset in a rate case.' It is on this basis that DCG concludes that 'FRPs or MRPs that essentially resemble FRPs are not in the public interest.").

[368] DCG's Brief at 29.

[369] DCG's Brief at 29.

[370] DCG's Brief at 30.

[371] DCG's Brief at 31.

129. DCG argues that the EMRP fails to protect ratepayers from the economic impact of COVID-19 due to the uncertainty of future electricity use in the District.[372] DCG notes Pepco's acknowledgment of declining electricity sales and notes that Pepco has not modified its budget or adjusted its capital construction plans to account for fewer capacity-driven projects in the EMRP as a result of the COVID-19 pandemic.[373] DCG states that Pepco has not performed an analysis on the load forecasts and revenue requirements with respect to COVID-19's impact, and Pepco provides no information regarding the $60 million in deferred capital identified in the original MRP for identification of specific capital projects to be deferred in the EMRP.[374] DCG states that "Pepco's ability to reconcile all costs (except for carrying costs) in the Enhanced MRP undermines its claim that the MRP allows Pepco flexibility by allowing for adjustments to reflect changes in the business environment (rather than changes in the utility's actual revenue and costs)."[375]

130. DCG requests that the Commission direct Pepco to: (1) develop and implement an integrated distribution plan and a comprehensive grid modernization plan including a system needs assessment, technology investment roadmap, timeline, and benefit-cost analysis; (2) reject Pepco's original MRP and EMRP proposals, and all associated proposed PIMs; (3) continue filing any rate change applications based on traditional cost of service regulation; and (4) not file another MRP proposal unless the proposal remedies the deficiencies in the original and EMRP proposals identified herein that: (a) exhibit strong cost-containment incentives; (b) prevent unreasonable shifting of risk to customers; (c) align with or advance the District's public policy goals and commitments; (d) provide benefits that are measurable, quantitative, and qualitative to customers; and (e) otherwise comply with the Commission AFOR Order in this proceeding.[376]

131. DCG suggests that the Commission continue with traditional cost of service regulation until the impacts of the pandemic on system needs are better understood and Pepco remedies the deficiencies in its EMRP.[377] DCG recommends the Commission reject the Proposal and direct Pepco to file a new MRP that provides strong cost containment incentives, escalates the revenue requirement based on (objective) external indices, and includes PIMs and tracking metrics that advance the District's climate and clean energy goals.[378]

132. **GSA.** GSA opposes Pepco's EMRP and recommends using the Traditional test year approach.[379] According to GSA, the evidence in this case does not demonstrate that the MRP

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[372] DCG's Brief at 32.

[373] DCG's Brief at 32.

[374] DCG's Brief at 32.

[375] DCG's Brief at 33.

[376] DCG's Brief at 33-34.

[377] DCG's Brief at 25. DCG (4A) at 24:8 (Lane Supplemental Surrebuttal).

[378] DCG (4A) at 3:6 (Lane Supplemental Surrebuttal).

[379] GSA's Brief at 5.

would produce benefits above those provided under Traditional regulation, but will involve more risk to customers.[380] Likewise, GSA asserts that the EMRP included the key features that were most concerning to the Parties with the MRP and suggest rejection of it also.[381] GSA has concerns that: (1) an MRP represents a dramatic change in how Pepco will be regulated; and (2) the MRP does not meet the threshold requirements for AFORs under District law (an MRP is not one of the AFORs listed under the statute) and Commission policy (*i.e.,* overarching framework) as set forth in Order No. 20273.[382]

133. GSA avers that the EMRP should not be adopted because it suffers from the same major flaws as the MRP in that it locks in three significant annual increases in a single rate case. The problems and risk to customers from approving three rate increases at once is problematic and potentially reduces Pepco's incentive to control costs as compared to a Traditional test year approach.[383] GSA states that although there will no longer be potential for additional rate increases in the annual reconciliation process, the EMRP will still virtually assure Pepco of earning its allowed ROE (or in excess of its ROE) through the reconciliation mechanism at the end of the MRP.[384] Similar to the MRP base rate increase on uncertain projections and how COVID-19 has increased that uncertainty with respect to Pepco's projected cost and load forecasts for the next several years, Pepco does not know how its Construction Plan will be affected.[385] GSA notes that Pepco has not made contingency spending plans for implementation as conditions change. According to GSA, it is telling that Pepco proposes to remove $60 million in projects from its Construction Plan but has yet to identify what projects will be cut.[386] The reduction of $60 million in capital spending will reduce the overall revenue requirement in MRP years 2021 and 2022. GSA notes that Pepco's EMRP includes only an indicative spending plan, and the actual plan would not be filed until 2021.[387] GSA states that the EMRP does not address some problematic features such as the deferral mechanism and the deferred accounting mechanism, which will be generally the same, but the Commission will determine if the costs reflected in each deferred accounting request will be made a regulatory asset for future consideration.[388]

134. GSA does not assert that Pepco should be precluded from making a deferral request, but regulatory asset treatment is an extraordinary remedy that should be used in limited

[380] GSA's Brief at 6.

[381] GSA's Brief at 6.

[382] GSA's Brief at 11-12.

[383] GSA's Brief at 28-29.

[384] GSA's Brief at 29.

[385] GSA's Brief at 30.

[386] GSA's Brief at 30.

[387] GSA's Brief at 30.

[388] GSA's Brief at 31.

circumstances, if at all over the term of the EMRP. GSA recommends that, at a minimum, the deferral requests should be evaluated and granted on a case-by-case basis provided the costs are truly extraordinary and unavoidable, unusually large and non-recurring, and materially decreases Pepco's earnings such that it would likely weaken Pepco's financial integrity if the deferred accounting treatment is not granted.[389] GSA indicates that if the Commission allows a regulatory asset to be created, all issues relating to the deferral (*e.g.*, whether allowing cost deferral is reasonable, the prudence and reasonableness of the regulatory asset's underlying costs, whether Pepco should be allowed to earn a return on the regulatory asset's unamortized balance and what the return should be, and the appropriate amortization period) should be preserved until Parties have an opportunity to evaluate in the context of a rate case.[390]

135. GSA notes that the EMRP does improve in some ways upon the original MRP proposal in that the annual reconciliation process under the EMRP will be largely informational and there will be no intra-MRP rate increases if Pepco under-earns, which GSA indicated is preferable to the annual reconciliation mechanism in the original proposal. However, GSA does not support the Maryland reconciliation mechanism for the EMRP but indicates that it can support certain elements such as the after-the-fact prudence review of costs incurred over the EMRP term.[391] GSA does not believe that the revised reconciliation mechanism is a basis on which the EMRP should be approved but indicates if the Commission moves forward, the program should be adopted as a pilot program.[392]

136. GSA agrees with making PIMs tracking-only, which GSA says are preferable to PIMs that provide incentives and possible rewards.[393] GSA acknowledges Pepco's willingness to more clearly define standards for reopening the MRP. Nonetheless, GSA does not believe these improvements overcome the problems with the MRP and should not serve as a basis for approving the EMRP.[394]

137. GSA argues the Pepco's rate mitigation proposals largely accelerate the flowback of benefits ratepayers are already entitled to receive, and an MRP is not required to facilitate such proposals. According to Witness Goins, "offsetting the large rate increases built into Pepco's EMRP comes at a cost to ratepayers – no immediate bill increases in exchange for higher bills later."[395] GSA maintains that even if the Commission determines that the proposed rate mitigation

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389 GSA's Reply Brief at 8-9.

390 GSA's Reply Brief at 9.

391 GSA's Reply Brief at 5-6.

392 GSA's Reply Brief at 5-6.

393 GSA's Brief at 31.

394 GSA's Brief at 31.

395 GSA's Brief at 32.

measures will benefit customers now, Pepco has not demonstrated that an MRP is necessary to implement such measures.[396]

138. In sum, GSA recommends the Commission reject the EMRP because it effectively locks in three annual rate increases, and customers will pay $72.6 million more for distribution in 2022 and $135.9 million more in 2023 than they are currently paying. GSA believes that offsetting the large rate increases built into Pepco's EMRP comes at a cost to ratepayers—no immediate bill increases in exchange for higher bills later. The modifications to the original MRP do not address the fundamental flaws of the MRP relative to a Traditional test year model—namely, fewer incentives for Pepco to control costs and a lack of quantifiable incremental economic benefits to ratepayers.[397] GSA recommends using a Traditional test year for setting rates and that the Commission approve the acceleration of flowback of the TCJA tax benefits to be used to mitigate a rate increase in recognition of the COVID-19 pandemic.[398] Additionally, GSA points out that the use of accelerating tax benefits could provide short-term rate mitigation to address COVID-19 economic issues, and the use of that acceleration is not dependent on an MRP.[399] GSA notes that Pepco has already received these benefits primarily as accelerated depreciation, so nothing prevents Pepco from proposing to pass these benefits through to customers sooner rather than later.[400] GSA asserts that mitigation measures proposed in the EMRP could also be used under a Traditional test year.

139. GSA recommends the following if the Commission decides to approve an MRP: it should require modifications to reduce the risks to consumers, and it should make it more likely to comply with Order No. 20273's AFOR framework principles:[401]

a. In order to limit the impact of information asymmetry and uncertain projected plans and costs, the term of an MRP should be limited to no more than two years.

b. The MRP must allow for full, after-the-fact prudence review of projects and costs. While the Commission may review and approve Pepco's Construction Plan when the MRP is approved, approval of the MRP should create no presumption that the projects will be found to be just and reasonable, and ultimately includable in rates.

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396 GSA's Brief at 32.

397 GSA (3A) at 5:1 (Goins Supplemental Surrebuttal).

398 GSA (3A) at 8:1 (Goins Supplemental Surrebuttal).

399 GSA (3A) at 8 (Goins Supplemental Surrebuttal).

400 GSA Brief at 32-33.

401 GSA's Brief at 34-37.

c. The Annual Reconciliation filing should be primarily informational, and any earnings sharing should be asymmetrical in favor of consumers. In other words, Pepco should not have the opportunity to request to increase rates if it is under-earning, but if Pepco is over earning, however, rates should be lowered.

d. As an additional step to address the interclass subsidy problem, the Commission should adopt an MRP with earnings-sharing and/or PIMs with penalties; then, any decreases arising from these mechanisms should be flowed back only to rate classes with a UROR of at least 0.9. This requirement would "exclude significantly under-earning classes from MRP rate decreases, demonstrate a commitment to address the negative ROR issue seriously, and help to mitigate the interclass rate subsidy problem."

e. The Commission should make clear that deferred accounting is an extraordinary remedy to be used in extremely limited circumstances, if at all, during the term of the MRP. The Commission should reject Pepco's request to grant a deferral routinely for any unexpected cost that has as little as a $1 million impact on Pepco's total distribution revenue requirement. Instead, the Commission should evaluate deferral requests on a case-by-case basis and should only grant a deferral request if certain threshold requirements are met, including whether the costs: (i) are truly extraordinary and unavoidable, (ii) are unusually large and non-recurring, and (iii) create a material degradation in Pepco's earnings that likely would impair Pepco's financial integrity if the deferred accounting treatment is not granted. Assuming these threshold requirements are met, and the deferral is granted, this should not create a presumption that the costs are just, reasonable, and includable in rates. Instead, in Pepco's next rate case, parties and the Commission will have the opportunity to examine all relevant issues, including but not limited to: (i) whether the cost deferral was reasonable and necessary in the first place, (ii) the prudence and reasonableness of the regulatory asset's underlying costs, (iii) whether Pepco should be allowed to earn a return on the regulatory asset's unamortized balance and, if so, what that return should be, and (iv) the appropriate amortization period.

f. The following specific criteria for possibly reopening the MRP should be adopted: (i) The Commission may reopen the MRP at any time; (ii) Non-utility parties may petition the Commission to reopen the MRP at any time; and (iii) Pepco may seek a reopener upon a showing that: (a) modifications to or termination of the MRP are necessary for Pepco to comply with applicable federal and local laws and regulations, or (b) continuation of the MRP would cause irreparable financial harm (either actual or potential) due to exogenous factors beyond Pepco's control.

g. If the MRP includes PIMs, they should be "penalty-only" PIMs with no opportunity for Pepco to increase rates as a reward for meeting prescribed benchmarks. While tracking-only PIMs would also be acceptable, penalty-only

PIMs would provide a stronger incentive for Pepco to meet the standards included in the PIMs.

h. Any MRP approved in this case should be treated as a pilot MRP and should not be considered precedent. In other words, approval of an MRP in this case should not be considered determinative of whether another MRP would be approved by the Commission in the future.

140. **BWLDC**. BWLDC recommends that the Commission reject Pepco's MRP and PIMs and its EMRP. BWLDC asserts that the AFOR proposal shifts risks from shareholders to ratepayers with insufficient customer protections and benefits.[402] BWLDC states that Pepco's proposals fail to: (1) establish how its AFOR proposals are better than a Traditional cost of service plan in delivering quality and reliable service; and (2) advance the District's public policy goals and climate commitments or recognize economic conditions.[403] BWLDC does not support Pepco's MRPs or PIMs proposals.[404]

D. EMRP DECISION

1. Commission Modified EMRP Meets the Requirements of D.C. Code § 34-1504(d)(2)[405]

141. Pepco offered an enhanced MRP (EMRP) that is different from its Original MRP. The EMRP among other things reduced the $147.2 million revenue requirement to $135.9 million; provided offsets/credits to mitigate the 2022 customer rate impact; offered a Customer assistance package funded by shareholders for $29 million; deferred $60 million in capital spending to 2023 or later, pauses regulatory asset amortization for two years, accelerates the MD Subtraction Modification Tax Benefit, and accelerates the TCJA EDIT refunds through the end of 2022; reduced the ROE from 10.3% to 9.7%; and included an annual information filing in 2022 that precluded Pepco from petitioning for under-earning. there is no opportunity to petition to increase rates.

142. Based on the record, the Commission rejects Pepco's Original MRP and determines that Pepco's EMRP with modifications that we adopt, meets the statutory requirements for approval and will result in just and reasonable rates. The Commission, therefore, approves Pepco's EMRP, as modified (Modified EMRP) to include overarching terms as follows:

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402 BWLDC's Brief at 26.

403 BWLDC's Brief at 26.

404 BWLDC's Brief at 26.

405 D.C. Code § 34-1504(d)(2) provides in pertinent part:

> The Commission may adopt an alternative form of regulation if the Commission finds that the alternative form of regulation (A) protects consumers; (B) ensures the quality, availability, and reliability of regulated electric services; and, (C) is in the interest of the public, including shareholders of the electric company.

a. A cumulative revenue requirement of $108.6 million representing a 33% reduction in revenue requirements from Pepco's original $162.0 million MRP proposal; [406]

b. An authorized ROE of 9.275% and overall ROR of 7.17% to recognize the reduction in financial risk and regulatory lag;

c. A total package of $11.4 million of Pepco shareholder-funded customer benefits including $7.8 million for residential and streetlight bill offsets and $3.6 million of CBRCs for residential customers;[407]

d. An initiation of a $5 million small commercial customer energy efficiency program, encompassing rebates and loans;

e. A set of tracking PIMs focused on the District's Climate and Clean Energy goals; and

f. A stay-out provision that prohibits Pepco from filing a new MRP application until at least January 2, 2023, with rates to be effective no earlier than January 1, 2024.

143. The Commission determines that the Modified EMRP meets the requirements prescribed by D.C. Code § 34-1504(d)(2) and is approved, as a Pilot through the end of CY 2022, equating to an 18-month MRP term.[408] The Commission finds that establishing a Pilot to consider Pepco's EMRP will allow this first MRP filing to serve as an opportunity to gather valuable lessons learned in assessing future MRP proposals and to facilitate the development of AFOR regulations. The Modified EMRP strikes the appropriate balance between the Company/investors, its customers, and District citizens.

144. It is undisputed that the Company is entitled to a rate increase.[409] We note that the vast majority of Pepco's cumulative rate increase over the term of the Modified EMRP is driven by utility infrastructure investments recently made or ongoing, to preserve the Company's top

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[406] The vast majority of Pepco's cumulative rate increase over the term of the Modified EMRP is driven by utility infrastructure investments recently made or ongoing to meet the Commission directed reliability improvements.

[407] Pepco's original proposed $29 million in shareholder funded rate offsets has been reduced due to the passage of time (the offset is not needed in 2020) and the lower approved total revenue requirements.

[408] Although opposed to the adoption of an MRP, both OPC and GSA recommended that if the Commission approved the MRP, it should be a pilot program only. *See* OPC (C) at 3:18–4:6 (DeCourcey Direct) and GSA's Brief at 37. Through this pilot the Commission will benefit from lessons learned to facilitate the adoption of regulations for MRP and other AFOR applications.

[409] *See e,g.,* GSA Initial Brief at 18 (Pepco has made significant reliability investments in its distribution system); *see* AOBA (B) at 49: 1-11 (T. Oliver Direct) (AOBA recommends the MRP revenue requirement be no more than $119.6 million; OPC proposes a $21 million traditional increase. OPC Brief at 138-141.

performance ranking for the electric delivery system in the District.[410] Over the course of 2018 through 2020, Pepco's capital expenditures amounted to approximately $905 million that have improved the quality, availability and reliability of electric service to consumers in the District.[411] In addition, we acknowledge that Pepco will continue to confront the need for significant future capital improvements over the 2021 through 2023 period. We are convinced that that $108.6 million revenue requirement we are approving today will allow the Company to secure the necessary financing to make such investments.[412] The Commission also believes that adopting the Modified EMRP will strengthen Pepco's credit profile and help retain its investment-grade credit rating. A strong credit rating provides Pepco with financial flexibility and the opportunity to obtain capital at an optimal overall cost, thereby enabling the continued financing of significant investment projects underway, such as DC PLUG and Capital Grid, which affect the quality, availability, and reliability of electric service in the District. These projects benefit customers because, among other things, they improve system resiliency and enhance hosting capacity for the District's grid modernization as climate changes.

145. The Modified EMRP authorizes a lower overall revenue requirement of $108.6 million for 2021 through 2023 which significantly reduces Pepco's original EMRP revenue requirement of $135.9 million.[413] This reduction benefits small and large commercial customers since those customers account for 78% of total revenue.[414] The Modified EMRP provides customers with rate predictability over the term of the plan. Residential customers will see a slight bill increase for the remainder of 2021; the average resident will see a net bill increase of $2.33 per month in 2022 and an increase of $1.85 on January 1, 2023, totaling $5.25 over the term of the Modified EMRP. It should be noted that this rate increase is the first net distribution rate increase for residential customers since 2014.

146. Moreover, the Modified EMRP adopts multiple customer assistance programs that will lessen the financial challenges residential and small commercial customers are facing due to the pandemic.[415] Residential customers will receive a rate assistance package that provides bill

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[410] Pepco Annual Consolidated Report 2021-01 ("PEPACR-2021-01") at 64-67, filed April 15, 2021. Each year, Pepco participates in the annual Transmission and Distribution System Reliability Benchmarking Study conducted by IEEE. Pepco has been achieving first quartile industry reliability performance annually for SAIDI and SAIFI, often performing well within the top decile of utilities across the country in both indices.

[411] Pepco (I) at 14 (Clark Direct). Table 1 lists Pepco's actual capital expenditure for 2018 and projected capital expenditures for 2019-2020. *See also* Pepco's Reply Br. at 19.

[412] *See* Pepco (I) at 14; Pepco Reply Br. at 19; *see also*, Pepco (A) at 2:21-22 (Velazquez Direct); Pepco (B) at 3:13-15 (McGowan Direct).

[413] *Cf.*, AOBA (B) at 49: 1-11 (T. Oliver Direct) (AOBA recommends the MRP revenue requirement be no more than $119.6 million.

[414] *See* Revenue Allocation Section XVI, UROR Table 13.

[415] *See* Pepco (5B) at 3:18–5:4 (McGowan Surrebuttal); *see also* XXII, Finding of Facts and Conclusions of Law (x), (y), and (z).

credits/offsets of $11.4 million,[416] which includes $ 3.6 million in CBRC benefits for residential customers, and $7.8 million of revenue offset (COVID-19 relief). Also, small commercial customers benefits include an installment payment program, and initiation of an energy efficiency loan, and a rebate program.[417] In addition, the Modified EMRP provides stability and predictability for small and large commercial customers because it spreads rates over a number of years thus helping the commercial customers plan their business operation costs.

147. OPC opposes Pepco's proposed "customer assistance programs as harmful," but we are persuaded they are reasonable and will provide needed relief to customers during the Covid-19 pandemic. To address Pepco's request for regulatory asset treatment,[418] we authorize Pepco to include the AMP-related expenses (not a specific amount) in a regulatory asset account consistent with the RAD eligibility expansion in *Formal Case No. 1164*, which thereby expands the AMP programs. As for the House of Worship and Non-profit Customer Credit, we agree to the creation of this regulatory asset for no more than $1 million because it is reasonable, and it will provide customer assistance during the pandemic. The Commission approves Pepco's Energy Efficiency $2 million zero-interest loans and the $3 million Supplemental Energy Efficiency Incentive programs and allows the creation of a regulatory asset to track the costs for these programs.

148. OPC argues that the EMRP's regulatory asset treatment for customer assistance programs puts upward pressure on future rates and that the proposed carrying charges for regulatory assets for the deferred amounts equate to ratepayers funding their own mitigation.[419] These programs may result in ratepayer contributions over time; however, the exigency of the unprecedented COVID-19 pandemic convinces the Commission to adopt and approve Pepco's programs. Our decision is consistent with the Commission's earlier decision that authorizes both Pepco and Washington Gas to create regulatory assets to address unforeseen utility costs due to the unpredictable economic circumstances of the pandemic.[420] The Commission will carefully assess the overall impact of these programs on future rates.

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[416] The $11.4 million includes a rate assistance of $0.3 million for Street Light class as well.

[417] Pepco (5B) at 29:10-17 (McGowan Surrebuttal).

[418] Pepco is proposing regulatory asset treatment for certain programs: including estimated program costs of: (1) $6.4 million for the modifications to the AMP; (2) $1.0 million for the House of Worship and Non-Profit Customer Credit; (3) $2.0 million for the Energy Efficiency 0% interest loans to purchase energy efficiency products; and (4) $3.0 million for the supplemental energy efficiency incentive program.

[419] OPC's Brief at 131.

[420] *See GD2020-01, In the Matter of the Establishment of Regulatory Assets for Covid-19 Related Incremental Costs*, Order No. 20329, ¶ 4 (April 15, 2021). The Commission authorized Pepco and WGL to create a regulatory asset accounts to record the incremental costs related to COVID-19 that were prudently incurred beginning March 11, 2020. The creation of the regulatory asset accounts will assist in the recovery of prudently incurred costs. The Commission found that deferral of such costs was appropriate given the public health emergency that is outside the control of Pepco and WGL and, that the Commission will evaluate the COVID-19 regulatory asset account in future proceedings to determine whether the costs are just and reasonable and whether these costs should be recovered..

149. The Modified EMRP reduces the ROE from 9.7% to 9.275% accounting for the reduction in risk and regulatory lag which further reduces the revenue requirement and benefits all ratepayers.[421] Customers will also benefit from our adoption of a lower 2.17% escalation, as compared to Pepco's 2.5% escalator, which provides a reasonable cost control mechanism during the Modified EMRP. Specifically, the Modified EMRP uses an escalation factor independent from actual cost changes. The escalator incentivizes Pepco to control costs over the course of the EMRP and benefits ratepayers since Pepco is prevented from escalated costs in a manner that equals its desired revenue requirements.

150. In addition, the Modified EMRP provides a reconciliation mechanism that benefits customers by enhancing the Commission's oversight by advancing the review of Pepco's spending plan and actual expenditure levels immediately with an informational filing of significant variances from approved levels within the first quarter of 2022. The Modified EMRP imposes a one-way adjustment provision that prohibits Pepco from recovering any over earnings for 2021. To recover any over-spending in 2022 Pepco will have to show a variance of actual and projected capital expenditure and O&M expenditures and Pepco will have to demonstrate that the costs were prudently incurred actual costs. Customers will benefit from this modified reconciliation approach that provides increased transparency and provides incentives for the Company to reduce costs and improve efficiency. Thus, the reconciliation and escalation mechanism work together to avoid any unreasonable shifting of risks to utility customers.

151. Another primary benefit to customers is the Climate and Clean Energy tracking PIM's which, although not financial, align with the District's Climate Plans. Our adoption of these tracking PIMS including the GHG emission reduction tracking PIM is consistent with our approval of a similar Washington Gas Light Company's commitment to track and file an annual report on GHG emissions associated with the Company's gas distribution system. In *Formal Case No. 1162*, OPC and the settling parties represented that this commitment meets the standard set forth in D.C. Code § 34-808.02. Based on the parties' representation in that proceeding the Commission found Washington Gas Light's GHG tracking commitment would help the Commission in advancing the District's climate goals.[422] We are likewise convinced that the adopted Modified EMRP tracking PIMs will advance the District climate goals. Once fully deployed, these PIMs will facilitate investments that support the District's energy policy goals.

152. Lastly, the Modified EMRP provides a one-year extension of Pepco's originally proposed stay-out until January 2, 2023, which we believe is a significant customer benefit. The Modified EMRP provides customers with rate predictability over the Modified EMRP term and avoids rate shock at the conclusion of the Modified EMRP due to the expiration of the offsets with

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421 The 9.275% ROE is the lowest ROE set for Pepco in a rate case since 2008; in *Formal Case No. 1053*, the ROE was set at 10.00%; in *Formal Case No. 1076*, the ROE awarded was 9.625%; in *Formal Case No. 1087*, the ROE awarded was 9.50%; in *Formal Case No. 1103*, ROE awarded was 9.40%; in *Formal Case No. 1139*, the ROE awarded was 9.50%;and in *Formal Case No. 1150*, the ROE awarded was 9.525%.

422 *See Formal Case No. 1162*, *In the Matter of the Application of Washington Gas Light Company for the Authority to Increase Existing Rates and Charges for Gas Service,* (*"Formal Case No. 1162"*), Order No. 20705, ¶ 32.

a stay-out directive extending through 2023 that also avoids substantial rate litigation costs for the near future.[423] The resources saved from avoided rate proceedings inures to the benefit of District ratepayers who ultimately pay the costs of our proceedings. Thus, for the reasons noted above and within, the Commission finds that the Modified EMRP meets the requirements set forth in D.C. Code § 34-1504(d)(2), by protecting consumers; ensuring the quality, availability, and reliability of regulated electric services; and is in the interest of the public, including shareholders of the electric company. We discuss further how the Modified EMRP will result in just and reasonable rates based on our determination of the EMRP revenue methodology, cost of capital, rate base, cost allocation, rate design, and other ratemaking determinations.

2. Further Description of Modified EMRP Terms

153. The Modified EMRP results in a modest distribution bill increase for residential customers in 2021 and 2022 after various offsets/credits including shareholder-funded rate offsets as discussed herein. In addition, our Modified EMRP extends the Customer Base Rate Credits ("CBRC") we approved as part of the Exelon/Pepco merger in *Formal Case No. 1119*,[424] resulting in a $1.37 a month credit for the R Class until March 31, 2022.[425] Pepco proposed a three-year rate effective period beginning 2020. However, with CY 2020 and the first half of CY 2021 having elapsed, the Commission is adopting an initial 18-month Modified EMRP pilot, from July 1, 2021, until December 31, 2022.[426]

154. Pepco's EMRP requested a $135.9 million increase, including offsets with no net revenue increase in CY 2020 and CY 2021. However, the Commission reduced this amount and is approving a $108.6 million Modified EMRP rate increase over Calendar Years ("CY") 2021-2023. In setting the Modified EMRP rate increase, we adopt various offsets that Pepco proposed, as described below, to mitigate the effect of the rate increase. Accordingly, the net revenue increase for the remainder of CY 2021 is $21.8 million, and for, applying the various offsets, a net revenue increase of $48.4 million for CY 2022. Because the credit offsets expire at the end of CY 2022, the

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[423] OPC and GSA offered secondary alternative approaches as an alternative to Pepco's MRP proposal some of which were adopted by the Commission in its Modified EMRP including GSA's recommendation to place specific limitations on any approved deferral mechanism and reopener provision. *See* paragraph 191.

[424] *Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction* ("*Formal Case No. 1119*"), Order No. 18148, rel. March 23, 2016, Attachment B, ¶ 2 ("Exelon will provide a Customer Base Rate Credit in the amount of $25.6 million, which can be used as a credit to offset rate increases for Pepco customers approved by the Commission in any Pepco base rate case filed after the close of the Merger until the Customer Base Rate Credit is fully utilized.")

[425] With the adoption of the Modified EMRP, the CBRC credit of $1.37 for residential (R) customers will resume for another 9 months. Pepco's original proposal is this credit will last from April 1, 2021 to December 31, 2021. With the current rate effective date July 1, 2021, we expect CBRC funds of $3.6 million to be available to be used as a credit for residential R customers from July 1, 2021 to March 31, 2022.

[426] The Commission notes that there is a critical timing issue with the implementation of the EMRP because the proposal is structured as a three-year EMRP covering 2020, 2021, and 2022. Because of the timing issue, the start of the rate effective period, the first year (2020) and a portion of 2021 will not be part of the EMRP covered period. With the directed stay-out, the term of this Modified EMRP pilot equates to an 18-month EMRP term.

final net revenue increase for CY2023 will be $38.4 million. It is important to point out that the $38.4 net increase results from the fact there will be no further offsets in CY 2023. Overall, this equates to a monthly bill impact for the average residential customer of $1.07, $2.33, and $1.85 in those three years, respectively, or a total of $5.25, which we deem to be just and reasonable. As we conclude below, the rate offsets are reasonable and benefit all customers by significantly reducing the rate increases through 2023.

155. Our approval of Pepco's EMRP with modifications will: (1) include offsets for part of CY 2021 and 2022 revenue requirements; (2) provides Residential Rate Assistance relief from shareholder funding to partially offset distribution rate increases;[427] (3) defers $60 million capital spending which represents approximately 10% of Pepco's budgeted total capital spending for CY 2021 and 2022 on a combined basis and a reduction in additions to EPIS of $25 million each year for 2021 and 2022; (4) pauses Regulatory Asset Amortization for CY 2021 and 2022; and (5) accelerates customer benefits related to the entire Maryland Subtraction Modification Tax Benefit in CY 2022.[428]

156. As we explained later in the Tax section of this order (Section XIII), we reviewed the unopposed/uncontested Pepco RMA No. 31, Maryland Additional Subtraction Modification, and independently found it to be just and reasonable. We recognize as OPC notes that the offsets presented in Pepco's EMRP, including the Maryland Additional Subtraction Modification, are ratepayer funds and are not dependent on the Commission adopting Pepco's EMRP proposal. As OPC and GSA point out, the Commission could use these offsets proposed by Pepco should the Traditional approach be approved to offset customer rate increase impacts during the current public health emergency.[429] However, with the Commission's approval of a modified EMRP, we find that using the Maryland Additional Subtraction Modification Tax Benefit as an offset is reasonable given the extraordinary COVID-19 pandemic and that the basis for the benefit was funded by both District and Maryland customers. Moreover, no party has blanketly opposed Pepco's proposal to utilize shareholder funding in providing COVID assistance by reducing the revenue requirement

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427 As originally proposed by Pepco, this is provided in two parts with $3.6 million (based on a reduction in the monthly residential fixed charge) associated with an effective extension of the CBRC monthly credit for the months of April 2021 through December 2021. The second part of $25.2 million will offset proposed distribution rate increase for residential and MMA customers during 2020 and 2021 and $0.3 million of rate assistance for Street Lighting customers. As explained in previous sections, the final offset and credits is around $11.4 million under the Commission adopted Modified EMRP.

428 The MD Addition Subtraction Modification Tax Benefit is allocated to the District because the basis for the benefit was funded by both District and Maryland customers. "For corporations like Pepco with taxable income in multiple jurisdictions, their total taxable income is apportioned to each taxing jurisdiction using an apportionment formula, and then the appropriate jurisdictional income tax rate is applied to the apportioned income. This means that the starting point for Maryland income taxes is Pepco's total taxable income, including both its District of Columbia and Maryland revenues net of expenses. As such, the Additional Subtraction Modification described in this section is based on Pepco's total depreciation expense. This means that both Maryland and District of Columbia customers have funded the amounts for which Pepco will now be able to take additional tax deductions in Maryland. Thus, it is appropriate for a portion of this tax benefit to be allocated to District of Columbia customers." *See* Pepco (D) at 39:11-20 (Ziminsky Direct).

429 OPC (3B) (Ramas) at 22:9-13; and 22:13-23:4.

in CY 2020 and CY 2021. We find that Pepco's proposal to utilize shareholder funding to reduce the revenue requirement in CY 2020 and CY 2021 is reasonable and in the public interest.

157. We approve Pepco's proposal to utilize the Pause in Regulatory Asset Amortization as an offset to rates and are persuaded by Pepco that such pause will reduce operating expenses for CY 2021 and CY 2022 and the amortization will be resumed in 2023; and that such a reduction in operating expenses will reduce the total revenue requirement for CY 2021 and CY 2022. We agree with OPC that given the extraordinary circumstances caused by the COVID-health emergency, it is reasonable and in the public interest to utilize the pause in regulatory assets as a rate mitigation measure.[430]

158. Our Modified EMRP also accepts Pepco's deferral of $60 million in capital spending. Pepco represents this deferral is approximately 10% of Pepco's budgeted total capital spending for CY 2021 and 2022 on a combined basis. OPC and other Parties argue that this is deferral is illusory and not verifiable. The Company, in its original MRP, proffered a specific forecast for capital expenditures for CYs 2020, 2021, and 2022 that was part of their long-range plan. Subsequently, due to the Parties' criticism, Pepco proffered an escalated approach using a baseline test year amount in its EMRP, and then proffered a deferral of $60 million of capital expenditure, as part of their EMRP.[431] The Company's Workpapers reveal that the Company switched to this escalation approach that resulted in EPIS proffer approximately $60 million lower in CY 2022 than the original MRP.[432] Thus, we are convinced that Pepco has formalized the $60 million cut in its numbers. Moreover, given the economic effects of the pandemic, our modified EMRP takes these cuts one step further, as we have further reduced the escalated annual additions to EPIS by $25 million in both CY 2021 and 2022 given pandemic economic effects. Thus, we are persuaded that Pepco's $60 million deferral is reasonable and benefits customers since the reduced capital expenditures lead to a lower overall revenue requirement.

159. The Commission's determination regarding each of the methods of extending the pace of the rate increase is summarized in the table below showing net revenue requirements for the Modified EMRP for the 18-month initial pilot period of July 1, 2021, through December 31, 2022, with $38.4 million of the revenue award rates effective January 1, 2023, due to the expiration of various offsets.

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[430] OPC (3B) (Ramas) at 25 of 30, Line 4 to 20.

[431] *See* Pepco (5B) at 8:15-21 (McGowan Surrebuttal). "Pepco is gathering data and will require further data to determine the longer-term impacts of the COVID-19 pandemic in 2021 and beyond. However, as discussed further, the MRP Enhanced Proposal will defer $60 million of capital forecasted to be placed in service during the Original MRP Proposal into 2023 or later."

[432] The Commission determined that Pepco had baked in a total of approximately $60 million (i.e. $57 million) deferral of capital spending in the EMRP's escalated EPIS amount balance in 2022. We compared EPIS total balances from Pepco's original MRP (*see* Pepco 5(C)-1 at 1 (Wolverton Testimony)) to Pepco's EMRP (*see* Pepco 5(C)-1 at 4 (Wolverton Testimony)). When we compare the 2022 EPIS amount balance, the EMRP shows $4,765 million for EPIS and the MRP shows $4,822 million, and the difference amounts to $57 million.

Table 4: Summary EMRP Net Revenue Requirements (18-month Pilot Program, July 1, 2021 Effective Date)

Modified EMRP Revenue Requirements with Offsets - Rate Effective 7/1/21

(in millions–rounded) Description	(6-months) Jul-21 Dec-21	Dec-22	Dec-23	Total
	Prorated			
EMRP Gross Revenue Requirements (before Offsets)	$ 41.7	$ 108.6	$ 108.6	
Offsets:				
1. Pause Regulatory Asset Amortization 2021-2022	(12.1)	(10.8)	-	(22.9)
2. Accelerate MD Additional Subtraction Modification	-	(27.6)	-	(27.6)
3. Accelerate Non-Protected Property EDIT Amortization	-	-	-	-
4. COVID-19 Rate Relief*	(7.8)	-	-	(7.8)
Change in Net Revenue (after Offsets)	**$ 21.8**	**$ 70.2**	**$ 108.6**	
Incremental	**$ 21.8**	**$ 48.4**	**$ 38.4**	

3. Annual Reconciliation Process

160. As part of the Modified EMRP approval, we adopt a reconciliation and prudency process involving two steps that: (1) includes an annual information filing that compares revenue requirement line items based on updated 2021 projections; and (2) provides for a final reconciliation and prudency review no later than 90 days after the end of the Modified EMRP.[433] Because of our requirement for a stay-out for any MRP proposal until at least January 2, 2023, and to ensure there is an annual review of the Modified EMRP forecasted amounts, we direct Pepco to file a reconciliation report similar to the Maryland PSC's Step 1 Annual Information Filing for CY 2021, as described below.[434] The 2022 prudence review will cover the CY 2021 and the 2023 prudence review or final reconciliation will cover CY 2022. Pepco's annual review shall contain worksheets and detailed explanations showing the differences between the Modified EMRP forecasted projections and the actual results for each of the years.[435] In addition, Pepco, for its capital budget filing shall include updated detailed capital additions (by project) and O&M expense projections by FERC account for CY 2021 and CY 2022, within120 days from the date of this Order as Pepco proposed.[436]

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433 Pepco's Brief at 69.

434 *See* Commission Exhibit 12. Pepco's Maryland process requires that within the first 90 days of the end of the first and second annual periods of the pilot MRP, the utility is to file an informational filing comparing forecasted data to actuals, with parties having 60 days to conduct discovery and to provide comments on the informational filing. If a significant disparity is shown in forecasted vs. actual data to the detriment of ratepayers, a hearing may be held to address whether an adjustment is appropriate. *See* Pepco's Brief at 69-71.

435 *See* Maryland Order No. 89482, ¶ 5; Appendix 1 for an example of the worksheets.

436 According to Witness Wolverton's surrebuttal testimony filed on June 1, 2020, Pages 17-18, "Pepco proposes to file with the Commission updated detailed capital additions (by project) and O&M expense projections (by FERC account) for 2021-2022 in February 2021, approximately 90-120 days after a final decision in this proceeding. As

161. For the annual prudence review and modified reconciliation, the Commission directs Pepco to file the CY 2021 Reconciliation filing by March 31, 2022. That filing shall cover the capital spending projects completed in the CY 2021, including the effects on electric plant in service, deferred taxes, rate base, as well as depreciation expense. The filing shall also include details on any capital spending variances between projected and actual results for those items set forth in this paragraph during CY 2021. The second-year reconciliation filing will be processed within 2023.[437] The CY 2022 Annual Information Filing holds ratepayers harmless from any over-earning and will allow a rate reduction for customers should Pepco be found to be over earning. The final reconciliation to be conducted at the conclusion of the Modified EMRP may allow a two-way adjustment, similar to the Maryland final reconciliation.

162. Parties shall have 45 days from the date of the reconciliation filing for 2022 and 2023 to conduct discovery with any comments filed within 60 days of the annual filing. Parties can request a hearing if significant differences exist between forecasted and actual expenditures. For the final reconciliation, we are not persuaded by OPC, DCG, and GSA's recommendation that Pepco not be allowed to request reconciliation for under-collections of costs.[438] We will allow Pepco to request a reconciliation for under-collections since we have ordered a stay-out as a condition of our approval of the EMRP. Such a symmetric approach balances the interest of ratepayers and shareholders. We note that this approach is consistent with Maryland's final reconciliation which allows two-way adjustments. If it is determined that Pepco is over-earning, a credit will be given to customers via a surcredit rider on a prospective basis. If it is determined that Pepco is under-earning the Company will have an opportunity to petition the Commission for relief. To aid in our reconciliation process, we direct Pepco to resume filing the Company's quarterly earnings reports within 30 days from the date of this Order. The quarterly earnings filing will facilitate the Commission's ability to recognize any potential over-earning or under-earning that occurs during the 18-month period of the Modified EMRP and CY 2023.

4. Deferred Accounting Mechanism and Reopener

163. OPC, AOBA, and GSA objected to Pepco's deferral accounting proposal, which allows Pepco to defer unexpected costs of greater than $1 million impact on the Company's total distribution revenue requirement asserting that a deferred accounting mechanism is an extraordinary remedy that should be used in extremely limited circumstances, if at all. The Commission is persuaded that Pepco should be allowed a deferral mechanism, as GSA recommends, the mechanism should provide minimum threshold requirements:(1) that the request

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with any rate case order, the final revenue requirement reflects the Commission's final order. Thus, these updated projections would reflect any modifications to Pepco's capital and O&M plans necessary to align with the final order and are being developed for purposes of this reconciliation. The "consolidated" and "final" reconciliations, described above would utilize these updated projections."

[437] We recognize that there could be a rate case filing in 2023 and thus the reconciliation can be part of the rate case. Alternatively, the reconciliation could be handled separately.

[438] OPC's Brief at 112, 123; DCG's Brief at 6, 28; and GSA's Brief at 13-15.

should have at least a minimum of a $1 million impact; and (2) that provides whether the costs: (i) are truly extraordinary and unavoidable, (ii) are unusually large and non-recurring, and (iii) create a material degradation in Pepco's earnings that likely would impair Pepco's financial integrity if the deferred accounting treatment. We believe that a deferral request should be evaluated on a case-by-case approach is appropriate because it allows the Commission and Parties an opportunity to evaluate the merits of any proposal and determine whether the circumstances are truly extraordinary, unavoidable, and non-recurring. Pepco is required to file a request for deferral within 90 days of identifying an event and the request should describe the external factors and unforeseen costs.

164. The Commission adopts a reopener provision which allows parties to petition the Commission to reopen the Modified EMRP at any time in the event of extraordinary circumstance that is outside of the utility's control that would warrant the Commission's intervention to ensure that existing rates are just and reasonable or the extraordinary circumstances threaten the fiscal solvency of the utility; extraordinary circumstances may include but are not limited to changes in federal or local law, natural disasters, cyber or terror attacks, major economic events or other circumstances that would warrant the Commission's intervention. The Commission believes that both the deferred accounting mechanism and the reopener provisions assure all stakeholders that these mechanisms would only be appropriate for extraordinary, unforeseen catastrophic events.

5. PIMs Decision

165. In the AFOR Order, the Commission noted that any MRP adopted should be accompanied by PIMs.[439] The Commission notes that PIMs have been extensively discussed throughout many of the filings in this case and across many other cases and regulatory forums. We have indicated that properly designed PIMs represent an important tool to align utility incentives with public policy goals, such as the District's aggressive clean energy and environmental goals.[440] Also, in the AFOR order, we noted that due to limitations in Pepco's data collection practices PIMs may be limited in this case.[441]

166. Pepco's original MRP proposed five financial PIMs and one (1) tracking PIM addressing: (1) SAIDI; (2) SAIFI; (3) service level; (4) call abandonment; (5) DER interconnection; and (6) CEMI-4 (a tracking PIM not based on an incentive reward or penalty). Pepco's EMRP proposal converts all proposed PIMs into tracking only PIMs and adds a GHG reduction tracking PIM. The Commission is not accepting all of the PIMs proposed by Pepco or Parties. The basis for the Commission's determination to reject Pepco's proposed PIMs is: (1) the SAIDI and SAIFI PIMs as proposed by Pepco only require the Company to maintain reliability which Pepco already has an obligation to perform through the EQSS and merger standards and

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[439] Order No. 20273, ¶ 104.

[440] *Formal Case No. 1130*; Final Report of the DCPSC MEDSIS Stakeholder Working Groups (May 31, 2019) at pp. 137-140. According to the CleanEnergy DC Omnibus Amendment Act of 2018, GHG emission reduction needs to achieve 50% by 2032, and 100% by 2050. Furthermore, the Tier One Renewable Energy Portfolio Standard should achieve 100% in 2032.

[441] Order No. 20273, ¶ 104.

therefore is not appropriate for an incentive reward;[442] (2) Pepco has not convinced the Commission that there is a need to raise the required service level performance or call abandonment rate above the EQSS level as provided in the Commission's rules; (3) Pepco has not shown that the proposed DER Interconnection tracking metric will provide enhanced performance;[443] and (4) we believe that CEMI-3 metric is more useful as a reporting PIM than the CEMI-4 metric because it is a higher measurement standard and provides more detailed data on outage areas with lower reliability.

167. With respect to the PIMs proposed by the other Parties, the Commission has reviewed the proposals, and we are not persuaded that any of the proposals should be adopted at this time. Specifically, we reject OPC's six (6) affordability tracking metrics because they either duplicate existing reports or are not feasible in part because they would be unduly costly since quarterly tracking for each of the eight wards would be expensive. In addition, we reject OPC and DCG proposed load forecasting PIM because they rely on a premise or arguments that the Commission has previously rejected in *Formal Case No. 1144*. As to DCG's tracking metrics, the Commission rejects them because they are premature. We reject DCG's GHG reduction and Peak Reduction PIMs because the Commission is instituting similar tracking PIMs. The Commission rejects BWLDC's proposed PIM for establishing a tracking metric regarding wage and hour violations by Pepco contractors because we do not believe that we should impose penalties on Pepco for actions of a contractor. As to Pepco's Call Center and Abandonment Rate PIMs, we agree with IBEW that more consideration needs to be given before IBEW's PIMs could be implemented.

168. In determining the type of PIMs to use in our first adoption of an MRP, the Commission reviewed other jurisdictions such as Minnesota and Rhode Island and found that those jurisdictions developed reporting metrics to track the utilities' performance to see which measures would be appropriate for use with targets to award incentives.[444] Consistent with other jurisdictions, the Commission believes that tracking PIMs are appropriate at this stage because we believe that tracking PIMs would be more useful in aiding the Commission and stakeholders in

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[442] 15 DCMR § 3603.11(h) provides that the minimum reliability performance standards established for 2020 remain in force until new standards are promulgated. On October 9, 2020, the Commission published a Notice of Proposed Rulemaking with amendments for § 3603.11.

[443] 15 DCMR § 40 *et. seq*. (January 25,2019). Pepco's Small Generator Interconnection Program will continue to be improved through *RM 40* Working Group discussions. To further update the interconnection rules for advanced inverters, socialization of CREF upgrade costs, interconnection queue and small generator timelines, the Commission issued first and second NOPR on April 10, 2020 and December 25, 2020, respectively.

[444] *Docket No. E-002/CI-17-401, In the Matter of a Commission Investigation to Identify and Develop Performance Metrics, and Potentially, Incentives for Xcel Energy's Electric Utility Operations*, issued January 8, 2019 ("MN January 8th Order") at 176-178 (MN PUC adopted PIMs which decides metrics, then decides targets, then decides incentives in separate steps.) *See also MN Excel MRP* order which details metrics first at PDF pages 176-178 based on steps in general order.; Docket No. 4770, In Re: The Narragansett Electric Company, d/b/a National Grid Electric and Gad Transformation vision and Implementation, and Docket No. 4780, In Re: The Narragansett Electric Company d/b/a National Grid Power Sector Transformation Vision and Implementation, Report and Order, dated August 15, 2018, at 29-31 (RI PUC rejects 6 of 7 financial PIMs proposed in Settlement converting them to tracking only, and accepted one financial PIM for annual MW capacity savings).

identifying what elements are appropriate to measure PIMs and how to structure financial rewards or penalties for implementing fully functional PIMs.[445]

169. In establishing a tracking PIM, we set forth three steps consistent with Minnesota and Rhode Island. First, the PIM should provide what is the agreed-upon historical data that should be tracked (*i.e.*, what will be used and how it will be used). Second, the PIM should indicate what is agreed upon for future performance (*i.e*., over the next number of years a specific metric for each year and cumulatively.) Third, the PIM should compare the reported data to the performance targets. To move towards the District's clean energy goals in a manner that is reasonable and transparent, we must first collect and analyze the data from the tracking PIMs and understand whether the reporting metrics as designed provide appropriate information on (1) GHG emissions, (2) energy efficiency, (3) peak demand reduction, (4) DER, and (5) CEMI-3. Once it is determined that the PIMs are properly designed, then they can be turned into fully functioning PIMs with appropriate financial consequences for the Company. In addition, understanding the data will, among other things, aid the Company's ability to facilitate increases in hosting capacity, automation, and will assist with the implementation of the CleanEnergy Act.

170. Therefore, the Commission adopts the following Tracking PIMs, which will advance the District's clean energy climate goals. We adopt a GHG emission reduction tracking PIM for the District to reduce GHG emissions in the District. This PIM will require Pepco to track and report on GHG emissions related to operations in the District in tons of carbon dioxide equivalents ("CO2e") per year starting in 2021.[446] Second, we adopt an Energy Savings (energy efficiency) tracking PIM. This PIM will support the District's climate goals with respect to energy savings and also provides an overall measurement to support the various programs that will be implemented through *Formal Case No. 1160* by requiring the Company to set a goal for annual energy savings. The electricity usage savings related to transportation electrification such as Electric Vehicle Time of Use ("EV-TOU") rates should be tracked separately. Third, we adopt a Peak Demand Reduction tracking PIM. The Peak Demand Reduction tracking metric will require Pepco to report the amounts of MW peak reduction forecasted and achieved for specific DERs, including those specified by DCG.[447] This includes demand response, rooftop solar, storage, and TOU program. This tracking PIM will provide a framework to incentivize new DER implementation for Pepco in the future. In addition, this type of PIM complements the CleanEnergy DC Act requirement authorizing Pepco to implement new EE/DR programs. Also, a peak reduction PIM could be designed to be associated with Pepco's NWA/Distribution System Planning ("DSP") implementation.

171. The fourth PIM we adopt is for Total DER deployed in the District. This PIM requires Pepco to report on total installed capacity (MW/Mega Volt Amperes ("MVA")) of DER as of the end of each calendar year for specified classes of DER. This PIM should boost total

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[445] GSA supports the use of tracking PIMs.

[446] *See* Commission Exhibit 4 (Pepco Response to DR 26.14.).

[447] DCG (2A) at 37 (Witness Lane Rebuttal). The Commission believes that Pepco should perform at a percentage or MW/MVA reduction in peak coincident annual load—on a weather-adjusted basis by DER class or in aggregate.

MWs of capacity served by DER in the District. In addition, this PIM will facilitate PowerPath DC goals and climate goals and highlight the role of emerging DER, such as storage or combined resources (solar and storage). Both energy savings (kWh) and demand (kW) reductions should be reported for certain DER types which will help parties see the potential benefits of the different DER types and will help target incentives for maximum benefit and potential. As a preliminary step, the Company provided an inventory of DER by MW in the District which should be revised and updated as necessary to support this tracking PIM.[448] Lastly, we adopt the CEMI-3 performance tracking PIM for customers in the District. Pepco will be required to track CEMI-3 which provides information about reliability performance at a customer level as opposed to a system level. CEMI-3 is measured in percentage of DC Customers experiencing three or more interruptions on a calendar year basis (including Major Service Outages). Thus, CEMI-3 can help target improvements in reliability for pockets of poor performance. The Commission believes that CEMI-3 would be the appropriate metric to capture all neighborhoods that experience persistent outages. We believe that reporting CEMI-3 will help to address those pockets or neighborhoods that have not benefitted from Pepco's improved system-wide reliability. Through the tracking of CEMI-3, the root causes of the interruptions can be determined, and facilitate appropriate remediation.

172. These Tracking PIMs will enable all stakeholders and the Commission to begin to establish threshold metrics that are measurable to track the progress of the utility, will help to establish milestones for determining financial rewards with timelines and life cycles, and will help to establish a reporting schedule. These Tracking PIMs will continue for the duration of the pilot EMRP, with the opportunity during the start of the final year, to solicit input and proposals from the Company and the stakeholders. We believe that these Tracking level PIMs can be readily converted to fully functioning PIMs with incentive and penalty mechanisms—subject to Commission approval during 2022 and beyond.

173. This Order directs Pepco to reconvene the PIMs Working Group within 45 days of the issuance of this Order. Pepco is directed to collaborate with the PIMs Working Group, Commission Staff, and the Parties to propose the data measurement methodologies for each of these five PIMs within 90 days of this Order. Parties will then have 15 days to comment before the Commission approves the reporting and tracking of these PIMs. Subsequently, the PIMs Working Group should develop additional financial/tracking PIMs for the future. The PIMs Working Group should submit their recommendations regarding future tracking/financial PIMs 90 days after the Commission approves the reporting and tracking of the five PIMs.

174. With respect to the approved Tracking PIMs, Pepco is to report on the performance quarterly. To review aspects of the implementation of the Tracking PIMs, the Commission will periodically sponsor technical conferences/workshops as an opportunity to make mid-course corrections, if necessary. Additionally, during the first year of deployment for these Tracking

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[448] *See* Commission Exhibit 1. In Order No. 20273, ¶103 sets forth the principles for developing PIMs. Subsection (6) states that PIMs should not duplicate a target or objective that is already addressed by any existing standards, metrics or requirements." Given that this is the first time Parties will have a chance to update the DER inventory, we expect that additional information will be provided for District's DERs. The Commission believes that part of this inventory could be evolved into financial PIMs in the future.

PIMs, the Commission will review the quarterly reports and direct the harmonization of the PIMs, if needed, with other decisions arising from other case dockets, including *Formal Case No. 1160* EEDR and *GD-2019-04-M* Clean Energy Act Implementation working group efforts.

IV. EMRP REVENUE REQUIREMENTS METHODOLOGY

175. **Pepco.** Witness Wolverton explains Pepco's EMRP methodology was developed starting with the historical test period revenue requirement with adjustments using what the Company determined to be reasonable ROE of 9.70%.[449] First, he removes any RMAs related to post-test-year ("PTY") period items (*e.g*. PTY reliability additions, wage increases) as a starting point to begin escalating costs.[450] The PTY RMAs are then eliminated to prevent double counting.[451] Witness Wolverton notes that in an effort to find common ground, the EMRP adopts a number of OPC and AOBA's recommendations for eliminating or modifying RMAs (*e.g*., RMA 7 – Reflection of 3-year-Average Overtime Level (eliminated), RMA 20B – Reflection of Benning Environmental Reg Asset – Forecast (eliminated), RMA 28 – Reflection of Frederick Douglass Bridge Project (eliminated), RMA 34 – Reflection of CTA Regulatory Asset (modified to OPC's adjusted CTA amount), RMA 36 – Reflection of CTO Regulatory Asset (modified to remove regulatory asset/amortization request)).[452]

176. Witness Wolverton states that adjustments are made to cost of service by escalating the historical costs to develop the EMRP revenue requirements. He states that the: (1) Company escalated the Plant-Related Items using 2.50% annual escalator to calculate plant-in-service throughout the EMRP period; (2) Company uses the actual O&M for the June 2019 historical test period and escalated those at 2.5% annually; and (3) Other Rate Base and Expense Items (cost-of-service) were either held flat throughout the EMRP term or amortized based on existing or requested amortization schedules.[453] Witness Wolverton notes that he calculated income taxes as a function of taxable income multiplied by the applicable statutory rates.[454] To calculate the depreciation expense, amortization expense, accumulated depreciation, accumulated amortization for the EMRP revenue requirements, he starts with the line items and adds the projected amounts, which are a function of the projection of plant additions and depreciation/amortization rates.[455] To calculate Accumulated Deferred Income Taxes ("ADIT"), he starts with the actual June 2019 ADIT balance and adds projected deferred tax activity.[456]

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449 Pepco's Brief at 68; *see* Pepco (6C) at 4:12-16 (Wolverton Surrebuttal).

450 Pepco's Brief at 50.

451 Pepco (6C) at 5:15-18 (Wolverton Surrebuttal).

452 Pepco (6C) at 5:23-6:8 (Wolverton Surrebuttal).

453 Pepco (6C) at 6:21-8:1 (Wolverton Surrebuttal).

454 Pepco's Brief at 51.

455 Pepco (6C) at 7:1-10 (Wolverton Surrebuttal).

456 Pepco's Brief at 51.

DECISION

177. The Commission finds that the Company's EMRP revenue requirements methodology, as modified by the Commission is reasonable and we accept the modified methodology as explained further herein. However, because the EMRP is based upon an adjusted historical test year, the Commission must first address the starting period to establish a base from which to forecast expenditures during the MRP. The following sections Test Year, Rate Base, EMRP Revenue Requirement, Operating Expense, Depreciation, and Tax Issues discuss the Commission's decisions in establishing the rate base. The Commission also addresses the use of an escalator to forecasted expenditures.

178. Pepco's EMRP is based on a historical test period (12-months ending June 30, 2019) with post-test year items removed. Pepco's EMRP cumulative revenue requirements request of $135.9 million is adjusted to reflect Commission approved adjustments, assuming a rate effective date of July 1, 2021, an ROE of 9.275%, and an annual escalator of 2.17%, as discussed in the Escalation section VI *infra*. Based upon the Commission's findings, we have determined that, before offsets, the appropriate revenue increase for the Modified EMRP are: 2021–$41.7 million (July 1 rate effective date) and CY 2022–$108.6 million.

V. TEST YEAR

179. To allow the Company a reasonable opportunity to recover its costs, the Commission adopts a proposed test year to:(1) ensure that rate levels and the revenues they produce have a reasonable correlation to the revenue requirements of the Company; and (2) determine costs and investments as accurately as possible.[457] In this instance, Pepco's proposed test year is uncontested.

DECISION

180. The Commission approves Pepco's proposed test year of actual results for the twelve (12) months ending June 30, 2019, as reasonable and as an appropriate starting point to evaluate the merits of Pepco's EMRP Application. The Parties have proposed certain ratemaking adjustments to Pepco's EMRP Application and removed certain post-test year attributes. The Commission will address each Party's proposals below.

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[457] *See Formal Case No. 1103*, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service* ("*Formal Case No. 1103*"), Order No. 17424, ¶ 14, rel. March 26, 2014 ("Order No. 17424"), *citing Formal Case No. 610*, *In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates, Tolls, Charges, and Schedules for Gas Service*, Order No. 5685 at 6, rel. January 23, 1975.

A. The EMRP "Starting Point" Historical Test Year with Post-Test-Year Adjustments Removed

181. **Pepco Surrebuttal.** In the EMRP, the Company uses a historical test period cost of service for the 12-month period ending June 30, 2019,[458] adjusts for certain items, and escalates those historical costs, where appropriate. Pepco indicates that DCG and OPC both expressed a preference for developing an MRP using escalation-based approaches based on historical data, as opposed to Pepco's initial proposal to use the Company's internal cost projections to develop the MRP.[459]

182. To have an appropriate starting point from which to apply escalators, Pepco eliminated RMAs that related to post-test period items to avoid "double counting" in the projected EMRP years. Pepco also adopted certain RMAs proposed by OPC and AOBA. The following eight (8) RMAs were eliminated from the starting point.[460]

- RMA PEPCO 1 – Annualization of Test Period Reliability Closings (Uncontested)
- RMA PEPCO 2 – Inclusion of Post Test Year Reliability Plant Closings Through May 31, 2020 (RMA OPC-1)
- RMA PEPCO 3 – Inclusion of Post Test Year Reliability Plant Closings June 1, 2020, through December 31, 2020 (RMA OPC-2)
- RMA PEPCO 8 – Annualization of Wage Increases (Uncontested)
- RMA PEPCO 9 – Annualization of Employee Health and Welfare Benefits (Uncontested)
- RMA PEPCO 19 – Reflection of Increase in DC Water and Sewer ("WASA") Rates (Uncontested)
- RMA PEPCO 35 – Reflection of Non-Labor Inflation Adjustment (RMA OPC-12, AOBA)
- RMA PEPCO 42 – Reflection of TPWR Purchase Price (RMA OPC 4, AOBA)

DECISION

183. The Commission finds it appropriate that Pepco removed the post-test year RMAs from the historic test period for the 12-months ended June 30, 2019, to develop a starting point from which to apply escalators to the EMRP to avoid a double count of these items in the projected EMRP years. Therefore, the Commission approves Pepco's elimination of the eight (8) post-test year adjustments indicated above to the Modified EMRP.

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458 Pepco (6C) at 4:16-18 (Wolverton Surrebuttal).

459 Pepco (6C) at 3:1–17 (Wolverton Surrebuttal).

460 Exhibit Pepco (6C) 4:14–6:3 (Wolverton Surrebuttal). Note that for purposes of clarity, each Pepco RMA removed is identified as uncontested or, if contested, and shows corresponding OPC and/or AOBA RMA number that opposed the original Pepco adjustment.

B. The EMRP "Starting Point" with Contested RMAs Eliminated or Modified by Pepco Based on Recommendations from Other Parties

184. **Pepco Surrebuttal.** In addition to removing the uncontested post-test year RMAs, Pepco adopts the following five (5) OPC and/or AOBA recommendations to eliminate or modify the following RMAs to establish a starting period.

- RMA PEPCO 7 – Reflection of 3-Year Average Overtime Level (RMA OPC-7) - eliminated
- RMA PEPCO 20b – Reflection of Benning Environmental Reg Asset-Forecast (OPC-20) – eliminated
- RMA PEPCO 28 - Reflection of the Frederick Douglas Bridge Project (RMA OPC-3) – eliminated
- RMA PEPCO 34 – Reflection of CTA Regulatory Asset (RMA OPC-11) – modified to OPC's adjusted CTA
- RMA PEPCO 36 - Reflection of CTO Regulatory Asset (OPC-13) – modified to remove regulatory asset/amortization request[461]

DECISION

185. The Commission determines that Pepco's adoption and elimination of RMAs Pepco 7, 20b, 28, and 34 are reasonable, and the Commission accepts the elimination of the RMAs in the Modified EMRP. The Commission rejects Pepco's modification of the regulatory asset/amortization associated with RMA PEPCO 36 Reflection of CTO Regulatory Asset (OPC-13). As discussed in the Rate Base Section of this Order, the Commission finds that this RMA should be adjusted to ensure that the associated O&M savings from the EBSC Transformation Initiative are appropriately reflected in the forecasted expenses in 2021 and 2022.[462]

VI. ESCALATION

186. **Pepco**. After establishing the starting point, Pepco applies escalations for cost-of-service items in the EMRP revenue requirements. Pepco Witness Wolverton asserts that the Company: (1) escalates the Plant-Related Items by 2.5% annually to calculate plant-in-service throughout the EMRP period; (2) escalates the O&M Expense using the Company's actual O&M for the June 2019 historical test period and escalated those at 2.5% annually; and (3) either held flat other Rate Base and Expense Items (cost-of-service) throughout the EMRP term or amortized them based on existing or requested amortization schedules.[463]

187. Witness Wolverton states that the escalation rate put forward by the Company is reasonable given the data points Pepco is using is in the range of escalation rates recommended by

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[461] Exhibit Pepco (6C) 5:21–6:3 (Wolverton Surrebuttal).

[462] *See* Section VIII C.2: Rate Base.

[463] Pepco (6C) at 6:21-8:1 (Wolverton Surrebuttal).

the Parties; noting that OPC Witness DeCourcy recommends a 2.17% escalation rate, and GSA recommends a rate of 2.49%.[464] Witness Wolverton notes that Pepco is obligated to provide a 2.5% wage increase and states that the Company proposes to escalate the actual capital spending level from the base historic period by 2.5%.[465] Under the EMRP, Pepco proposes to file detailed capital additions by projects anticipated for 2021 and 2022 that incorporate a $60 million reduction to capital spending.[466] Pepco claims that it will identify variances in spending and justify the prudence of any new projects or spending on any projects that are significantly over budget.[467] In sum, Pepco argues that both the 2.5% escalation factor for Pepco and the manner in which Pepco applies the escalation factor to costs inputs are reasonable and essential to Pepco's ability to carry out its planned capital spending.[468]

188. **OPC**. OPC provides an alternative escalation methodology for the MRP that is based on the traditional test year that removes or eliminates the post-test adjustments/attributes. OPC proposed 2.17% as its escalation factor.[469] In surrebuttal and supplemental testimony filed after the issuance of the public health emergency, OPC Witness DeCourcey makes clear that OPC no longer recommends the adoption of any MRP. However, even though OPC no longer proposes an alternative MRP, OPC states that if the Commission does decide to adopt an MRP, it should adopt the OPC Alternative MRP Proposal. If that is the result, OPC points out that because of the COVID-19 pandemic, a different inflation rate should be calculated as Witness DeCourcey 2.17% recommendation will no longer be relevant.[470] OPC concludes, "Pepco has not met its burden of proof for the 2.5% escalation rate proposed in its MRP Enhanced Proposal," and using its escalation factor will result in unjust and unreasonable rates.[471]

189. **AOBA**. AOBA Witness B. Oliver states that the annual escalation of capital expenditures is inappropriate because it: (1) assumes that historic levels are a normal or ongoing level of expenditure; (2) is inconsistent with long-term planning of capital programs; and (3) removes Pepco's performance accountability as costs will not be impacted by performance.[472] AOBA argues that with Pepco having exceeded service reliability, declining sales, and potential

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[464] Pepco's Brief at 52, 58.

[465] Pepco's Brief at 52. We note that Pepco did not provide either the effective date or the termination date of the agreement.

[466] Pepco's Brief at 54, 62.

[467] Pepco's Brief at 54.

[468] Pepco's Brief at 61.

[469] OPC (3B) at 14:7-13 (Ramas Supp.).

[470] OPC's Brief at 124.

[471] OPC's Reply Brief at Appendix-23.

[472] AOBA (4A) at 38:4-13 (B. Oliver Supplemental Surrebuttal).

long-term COVID-19 impacts, there may be no growth of capacity.[473] Witness B. Oliver suggests having an annual planning process to evaluate specific projects.[474]

190. **DCG**. DCG witness Lane states that a common approach found in other jurisdictions is to escalate expenditures using a general measure of output inflation for the national economy, such as the GDP-PI, the gross domestic product price index, less a productivity factor ("X-Factor").[475] DCG explains that the "GDP-PI – X-Factor" is often used as the external index while the productivity factor ("X-Factor") is typically included in an MRP index-based formula to reflect the fact that the formula should account for productivity trends of the target utility and the electricity industry in general. DCG asserts that this approach is used in Massachusetts (Eversource, National Grid), Maine (Central Maine Power), Washington (Puget Sound Energy), and in the Canadian Provinces of Ontario and Alberta.[476]

191. DCG argues that Pepco's arbitrary and unfounded 2.5% escalation factor is not derived from any external index.[477] DCG asserts an escalation factor should be based upon a known independent published external index.[478] DCG also states that the key purpose of using an escalation index is to allow rate changes to be independent of actual cost changes incentivizing Pepco to control costs over the course of the EMRP and preventing Pepco from escalating costs in a manner that equals its desired revenue requirements.[479]

DECISION

192. In any assessment of inflationary expectations, it is important to recognize that the economic outlook at present remains uncertain. The US economy is recovering from a recession triggered by COVID-19, and economists are divided about prospects for a rapid recovery. Much will depend on economic policies, including changes to federal spending and taxation policies.[480]

193. OPC's escalation index relies on a survey of professional forecasters reported by the Philadelphia Federal Reserve Bank. Witness DeCourcey testifies that his original 2.17% rate

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473 AOBA (4A) at 38:14 – 39:11 (B. Oliver Supplemental Surrebuttal).

474 AOBA (4A) at 39:12-17 (B. Oliver Supplemental Surrebuttal).

475 DCG (4A) at 15:9-15 (Lane Supplemental Surrebuttal).

476 DCG (4A) at 15:9 – 16:9 (Lane Supplemental Surrebuttal).

477 DCG's Brief at 28.

478 DCG's Brief at 30.

479 DCG's Brief at 30.

480 *See* Congressional Budget Office, *An Overview of the Economic Outlook: 2021 to 2031* (CBO) February 2021, p. 1. According to this report, "Inflation, as measured by the price index for personal consumption expenditures, rises gradually over the next few years and rises above 2.0 percent after 2023, as the Federal Reserve maintains low interest rates and continues to purchase long-term securities."

recommendation (based on a fourth-quarter 2019 survey) is "no longer relevant."[481] The Philadelphia Federal Reserve conducts a quarterly survey of professional forecasters to estimate 1-year and 10-year CPI inflation rates. OPC Witness DeCourcey recommends the Commission use an average of the 1-year and 10-year CPI inflation rates as the escalation factor for Pepco. In Witness DeCourcey's Direct testimony,[482] he used the fourth quarter 2019 data that was available at the time of writing, which resulted in an average CPI inflation of 2.17 percent.

194. Witness DeCourcey recommends that the number be updated to reflect conditions closer to the time of the Commission's order. The latest estimates from the Philadelphia Federal Reserve published on May 14, 2021 result in an average of 2.34% (using Witness DeCourcey's method). And the first quarter of 2021 has an average of 2.18%. We note that OPC no longer supports this, but we recognize that the Philadelphia Federal Reserve is a credible source in the Mid-Atlantic region for forecasting inflation rates It is one of the oldest and most widely respected surveys available and it is frequently cited as the basis for forecasted inflation rates.[483] We also note that the long-term (10-year) inflation rate range has been relatively stable, 2.03% to 2.30% from 2019 to now. The following table shows the inflation forecasts from the Philadelphia Federal Reserve from the fourth quarter 2019 to the second quarter 2021.

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481 OPC's Brief at 124.

482 OPC (C) 56:8 (DeCourcey Direct).

483 The inflation forecast is part of the Survey of Professional Forecasters, which is the oldest quarterly survey of macroeconomic forecasts in the United States. The survey began in 1968 and was conducted by the American Statistical Association and the National Bureau of Economic Research. The Federal Reserve Bank of Philadelphia took over the survey in 1990.

Table 5: Inflation Forecasts from Philadelphia Federal Reserve

Year	Quarter	Inflation CPI 1 Year (%)	Inflation CPI 10 Year (%)	Average (%)
2019	4	2.14	2.20	2.17
2020	1	2.16	2.20	2.18
2020	2	1.86	2.14	2.00
2020	3	1.77	2.03	1.90
2020	4	2.07	2.12	2.10
2021	1	2.15	2.20	2.18
2021	2	2.37	2.30	2.34

195. Given the recent inflationary expectations and that the CPI obviously will change through time, we believe that a 2.17% escalator is a reasonable estimate for inflation during the EMRP period. This figure is close to the average of long-term inflation in the most recent four quarters (2.13% on average for the latest four quarters in the last column of the table above). Even though the 2.13 % average is slightly lower than 2.17%, given the recent upward trend, we believe the 2.17% falls within a range of reasonableness. The 2.17% escalator also compares favorably to the 2.5% BGE inflation proffer that the Maryland Commission approved in BGE's MRP application.[484] In this instance, the only support proffered by Pepco to support its 2.5% escalator is an opaque reference to a labor contract inflation adjustment negotiated by Pepco with its workforce represented by IBEW Local 1900.[485] We agree with DCG Witness Lane assessment that Pepco's 2.5% escalator fails the test of objectivity and independence and is not based on published data sources.[486] Consequently, the Commission rejects Pepco's 2.5% simply because it is not based upon a known independent published external index. We believe that the Commission's decision to reduce the escalation rate from Pepco's 2.50% to 2.17% is reasonable and consistent with the most recent average long-term inflation rate from the Philadelphia Federal Reserve. Based on the above, we, therefore, adopt a 2.17% escalation factor as a reasonable escalation adjustment.[487]

VII. COST OF CAPITAL

196. In approving the EMRP, the Commission must determine a reasonable rate of return including the cost of equity capital, the cost of debt, and the projected capital structure for Pepco. Our decisions follow the well-settled standards established in *Washington Gas Light Co. v. Public*

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[484] In the Maryland PSC's recent order on BGE's MRP, the PSC stated, "BGE's submission of the September 2020 update to the CPI Index for the Baltimore-Columbia-Towson region also demonstrates that the Company's 2.5% per year inflation forecast is reasonable, given that it lies between the low (1.8%) and the high (2.8%) of that three-year forecast for 2021 through 2023." *See* Maryland PSC Order No. 88975.

[485] Pepco's Brief at 52. There are no details of the contract (*e.g.*, effective dates) in the record of this case.

[486] DCG (4C) 12.4-12.8 (Lane Supplemental Surrebuttal).

[487] We note that DCG also proposed the use of index approach. *See* ¶¶ 219-220 herein.

Service Comm'n, 450 A.2d 1187, 1209-1215 (D.C. 1982) (review of *Formal Case No. 686*).[488] We also adhere to the standards derived from the United States Supreme Court's decisions in *Bluefield Waterworks & Improvement Co. v. Public Service Comm'n of the State of West Virginia*, 262 U.S. 679 (1923) ("*Bluefield*") and *Federal Power Comm'n v. Hope Natural Gas Co*., 320 U.S. 591 (1944) ("*Hope*"). In *Bluefield* and *Hope,* the Court held that a public utility is entitled to earn a fair and reasonable rate of return on its capital investments comparable to that of investments of similar corresponding risks;[489] a return sufficient to assure confidence in the financial integrity of the public utility such that it will be able to maintain its credit and attract investment capital.[490]

197. The Commission determines the Company's authorized overall rate of return by the "cost of capital" method.[491] That method seeks to determine what return the Company must offer its investors in order to attract the capital investment in its stocks and bonds necessary to finance its construction and operations. It is assumed that the cost of capital is essentially and practically the equivalent of a fair rate of return. The overall cost of a utility's capital is calculated by determining the cost of each component in the company's capital structure. A weighted cost for each component is derived by multiplying its cost by its ratio to total capital. The sum of these weighted costs then becomes the utility's overall rate of return, which is multiplied by the company's rate base to determine the company's required return.[492] With these standards forming the backdrop for our consideration of Cost of Capital and Capital Structure, we turn to its various components and the evidence submitted into the record by the Parties.

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488 *See, e.g., Formal Case No. 850*, *In the Matter of Investigation into the Reasonableness of the Authorized Return on Equity, Rate of Return, and Current Charges and Rates for Telecommunication Services Offered by Chesapeake and Potomac Telephone Company*, Order No. 9927 at 7-8, rel. January 27, 1992; *see also Office of the People's Counsel v. Public Service Comm'n*, 455 A.2d 391, 397-398 (D.C. 1982) (review of *Formal Case No. 685*). More recently, *see Formal Case No. 1139, In the Matter of the Application of Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service* ("*Formal Case No. 1139*"), Order No. 18846, rel. July 25, 2017, ¶ 250 ("Order No. 18846").

489 *Bluefield*, 262 U.S. 679, 692-693.

490 *Hope*, 320 U.S. 591, 603.

491 "The rate of return is an expression, in terms of percentage of rate base, of: 'the amount of money a utility earns, over and above operating expenses, depreciation expense, and taxes expressed as a percentage of the legally established net valuation of utility property, the rate base. Included in the returns are interest on debt, dividends on preferred stock, and earnings on common stock equity. In other words, the return is that money earned from operations which is available for distribution among the various classes of contributors of money capital." *Formal Case No. 685, In the Matter of Application of Potomac Electric Power Company for an Increase in its Retail Rates for the Sale of Electric Energy, ("Formal Case No. 685"),* Order No. 6096 at 6, rel. June 14, 1979.

492 *See generally*, *Washington Gas Light Co. v. Public Service Commission*, 450 A.2d 1187, 1209, n.30 (D.C. 1982).

A. Overall Position of the Parties

198. **Pepco (EMRP).**

Table 6: Pepco EMRP Cost of Capital

Capital Component	Proportion[493]	Cost	Weighted Cost
Common Equity	50.68%	9.70%	4.92%
Long Term Debt	49.32%	5.01%	2.47%
OVERALL			**7.39%**

199. **OPC.**

Table 7: OPC Recommended Cost of Capital

Capital Component	Proportion	Cost	Weighted Cost
Common Equity	50.00%	8.75%[494]	4.38%
Long Term Debt	50.00%	5.01%	2.51%
OVERALL			**6.89%**

200. **AOBA.**

Table 8: AOBA Recommended Cost of Capital

Capital Component	Proportion	Cost	Weighted Cost
Common Equity	50.68%	8.50%	4.31%
Long Term Debt	49.32%	5.01%	2.47%
OVERALL			**6.78%**

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[493] Pepco (2D) at 13:5–13 (Ziminsky Supplemental) and Pepco (2D)-3 (Ziminsky Supplemental Exhibits). In Pepco's Surrebuttal Testimony, witness McGowan introduced an enhanced MRP with a revised ROE of 9.70%. The capital structure remained the same as in the Supplemental Testimony.

[494] OPC (D) at 77: 5 (O'Donnell Conformed Direct). OPC (D) at 90:15-18 (O'Donnell Conformed Direct). The cost of equity of 8.75% does not reflect a 50-basis point decrease for the reduction in the risk with the MRP.

B. Capital Structure

201. The capital structure refers to the make-up and proportions of the utility's financial resources comprised of long-term debt, short-term debt, preferred stock and common stock (equity). The capital structure is used in determining an appropriate rate of return on rate base.[495]

202. **Pepco**. Pepco's capital structure as originally proposed in this case was Common Equity - 50.46% and Long-Term Debt - 49.54% based on capital amounts as of December 2018.[496] The common equity ratio is at the low end of Pepco Witness D'Ascendis'[497] proxy group common equity ratios with a mean common equity ratio of 53.28% and a range of 46.01% to 64.78%.[498] Short-term debt is not included since it is used to finance AFUDC, and the Commission has previously approved this treatment.[499] In its Supplemental Testimony, Pepco revises its capital structure for Common Equity to 50.68% and Long Term Debt to 49.32% to reflect a Pepco debt issuance of $150 million on June 13, 2019, at 3.45% and capital amounts as of June 30, 2019. Additionally, on June 27, 2019, given the specific terms of the bond, Pepco was able to refinance a tax-exempt fixed rate bond originally issued on March 17, 2009, with a current outstanding principal balance of $109.5 million. As a result of the refinancing, the interest rate on the bond was lowered from 6.20% to 1.70%,[500] which provides cost savings for customers.[501]

203. **OPC.** OPC Witness Kevin O'Donnell recommends a capital structure consisting of 50.00% Common Equity and 50.00% Long-Term Debt. He bases these figures on the capital proportions of OPC's proxy group (47.6%), D'Ascendis' proxy group (49.6%), the average common equity ratios granted by regulators in 2019 (49.94%), and the common equity ratios granted by regulators over the past 15 years (47–51%). Witness O'Donnell notes that Pepco has stated a goal of attaining a common equity ratio of 49% to 50%.[502]

204. **AOBA.** AOBA Witness Timothy Oliver recommends the same revised capital structure recommended by Pepco. For Common Equity, 50.68%, and 49.32% for Long Term Debt.

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495 Public Utilities Report Glossary of Utility Terms.

496 Pepco (D)-5 (Ziminsky Direct Exhibits), Pepco (G) at 60:13–60:15 (D'Ascendis Direct).

497 By letter dated July 6, 2020, Pepco provided notice to the Commission and parties that Pepco's Cost of Capital witness Robert Hevert was replaced by Dylan D'Ascendis, Director at Scott Madden. Witness D'Ascendis adopted the testimony and data responses sponsored by Company witness Hevert. For clarity, Pepco's Cost of Capital witness will be referred to as witness D'Ascendis in all instances in this Order.

498 Pepco (G) at 60:7-153:15-1 (D'Ascendis Direct).

499 Pepco (D) at 55:1-55:6 (Ziminsky Direct).

500 See: https://www.sec.gov/Archives/edgar/data/79732/000162828019008405/exc-201906278k.htm.

501 Pepco (2D) at 13:5-13 (Ziminsky Supplemental) and Pepco (2D)-3 (Ziminsky Supplemental Exhibits).

502 OPC (D) at 66:16-74:14 (O'Donnell Direct).

205. **Pepco Rebuttal.** Pepco Witness D'Ascendis disagrees with OPC Witness O'Donnell's proposed capital structure for the following three reasons: (1) Mr. O'Donnell does not consider equity duration; (2) Mr. O'Donnell relies upon holding company capital structures instead of operating company capital structures because parent capital structures may contain debt not associated with utility operations; and (3) some of Mr. O'Donnell's authorized capital structures include non-investor-supplied capital. Pepco asserts correcting for these errors, results in authorized capital equity ratios in the 51% to 52% range.[503]

DECISION[504]

206. As referenced above, Pepco's proposed capital structure reflects Pepco's debt issuance of $150 million on June 13, 2019, at 3.45%, and the capital amounts as of June 30, 2019, the end of the test year. Additionally, on June 27, 2019, Pepco was able to refinance a tax-exempt fixed rate bond originally issued in 2009 resulting in a reduced interest rate on the bond from 6.20% to 1.70%, which provides a cost savings for customers. We also note that the Commission's general policy is to use a utility's actual end-of-test-year capital structure unless it would lead to an unreasonable return.[505] The Exelon/PHI merger Commitment No. 93 requires Pepco to maintain a rolling 12-month average equity ratio of at least 48%.[506] We have monitored Pepco's rolling 12-month average ratio since the merger to ensure that it remains at or above 48%.

207. In *Formal Case No. 1139*, the Commission stated that it analyzes the capital structures used by similar companies in the industry; recognizing that an electric utility's ability to maintain its debt and equity ratios within the appropriate range for its industry influences the bond rating it will receive. The Commission further explained that a utility's bond rating affects the costs at which a company can access the capital markets. In that case, the Commission found Pepco's proposed actual capital structure as of March 31, 2016, both reasonable and appropriate.[507]

208. Pepco's approved equity ratio in *Formal Case No. 1150*, Pepco's last rate case, which resulted in a settlement, was 50.44%.[508] We also note that the average equity ratio granted from February 2018 through February 2020 to the nine (9) operating companies in 10 distribution-

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503 Pepco(3G) at 59:5-10 (D'Ascendis Rebuttal) and Pepco (3G)-14.

504 The Decision rendered in this section is applicable to the EMRP, which the Commission approves in this Order with modifications.

505 *See* Order No. 18846, ¶ 257; *Formal Case No. 1137,* Order No. 18712, ¶ 42, rel. March 3, 2017; *Formal Case No. 1093*, Order No. 17132, ¶ 15, rel. May 15, 2013.

506 *Formal Case No. 1119,* Order No. 18148, Attachment B, ¶93.

507 Order No. 18846, ¶ 262.

508 *Formal Case No. 1150,* Order No. 19433, ¶ 49, rel. August 9, 2018.

only rate cases in the D'Ascendis peer group is 49.39% (ranging from 42.50% to 53.34%).[509] The average equity ratio granted in the past three years to the Exelon utilities is 49.76%.

209. The Commission believes that Pepco's proposed capital structure of 50.68% equity, which is based on actual results for the year ended June 30, 2019, is within a reasonable range of 48.00% (as generally required by Exelon/PHI Merger Commitment No. 93) and 53.00% (the highest equity ratio approved in the Pepco Peer Group within the last three years).

210. Maintaining a reasonable capital structure with the appropriate mix of equity and debt is essential in retaining Pepco's investment-grade credit rating. We note that Standard and Poor's ("S&P") upgraded Pepco's long-term issuer credit ratings (and those of other PHI Utilities: ACE, Delmarva and Conectiv) from BBB+ to A- (minus) on March 1, 2019.[510] Moody's specifically noted the significant capital expenditure facing Pepco and the regulatory lag issues it faces in Maryland; highlighting, however, improving regulatory environments in DC and MD as Pepco's credit strengths; and significant regulatory lag as well as Pepco's large capital expenditure program as credit challenges.[511] Whatever capital structure the Commission adopts must be sufficient to help maintain Pepco's current investment-grade credit rating.

211. In light of the above, we adopt a capital structure for Pepco that contains 50.68% common equity and 49.32% long-term debt. While not adding a component of short-term debt to the capital structure in this case, we do want to make certain that the rates for District customers reflect the benefits of prudently incurred low-cost debt in light of increased level of construction activities in the coming years. For these reasons, and as recommended by OPC, we will continue to monitor Pepco's use of short-term debt and continue to evaluate whether we should include short-term debt as a component in Pepco's capital structure.

C. Cost of Capital

212. Pepco's original proposed cost of capital was 7.81%[512] but was revised downward in the Company's Supplemental Testimony to 7.69% to reflect Pepco's debt issuance of $150 million on June 13, 2019. Additionally, as stated previously, the Company was able to refinance a tax-exempt fixed rate bond resulting in lowering the interest rate from 6.20% to 1.70%, which provides a cost savings for customers.[513] Pepco does not propose a change in its recommended cost of equity because of the MRP. However, Pepco's EMRP proposal contains a 7.39% Rate of

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[509] The average equity ratio granted from February 2018 through February 2020, when all formula rate cases are removed, for eight (8) operating companies in eight (8) distribution-only rate cases in the D'Ascendis peer group is 49.24%.

[510] Standard and Poors' Global Ratings, "Research Update: Exelon Upgraded To 'BBB+' On Successful Execution of Growth Strategy; Subsidiary Ratings Also Raised; Outlook Stable", published March 1, 2019.

[511] Moody's Investor Service, Credit Opinion, Update to Credit Analysis of Potomac Electric Power Company, published March 31, 2020. Report No. 1216398, p. 1.

[512] Pepco (D) at 52:1853:15-19 (Ziminsky Direct).

[513] Pepco (2D) at 13:5-13 (Ziminsky Supplemental) and Pepco (2D)-3 (Ziminsky Supplemental Exhibits).

Return ("ROR"), which reflects a reduced Return on Equity ("ROE") of 9.70%, and Pepco does not propose that the cost of equity be changed throughout the life of the EMRP.[514] OPC's recommendation is 6.89% for a traditional rate case, or 6.64% to reflect the reduction in risk with the EMRP, as the cost of capital for Pepco, while AOBA argues that 6.78% (and lower if an MRP) should be the cost of capital in this proceeding.

1. Return on Equity ("ROE")

213. **Pepco.** Pepco witness D'Ascendis developed a proxy group of 24 companies and three cost of equity methods: (1) Discounted Cash Flow ("DCF"); (2) Capital Asset Pricing Model ("CAPM"); and (3) Bond Yield Plus Risk Premium ("Risk Premium" or "RP").[515]

214. In his Direct Testimony, witness D'Ascendis uses a Constant Growth DCF model as a DCF method.[516] The dividend yield is based on the proxy companies' current annualized dividend and average closing stock prices over the 30-day, 90-day, and 180-day trading periods as of March 29, 2019.[517] The witness also uses the Zacks consensus, First Call, and Value Line earnings growth estimates for the growth rate in his DCF model.[518] His DCF results are in the ranges of 8.90%–9.11% (Median) and 9.68%–9.96% (Median High).[519] However, witness D'Ascendis believes that his DCF results should be given little weight since the Fed has begun a policy of monetary policy normalization with a likelihood of increasing interest rates.[520] In Rebuttal Testimony, D'Ascendis updates his results by again using the Constant Growth version of the DCF Model. D'Ascendis' Constant Growth DCF analysis produced a range of mean for the proxy group ranging from 8.90% to 9.31%.[521]

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514 Pepco (B) at 46:5-13 (McGowan Direct), Pepco (D) at 52:20-53:4 (Ziminsky Direct), and Pepco (C)-1, page 1 of 27.

515 Pepco (G) at 19:11–12 (D'Ascendis Direct)

516 Under the DCF method, the market price of the common stock embodies investors' expectations about that stream of future dividends. However, a dividend expected to be received in the future is not valued as highly by investors as that same dividend received today. The investor implicitly imputes a discount to future dividends. Also, the further in the future the dividend is expected to be received, the greater is the discount. This value, or market price, that investors impute to that share of common stock is the present value of the stream of dividends expected to be received by them. These future dividends are discounted by an amount determined by the discount rate, or cost of equity. The DCF model is expressed in this way: Cost of Equity = Dividend Yield + Expected Growth Rate.

517 Pepco (G) at 23:1-5 (D'Ascendis Direct).

518 Pepco (G) at 26:17-20 (D'Ascendis Direct).

519 Pepco (G) at 27:1-14 (D'Ascendis Direct).

520 Pepco (G) at 28:1-30:4 (D'Ascendis Direct).

521 Pepco's Brief at 123-124; See Pepco (3G): at 76; Pepco (3G)-1 Table 4 (D'Ascendis Rebuttal).

215. Utilizing the CAPM method,[522] Pepco witness D'Ascendis assumes a risk-free rate in the range of 2.99%–4.05% based on current and projected 30-year Treasury yields.[523] For his market risk premium, he uses DCF estimates of companies based on Bloomberg and Value Line projected earnings growth rates. Those estimates ranged from 10.77% to 13.41%.[524] He also uses Beta coefficients reported by Value Line and Bloomberg.[525] His CAPM cost of equity results range from 8.31% to 11.91%.[526] In Rebuttal Testimony, Pepco witness D'Ascendis cautions that even under more normal conditions, the CAPM can underestimate the ROE for firms with low Beta coefficients, such as regulated utilities. The Empirical CAPM ("ECAPM") is often used to address this tendency. D'Ascendis prepares an ECAPM analysis in light of the COVID-19 pandemic's impact which produces a range of results from 9.40% to 16.47%.[527]

216. In his RP analysis,[528] to reflect a negative correlation between risk premiums and Treasury yields, witness D'Ascendis performs a regression analysis using state-authorized returns and 30-year Treasury yields for the period 1980 to 2019.[529] Based on this analysis, his Risk Premium estimate for the equity cost of capital is in a range of 9.92% to 10.17%.[530] In his update, Company witness D'Ascendis also conducts a regression analysis to determine the relationship between interest rates and the Equity Risk Premium, which shows that there is a statistically significant, inverse relationship between the 30-year Treasury yield and the Equity Risk Premium. Simply applying the long-term average Equity Risk Premium of 4.67% will significantly

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522 The formula for the CAPM method is $k = rf + \beta(rm - rf)$, where k is the cost of equity, β is the Beta coefficient, rm is the expected return on the market as a whole, and rf is the risk-free rate. The expected return can be estimated either using a backward-looking approach, a forward-looking approach, or a survey of academics and investment professionals. The risk-free rate is represented by a proxy, typically the yield on 30-year US Treasury bonds. The term (rm – rf) represents the Market Risk Premium. The Beta coefficient represents the variability of a company's stock price relative to the overall stock market volatility. For example, a company with a Beta coefficient of 0.70 means that that company's stock price on average moves up or down 70% of the degree to which the overall stock market moves up or down. Betas are published by a number of commercial sources, including Value Line.

523 Pepco (G) at 31:12-32:14 (D'Ascendis Direct).

524 Pepco (G) at 32:15-34:7 (D'Ascendis Direct).

525 Pepco (G) at 34:8-13 (D'Ascendis Direct).

526 Pepco (G) at 35, Table 3 (D'Ascendis Direct).

527 Pepco's Initial Brief at 126.; See Pepco (3G) at 77; Pepco (3G)-4, Table 6 (D'Ascendis Rebuttal)

528 The Risk Premium ("RP") Model is based on the simple idea that since investors in stocks take greater risk than investors in bonds, the former expect to earn a return on a stock investment that reflects a premium over and above the return they expect to earn on a bond investment. The RP Method uses the following equation: Ke = Bond Yield + RP. The bond yield can be a projected or contemporaneous utility bond yield. RP is not assumed to be constant, but changes over time. There is some evidence that there is an inverse correlation between bond yields and risk premiums.

529 Pepco (G) at 36:19-38:7, Chart 1 (D'Ascendis Direct).

530 Pepco (G) at 38:12-13 (D'Ascendis Direct).

understate the ROE. He concludes that, based on the coefficients derived from his regression analysis, the implied ROE is between 9.97% and 10.19%.[531]

217. Pepco alleges that it is undertaking a significant capital expenditure program, which is greater than internally generated cash flow.[532] Witness D'Ascendis performed an analysis using the "DuPont" formula to estimate a regression relationship between capital expenditures and Asset Turnover. The statistically significant relationship shows that an increase in capital expenditures negatively affected the return on common equity. Based on that fact, he concludes the Commission needs to provide adequate support to Pepco with its allowed ROE.[533]

218. Thus, based on his analysis, Pepco witness D'Ascendis recommends a range of 10.00% to 11.00% for the allowed ROE with a point recommendation of 10.30%.[534] Pepco does not propose a change in its recommended cost of equity because of the MRP, nor does Pepco propose that the cost of equity be changed throughout the life of the MRP.[535] D'Ascendis claims that Pepco will be exposed to interest rate risk over the next few years. Furthermore, aspects of the DCF and CAPM equations may change: Long-term Treasury yields, Beta coefficients, the Market Risk Premium, dividend yields and growth rates. The potential changes imply that, with the MRP, Pepco will be exposed to these risks.[536] Witness D'Ascendis concludes that the MRP will not enhance Pepco's risk profile or reduce its cost of equity.[537]

219. **OPC.** OPC witness O'Donnell presents OPC's cost of equity recommendations using the DCF and CAPM models. Witness O'Donnell develops a proxy group that filtered out holding companies of large, unregulated generation affiliates.[538] For his DCF analysis, he uses Value-Line-forecasted dividend yields. The average dividend yield was 2.9–3.0%.[539] He also develops five different DCF growth rates, which include the "plowback ratio" and historical and forecasted growth rates in dividends per share, earnings per share, and the book value of equity per share. Based on these results, he believes that the DCF growth rate should be in the range of

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[531] Pepco's Brief at 127, *See* PEPCO (3G): at 78; PEPCO (3G)-5, Table 7; (D'Ascendis Rebuttal)

[532] Pepco (G) at 43:7-46:2, Chart 3, (Hevert Direct) and PEPCO (I) at 11:1-25:16 (Clark Direct).

[533] Pepco (G) at 47:9–49:11 (D'Ascendis Direct).

[534] Pepco (G) at 61:1-9 (D'Ascendis Direct).

[535] Pepco (B) at 46:5-13 (McGowan Direct), Pepco (D) at 52:20-53:4 (Ziminsky Direct), and Pepco (C)-1, page 1 of 27.

[536] Pepco (G) at 50:1-16 (D'Ascendis Direct).

[537] Pepco (G) at 52:1-9 (D'Ascendis Direct).

[538] OPC (D) at 30:3-13 (O'Donnell Direct)

[539] OPC (D) at 37:4-38:14 (O'Donnell Direct).

4.0–6.0%.[540] His DCF range is 6.9% to 9.0%.[541] Witness O'Donnell also performs the same DCF analysis using D'Ascendis' proxy group. That DCF range is 6.8% to 9.0%.[542]

220. Mr. O'Donnell's CAPM result is 4.04% to 6.49%, using an equity risk premium of 4% to 6%.[543] He also applies his CAPM analysis to D'Ascendis' proxy group to obtain a CAPM range of 4.04% to 6.49%.[544] Mr. O'Donnell set the low end of his CAPM range at 5.0% and the high end at 7.0%.[545] His midpoints from his DCF and CAPM analyses are 8.00% and 6.50%, respectively. O'Donnell recommends a higher 8.75% ROE in recognition of the higher allowed ROEs from across the country.[546] Mr. O'Donnell also critiqued D'Ascendis' analysis in a number of areas; for example, he claims D'Ascendis' DCF analysis needs to be updated; D'Ascendis excludes the low-end DCF results, and D'Ascendis used flawed interest rate forecasts.[547] In surrebuttal testimony, OPC witness O'Donnell continues to recommend an ROE not to exceed 8.75%, an overall rate of return of 6.89%, and the use of a capital structure comprised of 50% debt and 50% equity.[548] However, he changes the composition of his peer group and updates the results of his DCF and CAPM analysis.[549] Witness O'Donnell's revises DCF range, based on his updated peer group, is 7.25% to 9.25% (with a midpoint of 8.25%).[550]

221. Contrary to Pepco's witness D'Ascendis, OPC witness O'Donnell believes that the proposed MRP will reduce Pepco's risk. The risk will shift from Pepco to customers due to information asymmetries. In particular, the Company maintains an information advantage over customers on forecasted rates, annual reconciliations, reopeners, and accounting deferrals for unforeseen costs. O'Donnell states that the reality is Pepco is in a far better position of knowing when it may ask for a re-opener, for example, as it will know its financial books long before consumers will realize the financial results. In essence, they have time on their side that consumers do not. O'Donnell states Pepco has not demonstrated that a majority of companies in the Pepco

[540] OPC (D) at 38:15-43:9 (O'Donnell Direct).

[541] OPC (D) at 47:18-19 (O'Donnell Direct).

[542] OPC (D) at 38:15-43:9 (O'Donnell Direct).

[543] OPC (D) at 48:3-57:9 (O'Donnell Direct).

[544] OPC (D) at 57:8-9 (O'Donnell Direct).

[545] OPC (D) at 57:10-17 (O'Donnell Direct).

[546] OPC (D) at 59:9-61:2 (O'Donnell Direct).

[547] OPC (D) at 52:4-12 (O'Donnell Direct).

[548] OPC (2D) at 4: 6-7.

[549] OPC (2D) at 14:11-14; and pp. 15-20.

[550] OPC (2D) at 20:3-11.

proxy group have the risk-reducing characteristics of Pepco's proposed MRP. If the Commission accepted the MRP, O'Donnell recommends a 50-basis point reduction in the ROE.[551]

222. O'Donnell also disagrees with: (1) H D'Ascendis' regression analysis of EBITDA;[552] (2) with McGowan's argument that an MRP may benefit consumers through lower interest rates since it was not clear that credit agencies will recognize that change and thus change the credit ratings;[553] and (3) D'Ascendis' reliance on the Brattle study on decoupling because it was not relevant since the MRP is much more than decoupling.[554]

223. **AOBA.** AOBA witness Oliver recommends a cost of equity range of 7.56% to 9.525% with a midpoint recommendation of 8.54%.[555] His proposal is based on a DCF result of 8.43%, a CAPM result of 6.68%, an application of the Illinois Formula of 8.49%, and Pepco's currently authorized ROE of 9.525%. Witness Oliver also critiques Pepco witness D'Ascendis' analysis in a number of areas; for example, Oliver claims D'Ascendis' proxy group is notably riskier than Pepco's distribution utility operations; the S&P 500 companies used in D'Ascendis' CAPM analysis are not reflective of Pepco's risk characteristics, and D'Ascendis' DCF analysis uses averaging periods that were too short.[556]

224. AOBA witness Bruce Oliver states that the proposed MRP reduces Pepco's risk.[557] AOBA witness Timothy Oliver also states that the MRP will reduce Pepco's risk and that reduction in risk should be reflected in the allowed ROE.[558] However, neither witness quantifies a precise ROE downward adjustment in the event the MRP is approved.

225. **Pepco Rebuttal**. In Rebuttal, Pepco witness D'Ascendis continues to recommend a 10.30% cost of equity and allowed ROE of 10.30%. He updates his proxy group,[559] and he updates his DCF, CAPM, and Bond Yield Plus Risk Premium results for the period ending March 31, 2020. His updates mean DCF results are in the range of 8.65% to 9.56%.[560] His updates for CAPM cost of equity results are in the range of 8.04% to 10.87%, using Value Line Beta Coefficients. The updates for the Bloomberg Beta Coefficients increased substantially in his

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[551] OPC (D) at 77:6-91:64 (O'Donnell Direct).

[552] OPC (D) at 94:13-95:14 (O'Donnell Direct).

[553] OPC (D) at 95:15–96:11 (O'Donnell Direct).

[554] OPC (D) at 97:4-10 (O'Donnell Direct).

[555] AOBA (B) at 14:15-16 (T. Oliver Direct) and Exhibit AOBA (B)-1.

[556] AOBA (B) at 20:17–25:18 (T. Oliver Direct).

[557] AOBA (A) at 15:1–4, 39:6-10 (B. Oliver Direct).

[558] AOBA (B) at 5:10-12 (T. Oliver Direct).

[559] Pepco (3G) at 4:4-16 (D'Ascendis Rebuttal).

[560] Pepco (3G) at 76 in Table 4 (D'Ascendis Rebuttal) and Pepco (3G)-1.

update. Those CAPM results are in the range of 12.74% to 16.25%. His updates for ECAPM results are in the range of 9.40% to 12.43%, using Value Line Beta Coefficients, and in the range of 12.93% to 16.47%, using Bloomberg Beta Coefficients.[561] His Risk Premium results for cost of equity are in the range of 9.97% to 10.19%.[562] Finally, witness D'Ascendis utilizes the Expected Earnings analysis as a corroborating method resulting in a median ROE of 10.06% and an average ROE of 10.06%.[563]

226. Pepco witness D'Ascendis claims that market volatility has recently increased because of the COVID-19 virus and related effects. That effect is demonstrated in the higher Bloomberg Beta Coefficients. It is his opinion that investors have increased their return requirements and that Pepco's cost of equity is now at the top of the 10%–11% range.[564] D'Ascendis also disagrees with numerous ROE analysis conclusions of OPC witness O'Donnell and AOBA witness Oliver.[565] He especially disagrees with O'Donnell's proposed 50-basis point downward adjustment to the ROE to reflect the MRP. He notes that O'Donnell's basis for the adjustment is the 50-basis point adjustment for the BSA. Other than that, he claims OPC witness O'Donnell had provided no basis to support his position.[566]

227. **Pepco Surrebuttal.** As part of its EMRP package, Pepco adopts an ROE of 9.70%, which represented a 60-basis points reduction from the Company's recommended 10.3% in its original MRP. According to Pepco, in order to allow for no overall distribution rate increase until January 1, 2022, the significant cash flow implications to the Company, and other factors considered in the EMRP, the Company determined that an ROE of 9.70% was necessary.[567]

228. **OPC Supplemental Surrebuttal.** OPC witness O'Donnell maintains that the Company's revised proposal of a 9.7% ROE is still excessive and unsupported.[568] He notes that his 8.75% recommended allowed ROE is still appropriate.[569] O'Donnell does not believe that his

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[561] Pepco (3G) at 77 in Tables 5 and 6 (D'Ascendis Rebuttal) and Pepco (3G)-2 through (3G)-4.

[562] Pepco (3G) at 78:5- in Table 7 (D'Ascendis Rebuttal) and Pepco (3G)-5.

[563] Pepco (3G) at 78:5-7 (D'Ascendis Rebuttal) and Pepco (3G)-6.

[564] Pepco (3G) at 5:4-11:2 (D'Ascendis Rebuttal).

[565] For example, *see* D'Ascendis Rebuttal: Pepco (3G) at 13: 5 – 15:20; Pepco (3G) at 24:8-27:3; Pepco (3G) at 41:18-46:13; Pepco (3G) at 66:12-67:12; Pepco (3G) at 69:6-72:8; and Pepco (3G) at 72:9-73:20.

[566] Pepco (3G) at 61:13-62:5 (D'Ascendis Rebuttal).

[567] For example, *see* Pepco (3G) at 13: 5 – 15:20 (D'Ascendis Rebuttal): Pepco (3G) at 13:5 – 15:20; Pepco (3G) at 24:8-27:3 (D'Ascendis Rebuttal); Pepco (3G) at 41:18-46:13 (D'Ascendis Rebuttal); Pepco (3G) at 66:12-67:12 (D'Ascendis Rebuttal); Pepco (3G) at 69:6-72:8 (D'Ascendis Rebuttal); and Pepco (3G) at 72:9-73:20 (D'Ascendis Rebuttal).

[568] OPC(3D) at 3:1-4: -12 (O'Donnell Supplemental Surrebuttal).

[569] OPC(3D) at 15:1-13 (O'Donnell Supplemental Surrebuttal).

proposal or the $145 million in negative cash flow will have an impact on the Company's credit metrics or access to credit markets.[570]

229. **AOBA Supplemental Surrebuttal.** AOBA witness Bruce Oliver argues against the 9.70% EMRP ROE. He notes that Pepco presented no documented numeric analysis of that 9.70%.[571] In addition, as it relates to the BSA, AOBA witness Oliver argues that if the Commission adopts Pepco's proposal to annually adjust its forecasted billing determinants and change base rates, Pepco will experience a reduction in revenue risk not enjoyed by other utilities with MRPs, and the relative equity risk will be reduced, supporting a further downward adjustment to Pepco's authorized ROE.[572]

DECISION

230. The District of Columbia Court of Appeals, in *Metropolitan Board of Trade v. Public Service Comm'n,* 432 A.2d 343, 350 (D.C. 1981) notes:

> Rate design principles and specific rates approved by the Commission, however, must be "reasonable, just and nondiscriminatory." This statutory authority is deliberatively broad and gives the commission the authority to formulate its own standards and to exercise its ratemaking function free from judicial interference, provided the rates fall within a zone of reasonableness which assures that the Commission is safeguarding the public interest that is, the interests of both investors and consumers. *** From the investor standpoint, courts have defined the lower boundary of this zone of reasonableness as "one which is not confiscatory in the constitutional sense." *** From the consumer standpoint, the upper boundary cannot be so high that the rate would be classified as "exorbitant." [Citations omitted][573]

Consequently, the establishment of a rate of return on common equity at any point within the range of reasonableness is within the Commission's statutory authority to set just, reasonable and nondiscriminatory rates.[574]

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570 OPC(3D) at 11:3-14:22 (O'Donnell Supplemental Surrebuttal).

571 AOBA (4A) at 32:4-35:8 (Oliver Supplemental Surrebuttal).

572 AOBA (4A) at 54:7 (B. Oliver Supplemental Surrebuttal).

573 *See Metropolitan Board of Trade v. Public Service Comm'n,* 432 A.2d. 343, 350 (D.C. 1981), citing *Federal Power Comm'n v. Natural Gas Pipeline Co.,* 315 U.S. 575, 585 (1942); *Washington Public Interest Organization v. Public Service Comm'n,* 393 A.2d. 71,76 (D.C. App. 1978), *cert denied sub nom; Potomac Electric Power Co. v. Public Service Comm'n,* 44 U.S. 926 (1979).

574 *See* D.C. Code § 34-1101; *see also Federal Power Comm'n v. Hope Natural Gas Co. v. Public Service Comm'n of the State of West Virginia,* 262 U.S. 679 (1923); *Washington Gas Light Co. v. Public Service Comm'n,* 450 A.2d 1187, 1209-1215 (D.C. App. 1982).

231. In its decisions, the Commission has relied primarily on the DCF model to determine a utility's appropriate cost of common equity because the Commission consistently has found that the DCF method produces results more reasonable than those of other methods.[575] The DCF analysis attempts to estimate the return which investors require from an equity investment in Pepco. This return may be expressed as an investor-expected stock dividend yield plus the investor-expected dividend growth rate. Nevertheless, the Commission's preference for the DCF model does not preclude consideration of other methods like the CAPM and RPM for calculating cost of equity in some instances. However, our reliance on the DCF model does not foreclose the parties from advocating the use of other methods in future rate proceedings.[576] The Commission, as always, considers the entire record in determining the just and reasonable cost of equity, which may include action taken by other commissions and recent changes in the law.[577]

232. The Commission has reviewed the DCF results of the parties, including Pepco, OPC and AOBA. Based on our review, the range of DCF results are as follows:

Table 9: DCF Analysis Results

	Pepco[578]	**OPC[579]**	**AOBA[580]**	**Average**
Low	9.31%	7.25%	8.19%	8.25%
Mid	9.33%	8.25%	8.42%	8.67%
High	9.56%	9.25%	8.68%	9.16%
Average	9.40%	8.25%	8.43%	

233. The Commission notes that the results show that the average of the high end of the DCF analysis of the parties is 9.16%. While the average of the low-end DCF results is 8.25%, we also observe that, according to Pepco witness Clark, the Company estimates that it is expected to

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575 *See*, *e.g.*, *Formal Case No. 939,* Order No. 10646 at 38, and n.16, rel. June 30, 1995 ("Order No. 10646"), (citing *Formal Case Nos. 929, 912, 905, 889*, and *869*). *See also*, *Formal Case No. 929*, *In the Matter of the Application of Potomac Electric Company for an Increase in Retail Rates for the Sale of Electric Energy,* Order No. 10387 at 38-41, rel. March 4, 1994 ("Order No. 10387"); *Formal Case No. 912*, Order No. 10044 at 45, rel. June 26, 1992 ("Order No. 10044").

576 *See Formal Case No. 1103,* Order No. 17424, ¶ 273, *citing Formal Case No. 939,* Order No. 10646 at 38.

577 *See, e.g., Formal Case No. 1016,* Order No. 12986, ¶¶ 57-64, rel. November 10, 2003 (the Commission considered but rejected other record evidence when determining whether adjustments to the DCF calculations should be made, including the impact of the new income tax law).

578 High ROEs from 30-day, 90-day and 180-day Average Stock Price based on Proxy Group Mean from P Pepco Exhibit (3G)-1.

579 OPC (2D)-1 through OPC (2D)-6. The midpoint of the updated DCF analysis produced an ROE of 8.25% (with a low- and high-end range of 7.25% and 9.25%, respectively).

580 AOBA (B)-1. Based on means of adjusted dividend yield and projected 5-year earnings growth retrieved from www.Zacks.com 1-23-2020, money.cnn.com 1-23-2020 and www.finance.yahoo.com 1-23-2020.

incur approximately $1.3 billion of capital expenditures for the DC service territory between 2020 and 2023, a significant amount of money given uncertain capital market conditions.[581] Therefore, to enhance the Company's ability to raise significant capital at favorable terms over the next few years, and to help maintain the company's current investment-grade credit rating, we place more weight on the upper end of the average DCF range.

234. The Parties present the Commission with an ample record on which to make a decision. In this proceeding, the witness for each of the parties has presented their recommended ROE based on a range of equity returns using various market-based methodologies and their variants, including the DCF, the CAPM, and the Risk Premium models. In applying a methodology, each party exercises a considerable degree of judgment concerning the assumptions underlying their methodology and how it is applied.

235. As part of its EMRP package, Pepco adopted an ROE of 9.70%, which represents a 60-basis points reduction from the Company's recommended 10.30% in its original MRP. OPC recommends an ROE not to exceed 8.75% after considering the impact of COVID-19 in the financial markets.[582] Furthermore, OPC recommends a 50-basis point reduction in the authorized ROE if the Commission approves an MRP. AOBA has indicated that Pepco's requested ROE is overstated and should be adjusted downward to 8.54%,[583] which is the midpoint of its proposed range of reasonable ROEs.[584] AOBA has also opined that Pepco can maintain the authorized ROE at its present level or lower it to a level more reflective of current market conditions without a rate increase.[585] Of note here is that the current approved ROE for Pepco as agreed upon by the settling parties in *Formal Case Nos. 1150/1151* is 9.525%.

236. We reviewed various authorized ROEs for electric distribution rate cases nationally. The following table summarizes the authorized ROEs for 2018 and 2019, as tabulated by the Regulatory Research Associates ("RRA") Database in the Quarterly ROE update for the third quarter of 2020. The 2020 rate case information on the table was summarized by the Commission based on the data obtained from the RRA database of past rate case decisions for the full calendar year of 2020.

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581 Pepco (I) at 14 (Clark Direct).

582 OPC (2D) at 4:1-8 (O'Donnell Direct) and 20:3-11, Table 7 (O'Donnell Direct).

583 AOBA Fully Conformed Direct Testimony at 14: 13-21.

584 AOBA (B) at 27:10-12 (T. Oliver Direct).

585 AOBA (4A) at 33:16-20 (B. Oliver Fully Conformed Supplemental Surrebuttal).

Table 10: Authorized ROEs for 2018, 2019, and 2020 (RRA Database)

	Average ROE (%)	Median ROE (%)	Number of Rate Cases
2018	9.38	9.50	15
2019	9.37	9.60	8
2020	9.10	9.30	17

Between 2019 and 2020, the average and median ROE decreased by approximately 27 and 30 basis points, respectively, with a 2020 average ROE of 9.10% and median ROE of 9.30%.[586]

237. We also reviewed nine (9) MRP electric distribution rate cases that have been approved in the Mid-Atlantic, New York and New England regions of the US from 2019 through December 31, 2020.[587] The range of the approved ROEs was 8.80%-9.60%, and the average approved ROE was 9.11%. The majority of the nine (9) rate cases involved companies with an S&P long-term issuer credit rating of A- (minus), except for Connecticut Light & Power Co., which had an S&P long-term issuer credit rating of A/A-. Additionally, we reviewed the ROEs of a subset of witness D'Ascendis' Pepco Peer Group, specifically, the regulated distribution companies that have been involved in rate cases from 2018 through June 2020.[588] The D'Ascendis Peer Group consisted of 24 publicly traded utility (parent) companies. Eighteen out of the 24 companies are vertically integrated according to the Regulatory Research Associates. The remaining six companies are primarily distribution companies.[589] These six parent companies have nine electric distribution subsidiaries which had ten rate cases from February 2018 through February 2020.

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[586] The 17 electric distribution only rate cases were compiled from the proprietary database of Regulatory Research Associates, a group within S&P Global Market Intelligence as of December 31, 2020 and are for the year 2020 only. These 17 rate cases are: (1) Fitchburg Gas & Electric Light DPU 19-130; (2) Massachusetts Electric Co. DPU-20-68; (3) Delmarva Power & Light Co. C-9630; (4) Central Maine Power Co. D-2018-00194; (5) Liberty Utilities Granite St D-DE-19-064; (6) Jersey Central Power & Light Co. D-ER20020146; (7) Rockland Electric Company D-ER19050552; (8) Consolidated Edison Co. of NY C-19-E-0065; (9)NY State Electric & Gas Corp. C-19-E-0378; (10)Rochester Gas & Electric Corp. C-19-E-0380; (11) AEP Texas Inc. D-49494; (12) CenterPoint Energy Houston D-49421; and (13) Baltimore Gas and Electric Co. Docket #C-9645(EL); (14) Ameren Illinois D-20-0381; (15) Commonwealth Edison Co. D-20-0393; (16) Public Service Co. of NH D-DE-19-057; and (17) NSTAR Electric Co. DPU 20-96.

[587] These nine (9) electric distribution rate cases are from the MidAtlantic, New York and New England regions and were authorized under multi-year alternative regulation plans ("MRPs"). The data source is from the proprietary database of Regulatory Research Associates, a group within S&P Global Market Intelligence and included data from January 1, 2019 through December 31, 2020. The nine (9) rate cases with MRPs are: (1) Massachusetts Electric Co. 9/30/2019; (2) Massachusetts Electric Co.9/23/2020; (3 Liberty Utilities Granite St 6/30/2020; (4) Consolidated Edison Co. of NY 1/16/2020; (5) Orange & Rockland Utilities Inc. 3/14/2019; (6) NY State Electric & Gas Corp. 10/19/2020; (7) Rochester Gas & Electric Corp. 11/19/20; (8) Baltimore Gas & Electric Co. Docket No. C-9645(EL); and (9) Connecticut Light & Power Co. 5/1/2020.

[588] P Pepco (G) p. 20, Table 1 "Peer Group" (D'Ascendis Direct).

[589] These six publicly traded companies are primarily electric distribution companies and include: (1) Ameren Corporation; (2) American Electric Power Company, Inc.; (3) Avangrid, Inc.; (4) Consolidated Edison, Inc.; (5) Duke Energy Corporation; and (6) Eversource Energy.

These ten regulated electric distribution rate cases included traditional as well as alternative rate-making mechanisms. Specifically, there were two formula rate cases, three MRP cases, one traditional rate case with ARM (Performance Based Ratemaking/PBR), and four traditional rate cases.[590] The range of ROEs approved in the ten rate cases was 8.25–10.00%, and the average ROE was 9.16%. The average ROE, when formula rate cases are removed, for eight (8) operating companies in eight (8) distribution-only rate cases in the D'Ascendis peer group is 9.26%. The S&P long-term issuer credit ratings of the ten (10) companies ranged from A through BBB+.

238. The Commission also considered the ROEs of the regulated utility subsidiaries of Pepco's parent company Exelon Corporation, specifically in Exelon's 14 electric distribution rate cases that were approved from 2018 through 2020.[591] The range of ROEs in those 14 rate cases was 8.38%–9.70%, and the average ROE was 9.34%. Excluding the three Formula rate case annual updates for ComEd, the average ROE would be 9.59% for the remaining 11 electric distribution subsidiaries in 2018, 2019, and 2020. Included in those 14 rate cases was an MRP rate case decided by the Maryland Public Service Commission ("MD PSC") in December 2020. The S&P long-term issuer credit ratings of the operations were in the range of BBB+ to A.[592]

239. On December 16, 2020, in Order No. 89678, the Maryland Public Service Commission ("MD PSC") approved a multiyear electric and gas rate plan for Baltimore Gas and Electric Co. ("BG&E"), an Exelon subsidiary, in Case No. 9645. This was the first such plan approved by the MD PSC under new rules promulgated in 2020. The MD PSC order authorized a 9.50% ROE for the company's electric operations and adopted the company-proposed capital structure with a 52.00% equity component. The Maryland Commission rejected BG& E's proposal to include a cost of debt true-up as part of this pilot multi-year plan. The MD PSC found that a fixed cost of debt of 3.78% for the three-year effective period of the rates struck the appropriate

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[590] The electric distribution utility rate cases for the operating distribution subsidiaries of Witness D'Ascendis' Peer Group were compiled from the proprietary database of Regulatory Research Associates, a group within S&P Global Market Intelligence. The analyzed data set was from February 2018 through February 2020. These ten rate cases were: (1) Ameren Illinois D-19-0436; (2) Ameren Illinois D-18-0807; (3) AEP Texas Inc.D-49494; (4) Duke Energy Ohio Inc. C-17-0032-EL-AIR; (5) Rockland Electric Company D-ER19050552; (6) Consolidated Edison Co. of NYC-19-E-0065; (7) Orange & Rockland Utilities, Inc. C-18-E-0067; (8) Connecticut Light & Power Co.D-17-10-46; (9) Central Maine Power Co. D-2018-00194; (10) NSTAR Electric Co. d/b/a Eversource Energy. The three rate cases with the MRP mechanism were: (1) Consolidated Edison Co. of NY, C-19-E-0065 authorized 1/16/2020, (2) Orange & Rockland Utilities, Inc., C-18-E-0067, authorized 3/14/2019 and (3) Connecticut Light & Power Co. D-17-10-46, authorized 4/18/2018.

[591] The Exelon subsidiaries (regulated electric utilities) data for 2018 through December 31, 2020 was based on the proprietary database of Regulatory Research Associates, a group within S&P Global Market Intelligence. The 14 rate cases were: (1) Delmarva Power & Light Co. C-9455; (2) Potomac Electric Power Co. C-9472; (3) Atlantic City Electric Co. D-ER18060638; (4) Potomac Electric Power Co.FC-1150; (5) Delmarva Power & Light Co.D-17-0977; (6) Commonwealth Edison Co.D-18-0808; (7) PECO Energy Co. D-R-2018-3000164; (8) Atlantic City Electric Co. D-ER18080925; (9) Potomac Electric Power Co. C-9602; (10) Commonwealth Edison Co.D-19-0387; 11) Baltimore Gas and Electric Co.C-9610 (EL); (12) Delmarva Power & Light Co. C-9630; (13) Baltimore Gas & Electric Co. C-9645(EL); and (14) Commonwealth Edison Co.D-20-0393.

[592] The credit ratings for Exelon and its subsidiaries were obtained from SP Global Market Intelligence platform (See Exelon Corporation/Credit Ratings).

balance.[593] This structure was similar to the one used by the New York Public Service Commission ("NY PSC"). On November 19, 2020, the NY PSC adopted a joint proposal for New York State Electric & Gas Corporation ("NYSEG") and Rochester Gas and Electric Corporation ("RG&E") commencing April 17, 2020, and continuing through April 30, 2023. The allowed rate of return on common equity was 8.80%. The common equity ratio for each business was 48.00%.[594]

240. We further note that most of the companies in the D'Ascendis peer group of companies in this case have full (with one having partial) decoupling. Consistent with the Commission's finding in *Formal Case No. 1139*, the Commission continues to believe that the effects of decoupling mechanisms are reflected in the market data since most of the companies in the peer group have decoupling mechanisms.

241. In looking for designated metrics for accounting for the effect of an approved MRP on a company's credit ratings, we found that the investor community (and credit rating agencies) generally look favorably on the impact of an MRP on a utility's cash flows.[595] More specifically, an MRP reduces a utility's regulatory lag, which was a major point in Pepco's rationale for proposing an MRP. In addition, the investor community looks unfavorably on increased regulatory lag when opining on a utility's cash flow and credit rating.[596] For example, in its February 18, 2020, and January 14, 2021 reports, (in which Pepco's A- credit rating was affirmed), S&P rated Pepco's business risk as "Excellent" and stated that the Company has taken steps to reduce its regulatory lag by filing rate cases frequently, implementing various riders, including decoupling, and filing for multiyear rate case increases.[597] In its May 20, 2021, Exelon's Credit Ratings Update, S&P states that MRPs could support Pepco's credit quality by reducing regulatory lag. Also, in its March 31, 2020 update, Moody's indicated that the use of MRPs has the potential to diminish the regulatory lag and bolster Pepco's earnings and cash flows. Therefore, we conclude that an MRP, and by extension, an EMRP, is a credit-positive mechanism that would improve the Company's credit rating and its ability to raise capital at reasonable prices in varying capital market conditions.

242. Pepco's decision to reduce the ROE requested from 10.3% to 9.7% is beneficial to customers. However, we further reduced the proposed ROE to reflect the lower risk associated with our Modified EMRP. We note that the current approved ROE for Pepco (as agreed-upon by

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[593] MD PSC Order No. 89678, ¶ 346, issued December 16, 2020.

[594] NY PSC Order approving electric and gas rate plans in accordance with Joint Proposal issued and effective November 19, 2020 Docket Nos. CASE 19-E-0378, CASE 19-G-0379, CASE 19-E-0380, CASE 19-G-0381, at p. 210, VII. Return on Equity and Common Equity Ratio. See: http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=19-E-0378&submit=Search

[595] Moody's Investor Service, Credit Opinion, Update to Credit Analysis of Potomac Electric Power Company, published March 31, 2020. Report No. 1216398, Pages 1 and 2.

[596] Moody's Investor Service, Credit Opinion, Update to Credit Analysis of Potomac Electric Power Company, published March 31, 2020. Report No. 1216398, Pages 1 and 2.

[597] *See S&P Global Ratings, Ratings Direct, Potomac Electric Company Rating Update*, February 18, 2020 (www.standardandpoors.com/ratingsdirect. *See also*, S&P Global Ratings, Ratings Direct, Potomac Electric Power Company's Full Analysis published January 14, 2021.

the Settling parties in *Formal Case Nos. 1150/1151*) is 9.525% and is lower than the currently proposed ROE of 9.7% in the Enhanced MRP Plan.

243. In approving the Modified EMRP, the Commission finds that an ROE in the range of 9.20% to 9.35%, which has a midpoint of 9.275%., is within the zone of reasonableness in this case. Also, we find that Pepco would be benefiting from the combined risk-reducing effects of the BSA and the EMRP, which further supports our recommended ROE range with a midpoint that is 25 basis points below the currently approved ROE of 9.525%.

2. Cost of Debt

244. **Pepco.** Pepco requests a long-term cost of debt of 5.27%. Short-term debt is not included in the capital structure.[598] In its Supplemental Direct Testimony, Pepco updates its long-term cost of debt to 5.01% based on inclusion of a Pepco debt issuance of $150 million on June 13, 2019, at 3.45%.[599]

245. **OPC.** OPC witness O'Donnell accepts Pepco's long-term cost of debt of 5.01%. However, he recommends that the Commission update that cost as soon as any portion of Pepco's $1.2 billion debt placement is completed and that the Commission continue to monitor the Company's use of short-term debt.[600]

246. **AOBA.** AOBA also accepts Pepco's proposed long-term cost of debt of 5.01%.[601]

DECISION

247. No Party objects to Pepco's cost of debt as revised – 5.01%. The Commission also believes that Pepco's revised proposed cost of debt of 5.01% is reasonable because it reflects the Company's actual cost of debt as of June 30, 2019.[602] The Commission will continue to monitor Pepco's use of short-term debt as recommended by OPC because, as explained by Pepco in response to OPC DR No. 43-2, Pepco's Construction Work in Progress (CWIP) far exceeds the short-term debt balance.[603] We note that 100% of the cost of short-term debt is being assigned to the AFUDC rate to finance the construction of capital projects. Furthermore, Pepco permanently finances its long-term rate base with long-term debt and equity, which is reflected in its capital structure for ratemaking purposes. As explained by the Company, it uses short-term debt to fund

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598 Pepco (D) at 52:23 and 55:1-56:15 (Ziminsky Direct).

599 Pepco (2D) at 13:5-13 (Ziminsky Supplemental) and Pepco (2D)-3.

600 OPC (D) at 75:1-76:18 (O'Donnell Direct).

601 AOBA (B) at 17:12-13 (T. Oliver Direct).

602 Pepco (2D)-3 (Ziminsky Supplemental Direct) at p.1 of 4.

603 OPC (D)-16, Pepco's response to OPC Data Request No. 43-2, Attachment at 1, sponsored by Kevin McGowan.

changes in working capital and temporarily fund its construction requirements.[604] However, we note that the cost of future debt issuances should be reflected in the consolidated reconciliation of the debt cost in 2022.

3. Conclusion – Overall Cost of Capital

248. Based on the above, we determine that the appropriate overall cost of capital for Pepco is 7.17% determined as follows:

Table 11: Authorized Cost of Capital

Components	Ratio	Cost Rate	Weighted Cost
Long-Term Debt	49.32%	5.01%	2.47%
Common Equity	50.68%	9.275%	4.70%
TOTAL	100.00%		
		Cost of Capital	7.17%

This rate of return will allow Pepco to maintain its financial integrity, attract capital on reasonable terms, and earn a return commensurate with those of other investments of corresponding risks.

VIII. RATE BASE[605]

A. Overall Position of the Parties

249. Rate base represents the investment the Company makes in plant, equipment, materials and supplies, cash working capital, and other items, to provide service to its customers. It is the value of a company's property that is used and useful in providing that service minus accrued depreciation.[606] Operating income is derived based upon the revenues the Company receives for electric service minus the costs it incurs in providing service to customers. The Parties have proposed various adjustments to Pepco's unadjusted rate base and associated operating income during the test year. The Parties' recommendations are set forth below, and the specifics of the contested rate base adjustments are discussed in greater detail in this Section.

250. **Pepco.** Pepco provides a list of rate base elements on both a system and distribution-only level in Pepco (D)-2. The Company also provides a short description of the method used to identify the distribution-related portion of the costs which is consistent with what was used and accepted by the Commission in *Formal Case Nos. 1087, 1103,* and *1139.*[607] Pepco presents unadjusted rate base on a 13-month-average basis and reduced rate base by customer

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604 Pepco (D) at 54:8-22 (Ziminsky Direct).

605 This section discusses and resolves the rate base ratemaking adjustments related to the Starting Point for the EMRP adopted by the Commission in this Order.

606 *Potomac Electric Power Co. v. Public Service Comm'n,* 380 A.2d 126, 133, n.8 (D.C. 1977).

607 Pepco (D) 8:9–14 (Ziminsky Direct).

deposits in Account 235 and Plant Held for Future Use, consistent with the Commission's decision in *Formal Case No. 929*. Pepco indicates that the Rate Base also includes plant materials and operating supplies, net of related accounts payable, as approved in *Formal Case No. 905* and the average balance of the Company's prepaid pension asset and other post-employment benefit (OPEB) liability, net of associated ADIT, which the Commission determined to be "consistent with Commission precedent" in *Formal Case No. 1053* and which has consistently been accepted by the Commission in each case since that time.[608] Pepco's unadjusted rate base is $1,966,247,000.[609]

251. Pepco's September 16, 2019, supplemental direct testimony trued up the forecast to actual, and the unadjusted rate base was revised to $1,971,772,000.[610] In its traditional rate case filing, the Company proposes 21 RMAs that affected rate base, resulting in an adjusted rate base of $2,269,699,000.[611] The supplemental direct testimony was filed to reflect the EDIT agreed to in the settlement in *Formal Case Nos. 1150 and 1151*. The result was an adjusted rate base of $2,263,712,000.[612] This issue is further discussed in the Tax Section (Section XIII).

252. Pepco states that its Original MRP was based on the Company's internal projections that were developed as part of its long-range planning process. The Company then calculates an annual revenue requirement and proposes rates for each year of the Original MRP term (2020-2022) based on those projections. The EMRP presents a simplified approach that starts with the June 2019 historical test period cost of service, adjusts for certain items, and escalates those historical costs using an escalation-based approach, where appropriate. Pepco represents that both DCG and OPC express a preference for developing an MRP using escalation-based approaches based on historical data, as opposed to Pepco's proposal to use its own internal cost projections to develop the MRP.[613]

253. Pepco eliminates RMAs that relate to post-test period items to avoid "double counting" in the projected EMRP years. Pepco also adopts certain RMAs proposed by OPC and AOBA. After removing the RMAs, the Company proposes 14 RMAs that affect rate base, which results in an adjusted starting point rate base of $1,970,396,000.[614]

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608 Pepco (D) 8:19–9:8 (Ziminsky Direct).

609 Pepco (D)-1, page 1 (Ziminsky Direct Exhibits).

610 Pepco (2D) 2:9–10 (Ziminsky Supplemental Direct).

611 Pepco (2D)-1, page 4 (Ziminsky Supplemental Direct Exhibits). We note that the Traditional Ratemaking adjustments are the same as the EMRP adjustments. There are no different adjustments for Traditional and EMRP. The EMRP uses a Starting Point that already reflects the Traditional Rate Case Adjustments, with the exception of a few adjustments that were removed from the EMRP starting point to avoid double counting.

612 Pepco (3D)-1, page 4 (Ziminsky Third Supplemental Direct Exhibits).

613 Pepco (6C) at 3:1–17 (Wolverton Surrebuttal).

614 Pepco (6C)-1 at 4 (Wolverton Surrebuttal Exhibit).

254. **OPC.** OPC recommends various adjustments to the Company's supplemental direct traditional rate base. As the EMRP is based on the same June 2019 historical test period cost of service, adjusted for certain items, OPC's adjustments should be considered in establishing the EMRP rate base. However, a number of OPC's ratemaking adjustments are removed by Pepco and are no longer contested in the EMRP. OPC proposes adjustments to rate base are summarized below with an explanation as to whether the adjustment will affect the EMRP rate base:[615]

- OPC-1 Remove Post PTY Plant Closings - January 1, 2020 - May 31, 2020 (Pepco RMA-2), Rate Base effect $(64.6 million): PTY was RMA removed by Pepco at starting point.

- OPC-2 Remove Post TY Reliability Plant - Closings 6/1/20 - 12/31/20 (Pepco RMA-3), Rate Base effect $(96.3 million): PTY RMA was removed by Pepco.

- OPC-3 Remove Frederick Douglass Bridge Project (Pepco RMA-28), Rate Base effect $(1.0 million): Pepco adopted OPC's adjustment.

- OPC-4 Remove Adjustment to Reflect Walter Reed Costs (Pepco RMA-42), Rate Base effect $(3.25 million): PTY RMA was removed by Pepco.

- OPC-8 Revise Non-Protected EDIT to Settlement Agreement (Pepco RMA-26), Rate Base effect $(12.4 million): This RMA is contested and is discussed in Tax Section XIII.

- OPC-9 Reverse PHISCO Non-Property Deferred Income Tax Adj. (Pepco RMA-29), Rate Base effect $(5.3 million): This RMA is contested and is discussed in Tax Section XIII.

- OPC-11 Reduction to Costs to Achieve Regulatory Asset and Amortization (Pepco RMA-34), Rate Base effect $(428,000): Pepco accepted OPC and included it in its starting period; therefore, the Adjustment is uncontested.

- OPC-13 Remove Costs to Optimize Regulatory Asset and Recovery (Pepco RMA-36), Rate Base effect $(894,000): This RMA is contested and is discussed below.

- OPC-17 Reflection of CWC Impact of OPC Adjustments (Pepco RMA-37), Rate Base effect $(1,000): This RMA Flows Through to reflect the other RMAs.

- OPC-19 Remove Benning Remedial Study Costs Regulatory Asset (Pepco RMA-5), Rate Base effect $(1.9 million): This RMA is contested and is discussed below.

- OPC-20 Remove Benning Environmental Regulatory Asset (Pepco RMA-20), Rate Base effect $(2.3 million): This RMA is contested and is discussed below.

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[615] OPC (2B)-3, at 1 of 3 (Ramas Surrebuttal).

255. **AOBA.** AOBA recommends two adjustments to the Company's supplemental direct Traditional rate base. These include the rate base component of Current Rate Case Costs (see the discussion in the Operating Expense section of this Order – Section XI) and costs related to "The Parks at Walter Reed." However, Pepco excluded The Parks at Walter Reed post-test year ratemaking adjustment in establishing the EMRP starting period.

256. Each of the Parties' contested adjustments will be addressed separately throughout this Order. The Commission's decision on rate base will be calculated based on an analysis of each adjustment.

B. Unopposed/Uncontested Rate Base Adjustments

257. Many of the Company's rate base adjustments that are reflected in the EMRP starting point are unopposed by the Parties: (1) RMA PEPCO-1, Annualization of Test Year Reliability Closings;[616] (2) RMA PEPCO-4, Remove DC PLUG Costs; (3) RMA PEPCO-5, Annualization of Regulatory Assets, the uncontested components of which are: (a) Excess Rate Case Costs Collected *Formal Case No. 1139*; (b) Over-Collected Depreciation Regulatory Liability; (c) Amortization of Rate Case Costs in *Formal Case No. 1150*; (d) I-Street Substation Lease Regulatory Asset;[617] (4) RMA Pepco-10, Reflection of 2019 Pension and OPEB; (5) RMA Pepco-11, Remove SERP; (6) RMA Pepco 12 Remove Certain Executive Incentive Plant Costs; (7) RMA Pepco-22, Annualization of Software Amortization; (8) RMA Pepco-24, Annualization of Approved Depreciation Rates; (9) RMA Pepco-34, Reflection of CTA Regulatory Asset and RMA OPC-11 Reduction to Cost to Achieve Regulatory Asset and Amortization;[618] (10) RMA Pepco-40, Inclusion of July 1, 2018 – August 13, 2018, Deferred Costs; and (11) RMA PEPCO-37, Cash Working Capital and OPC-17, Reflection of CWC Impact of OPC Adjustments.[619]

258. The Commission has reviewed these adjustments which were either unopposed or uncontested and has independently found them to be just and reasonable. Therefore, we approve these ratemaking adjustments that have a net impact on rate base totaling $1.4 million.

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[616] RMA Pepco-1 is uncontested. However, Pepco removed the annualization of test period reliability closings from its starting point in developing the EMRP.

[617] RMA PEPCO-5 has a contested component and is related to RMA OPC-19 Benning Road Remediation.

[618] With respect to RMA Pepco-34, as discussed in the PHI Service Company Section, Pepco did not contest RMA OPC-11 Reduction to Costs to Achieve Regulatory Asset. However, Pepco did not reflect the change in its revised revenue requirements in its rebuttal.

[619] Concerning PEPCO-37 and OPC-17, these are flow-throughs. No party contested the Company's approach to computing the cash working capital allowance or the underlying lead-lag factors used in the formula. The final cash working capital will be calculated based on the final adjustments to operating expense.

C. Contested Rate Base Adjustments

1. RMA Pepco 5-A, Remedial Investigation Costs for Benning Road Facility
OPC-19, Remove Benning Remedial Study Costs Regulatory Asset
RMA Pepco-20A, Reflection of Benning Environmental Regulatory Asset-Actual
OPC-20, Remove Benning Environmental Regulatory Asset

259. **Pepco.** PEPCO RMAs 5[620] and 20A reflect the Benning Road Environmental Remediation Effort Costs. As part of the *Formal Case Nos. 1150 and 1151* Settlement, the Commission approved the Company's establishment of a regulatory asset to recover over a 10-year amortization period $3.3 million in costs Pepco had incurred through December 31, 2017, in connection with the Remedial Investigation ("RI") at the Benning Road facility. The Company recorded a regulatory asset of $3.29 million in July 2017 and began amortizing the costs in August 2018 over a 10-year period.[621] Because the amortization of the regulatory assets approved in Order No. 19433 in *Formal Case Nos. 1150 and 1151* began on August 13, 2018, part-way through the Traditional Test Period Compliance Filing ("TTPCF") test year, Pepco contends that RMA 5 is necessary to annualize the amortization expense; therefore, Pepco has reflected an adjustment of ($31,000) to rate base to annualize the test-period amount.[622]

260. PEPCO RMA-20A adjusts the cost of service to reflect (i) the actual costs incurred from January 1, 2018, through June 30, 2019, associated with the RI and Feasibility Study ("RI/FS") of the Benning Road facility; and (ii) the costs to remove the cooling tower basins at the Benning Road facility. Company witness Ziminsky updated RMA-20A in Rebuttal Testimony to reflect the actual costs of the Benning RI/FS through February 29, 2020;[623] seeking recovery of an additional $3.003 million.[624]

261. Pepco witness Sanford states that Pepco is conducting the RI/FS pursuant to a consent decree approved by the U.S. District Court for the District of Columbia in December of 2011. The Court action provided the legal mechanism by which Pepco could be required, in the interest of protecting human health and the environment, to address environmental conditions resulting from past operations, even where such operations were conducted in accordance with the law and prudent industry practice at the time. To date, work conducted by Pepco pursuant to the

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[620] PEPCO RMA-5 has multiple parts, but the only contested component is the regulatory asset for the Remedial Investigation for the costs associated with the environmental issues at the Benning Road facility.

[621] Compliance Filing at Section 206.9, Attachment B-5, p. 6 of 6.

[622] Pepco (D)-1 at 14:15, 15:9–12 (Ziminsky Direct).

[623] Pepco's Brief at 259.

[624] Pepco (6C)-1-1, at 38 of 57. RMA-20B reflects the future cost associated for RI/FS, and Pepco removed RMA-20B from its EMRP starting period.

consent decree has involved extensive investigation of environmental conditions at the entire Benning Road facility and a segment of the Anacostia River located close to the Benning Road facility (referred to as the "Waterside Investigation Area").[625]

262. Pepco contends that its costs were prudently incurred, and recovery is appropriate and consistent with Commission precedent.[626] Pepco asserts: (1) these costs associated with the remedial investigation were incurred to comply with the Company's legal obligations under the consent decree and are unrelated to any clean-up standards or potential conversion of the site from industrial use to public recreation;[627] (2) it engaged DOEE in extensive technical discussions to manage the scope of the environmental investigation work to avoid unnecessary effort and expense;[628] (3) its efforts to pursue insurance recovery of the RI/FS costs were described by witness Sanford;[629] and (4) the RI/FS is necessary and provides a benefit to current customers as the Benning Road site is currently devoted entirely to Pepco's Service Center's operations.[630] Pepco also argues that recovery of costs for remediation of the cooling tower basins is reasonable, consistent with Commission precedent, and not barred by the *Formal Case No. 945* Settlement Agreement.[631]

263. Pepco also states that the Commission has previously addressed the issue of utility recovery of environmental remediation costs citing the Commission's precedent regarding such recovery related to WGL's East Station, redeveloped as Maritime Plaza. Pepco explains that the Commission's determination as to the treatment of East Station was developed through a series of orders issued over 14 years; citing *Formal Case No. 922*, wherein the Commission first examined the recovery of environmental assessment and remediation costs for WGL's East Station property, the site of a former manufactured gas plant that had ceased operations several decades earlier. The Commission, in that proceeding, found that there were many reasons justifying the adoption of a sound cost recovery scheme for the recovery of necessary and prudent environmental remediation costs.[632]

264. Pepco witness Ziminsky explains that the Anacostia River Sediment Project ("ARSP") is a joint effort by the District of Columbia (acting through DOEE) and the National

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625 Pepco (K) at 2:12–22 (Sanford Rebuttal).

626 Pepco's Reply Brief at 85-92.

627 Pepco (K) at 12:17 (Sanford Direct).

628 Pepco (K) at 16:18-17:4 (Sanford Direct).

629 Pepco (K) at 17:14-18:13 (Sanford Direct).

630 Pepco ((2K) at 9:20-10:13 (Sanford Rebuttal).

631 Pepco's Reply Brief at 96-102.

632 Pepco (D) at 25:1–26:3–5 (Ziminsky Direct); citing *Formal Case No. 922*, *In the Matter of the Application of Washington Gas Light Company District of Columbia Division For Authority to Increase Existing Rates and Charges for Gas Service*, Order No. 10307, rel. Oct. 8, 1993.

Park Service to assess environmental conditions within the lower Anacostia River and plan cleanup actions.[633] Pepco states that the Company accrued a $3 million liability in December 2017 which was not included in rates. The Company requests deferral of costs associated with the ARSP that are going against the $3 million liability in a regulatory asset with the opportunity to seek recovery in a future rate case. Pepco expects the costs associated with the ARSP placed into the regulatory asset to grow.[634]

265. **OPC.** OPC argues that the Commission should deny the entirety of costs associated with investigating and remediating the Benning Road Facility in Pepco RMA 20A and 20B. OPC requests that the Commission halt recovery of the Benning Remediation regulatory asset previously authorized in *Formal Case Nos. 1150/1151* with the rate effective date of this case.[635] As support for its request, OPC cites Paragraph 14.d of the Settlement Agreement in *Formal Case Nos. 1150 and 1151*, which stipulated, "[a]ll Parties retain the right to challenge in future rate cases Pepco's entitlement to any further recovery from ratepayers of this $3.3 million regulatory asset."[636] OPC explains that "because there is uncertainty over the final clean up levels as well as the end use of the property, consideration of the recovery of [remediation investigation] costs should be deferred until such time as these issues are decided and the benefits to ratepayers can be evaluated more thoroughly."[637]

266. OPC also states that, while Pepco plans to reuse that area for an expansion of Benning Road Service Center operations, other parties such as the Anacostia Waterfront Trust, the Anacostia Citizens Advisory Committee, and DOEE envision the Benning Road Generating Station portion of the property to include commercial, residential and recreation, and the Anacostia River that includes contact recreation like swimming.[638] OPC claims that the costs of cleaning up an industrial site to residential or recreational use standards are greater than industrial or commercial standards. If redevelopment of the Benning Road Facility were to involve recreational use, the site would likely become a public entity for which there is no tax revenue to the District and no benefit to the ratepayer different from the public at large. Therefore, according to OPC, ratepayers should not have to pay for the additional costs of remediating the site to a cleanup standard beyond industrial reuse.[639] OPC opposes regulatory asset treatment for the ARSP.[640]

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[633] Pepco (D) at 31:6-9 (Ziminsky Direct).

[634] Pepco (D) at 31:11-99 (Ziminsky Direct).

[635] OPC (B) at 76:3–5 (Ramas Direct).

[636] *Formal Case No. 1150,* Non-Unanimous Settlement Agreement at Paragraph 14.d; OPC (B) at 75:11-15 (Ramas Direct).

[637] OPC (G) at 61:18–62:2 (Wittliff Direct).

[638] OPC (G) at 41:8–41:23 (Wittliff Direct).

[639] OPC (G) at 45:23–46:3 (Wittliff Direct).

[640] OPC's Reply Brief at 93.

267. OPC's proposed adjustment (OPC-19) to suspend the previously authorized Benning Remediation regulatory asset reduces rate base by $1.871 million and amortization expense by $329,000.[641] The impact to net operating income will be an increase of $238,000.[642]

268. **DCG**. DCG notes that the *Formal Case Nos. 1150 and 1151* Settlement Agreement that created both Benning Road Facility regulatory assets (one allowing recovery of past remediation costs and one allowing a right to recovery of ongoing remediation costs in a future rate case) were explicitly conditioned upon these provisions having no precedential effect.[643] DCG urges the Commission to deny Pepco any further recovery of the unamortized balance of the $3.3 million regulatory asset by Pepco from ratepayers, including accrued carrying costs, as well as any additional recovery of past or future investigation, remediation, and restoration costs by Pepco associated with the past or future cleanup costs for Pepco's Benning Road Facility.[644] DCG agrees with OPC that the environmental costs at issue are stranded generation costs that cannot be recovered in rates under the 1999 settlement agreement on divestiture. DCG agrees that allowing Pepco to recover any costs associated with investigating the extent of contamination and its remediation violates the Settlement Agreement.[645]

269. DCG asserts that Pepco's reliance on *Formal Case No. 922*[646] is not supported by the facts.[647] Under the Consent Decree, Pepco's unregulated affiliate Pepco Energy Services ("PES") is jointly and severally liable for Benning Road cleanup costs.[648] According to DCG, Pepco's claim that investigation and remediation costs do not need to be allocated is belied by the fact that 5% of the costs incurred ($0.6 million as of October 21, 2019), related to the remediation and RI, have been allocated to PES as supported by DCG Exhibit 54 (Pepco's response to DCG Follow Up to Data Request 3-1). DCG asserts that PES will continue to incur 5% of the RI and remediation costs until the project is complete.

270. **Pepco Rebuttal.** Pepco asserts that OPC's argument for suspending recovery of the Benning Remediation regulatory asset approved in *Formal Case Nos. 1150 and 1151* rest upon the premise that the Company has not demonstrated benefits to ratepayers beyond that which would accrue to the general public. Pepco states that the delineation between ratepayers and non-ratepayers advanced by OPC "is akin to saying that Pepco's District of Columbia customers should not pay for their electric service because residents from Virginia or Maryland benefit from working

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641 OPC (B) at 76:3-7 (Ramas Direct)

642 OPC (B)-6, p. 1 of 4 (Ramas Direct Exhibits).

643 DCG's Reply Brief at 2-3.

644 DCG's Reply Brief at 3.

645 DCG's Reply Brief at 4-5.

646 *Formal Case No. 922*, Order No. 10307, rel. Oct. 8, 1993.

647 DCG's Reply Brief at 5-8.

648 DCG's Reply Brief at 8-11.

in the District."[649] According to Pepco, the costs associated with the remedial investigation were incurred to comply with the Consent Decree and are unrelated to any cleanup standards or potential conversion of the site from industrial use to public recreation. More importantly, Pepco states it intends to continue to use the Benning Road facility as a service center supporting its distribution activities for the foreseeable future, notwithstanding the desires of parties who have no ownership interest in the property and no inherent right to control its use.[650]

DECISION

271. There are two (2) adjustments related to the Benning Road Environmental Remediation Effort Costs that remain to be resolved: (1) Pepco RMA-5, annualization of costs previously approved for regulatory asset treatment and recovery ($3.3 million) in the *Formal Case Nos. 1150 and 1151* Settlement, which included actual costs Pepco had incurred through December 31, 2017, in connection with the RI; and (2) Pepco RMA-20A, the cost of service to reflect: (i) the actual costs incurred from January 1, 2018, through June 30, 2019, (and updated through February 29, 2020) associated with the RI/FS of the Benning Road facility; and (ii) the costs to remove the cooling tower basins at the Benning Road facility in which the Company is seeking recovery of this additional $3.003 million. As noted above, Pepco removed Pepco RMA-20B from its EMRP starting period.

272. Regarding RMA-5, the *Formal Case Nos. 1150 and 1151* Settlement Agreement states in pertinent part:

> RMA 24 (Benning Remediation Regulatory Asset) - The Parties agree that Pepco will receive regulatory asset treatment in the total amount of $3.3 million in actual costs incurred to conduct a remedial investigation ("RI") at the Benning facility. Pepco will begin to recover the $3.3 million over a 10-year amortization period.
>
> *****
>
> The Parties agree that all Parties retain the right to challenge in future rate cases further recovery from ratepayers of this $3.3 million regulatory asset.[651]

273. The Settlement Agreement states that a second Benning Road regulatory asset (relevant to RMA-20A) is to be handled as follows:

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649 PEPCO (4D) at 14:5-12 (Ziminsky Rebuttal).

650 PEPCO (4D) at 15:17–16:3 (Ziminsky Rebuttal).

651 *Formal Case No. 1150/1151*, Settlement Agreement, ¶ 14 (d).

> In addition, Pepco will track in a separate regulatory asset the actual remediation costs incurred for the Benning facility as described in the testimony of Pepco Witness Wesley L. McNealy; however, Pepco will not seek recovery of this regulatory asset until at least the next rate case…Notwithstanding the foregoing provision, the Parties agree that all Parties retain the right to challenge in future rate cases Pepco's ability to recover costs recorded in this regulatory asset from ratepayers including associated carrying costs, the prudence of these remediation costs, or the amortization period under which Pepco proposes to recover such costs.[652]

274. A review of the Company's request raises concerns about the past uses of the site and how costs for the RI/FS and actual remediation should be allocated among generation, transmission, and distribution, and ultimately the amount that should be recovered from District distribution customers. There is also the matter of the ARSP, which remains under review by DOEE, and its relationship to the Benning Road cleanup. Based on the preliminary findings of DOEE in the ARSP, DOEE states the potential costs may be significant.[653]

275. In *Formal Case No. 1087,* an electric distribution rate case, Pepco requested, among other things, that the Commission approve deferral of the Company's Benning Environmental Liability expense in a regulatory asset for review in a future proceeding but the Commission declined stating that "we are not approving the establishment of a regulatory asset. Pepco can separately track and quantify such costs for future consideration in the next rate case."[654] At that time, parties were concerned with how much should be allocated to generation, transmission, and distribution.[655] Pepco also submitted another RMA associated with the Benning environmental cost in *Formal Case No. 1139*.[656] Although these issues were raised in previous rate cases, recovery of the costs was deferred.

276. The Company represents that it has incurred $3.3 million in costs associated with the remediation investigation of Benning Road through December 31, 2017. Pepco asserts these costs were incurred to comply with the Company's legal obligations under the Consent Decree and are unrelated to any clean-up standards or potential conversion of the site from industrial use to public recreation.[657] Pepco indicated that it also engaged DOEE in extensive technical

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652 *Formal Case No. 1150/1151*, Settlement Agreement, ¶ 14 (d).

653 The estimated costs of selected early actions amount to $35.5 million. *See* District Department of Energy and Environment; Interim Record of Decision Early Action Areas in The Main Stem, Kingman Lake, and Washington Channel Anacostia River Sediment Project (September 30, 2020).

654 *See Formal Case No. 1187,* Order No. 16930, ¶ 105.

655 *See Formal Case No. 1187,* Order No. 16930, ¶ 104.

656 *See Formal Case No. 1139,* Order No. 18846, ¶ 170 (Uncontested RMA-17: Removal of Benning Environmental Liability).

657 Pepco (K) at 12:17 (Sanford Direct).

discussions to manage the scope of the environmental investigation work to avoid unnecessary effort and expense.[658] Pepco's efforts to pursue insurance recovery of the RI/FS costs were described by witness Sanford.[659] Furthermore, Pepco contends the RI/FS is necessary and provides a benefit to current customers as the Benning Road site is currently devoted entirely to Pepco's Service Center's operations.[660] These facts are for the most part uncontested and we are persuaded by Pepco that the remediation, investigation, and feasibility study costs were prudently incurred and are recoverable consistent with Commission precedent.[661] Thus, we will continue to allow the recovery of the amortized costs approved in *Formal Case No. 1150* as reflected in Pepco RMA 5. We, therefore, accept Pepco RMA 5 and reject OPC RMA 19 (Exclusion of the Remedial Investigation Study Costs for the Benning Road Facility) as the costs were approved in *Formal Case No. 1150*.

277. However, there is an additional $3.003 million[662] that has been incurred after those approved in *Formal Case No. 1150*, and there are indications that the total costs will continue to increase. The actual costs incurred to date, after those previously approved, are included in Pepco RMA-20A. To fully address this accrual issue, the Commission directs that these subsequent costs and any future costs be deferred, and Pepco continue to track and quantify these costs for future consideration once the Benning Road environmental costs and future use of the property is determined. Thus, we deny, at this time, Pepco's request for regulatory asset treatment of the costs incurred since the *Formal Case No. 1150* Settlement as reflected in Pepco 20A, which reduces rate base by $2.2 million.[663]

278. In addition, the Commission denies Pepco's request for regulatory asset treatment of the costs associated with the ARSP for the same reason stated above. There is very little record evidence concerning these ARSP costs, and there are no ARSP ratemaking adjustments before us. Thus, we direct Pepco to track the costs incurred pending a future determination of the allocation of responsibility for cost recovery. After the ARSP is complete and its relationship to the Benning Road clean-up is determined, the Commission will consider the issue in a future proceeding.

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[658] Pepco (K) at 16:18-17:4 (Sanford Direct).

[659] Pepco (K) at 17:14-18:13 (Sanford Direct).

[660] Pepco (2K) at 9:20-10:13 (Sanford Rebuttal).

[661] *See, e.g., Formal Case No. 922*, *In the Matter of the Application of Washington Gas Light Company District of Columbia Division for Authority to Increase Existing Rates and Charges for Gas Service,* Order No. 10307 at 119 (October 8, 1993).

[662] Pepco (6C)-1, p.11 of 67, and 38 of 67 (Wolverton Surrebuttal).

[663] We note that Pepco voluntarily removed the future costs reflected in Pepco RMA-20B from its EMRP starting period.

2. RMA PEPCO-36 Reflect of Cost to Optimize ("CTO") OPC-13 Remove Costs to Optimize Regulatory Asset and Recovery

279. **Pepco**. Pepco's RMA-36, Reflection of Cost to Optimize ("CTO") Regulatory Asset - seeks recovery of the up-front costs Pepco incurred to achieve future savings through Exelon Business Services Company's ("EBSC") Transformation Initiative, a process in which EBSC has identified O&M savings in 2021 and beyond. These savings are expected to be achieved through a focus on improving efficiencies, eliminating redundancies, and leveraging innovation and technologies. However, to achieve these cost savings, Pepco asserts that EBSC has and will incur certain CTO costs. To better match the recovery of CTO with the projected savings, RMA-36 removes the CTO from the Company's traditional O&M expense and Pepco proposes to defer it to a regulatory asset to be amortized over five years.[664] RMA-36 increases rate base by $894,000 and net operating income by $795,000.[665]

280. **OPC**. OPC argues that Pepco RMA 36 should be rejected. OPC witness Ramas contends that Pepco does not provide sufficient information to justify establishing a regulatory asset.[666] Specifically, witness Ramas claims that the Company has not established that District distribution ratepayers will benefit from the costs incurred under the EBSC Transformation Initiative.[667] Witness Ramas suggests that if the Commission allows a CTO regulatory asset, then Pepco should not be allowed to earn a return on the asset or begin to recover the regulatory asset until it can clearly demonstrate that the cost savings specific to Pepco's DC distribution customers exceed the CTO costs included in the regulatory asset.[668]

281. **AOBA**. AOBA witness B. Oliver argues that Pepco characterized its CTO costs as up-front expenditures incurred to achieve future savings, but the Company quantified no benefits that District ratepayers have experienced to date as a result of those expenditures. Likewise, AOBA asserts that Pepco offers no estimate of benefits that its customers in the District can expect to experience before the end of its requested MRP period. AOBA contends the best that the Company offers is a high-level representation that the EBSC CTO Initiative will result in a $100 million cost savings. Oliver contends that the Company does not present analyses that assess the extent to which CTO-related cost savings will be realized by each operating company.[669]

282. **Pepco Rebuttal**. Pepco states that by 2021, the rate-effective period, PHI is expected to realize $13 million of EBSC Transformation run-rate savings.[670] Pepco broke these

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[664] Pepco's Brief at 285.

[665] Pepco (4D)-1, p.2 of 54 (Ziminsky Rebuttal).

[666] OPC (B) at 61:3-62:18 (Ramas Direct); OPC (B)-4, Schedule 13.

[667] OPC (B) at 61:16-18 (Ramas Direct).

[668] OPC (B) at 62:7-11 (Ramas Direct).

[669] AOBA (B) at 39:13-17, 40:8-15 (T. Oliver Direct).

[670] Pepco (4D) at 27:3–4 (Ziminsky Rebuttal).

savings down further as follows: (i) EBSC Transformation—this includes specific reductions in EBSC departments to remove costs (total PHI savings $5 million); (ii) Compensation and Benefits—the EBSC benefits group negotiates a new pharmacy benefit contract enabling savings throughout PHI and also undertake a comprehensive dependent verification that reduces costs (total PHI savings $4 million); and (iii) EBSC Enabled—these savings, realized outside EBSC, are directly attributable to actions that EBSC leaders take (total PHI savings $4 million).[671] However, Pepco adopts OPC's and AOBA's position to remove Pepco RMA-36 in developing its EMRP starting period.[672]

DECISION

283. The Commission, in establishing the Modified EMRP, believes that these future savings that are expected to be realized starting in 2021 should be reflected in the EMRP revenue requirements determination. Pepco's EMRP reflects O&M expenses based on a historical starting point of June 30, 2019, escalated at 2.5% to derive the expected O&M expenses for 2021 and 2022.[673] Thus, Pepco's EMRP does not reflect the savings that are anticipated from EBSC's Transformation Initiative. Pepco stated that by 2021, the rate-effective period, PHI is expected to realize $13 million in expected O&M savings. The Pepco DC annual savings are expected to be $2.3 million. We direct that the Modified EMRP revenue requirement be adjusted to reflect Pepco's forecasted savings in 2021 and 2022. To recognize those savings, the Company shall include the costs incurred as reported in RMA-36. Since Pepco removed the regulatory asset and associated amortization of the CTO from the starting period of the EMRP, both the CTO regulatory asset and amortization will be included in the starting period (which increases rate base by $894,000 and reduces net operating income by $199,000), and the District's portion of PHI's $13 million in expected O&M savings will be recognized in both 2021 and 2022. Thus, O&M savings of $2.3 million per year for 2021 and 2022 have been included in the Modified EMRP.

3. Reduction in Load-Driven Plant and Forecasted Customer-Driven Additions

284. Pepco includes $55.2 million in load-driven capital additions. Pepco represents that its EMRP incremental change in EPIS was based on the actual plant additions from July 2018 through June 2019, escalated by 2.5%.[674] The actual starting point plant additions used by Pepco in the EMRP are summarized in the following table:[675]

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671 Pepco (4D) at 27:4–10 (Ziminsky Rebuttal).

672 Pepco (6C) at 5:23-6:3 (Wolverton Surrebuttal).

673 Pepco (6C)-1, p. 4 of 67, line 16 (Wolverton Surrebuttal).

674 Pepco (6C) at 6:19-7:1 (Wolverton Surrebuttal).

675 Pepco (6C)-1, Tab WP 1 – June 2019 EPIS Adds (Wolverton Surrebuttal).

Table 12: Plant Additions 12-months Ended June 30, 2019

Plant Additions		Actual July 2018 Through June 2019
Distribution	Reliability Driven	$ 102,332
Distribution	Load Driven	55,228
Distribution	Customer Driven	84,444
Distribution	Reliability Driven - 69kv	2,109
Distribution	Load Driven - 69kv	10,067
Distribution	Customer Driven - 69kv	120
General & Intangible	General	7,655
General & Intangible	Intangible	9,700
		$ 271,655

In addition, Pepco witness Clark includes his projections of the capital budget for three distribution categories. Those categories are Customer Driven, Reliability, and Load Projects.[676]

285. **OPC.** OPC argues that Pepco proposes a budget reduction that is approximately 10% of the forecasted capital additions planned for the last two years of the Original MRP Proposal.[677] OPC claims that Pepco has conceded that the revised capital budget is not based on an updated load forecast.[678] OPC contends that updated load forecasts are necessary to demonstrate that the revised construction budget properly accounts for the impacts of COVID-19 and is otherwise just and reasonable.[679] OPC asserts that at the hearing, Pepco witness Clark, who sponsored the Company's original Construction Report, confirmed that the Company's failure to conduct a load forecast in order to develop the Enhanced MRP construction budget was a departure from what Mr. Clark considers to be a "best practice" and is inconsistent with the Company's prior practice with respect to construction budgeting.[680] Moreover, OPC claims that Pepco witness Clark does not determine that $60 million is the appropriate amount of capital investment to defer in response to COVID-19 and is unable to state whether anyone in the Company's engineering department was involved in the decision.[681] OPC argues that the $60 million deferral amount is

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[676] Pepco (I) at 1-14(Clark Direct).

[677] OPC's Brief at 160.

[678] OPC's Brief at 160.

[679] OPC's Brief at 160.

[680] OPC's Brief at 160-161.

[681] OPC's Brief at 161.

nothing more than an arbitrary unsupported spending estimate that cannot be determined to be just and reasonable.[682]

286. **AOBA.** AOBA argues that during a period of significant reductions in electrical use by C & I customers, Pepco's planned construction expenditures are excessive. AOBA contends that Pepco's capital expansion plans far exceed the Company's projected growth in sales and customers. In addition, AOBA maintains that Pepco has not demonstrated that it cannot meet existing EQSS standards without its proposed capital expenditures for reliability.[683] According to AOBA, Pepco's perceived need for capital expenditures to meet load growth has been significantly altered by the impact of the COVID-19 pandemic.[684] AOBA argues that the continuing nature of COVID-19 and its long-term effects on the future growth of business activities are uncertain.[685] AOBA asserts that even if business activity does return to pre-COVID levels, the District's CleanEnergy legislation requires significant reduction in their energy use.[686] Therefore, Pepco's aggressive capital spending to maintain reliability in the context of uncertain future load growth is unjustified.[687]

287. **DCG.** DCG claims that Pepco has acknowledged that it may take up to two years following the end of the pandemic before the District's economy will recover.[688] According to DCG, Pepco anticipates an overall 2020 drop in electricity sales of 3.7%, while OPC projects a 5% to 15% decrease in electricity usage. In addition, DCG states that Pepco also acknowledged that construction spending on new commercial and residential connections has dropped due to COVID-19 in 2020.[689] DCG argues that despite declining electricity sales, Pepco has not modified or adjusted its capital construction plans to account for the need for fewer capacity-driven projects.[690] DCG asserts that Pepco has not performed an analysis to determine COVID-19 impact on load forecasts and revenue forecast and has not provided any information on the $60 million in deferred capital that the EMRP would defer.[691]

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[682] OPC's Brief at 161.

[683] AOBA's Brief at 85.

[684] AOBA's Brief at 85.

[685] AOBA's Brief at 7.

[686] AOBA's Brief at 7-8.

[687] AOBA's Brief at 8.

[688] DCG's Brief at 32.

[689] DCG's Brief at 32-33.

[690] DCG's Brief at 32.

[691] DCG's Brief at 33.

DECISION

288. We conclude that additions to Electric Plant in Service ("EPIS") for 2021 and 2022 should be reduced. Accordingly, we are making adjustments to Customer Driven and Load Growth driven annual additions to EPIS as discussed below.

289. The Company budgeted Customer-Driven capital expenditures of $76.2 million and $76.6 million for 2021 and 2022, respectively. Load Driven capital expenditures were budgeted at $54.4 million and $54.7 million for 2021 and 2022, respectively.[692] The capital budgets submitted by the Company for approval in May 2019 were based on load projections and other economic assumptions that did not and could not have accounted for the significant economic and social disruption caused by COVID-19 in the District.[693] We agree with OPC witness Mara's assertion that "[t]hese changes will have a substantial and potentially prolonged effect on demand on the Pepco system."[694] Additionally, OPC cited independent studies that have found that on a year-to-date basis through June, total non-residential building starts were down 22%, commercial starts were 27% lower, and residential construction starts were down 5%.[695]

290. DCG contends that Pepco acknowledged that construction spending on new commercial and residential customers connections has decreased due to COVID-19 in 2020. As OPC indicated, commercial building starts have significantly declined.[696] Thus, the economic downturn and reduced sales and demand justify our further reduction of future cap-ex spending. AOBA believes that during a period of significant reductions in electrical use by C&I customers, Pepco's planned construction expenditures are excessive.[697] We further note that the total D.C. kWh sales in 2020 are 11% lower than in 2019.[698] Thus we also share the Parties' concern that despite the declining electricity sales, Pepco has not modified its budget or adjusted its capital construction plans to account for the need for fewer new capacity-driven projects in its EMRP due to pandemic.[699]

291. The significant reduction in business activity would lower the Company's estimate of demand derived from "prospective new business" included in its 10-year plan for new capacity

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692 Pepco (I) at 14:3 (Clark Direct).

693 OPC's Brief at 162.

694 OPC (4E) at 4:8-9 (Mara Direct).

695 OPC (4E) at 6.1-6.3(Mara Direct).

696 OPC (4E) at 6:1-3 (Mara Direct).

697 AOBA's Brief at 85.

698 *See* PSC RPS Report to the Council of the District of Columbia, dated May 3, 2021, page i. The total sales in 2019 was 11.08 million MWh and in 2020 was 9.85 million MWh. There was an 11% load reduction. Although the record closed on December 23, 2020, we take Administrative Notice of PSC RPS Council Report dated May 3, 2021 which is in the public record.

699 *See* DCG's Brief at 32-33.

needed to meet constraints resulting from load growth. Pepco witness Clark described enhancements to Pepco's load forecast, including changes to the procedure for estimating load from prospective new business which are expected to be completed in 2021; this implies that the Company is modifying the PNB methodology that provided the basis for its existing forecast of load-driven capital expenditures.[700] We also noticed that PJM's recent load forecast projected a negative growth for 10-year peak load for the Pepco zone.[701] Regarding customer-driven capital expenditures, the economic and business development slowdown can reasonably be expected to slow the pace of customer-driven residential and commercial new business connections.

292. These recent changes in economic conditions raise legitimate concerns about the level of spending for load-driven and customer-driven projects going forward. It is undeniable that both load-driven and customer-driven capital expenditures are influenced by the sharp reductions in business activity resulting from the COVID-19 pandemic. The Commission believes that the Company's escalation of both load-driven and customer-driven capital expenditures would result in an overstated EPIS and rate base. The Commission further believes that it is unreasonable to ignore the impact of economic conditions on customer-driven and load-driven capital expenditures.

293. We also note that the capital additions in Pepco's EMRP using the Company's escalation methodology at 2.5% reflect higher expenditures than those budgeted before the COVID-19 economic slowdown. Pepco's EMRP forecasts customer-driven capital addition of $89.8 million and $92.1 million for 2021 and 2022, respectively. Load-driven capital additions in the EMRP are forecasted at $58.7 million and $60.2 million for 2021 and 2022, respectively.[702] As further discussed in the escalation section, we reduced the escalation from 2.5% to 2.17%, which reduces the capital additions reflected in the EMRP rate base. However, even with the reduced escalation factor, the capital additions reflected in the EMRP are higher than the Company's pre-COVID-19 budget.

294. To account for the COVID-19 economic realities and that the EMRP reflects Customer Driven and Load Driven Capital Additions that are in excess of the amount budgeted before understanding the impact COVID-19 will have on the District economic activities, we believe that a reduction in capital additions is warranted. The Commission's Modified EMRP assumes a further reduction in additions to EPIS of $25 million per year in 2021 and 2022. This $25 million reduction a year is approximately 18% of the customer-driven and load-driven plant

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[700] Pepco (3I) at 10:4-10 (Clark Surrebuttal).

[701] *See* PJM's Load Forecast, January 2021 at www.pjm.com. PJMs latest load forecast projects a negative 1.2% load growth for the next 10 years (2021-2031) for the Pepco zone summer peak (DC and Maryland). *See*, Pepco (I)-1, p. 6 of 78. (The ten-year plan is developed in conjunction with the PJM ten-year forecast so that the projected growth in total system load is consistent with the development of the transmission system serving the District of Columbia.).

[702] Pepco (6C)-1, page 9 of 67 extrapolated using escalator.

additions of $139.7 million incurred from July 2018 to June 2019.[703] This reduction reflects a downturn in economic activity as noted by the Parties, including OPC, AOBA, and DCG, and discussed above. This reduction also reduces depreciation expense, accumulated depreciation, and ADIT in calculating the Modified EMRP revenue requirements. Accordingly, this reduction lowers revenue requirement in 2021 and 2022 to the benefit of ratepayers.

295. We are convinced that the Company's capital budgets submitted for approval have not adequately considered the effects of the COVID-19 pandemic and we direct Pepco to submit a new capital workplan based on our $25 million reductions in 2021 and 2022. We are not reducing the forecasted capital expenditure for reliability projects. However, given the reduced load growth due to the pandemic, unless the expenditure is absolutely necessary for reliability, we expect the Company to defer additional capital expenditures during 2021 and 2022. We encourage the Company to use its discretion to pursue additional cost-containment activities without reducing the quality, availability, and reliability of customer service. Furthermore, with the Commission adopting the annual information filing and final reconciliation, the Company will need to fully justify that all its capital expenditures were prudently incurred to maintain the quality, availability, and reliability of customer service.

296. After applying the modifications discussed above and the effect of the Tax-related adjustments on rate base (discussed in Section XIII), the Commission finds it just and reasonable, and approves a forecasted Modified EMRP rate base of $2,206.4 million for 2020, $2,333.5 million for 2021, and $2,472.3 million for 2022.

IX. REVENUE SALES AND RATEMAKING ADJUSTMENTS 6, 27, and 43

297. **Pepco**. The EMRP revenues are based upon the historical operating revenues as of June 30, 2019, with three adjustments. RMA-6 annualizes the billed distribution revenues to those established in Order No. 19433 in *Formal Case No. 1150* base revenues. The rate decrease, authorized by the Commission in Order No. 19433, went into effect on August 13, 2018, overlapping with the test year ending June 30, 2019. RMA-6 decreases operating revenue by $4.686 million.[704]

298. RMA-27 adds $5.058 million to revenues. From January 1, 2018, through August 13, 2018, Pepco recorded regulatory liability associated with the TCJA benefits to customers that had not yet been reflected in customer rates. To establish this regulatory liability, Pepco asserts that it debits, and thus reduces, its distribution revenue and credits a regulatory liability. Ultimately, Pepco avers these "pre rate change" TCJA benefits were refunded to customers

[703] Pepco (6C)-1, Tab WP 1 – June 2019 EPIS Adds. Our decision to reduced Pepco's capital expenditure is similar to the action the Maryland PSC took in reducing BGE's cap ex proposal in BGE's multi-year rate case (Maryland Order No. 89678). In its subsequent revised capital workplan filing, dated February 12, 2021, BGE reported that it had reduced its 2021-2023 capital workplan by $175 million in compliance with Maryland Order No. 89678.

[704] Pepco (D) at 15:14–21 (Ziminsky Direct) and Pepco (6C)-1 at 7, line 6 (Wolverton Surrebuttal Exhibit).

through a one-time $24.163 million payment. The Company States that RMA 27 adds back the test period amount of these non-recurring debits to Pepco's revenue such that the test period will reflect an appropriate level of ongoing distribution revenues.[705]

299. Finally, in RMA-43, Pepco asserts that it corrected revenues after, discovering that it was not including PJM revenues associated with its DLC Program in its other revenues. The adjustment increases revenues by $268,000.[706] RMA 6 Annualization of *Formal Case No. 1150* base revenues, RMA-27 Annualization of *Formal Case No. 1151* Proposed Base Revenue Reduction (TCJA Impact), and RMA-43 Inclusion of DLC Program Revenues are uncontested. The EMRP revenues for 2020, 2021, and 2022, reflect the adjusted revenues of $539.874 million and are held constant through the EMRP.[707]

DECISION

300. No party has contested the Company's revenue estimates. The Commission has reviewed Pepco's operating revenues and ratemaking adjustments which are uncontested and has independently found them just and reasonable. Therefore, we approve the $539.874 million of operating revenues incorporated in the Modified EMRP.

A. Weather Normalization

301. **Pepco.** Pepco asserts that it used a Weather-Normalization Study to design rates that yield the target revenue requirement under the assumption of a normal weather year. Weather normalization helps measure and remove the impact that an unusually warm or cold weather year could have in setting the level of customers' rates. As directed by the Commission in Paragraph 172 of Order No. 17424 in *Formal Case No. 1103*, Pepco designed volumetric rates using weather normalized billing determinants. The weather-normalization study is attached as PEPCO (F)-9. Pepco asserts that this exhibit includes an explanation of the process for the weather normalization of sales and Pepco represents that the Company continues to use the same weather-normalization methodology approved by the Commission in Order Nos. 15710, 16930, and 17424 in *Formal Case Nos. 1076, 1087*, and *1103*, respectively. In addition, as directed by the Commission in *Formal Case No. 1139*, Order No. 18846, RAD customers have been excluded from the weather normalization calculation.[708]

302. **AOBA.** AOBA witness Oliver states that the Commission should note that in the development of its estimate of the 3% decline in sales for 2020, Pepco employed a 20-year historical period to compute the normal weather normal degree days. However, in its weather normalization analyses the Company uses as part of its rate design presentation in this proceeding,

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705 Pepco (D) at 35:5–13 (Ziminsky Direct) and Pepco (6C)-1 at 8, line 27 (Wolverton Surrebuttal Exhibit).

706 Pepco (4D) at 36: 17–20 (Ziminsky Rebuttal) and Pepco (6C)-1 at 8, line 43 (Wolverton Surrebuttal Exhibit).

707 Pepco (6C)-1 at 4, line 15 (Wolverton Surrebuttal Exhibit).

708 Pepco (F) at 51:11 – 52:4 (Blazunas Direct).

the Company uses a 30-year average of historical degree day measures. AOBA maintains that Pepco needs to revise billing determinants to "synchronize" the billing determinants used in its financial forecasts with those used for rate design purposes.[709]

303. **Pepco Rebuttal**. The Company contends that AOBA's "synchronization" argument is misplaced and premised on the mistaken belief that the billing determinants are used to develop revenue. Pepco counters that billing determinants are used to only calculate rates once the appropriate levels of revenue are established.[710]

DECISION

304. Pepco's weather normalization is an adjustment to the billing determinants used to develop the Company's rate design. Weather normalization helps measure and remove the impact that an unusually warm or cold weather year could have in setting the level of customers' rates. As directed by the Commission in Paragraph 172 of Order No. 17424 in *Formal Case No. 1103*, Pepco designed volumetric rates using weather normalized billing determinants. The weather-normalization study is attached as PEPCO (F)-9. This exhibit includes an explanation of the process for the weather normalization of sales and the Company continues to use the same weather-normalization methodology approved by the Commission in Order Nos. 15710, 16930, and 17424 in *Formal Case Nos. 1076, 1087*, and *1103*, respectively. In addition, as directed by the Commission in *Formal Case No. 1139*, Order No. 18846, RAD customers have been excluded from the weather normalization calculation. No party has contested or provided a reasonable alternative to, the Company's weather normalization. Given that the weather normalization in this case is based on the Commission's previously affirmed use of a 30-year average, we accept Pepco's approach.

X. BILL STABILIZATION ADJUSTMENT ("BSA")[711]

305. **Pepco**. Pepco proposes to continue the BSA in its proposed EMRP.[712] Pepco asserts that during the term of the EMRP, "[t]he average class distribution base revenue per customer targets used in the monthly BSA calculation will be updated annually to reflect authorized adjustments to the revenue requirement."[713] Pepco witness Blazunas argues, based upon the settlement in *Formal Case No. 1150,* the creation of the new MGT-LV class and the proposed separate rates therein should, over time, resolve issues with the deferral balances of the GT-LV class.[714]

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[709] AOBA Brief at 70.

[710] Pepco Brief at 224.

[711] This section addresses the issue of whether the BSA should be discontinued. Section XVII addresses the issues concerning the BSA deferral.

[712] Pepco (F) at 34:7 (Blazunas Direct).

[713] Pepco's Brief at 232.

[714] Pepco (F) at 43:1 (Blazunas Direct).

306. **OPC.** OPC witness Dismukes points out that the BSA has grown substantially in the recovery of revenue and over its history. The Company has recovered $171.9 million from ratepayers at the time of the filing of the Direct Testimony, including five years at above $20 million annually.[715] Witness Dismukes analysis shows little of the revenue volatility is from residential customers ($6.5 million total) with GT classes responsible for $163 million and the GT-LV class responsible for $114.4 million of the total amount.[716] Witness Dismukes notes residential usage per customer in 2019 was 1.1% higher than in 2010, while commercial customer usage per customer decreased by 27.1%; since 2010, residential customer counts increased by 20.7% and commercial customers by 32.5%.[717] In his Supplemental Surrebuttal Testimony, witness Dismukes argues that the continued implementation of the BSA along with the EMRP is problematic.[718] He contends that the BSA has structural deficiencies, including that it acts as an attrition relief mechanism ("ARF") and has become more problematic during the COVID-19 pandemic where energy use has declined but the BSA has continued to make the Company whole.[719]

307. **AOBA.** AOBA witness Bruce Oliver argues there are problems with the BSA that "make it inappropriate for continued application, particularly for commercial rate classes." He argues the CleanEnergy DC Act makes the BSA inapplicable, and the BSA should be questioned.[720] Oliver asserts that the BSA was needed because Pepco had no incentive to encourage increased use of energy efficiency by customers as it would result in lost sales revenue. Noting that the CleanEnergy DC Act now mandates energy efficiency, witness Oliver argues the CleanEnergy DC Act makes DC building efficiency a broader societal benefit, and the benefits do not accrue solely to members of the individual rate class. Therefore, witness Oliver submits that the burden of revenue losses should be spread across all residents and businesses in the District.[721] The witness also argues there are problems with the structure of the BSA, referring to his testimony in *Formal Case No. 1139*, which alleged Pepco benefitted from customers transferring from one commercial class to another due to differences in revenue per customer with an impact of more than $50,000 per customer, without any demonstrated cost increase of providing service.[722] With the creation of the MGT-LV class in *Formal Case No. 1150*, witness Oliver argues the problem

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[715] OPC (A) at 59:5-17 (Dismukes Direct) and Exhibit OPC (A)-12.

[716] OPC (A) at 60:8-61:4 (Dismukes Direct).

[717] OPC (A) at 61:5-13 (Dismukes Direct).

[718] OPC (4A) at 5:8 (Dismukes Supplemental Surrebuttal).

[719] OPC (4A) at 21:3 (Dismukes Supplemental Surrebuttal).

[720] AOBA (A) at 81:1-12 (B. Oliver Direct).

[721] AOBA (A) at 83:17-84:2 (B. Oliver Direct).

[722] AOBA (A) at 84:7 and Table 5 (B. Oliver Direct).

was only partially mitigated but not eliminated.[723] His recommendation is for Pepco to track customer transfers and recompute monthly revenue per customer.[724]

308. AOBA witness Bruce Oliver also argues there are additional problems with the BSA such as: (1) it does little to stabilize the levels of customers' bills but is rather a revenue assurance mechanism;[725] (2) the Company has not provided the revenue per customer amounts by rate class in its filing, and the billing determinants will not be known until the post-compliance filing; therefore, the adjustment of billing determinants is inappropriate and should not be permitted;[726] and (3) the effects of energy efficiency on the correlation between kWh and kW has not been assessed by the Company.[727] Additionally, AOBA contends, among other things, that there is no compelling case to continue the BSA except for classes that have a large number of small usage customers (Rate Classes R and GSND),[728] and that Pepco has no incentive to improve the BSA as it is a revenue assurance mechanism.[729]

309. In his Supplemental Surrebuttal Testimony, AOBA witness Oliver argues the annual billing determinant update was designed to enhance the certainty of Pepco's revenue collection without benefit to Pepco's customers and is duplicative of the basic purpose of the BSA mechanism.[730] He also highlights that the BSA has not performed well during the period of the COVID-19 impact as it was never designed to operate under such extreme circumstances. Table 1 of AOBA's testimony indicates the January–June 2020 BSA under-recovery ($29.7 million) exceeded the annual under-recovery for 2019 or 2018 with 93% attributable to demand metered commercial rate classes.[731] He repeats his concerns about transfers between rate classes even after the development of the MGT-LV rate class.[732] Thus, AOBA calls for the termination of the BSA mechanism as it has not served to benefit either the Company or customers in the District in the face of COVID-19 impacts. In rebuttal, AOBA witness Oliver asserts that the BSA will increase rates for commercial customers, even absent a rate increase, as the efficiency standards will reduce energy sales.[733]

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[723] AOBA (A) at 86:3 and Table 6 (B. Oliver Direct).

[724] AOBA (A) at 88:12-17 (B. Oliver Direct).

[725] AOBA (A) at 89:12 (B. Oliver Direct).

[726] AOBA (A) at 89:19-90:13 (B. Oliver Direct).

[727] AOBA (A) at 91:4 (B. Oliver Direct).

[728] AOBA (A) at 93:6-13 (B. Oliver Direct).

[729] AOBA (A) at 94:7-16 (B. Oliver Direct).

[730] AOBA (4A) at 7:1-8:17 (B. Oliver Supplemental Surrebuttal).

[731] AOBA (4A) at 47:13-48:6 (B. Oliver Supplemental Surrebuttal).

[732] AOBA (4A) at 50:1-13 (B. Oliver Supplemental Surrebuttal).

[733] AOBA (2A) at 8:4-9:3 (B. Oliver Rebuttal).

310. **Pepco Rebuttal.** Pepco witness McGowan notes energy efficiency is necessary to meet the District's 2032 greenhouse gas and renewable energy policy goals and that decoupling sales from revenues through the BSA aligns the Company and customers, and "absent the BSA, the Company would be challenged to voluntarily promote a program that reduces its sales and revenues."[734] Pepco witness Blazunas rejects AOBA's position that the CleanEnergy DC Act has altered the underlying premise of the BSA, noting a task force[735] started meeting in December 2019 to set standards, *i.e.*, the Building Efficiency Performance Standard ("BEPS") scheduled to go into effect in January 2021, but the implementation may be subject to delay for smaller buildings, and therefore, the new standards would be unlikely to be implemented during the term of the MRP or EMRP.[736] Witness Blazunas also asserts that the BSA's cap on adjustments has contributed to deferred BSA balances for Schedules MGT-LV and GT-LV.[737] Lastly, witness Blazunas rejects OPC's characterization of the BSA as an earnings attrition mechanism, noting it is a revenue decoupling mechanism, removing the link between electricity use and distribution revenue.[738]

DECISION

311. The BSA represents a decoupling mechanism that separates the link between kWh sales and the revenues collected. The separation of the revenue a utility collects and the amount of kWh sold serves to make the utility indifferent to a decline in sales volumes due to the implementation of energy efficiency goals. The Commission implemented a BSA mechanism for Pepco in 2009.[739] The BSA is calculated based on the Commission-approved monthly revenue per customer and is compared with actual monthly revenue per customer collected. The difference between the approved monthly revenue and the actual revenue is divided by the forecasted kWhs to arrive at a per kWh surcredit or surcharge. The surcredit or surcharge is added or subtracted from the tariffed per kWh distribution rate and does not appear as a separate line item on a customer's bill.

312. OPC asserts that the BSA has structural deficiencies, including that it acts as an attrition relief mechanism and has become more problematic during the COVID-19 pandemic where energy use has declined but the BSA continues to make the Company whole.[740] AOBA

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734 Pepco (4B) at 45:1-17 (McGowan Rebuttal).

735 The task force is hosted by DOEE, as part of the CleanEnergy DC Act to establish the Building Energy Performance Standards for commercial buildings.

736 Pepco (4F) at 14:19-15:11 (Blazunas Rebuttal).

737 Pepco (4F) at 17:15 (Blazunas Rebuttal).

738 Pepco (4F) at 21:1-11 (Blazunas Rebuttal).

739 *See Formal Case No. 1053*, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 15556, rel. September 28, 2009.

740 OPC (4A) at 21:3 (Dismukes Supplemental Surrebuttal).

advocates for eliminating the BSA or, at a minimum, modifying it by applying it only to residential and small commercial customers. AOBA indicates that the BSA is no longer needed to incentivize Pepco to pursue energy efficiency goals because of the CleanEnergy DC Act's mandates that Pepco pursue energy efficiency initiatives.[741]

313. We are not persuaded to eliminate the BSA at this time. Even though we believe the BSA may be further improved, the BSA mechanism provides adequate incentive for Pepco to develop energy efficiency programs to achieve GHG reduction and clean energy goals to address the District climate plans. We will host a technical conference to address OPC's concern about the BSA structural deficiencies due to the pandemic. While the CleanEnergy DC Act does allow utilities to submit energy efficiency and demand response programs, it does not mandate the kWh or kW saving goals to be achieved through Pepco's energy efficiency ("EE") and demand response ("DR") programs and there are no statutory prescriptions on the kWh or kW saving goals that the utility must achieve through these programs. Thus, we reject AOBA's rationale for eliminating the BSA.[742]

314. While the BSA protects Pepco from any difference between actual vs. forecasted sales (including demand revenue) on a per-customer basis, the BSA has an ancillary benefit in that it protects Pepco from adverse business conditions. As commercial sales have declined due to COVID-19,[743] existing commercial customers are compensating Pepco for lost sales revenue for those commercial customers that have decreased energy consumption due to reduced operations.

315. We have reviewed the states implementing an MRP (New York, Minnesota, and Hawaii),[744] and none of them have eliminated or plan to eliminate the decoupling mechanism when adopting the MRP. The recent Maryland BGE order authorizing the BGE MRP applications also allows BGE to retain its decoupling mechanism.[745] The BSA continues to be a credit-positive feature for the company and helps maintain its Investment grade credit rating. Thus, we will not terminate the BSA because decoupling remains a valuable incentive for the utility to implement energy efficiency and demand response programs encouraged by the legislation.

316. We share the Parties' concerns regarding a significant BSA deferral linked to the pandemic and associated economic downturn, as well as whether the BSA is operating as the Commission intended in terms of the reasons and goals for the decoupling mechanism or whether that goal is being diluted by other unintended consequences. Accordingly, we will convene a technical conference(s) to discuss possible reform of the BSA to address revenue pressures unrelated to the Company's energy efficiency efforts. The technical conference(s), to be facilitated by Commission Staff, shall be held within 120 days after the new rates become effective. In this

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[741] AOBA (A) at 81:1-83:17 (B. Oliver Direct).

[742] *See* CleanEnergy DC Act of 2018. The Act is silent about the kW or kWh goals for utility EE/DR programs.

[743] AOBA (A) at 114:9-13 (B. Oliver Direct).

[744] *See e.g.,* Hawaii Public Utilities Commission Order No. 37507 at 14, issued December 23, 2020.

[745] MDPSC Order No. 89678, Paragraph 500, issued December 16, 2020.

technical conference, the parties shall also discuss the effect of the billing determinants error on the BSA deferral (as discussed in the Billing Determinants Errata, Section XVII. herein), other states' practices, and any research or studies available to assure that a decoupling mechanism is employed in a just and reasonable manner. Parties shall also discuss the possibility of moving the BSA out of distribution rates and into either a surcharge or surcredit on customers' bills. We also direct that Pepco file a report with the Commission within 90 days after the first technical conference explaining the proposals and recommendations made by the parties at the conference and the final or consensus recommended course of reforming the BSA.

XI. OPERATING EXPENSES

317. In the EMRP, the Company uses a historical test period cost of service for the 12-month period ending June 30, 2019,[746] adjusted for certain items, and escalates those historical costs, where appropriate. Pepco's EMRP Test year expenses include what the Company spends to operate its distribution system; to pay employee wages and benefits; to purchase materials and supplies; to pay interest on the company's debt; to pay federal, state and local taxes; and the costs of other direct business expenses adjusted for known and measurable changes to make it reflective of the rate-effective period.

A. Unopposed/Uncontested Operating Expense Adjustments

318. Many of the Company's operating expense adjustments that are reflected in the EMRP Starting Point are unopposed by the parties. These include:

- RMA Pepco-4, Removal of DC Power Line Undergrounding (DC PLUG) initiative costs
- RMA Pepco-6, Annualization of Formal Case No. 1150 base revenues (OPC agreed with Pepco)
- RMA Pepco-8, Annualization of wage increases
- RMA Pepco-9, Annualization of employee health and welfare costs
- RMA Pepco-10, Reflection of 2019 pension and Other Post-Employment Benefits (OPEB) expense
- RMA Pepco-11, Removal of supplemental executive retirement plans (SERP)
- RMA Pepco-12, Removal of certain executive incentive plan costs
- RMA Pepco-13, Removal of adjustments to deferred compensation balances
- RMA Pepco-14, Reflection of 3-year average regulatory expense
- RMA Pepco-15, Reflection of 3-year average storm costs
- RMA Pepco-16, Removal of employee association costs
- RMA Pepco-17, Removal of industry contributions and membership fees
- RMA Pepco-18, Removal of institutional advertising/selling expenses
- RMA Pepco-21, Reflection of customer deposit interest expense and credit facility expense and maintenance costs

[746] Pepco (6C) at 4:16-18 (Wolverton Surrebuttal).

- RMA Pepco-22, Annualization of software amortization
- RMA Pepco-23, Removal of executive perquisite expenses
- RMA Pepco-24, Annualization of Approved Depreciation Rates
- RMA Pepco-25, Reflection of 8.25% D.C. Income Tax Rate Change
- RMA Pepco-27, Annualization of DC Case No. 1151 Proposed Base Revenue Reduction (TCJA Impact)
- RMA Pepco-30, Removal of Control Center Capital Lease due to Expiration
- RMA Pepco-31, Reflection of Additional Subtraction Modification
- RMA Pepco-32, Removal of BSC Billed Depreciation (Merger Commitment 39)
- RMA Pepco-38, Interest Synchronization[747]
- RMA Pepco-39, Removal of Non-Recurring Expense Charges
- RMA Pepco-40, Inclusion of July 1, 2018-August 13, 2018 Deferred Costs
- RMA Pepco-43, Inclusion of DLC Program Revenues
- RMA Pepco-44, Removal of Facilities Depreciation and EP Leasehold Improvement Amortization

319. The Commission has reviewed these adjustments which are either unopposed or uncontested and has independently found them just and reasonable. Therefore, we approve these ratemaking adjustments that have a net impact on the Modified EMRP net operating income totaling $4.69 million.

B. Contested Ratemaking Adjustments

1. RMA PEPCO-33, Reflection of Current Rate Case Costs RMA AOBA Reduce Current Rate Case Costs

320. **Pepco**. Pepco states that RMA-33 adjusted the cost of service to defer and amortize incremental costs associated with this proceeding offset by the amount that *Formal Case Nos. 1150 and 1151* estimates exceeded actual costs incurred.[748] Company witness Ziminsky updates RMA-33 in Rebuttal Testimony, removing a double-counted invoice from a consultant and including a Commission deposit order paid in July 2019 outside of the test period.[749]

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[747] Pepco RMA-38, Interest Synchronization adjusts District of Columbia and Federal income tax expenses to reflect the impact on synchronized income taxes of the ratemaking adjustments to rate base. While OPC and AOBA include adjustments for interest synchronization to reflect the impact of their proposed rate base adjustments, no party contests the methodology. The final amount will be determined based on the Commission's final approved rate base and cost of debt.

[748] Pepco estimated that rate case expenses would be $1.67 million. The Company incurred $1.96 million of rate case costs and received refunds from the Commission Staff and OPC in the amount of $1.02 million. Pepco created a regulatory liability in the amount of $723,212 to refund to customers. PEPCO (D) at 45:3-12 (Ziminsky Direct) and Table 5; Pepco (D)-1, page 37 of 46.

[749] OPC witness Ramas noted these errors and recommended that RMA-33 be corrected. OPC (B) at 46:4-17 (Ramas Direct); OPC (B)-4, Schedule 10. OPC witness Ramas agreed with the corrections that the Company made to RMA 33. OPC (2B) at 11:10-12 (Ramas Surrebuttal); OPC (2B)-4, Schedule 10.

321. Pepco claims that AOBA's arguments are baseless, arguing that in order to develop a robust MRP proposal, Pepco incurred reasonable and necessary costs associated with retaining two consulting firms to advise the Company on the aspects of the MRP, including RMA-33.[750] Pepco challenges AOBA's assertion that MRP-related costs and "mismanagement" of rate case filings drove up the rate case costs in this proceeding, and, as such, the rate case costs should be reduced. Pepco questions AOBA's claim that the cost of this case is disproportionately large when compared to previous cases, citing Company witness McGowan's testimony that, "the incremental cost incurred by Pepco in the last litigated rate case (*Formal Case No. 1139*) was approximately $4.4 million."[751] That $4.4 million, according to Pepco, represented the cost of a single test year traditional case. The Commission required that Pepco file a traditional case alongside an MRP. Pepco complains that while it is not proposing the TTPCF in this case, as previously discussed, all other parties have spent almost 18 months litigating the TTPCF, choosing to only superficially address the MRPs, themselves, while focusing much of their efforts on traditional parts of the case, like ROE and capital additions. For this reason, Pepco argues that the cost of the TTPCF and the MRP are intertwined and cannot be separated. Pepco added that to be properly compared to the $4.4 million in *Formal Case No. 1139*, the costs of this case should be divided over three years, showing the efficiencies gained in filing for a three-year rate change.[752]

322. **AOBA.** AOBA claims that Pepco's proposed test year and MRP rate case expense are not reasonable. Given that a key purpose of an MRP is to reduce regulatory activity and the regulatory expenses borne by ratepayers, AOBA asserts Pepco's projected increases in its regulatory expenses over the MRP period are incongruent with its overall request for adoption of an MRP.[753] AOBA argues that the Commission should limit Pepco's recovery of the Company's rate case expenses for this proceeding. AOBA argues that Pepco's estimate of directly incurred rate case expenses for this proceeding (i.e., excluding payments to the Commission and OPC) has increased nearly 250% since *Formal Case No. 1103*.[754] AOBA further argues that Pepco's mismanagement of its rate filings and multiple corrections to its testimony and exhibits have greatly protracted this proceeding and increased excess costs for all intervenors and the Commission Staff. AOBA proposes that Pepco should be held responsible for all regulatory costs incurred by the Company, the Commission, and OPC between the filing of Pepco's EMRP Proposal on June 1, 2020, and the submission of witness Blazunas Fourth Supplemental Testimony on October 14, 2020.

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750 Pepco (4D) at 23:5–13 (Ziminsky Rebuttal).

751 Pepco (4B) at 12:4-11 (McGowan Direct).

752 Pepco's Reply Brief at 115.

753 AOBA (B) at 30:16-31:8 (T. Oliver Direct).

754 AOBA Brief at 51.

DECISION

323. The Commission approves Pepco's RMA Pepco-33, Reflection of Current Rate Case Costs as reasonably incurred expenses in litigating this matter. The protracted schedule and contentious nature of the proceeding have increased rate case expenses. The adjustment increases the Modified EMRP rate base by $2.146 million and increases net operating income by $844,000.

2. RMA Pepco-41, Reflection of Run-Rate Manhole Inspection Costs RMA OPC-16, Reduction to Manhole Inspection Cost Adjustment

324. **Pepco.** RMA-41 adjusts the test period O&M expense to reflect the expected run rate of DC Manhole Inspection Program costs.[755] Pepco states that it is required to inspect manholes in the District at the rate of 10,000 manholes a year and to file quarterly inspection reports with the Commission in the Potomac Electric Power Company Manhole Inspection Reports ("PEPMIR") docket. Pepco explains that because the inspection program contract was being rebid to improve the field data collection and analytics, Pepco ran significantly under budget during the first half of 2019.[756] Pepco continues that its quarterly filings this year in PEPMIR indicate the enhanced manhole inspection program began in January 2020. The Company maintains that this adjustment is necessary to reflect the expected run rate of manhole inspection program costs.

325. **OPC.** OPC argues that Pepco's requested increase for manhole inspection costs should be reduced by 50%. OPC indicates Pepco is requesting a 136% increase, *i.e.,* $4,489,000, in costs for its manhole inspection program, which will raise program costs to $7,789,000.[757] OPC argues that because no support was provided, the Commission should find that Pepco has not met its burden of justifying its requested increase in costs for the manhole inspection program. OPC witness Ramas, nevertheless, recommends allowing an increase in this expense as Pepco is expanding the scope of work of the manhole inspections, resulting in a higher cost per unit. Under the circumstances, OPC recommends that the Commission reject Pepco's proposed increase and instead allow the Company to increase its manhole inspection costs by $2,245,000, which represents 50% of its requested increase. With that increase, the adjusted program costs would be $5,545,000.

326. **Pepco Rebuttal**. Pepco disputes OPC witness Ramas' claims that the costs are unsupported, arguing that witness Sullivan detailed the expanded scope of work under the Company's new manhole inspection program compared to the prior program.[758] Pepco explains that the increased cost is related to the enhanced field data collection and analytics under the new contract. Pepco advises that if the Commission were to adopt OPC's suggestion, it will be the

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[755] *See Formal Case No.* 991, Order No. 12735, ¶¶ 35, 133.

[756] Pepco Brief at 289, citing Pepco (2D) at 7:18-8:2 (Ziminsky Supplemental Direct); Pepco (2D)-1, page 49 of 52.

[757] OPC Brief at 64, citing Exhibit OPC (B) at 67:15-18 (Ramas Direct).

[758] Pepco Brief at 289, citing Pepco (2M) at 5:13-7:12 (Sullivan Rebuttal).

equivalent of having customers inappropriately pay for only 71% of the new contract's cost. Pepco argues that OPC's suggestion to arbitrarily reduce RMA-41 by 50% should be rejected.

DECISION

327. The Commission accepts Pepco's RMA-41 Reflection of Run-Rate Manhole Inspection Costs as reasonable. Due to the significant importance of continuing to perform manhole inspections, the Commission is unwilling to approve a 50% reduction which would only cover 7,100 manhole inspections instead of the required 10,000 annual manhole inspections. The adjustment reduces the Modified EMRP Starting Period net operating income by $3.25 million.

3. RMA OPC-15, Remove Out of Period Service Company Cost Allocations

328. **OPC.** OPC contends that in an MRP, reasonable annual step increases in rates would be predicated upon an escalation of adjusted historical base period amounts.[759] OPC recommends the historical base period be adjusted to the test year ending June 30, 2019, which has already been vetted in the instant case.[760] OPC identifies service company charges in the historical test year that is related to expenses pre-dating the measurement period that OPC contends should be removed, including (1) PHISCO gross receipt taxes; (2) EBSC liability insurance; and (3) EBSC software cloud use taxes. The OPC adjustment to remove the pre-test-year charges increased operating income by $500,000.[761]

329. OPC contends it is not challenging the appropriateness of journal entries recorded to match expenses to the correct fiscal year. OPC points out that the accounting true-up at issue relates to costs and obligations that pre-date the test year, and that the problem is, in part, because the test year in this case does not align with the Company's fiscal year. OPC argues that when there is a mismatch between the test year and fiscal year, additional care should be taken to ensure true-up entries recorded during the overlapping months do not include costs that are outside the test period.[762] Moreover, OPC contends the costs should be reflective of normal and recurring annual net operating conditions.[763]

330. **Pepco.** Pepco disagrees with OPC's recommendation to remove out-of-period service company costs. Pepco states that the out-of-period charges identified by OPC relate to audit adjustments and true-ups that arise in the normal course of business. Pepco also states that it is common for utilities to perform audits involving prior months and to record accounting true-

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[759] OPC (B) at 76:18-21 (Ramas Direct).

[760] OPC (B) at 79:12-19 (Ramas Direct).

[761] OPC (B)-4, Schedule 15.

[762] OPC (2B) at 33:15-24:10 (Ramas Surrebuttal).

[763] OPC (2B) at 34:11-21 (Ramas Surrebuttal).

ups when an obligation is present and recurrent. Since the Company has a recurrent obligation to pay the three referenced charges, the inclusion of each expense in the test year is appropriate.[764]

DECISION

331. The out-of-period service company costs that OPC recommends removing include: (1) PHISCO gross receipt taxes; (2) EBSC liability insurance; and (3) EBSC software cloud use taxes that occurred before the test year. The Commission finds that Pepco should have addressed the mismatch between the test year and fiscal year and ensured that true-up entries do not include costs outside the test year. Costs should reflect normal and recurring annual operating conditions. Therefore, the Commission accepts OPC's adjustment to disallow out-of-period costs that occurred prior to the test year. The adjustment increases the Modified EMRP net operating income by $500,000.

XII. DEPRECIATION

332. **Pepco.** Pepco states that it has shown that its proposed depreciation adjustments and rates are just and reasonable. The Company continues to use the depreciation rates approved by the Commission in *Formal Case No. 1150*.[765] Consistent with Order No. 19433 in *Formal Case No. 1150*, Pepco witness Wolverton states, "Pepco's projected depreciated expense is based on its projected monthly depreciable plant balances multiplied by the composite distribution and general depreciations rates" that were already previously approved by the Commission.[766] Pepco also states that the projected monthly depreciable plant balances are based on the projections of Electric Plant in Service ("EPIS"), less non-depreciable amounts, such as land.[767] Neither Pepco nor other intervenors made mention of the calculation of discount rates and reserves in depreciation adjustments in testimony, briefs, or at the evidentiary hearing.

DECISION

333. No party contests Pepco's proposed depreciation adjustments. The Commission has independently reviewed Pepco's adjustments and finds them to be consistent with Commission Order No. 19433 and otherwise just and reasonable.

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[764] Pepco (4D) at 32:21-34:2 (Ziminsky Rebuttal).

[765] *Formal Case No. 1150*, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service* ("*Formal Case No. 1150*"), Order No. 19433, rel. August 9, 2018 ("Order No. 19433").

[766] Pepco (C) at 12:6-14 (Wolverton Direct).

[767] Pepco (C) at 12:13-14 (Wolverton Direct).

XIII. TAX ISSUES

A. Generally Accepted Accounting Principles

334. The Internal Revenue Service ("IRS") requires Pepco to utilize the Generally Accepted Accounting Principles ("GAAP") when maintaining its books and records. Among other things, the IRS rules permit Pepco to accumulate federal tax losses and flow them back over a period of time. The Parties have proposed various adjustments to Pepco's tax RMAs during the EMRP. The Parties' tax recommendations regarding the EMRP are set forth below.

B. Ratemaking Adjustments

1. RMA Pepco-26, Annualization of Federal Estimated Deferred Income Tax ("EDIT") Liability and OPC-8, Non-Protected Property EDIT to Settlement

335. **Pepco Direct**. RMA Pepco-26 annualizes the amortization associated with the excess deferred income tax ("EDIT") liabilities created by the Tax Cut and Jobs Act of 2017 ("TCJA"). As a result of the TCJA, the Company revalues its accumulated deferred income tax ("ADIT") balances to reflect the Federal income tax rate change from 35% to 21%. This tax rate reduction creates a net EDIT liability owed to customers. In *Formal Case Nos. 1150 and 1151*, a Settlement Agreement was executed which established amortization periods for Protected Property ("PP") EDIT, Non-Protected Property ("NPP") EDIT, and Non-Protected Non-Property Property ("NPNP") EDIT.[768] The Settlement Agreement provided that PP was to be amortized in accordance with the Average Rate Assumption Method ("ARAM");[769] for NPP, the parties agreed to use a 10-year amortization period to flow back $137.5 million; and for NPNP the parties agreed to use a 5-year amortization period to flow back $20.1 million.[770]

336. Pepco Witness Ziminsky notes that prior to August 13, 2018, the EDIT liabilities were amortized on Pepco's books based on the Company-proposed periods.[771] According to witness Ziminsky, the first month and 13 days of the test period do not reflect the Commission's

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[768] *Formal Case Nos. 1150/1151*, Order No. 19433, ¶ 8.

[769] ARAM is the method under which the excess in the reserve for deferred taxes is reduced over the remaining life of the property as used in the company's accounting records that generated the reserve for deferred taxes.

[770] *Formal Case Nos. 1150/1151*, Order No. 19433, ¶8.

[771] Pepco's Brief at 273, *citing*, Pepco (D) at 34:12-35:2 (Ziminsky Direct); Pepco (D)-1, page 30 of 46 (Ziminsky Direct). Company Witness Ziminsky updated RMA-26 to reflect actual data for the 12 months ended June 30, 2019 in his Supplemental Direct Testimony. Pepco (2D)-1, page 32 of 52. This update reflected amounts in RMA-26 that were based on the final federal tax return filed for 2017. Pepco (3D): 3:10-12 (Ziminsky Second Supp. Direct).

approved amortization period for NPP EDIT.[772] Witness Ziminsky indicates that RMA Pepco-26 annualized the impact of the Commission's authorized amortization periods and increases both rate base and net operating income by $2.123 million.[773]

337. Subsequently, on September 19, 2019, Pepco updated its testimony to reflect 12 months of actual data.[774] The Company modified the gross PP EDIT to $142.1 million, gross NPP EDIT to $109.2 million, and gross NP EDIT to $20.2 million. The updated impact of RMA Pepco-26 decreased both rate base and net operating income by $444,000.[775]

338. On January 2, 2020, OPC and several other Parties filed a Joint Motion requesting the Commission rule that Pepco's reflection of the NPP and NPNP EDIT categories in both filings deviated from amounts agreed to in the *Formal Case Nos. 1150 and 1151* Settlement Agreement, specifically $137.5 million for NPP and $20.1 million for NPNP.[776] On February 5, 2020, the Commission issued Order No. 20293 granting the Joint Motion.[777]

339. In response to Order No. 20293, Pepco submitted a revised RMA Pepco-26 adjusting operating income and rate base to reflect what the Company states were the "exact" amounts underlying the *Formal Case No. 1150 and 1151* Settlement, as opposed to the 2017 federal tax return.[778] Section Two of revised RMA Pepco-26 modifies income tax expense to avoid double-counting benefits that were previously reflected as a tax "flow-through" but were shifted to NPP-related EDIT amortization as part of Section One.[779] The combined changes decreases rate base by $6.43 million and increases net operating income by $1.817 million.[780]

340. **OPC**. OPC argues that the Company went beyond the explicit directions of Order No. 20293.[781] OPC states that Pepco modified all three categories, including PP, even though the Settlement Agreement did not specifically state an amount, unlike the NPP and NPNP categories. OPC contends that the Settlement Agreement requires that the average unamortized EDIT balance

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[772] Pepco's Brief at 273, *citing*, Pepco (D) at 34:12-35:2 (Ziminsky Direct); Pepco (D)-1, page 30 of 46 (Ziminsky Direct).

[773] Pepco (D) at 34:4–35:4 (Ziminsky Direct).

[774] Pepco (2D) at 2:7–2:8 (Ziminsky Supplemental Direct).

[775] Pepco (2D)-1, page 32 of 52 (Ziminsky Supplemental Direct Exhibits).

[776] OPC (B) at 32:12–33:2 (Ramas Direct).

[777] *Formal Case Nos. 1150 and 1151*, Order No. 20293, rel. February 5, 2020.

[778] Pepco (2D) at 3:8–3:12 (Ziminsky Second Supplemental Direct).

[779] Pepco (2D) at 3:18–4:1 (Ziminsky Second Supplemental Direct).

[780] Exhibit Pepco (3D)-1, page 32 of 52 (Ziminsky Second Supplemental Direct Exhibits).

[781] OPC (B) at 12:5–7 (Ramas Direct).

in rate base as of June 30, 2019, should total $290.2 million,[782] comprised of $132.2 million in NPP, $18.5 million in NPNP, and $139.5 million in PP.[783] But the Company reflected $277.77 million, which is $12.406 million below OPC's calculation.[784] OPC asserts Pepco's proposed liability in rate base is understated due to two key factors: (1) its proposed reduction to the actual PP balance; and (2) the determination of the beginning date for the amortization of the non-protected EDIT balances.[785]

341. OPC witness Ramas states that Pepco reduced the actual PP EDIT balance by approximately $8 million to tie to its application in *Formal Case Nos. 1150 and 1151*.[786] She states that the total EDIT liability to which Pepco asserts was agreed to in the Settlement Agreement, *i.e.,* the $291.7 million, does not appear anywhere in the language of the Settlement Agreement, nor does the amount of PP EDIT appear in the agreement.[787]

342. OPC argues that in determining the average unamortized NPP and NPNP EDIT balances to be reflected in rate base, the correct starting date of the amortization must be used. As the rates resulting from the *Formal Case Nos. 1150 and 1151* Settlement Agreement took effect in mid-August 2018, witness Ramas contends so should the commencement of the NPP and NPNP amortization schedule.[788] "The amount of Non-Protected Property-Related EDIT balance that is to be amortized to the benefit of ratepayers was specified in the Settlement Agreement. By increasing the depreciation flow-through adjustment in the tax calculation to reflect a proxy 35% federal income tax rate in its supplemental filing, Pepco is effectively offsetting or reducing the amount of Non-Protected Property-Related EDIT that it committed to in the Settlement Agreement through a new separate adjustment."[789]

343. OPC also rejects the "Adjustment to Tax Flow Through" under Section Two of revised RMA Pepco-26 asserting that it appears to be a back-door way of reducing the NPP EDIT liability by effectively offsetting the amortization flowing back to customers that Pepco agreed to in the Settlement Agreement.[790]

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782 OPC (2B) at 25:11-15 (Ramas Surrebuttal).

783 OPC (2B)-4. Schedule 8 at 2.

784 OPC (2B) at 25:12–15 (Ramas Surrebuttal).

785 OPC Initial Brief at 54.

786 OPC (B) at 35:6–11 (Ramas Direct).

787 OPC (B) at 35:15–36:5 (Ramas Direct).

788 OPC Brief at 55 and OPC (B) at 41:13–42:6 (Ramas Direct).

789 OPC Ramas (B) at 38:19-21.

790 OPC (B) at 38:11–39:4 (Ramas Direct).

344. **Pepco Rebuttal**. The Company contends it is inappropriate to adjust one portion of the EDIT (non-protected) back to the settlement estimates without adjusting other affected items, namely protected EDIT balances and the flow-through adjustment.[791] Although the Settlement Agreement did not explicitly state the amount of the PP liability, thereby leaving the balance open to true up, Pepco counters that the amount was clearly presented in the *Formal Case Nos. 1150 and 1151* rate case filing at PEPCO (2C)-1, RMA -9.[792]

345. In response to OPC's contention regarding "Adjustment to Tax Flow Through," Pepco witness Ziminsky states that OPC witness Ramas' proposal would double count customer tax benefits attributable to pre-1981 asset depreciation in two ways. First, through its reflection in the NPP EDIT balance and, second, as a flow-through item in the income tax expense computation for ratemaking. Furthermore, Pepco asserts that OPC witness Ramas does not dispute that her adjustment would result in double counting, which is clearly not a sound ratemaking practice.[793]

346. Pepco also argues that OPC witness Ramas incorrectly asserts that the Company used a start date of January 1, 2018, for commencement of the NPP and NPNP EDIT amortization rather than the effective date of the *Formal Case Nos. 1150 and 1151* Settlement Agreement. PEPCO (3D)-2 demonstrates that Pepco provided customers with the TCJA benefits from January 1, 2018, until August 13, 2018, through a one-time payment.[794] This one-time payment included the amortization of NPP EDIT along with amortization of PP EDIT and NPNP EDIT as well as the reduction in calculated income tax expense from the reduced Federal income tax rate.

347. Witness Ziminsky argues that Pepco is not negating the non-protected EDIT benefits agreed to in the *Formal Case Nos. 1150 and 1151* Settlement Agreement. The issue is that the pre-1981 asset depreciation flow-through was included in the non-protected EDIT balances in *Formal Case No. 1150*, and the very same pre-1981 asset depreciation flow-through is also treated as a flow-through item in the calculation of income tax in the cost of service. The pre-1981 asset depreciation flow-through should be included in the calculation of the revenue requirement; however, not in two places. Because Pepco reverts to the *Formal Case Nos. 1150 and 1151* Settlement Agreement non-protected EDIT amounts, the pre-1981 asset depreciation is included there. As such, Pepco contends that the Company must adjust the pre-1981 asset depreciation flow-through to reflect a 35% tax rate so that the difference in the tax rates between 35% and 21% is included only once. Pepco concludes that if the Company does not modify the flow-through adjustment, customers will receive this very same benefit twice.

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[791] Pepco (4D) at 17:17-18:2 (Ziminsky Rebuttal).

[792] Pepco (4D) at 17:8–17:12 (Ziminsky Rebuttal).

[793] Pepco (4D) at 18:3-18:16 (Ziminsky Rebuttal).

[794] PEPCO (3D) at 4-5, n.1 (Ziminsky Second Supp. Direct).

DECISION

348. Pepco updated RMA Pepco-26 to reflect the NPP and NPNP EDIT reflected in its amortization tables versus the amounts specifically stated in *Formal Case Nos. 1150/1151,* whereas OPC used the rounded amounts reflected in the Settlement Agreement. Because the difference is negligible and would have no impact on revenue requirements[795] we approve Pepco's request that the rate base reflect the 13-month average NPP EDIT balance of $129.7 million and the NPNP EDIT balance of $19.1 million as noted in Pepco (3D)-2 Amortization Schedules.

349. As to what balance should be reflected for the PP EDIT, Pepco asserted that the *Formal Case Nos. 1150 and 1151* filings support a balance of $134.1 million. OPC argues that the balance of PP EDIT should be based on the per-book amounts. The Commission notes that the *Formal Case Nos. 1150 and 1151* Settlement Agreement does not reflect a specific amount for PP EDIT amount. Unlike the Non-Protected EDIT classes, PP is subject to IRS normalization rules, which require the use of ARAM, as opposed to simple straight-line amortization in determining how the regulatory liability will be flowed back to customers.[796] The Commission believes that allowing the Company to reduce the PP book balance below actual to match the value in the *Formal Case Nos. 1150 and 1151* filing would make a difficult-to-verify calculation more intractable for oversight. The *Formal Case Nos. 1150 and 1151* Settlement Agreement, as presented by the Parties to the Commission was not explicit in stating the amount of the PP regulatory liability, only that it was to be discharged using ARAM. As such, the Commission finds that, in the absence of an explicit statement in the Settlement Agreement, Pepco should utilize the actual book balances and PP credits computed by the Company's tax accounting system. Therefore, the Commission directs that, for ratemaking purposes, the PP EDIT amount should be based on the amount recorded in the Company's records of $142.1 million as reported in the Company Supplemental Direct filing.[797]

350. Regarding the amortization of the NPP EDIT and the date ratepayers began to receive the benefit of the $137.5 million regulatory liability, despite OPC's contention that the Company incorrectly used a start date of January 1, 2018, we find that the Company correctly provided customers with the TCJA benefits from January 1, 2018, until August 13, 2018, through a one-time payment.[798] Thus, the difference of $2.5 million has already been refunded as part of the *Formal Case Nos. 1150 and 1151* Settlement Agreement.

351. Regarding the flow-through of NPNP EDIT, Pepco argues that OPC's proposal is not sound from a regulatory accounting and ratemaking perspective, while OPC argued that Pepco's proposal is inconsistent with the terms of the *Formal Case Nos. 1150 and 1151* Settlement Agreement. Specifically, tax flow-through is a well-established ratemaking concept which all

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795 The 13-month average rate base difference between OPC's amount and Pepco's amount is $23,000 for NPP EDIT and $32,069 for NPNP EDIT.

796 26 CFR § 1.167(l).

797 *Formal Case No. 1156*, Pepco (2D) -1.xlsx, page 32 of 52 (Ziminsky Supplemental Direct).).).

798 PEPCO (3D)-2, page 5 of 6 (Ziminsky Second Supplemental Direct); Pepco Brief at 275.

Parties knew or should have known about when they negotiated the Settlement Agreement. However, Pepco apparently failed to recognize the separate treatment for tax flow-through items during the settlement negotiations. Thus, the question for the Commission is whether it should make Pepco bear the consequences of its own failure to explicitly include the impact of tax flow-through items in valuing the EDIT liabilities in the Settlement Agreement. The Company should know its books and cost of service model best and has access to information that could affect its books more readily than other Parties. The terms of the Settlement Agreement control. Given that the Settlement Agreement does not provide for a tax flow-through, we will not allow Pepco's tax flow-through adjustment for ratemaking purposes Accordingly, the Commission is persuaded by OPC's arguments that Pepco is effectively offsetting the amortized amount of NPP EDIT that it committed to in the settlement through this flow through adjustment.

352. Therefore, the Commission directs that the base test year ended June 30, 2019, reflect the *actual* 13-month average PP EDIT balance of $139.5 million. The NPP and NPNP EDIT balances should conform to the amounts agreed to in the *Formal Case Nos. 1150 and 1151* Settlement Agreement. The 13-month average balances in rate base as of June 30, 2019, are $129.7 million and $19.1 million for NPP and NPNP EDIT, respectively. Further, the "Adjustment to Tax Flow Through" under Section Two of RMA Pepco-26 is denied.

353. An overarching issue related to the NPP EDIT amortization is the Company's proposed acceleration of the amortization of the PPP EDIT to provide rate relief during COVID-19. Pepco proposes to accelerate the NPP EDIT December 31, 2022 balance of $103 million to offset COVID-19's adverse impact on ratepayers. The NPP EDIT amortization period of 10 years was established in the *Formal Case Nos. 1150 and 1151* Settlement Agreement, and the Company is proposing acceleration of the amortization. It is important to note that the money proposed to be used to reduce the 2021 and 2022 billing impact of this rate case comes from customer funds that are being held in the regulatory liability, not from Pepco's shareholders. Moreover, the creation of the deferred liability was the result of a settlement. We recognize that there is general sentiment that the Commission should take appropriate steps to mitigate any immediate rate increase associated with Pepco's request. Although there is disagreement in how we should mitigate any rate increase awarded, no Party outright rejects accelerating amortization of the regulatory liability to customers. It is clear under D.C. Code § 34-602 that the Commission has the authority to "at any time" rescind, alter or amend any order fixing any rate or rates.[799] Although the Commission could issue an order altering or amending the Settlement Agreement, we are reluctant to issue an order that would effectively modify the terms of a settlement agreement. For those reasons alone, the Commission rejects Pepco's proposal to accelerate $103.1 million of the NPP EDIT balance to offset the impact of the rate increase.[800]

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[799] *See* D.C. Code §§ 34-602, 34-608.

[800] *See* MD PSC Order No. 89678, at pp. 201-202, issued December 16, 2020. The MD Commission, in a litigated case, approved BG&E's MRP Pilot Application and directed the BGE Federal Tax Credit be listed as a rider separately on a customer's bill. In addition, BG&E could present the individual components of the rider as a single line item on the bill to increase transparency of the use of the customers' funds to offset BG&E's rate increase.

2. RMA- Pepco-29, Amortization of PHISCO Deficient Deferred Income Tax and OPC-9, Reverse PHISCO Non-Property Deferred Income Tax Adjustment

354. **Pepco Direct.** Witness Ziminsky's testimony notes that as a result of the TCJA, the PHI Service Company (PHISCO) revalued its ADIT balance to reflect the Federal income tax rate change from 35% to 21%. This revaluation creates a net deficient deferred income tax ("DDIT") balance of $1.868 million to be recovered from customers. Witness Ziminsky indicates that PHISCO costs are allocated to the PHI utilities, pursuant to the Cost Allocation Manual, thus, the DDIT balances were allocated to the utilities.[801] Witness Ziminsky states that: (1) the net PHISCO DDIT balance includes an NPNP DDIT asset of $6.834 million and an NPP EDIT liability of $4.965 million; (2) Pepco proposes to amortize the two components over a five- and 10-year period, respectively, consistent with the treatment established in *Formal Case No. 1150*; and (3) RMA-29 reflects the net DDIT balance in rate base, an increase of $1.039 million, and the corresponding amortization in operating income, a decrease of $616,000.[802] Pepco witness Ziminsky asserts that: (1) OPC is "cherry-picking" the inclusion of items that reduced the revenue requirement and recommending exclusion of items that increase the revenue requirement; and (2) OPC's argument that book-tax differences underlying the PHISCO NPNP DDIT are not included in rate base is misguided because there are numerous underlying tax basis accounts that are not included in Pepco's ADIT in rate base but were included in the Pepco's non-property EDIT agreed to in *Formal Case No. 1150*. The witness contends that the test should be whether the underlying basis is included in customer rates as a recoverable operating expense.[803] Witness Ziminsky concedes that OPC identified certain amounts that are non-recoverable in the District, but claims that OPC arbitrarily removed the entire DDIT balance rather than applying a surgical approach to eliminate the non-applicable amounts.[804] Per the Company's analysis included in its updated 21-Day Compliance Filing, the as-filed net DDIT asset of $6.834 million should be revised down to $5.853 million.[805]

355. **OPC Direct.** OPC contends that it is appropriate to reflect the PHISCO NPP EDIT regulatory liability in rate base, as well as the 10-year amortization period established in *Formal Case No. 1150*.[806] However, it is not appropriate to include the DDIT as a regulatory asset because: (1) while the PHISCO plant assets and property-related ADIT balances are authorized in rate base, the non-property related ADIT balances are not, and (2) the book-tax differences underlying the PHISCO non-property related ADIT balances are associated with costs that are not passed on to

801 Pepco (D) at 36:15-20 (Ziminsky Direct).

802 Pepco (D) at 37:15 (Ziminsky Direct).

803 Pepco (4D) at 20:9-21:2 (Ziminsky Rebuttal).

804 Pepco (4D) at 21:12-17 (Ziminsky Rebuttal).

805 *Formal Case No. 1156*, Pepco's 21 Day Compliance Filing Update, filed September 19, 2019.

806 OPC (B) at 44:4-9 (Ramas Direct).

Pepco DC ratepayers since they provide no benefit to customers.[807] OPC witness Ramas argues against the inclusion of the PHISCO NPNP DDIT in rate base.[808] Witness Ramas' recommendation is based on the fact that the associated PHISCO ADIT balances that gave rise to the DDIT are currently not authorized in Pepco's rate base in the current or in past rate cases.[809] OPC witness Ramas recommends that Pepco's proposed rate base be reduced by $5,268,000 and amortized expense reduced by $1,171,00 to remove Pepco's inappropriate inclusions.[810]

DECISION

356. The Commission agrees with OPC's position that while the PHISCO plant assets and property related ADIT balances are authorized in rate base, the PHISCO non-property related ADIT balances are not.[811] Pepco contended that the test should be whether the underlying basis is included in customer rates as a recoverable operating expense since there are underlying tax basis accounts that are not included in Pepco's ADIT in rate base but were included in Pepco's non-property EDIT agreed to in *Formal Case No. 1150*. However, the Commission denies the Company's revised proposal to include the NPNP DDIT asset of $5.853 million on a gross basis. The Company's reference to the EDIT Settlement agreement is misplaced. The NP EDIT agreed to in *Formal Case No. 1150* did not address the PHISCO deferred income tax balances; it only addressed the Pepco balances. PHISCO non-property ADIT is not a component of rate base. The adjustment reduces rate base by $5.3 million and increases operating expenses by $848,000.

3. OPC-14 Remove Charge for EBSC Residual Income Taxes

357. According to OPC witness Ramas, as part of the 2018 O&M variance explanations, the Company identified a Post-Close adjustment that includes a charge with the description "to bill out residual BSC income tax." The charge is recorded in Account 923–Outside Services Employed ($591,000 with $224,000 allocated to D.C. distribution operations), and the Company does not provide any justification for including the costs in adjusted test year expenses.[812] OPC claims that the charges for the service company are already factored in the income tax expense and the service company's cost should not trigger net income that would be subject to additional income taxes.[813]

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[807] OPC (B) at 45:6-17 (Ramas Direct) and OPC (2B) at 26:9-12 (Ramas Surrebuttal).

[808] OPC (2B) at 27:13–27:18 (Ramas Surrebuttal).

[809] OPC (2B) at 28:10–28.14 (Ramas Surrebuttal).

[810] OPC (2B) at 27:1-2 (Ramas Surrebuttal).

[811] *See generally*, *Formal Case No. 1139*, 21-day Compliance Filing, filed on July 21, 2016, at Section 206.9 Att. A, pages 66 to 72 and 79 of 133. The Commission has not previously ruled on this particular issue before. However, we have allowed similar PHISCO Plant Assets and Property related ADIT balances to be included in Rate Base.

[812] OPC (B) at 63:5–13 (Ramas Direct).

[813] OPC (B) at 63:18-64:11 (Ramas Direct).

358. Witness Ramas notes that "the amount of income tax expense included in the adjusted test year is calculated based on pre-tax distribution operating income which includes the impact of expenses charged and allocated to Pepco for services provided by the service companies."[814] This process allows for income taxes to be included in the revenue requirements. Witness Ramas explains that these are expenses that are directly charged and allocated to Pepco for services provided by both PHISCO and EBSC and are included in the test year O&M expenses; therefore, the impacts of such charges are factored into the determination of the appropriate income tax expense to include in rates.[815] Witness Ramas contends that since such charges are factored into what the appropriate income taxes are, it is not appropriate to also include an additional layer of income tax expense associated with EBSC operations, or a "residual BSC income tax."[816] OPC argues the EBSC income taxes should be excluded entirely reducing DC Distribution test year expenses by $224,000 because Pepco has not met its burden of proof on the EBSC income taxes being passed on to ratepayers.[817]

359. **Pepco.** In opposition, witness Ziminsky notes that EBSC incurs income taxes that are allocated to PHI (and to all other Exelon operating companies)[818] and, that the charge did not represent an additional layer of income tax expense but a true up to account for post-close adjustments; that it is a recurring and warranted charge appropriately recorded in Pepco's books as part of the normal course of business.[819]

DECISION

360. The Commission notes that the determination of income taxes for ratemaking is a function of applying statutory tax rates to taxable income based on the utility's standalone cost of service.[820] Thus, we agree with OPC that the Company's treatment and characterization of EBSC income taxes allocated to the Company as a legitimate service company charge is inappropriate and does not comport with the utility standalone principle the Company has previously relied on and the Commission affirmed in the past.[821] Specifically, the Commission believes that the EBSC Service costs have already been allocated to Pepco and are reflected in Pepco's test year operating income and tax expense. Therefore, Pepco should not be allocated additional EBSC income taxes

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[814] OPC's Brief at 63.

[815] OPC's Brief at 63.

[816] OPC's Brief at 63, *citing,* OPC (B) at 63:18–11 (Ramas Direct).

[817] OPC's Brief at 63, *citing*, OPC (B) at 63:13-15 (Ramas Direct).

[818] Pepco (4D) at 31:20–32:2 (Ziminsky Rebuttal).

[819] Pepco (4D) at 31:20–32:7 (Ziminsky Rebuttal).

[820] *See Formal Case No. 1053, In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service,* Order No. 14712, rel. January 30, 2008,¶¶ 238-240 (the Commission defended its stand-alone policy and its preference for it, with regards to federal and state taxes).

[821] *Formal Case No. 1053*, Order No. 14712, ¶¶ 238-240.

for ratemaking purposes since the EBSC is a different tax entity from Pepco the utility. Therefore, OPC RMA-14 is approved and increases net operating income by $163,000.

4. Unopposed/Uncontested Tax-Related Adjustments

361. A number of Pepco's tax-related adjustments that affect the EMRP Starting Period of June 30, 2019, are unopposed by the Parties. These adjustments include: (1) RMA Pepco-25 – 8.25% Income Tax Rate Change increasing net operating income by $135,000; (2) RMA PEPCO-27, Tax Cuts Revenue Debit increasing net operating income by $3.666 million; and (3) RMA PEPCO-31 Maryland "Statutory Subtraction" Modification Tax Benefit increasing net operating income by $598,000.

DECISION

362. The Commission has reviewed the unopposed/uncontested tax-related adjustments and has independently found them just and reasonable. Therefore, we approve these tax-related adjustments in the amounts noted above.

XIV. JURISDICTIONAL COST ALLOCATION STUDY

363. **Pepco.** Pepco argues that its Jurisdictional Cost of Service Study ("JCOSS") for distribution service in the District is consistent with Commission precedent and is reasonable and, therefore, should be approved.[822] The Company asserts that it developed the JCOSS to appropriately assign and allocate: (1) each element of rate base, revenues, and expenses to Pepco's District of Columbia jurisdiction; and (2) costs associated with customers outside of the District to the "Other" jurisdiction.[823] Pepco witness Ziminsky, testifies that the allocations and assignments in the JCOSS are consistent with the study that the Commission found reasonable in *Formal Case No. 1139*.[824] The study's allocations were driven primarily by direct jurisdictional assignments and allocations of plant, depreciation expense, and O&M expense.[825]

364. Pepco witness Wolverton indicates that he used the same approach described by witness Ziminsky to prepare the JCOSS for the Original MRP Proposal, citing PEPCO (C)-3, wherein he presented the jurisdictional allocation of Pepco's actual distribution costs for 2018, the

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[822] Pepco's Brief at 189; *citing* Pepco (D) at 50:6-52:13 (Ziminsky Direct); Pepco (D)-3. When he updated the TTPCF to reflect actual data for the 12 months ended June 30, 2019, Company witness Ziminsky also updated the JCOSS for purposes of the TTPCF (Pepco (2D)-2) as well as Pepco's June 30, 2019 capital structure (Pepco (2D)-3).

[823] Pepco's Brief at 189; *citing* Pepco (D) at 50:6-9 (Ziminsky Direct); Pepco (D)-3; Pepco (2D)-2. Company witness Wolverton explained that the Original MRP Proposal used an identical process to assign and allocate costs to the distribution function as in the Traditional Test Period Compliance Filing. Pepco (C) at 15:18-20 (Wolverton Direct); Pepco (C)-2. Both used an identical process to assign and allocate distribution costs to the District of Columbia that the Commission has approved in prior proceedings. Pepco (C) at 16:6-8 (Wolverton Direct).

[824] Pepco's Brief at 189; *citing* Pepco (D): Ziminsky Direct at 50:9-12. *See Formal Case No. 1139*, Order No. 18846, ¶399.

[825] Pepco's Brief at 189; *citing* Pepco (D) at 50:12-14 (Ziminsky Direct).

projection of distribution costs for the bridge year (2019), and each of the MRP's projected years (2020, 2021 and 2022).[826] Pepco asserts that all of the allocation methods used in the Company's JCOSSs have previously been approved.[827] Pepco asserts that AOBA witness Oliver agreed that the allocation methods employed in the JCOSS generally appear consistent with those used by Pepco in prior cases.[828] Pepco states that no other Party has objected to the JCOSS, and the Company requests that the Commission find the JCOSS reasonable and consistent with Commission precedent.

365. **AOBA.** AOBA witness Timothy Oliver testifies that the allocation methods employed in the Company's jurisdictional cost of service study are generally consistent with those used by Pepco in past cases. He also argues, without providing any support that there are instances in which Pepco's recording of costs by account has changed and that those changes alter the allocation of the affected costs.[829]

DECISION

366. The Commission finds the Pepco's JCOSS is consistent with Commission precedent and is reasonable for purposes of this proceeding. No Party has presented a compelling reason to reject Pepco's JCOSS in this case.

XV. CLASS COST OF SERVICE

367. **Pepco.** Pepco argues that its customer class cost of service study ("CCOSS") is reasonable and should be approved. Pepco witness Schafer developed the study to assign and allocate each element of rate base, revenues, and expenses to Pepco's District of Columbia proposed customer classes.[830] Pepco asserts that the CCOSS is substantially similar to those the Company used in prior proceedings, and was used in the rate design for the EMRP Proposal, as well as the Traditional Test Period Compliance Filing.[831] Pepco asserts that the CCOSS

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[826] Pepco's Brief at 191; *citing* Pepco (C) at 16:11-13 (Wolverton Direct).

[827] Pepco's Brief at 191; *citing* Pepco (D) at 52:11-13 (Ziminsky Direct).

[828] Pepco's Brief at 191; *citing* AOBA (B) at 50:18-20 (T. Oliver Direct).

[829] AOBA (B) at 50:13 (T. Oliver Direct).

[830] Pepco's Brief at 192, *citing* Pepco (E) at 7:3-5 (Schafer Direct); Pepco (E)-1. Company witness Schafer also provided a new CCOSS model that meets the Commission's objectives that Pepco proffer a "flexible" cost of service model that the parties could more readily utilize as well as an Instruction Manual that explains how the CCOSS model works. Pepco (E) at 3:1-4; 7:18-10:7 (Schafer Direct). Pepco also held a technical conference on July 16, 2019, for the Commission Staff and all parties regarding how the CCOSS model works, at which Company witness Schafer demonstrated how to make changes to the inputs and allocators in the model. Pepco (E) at 3:4-8 (Schafer Direct).

[831] Pepco's Brief at 192, *citing* Pepco (E) at 6:12-19 (Schafer Direct). Customers were classified for purposes of the CCOSS in accordance with the base-rate schedules in Pepco's current approved tariffs and thus includes the new classes that the Commission directed be created in *Formal Case No. 1139* as well as the MGT-LV rate class approved as part of the *Formal Case Nos. 1150 and 1151* Settlement. Pepco (E) at 10:11-19 (Schafer Direct).

incorporates the unadjusted results of the JCOSS and includes the Company's various adjustments in order to provide a more accurate portrayal of the cost of service for each customer class.[832] Pepco's Errata filing on billing determinants did not change CCOSS.

368. Pepco contends that only AOBA witness T. Oliver questioned the transparency of the CCOSS model, indicating that he challenged the Company's use of general allocators in the CCOSS as well as its allocation of income taxes, and that witness Oliver alleged that the Company had not appropriately addressed contributions in aid of construction ("CIAC") in the CCOSS.[833]

369. Pepco responds that Company witness Schafer addressed each of AOBA witness T. Oliver's baseless claims. With respect to the claim that the CCOSS model is less transparent Company witness Schafer states that all calculations in the CCOSS use accessible formulas in the cells of the worksheets. Pepco adds that, although the proprietary model was password-protected, the Company supplied the password to all the Parties, including AOBA.[834] Pepco also cites the July 16, 2019, technical conference during which Company witness Schafer discussed the CCOSS model in detail. Finally, the Company asserts that it provided an instruction manual for the CCOSS model that explained its functioning as well as how to make changes to the model.[835] Contrary to AOBA witness T. Oliver's claims, Pepco contends every facet of the CCOSS is accessible to the Parties.[836]

370. Pepco also contends that AOBA witness T. Oliver is mistaken in his allegation that the use of general allocators in the CCOSS undermines the purpose of the study; Pepco's witness Schafer shows that the general allocators are well-established and accepted methods of allocating costs and that the Commission has previously found these allocators to be appropriate.[837] Pepco argues that it complied with the CCOSS filing in *Formal Case No. 1150* which was the next base rate proceeding following *Formal Case No. 1139*, contrary to AOBA witness T. Oliver's claim.[838] Finally, the Company states that witness Schafer demonstrated that, contrary to AOBA witness T. Oliver's claims, Pepco did not depart from past practice for the allocation of income taxes in the CCOSS that the Commission approved in prior proceedings.[839] Therefore, Pepco requests that the Commission find the CCOSS reasonable and approve its use in this proceeding.

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832 Pepco's Brief at 192, citing Pepco (E) at 8:21-9:3 (Schafer Direct).

833 Pepco's Brief at 194, *citing* AOBA (B) at 52:13-16; 52:17-53:7; 55:9-61:12; 53:12-54:17 (T. Oliver Direct).

834 Pepco's Brief at 194, *citing* Pepco (2E) at 2:19-3:2 (Schafer Rebuttal).

835 Pepco's Brief at 195, *citing* Pepco (2E) at 3:4-14 (Schafer Rebuttal). A copy of the instruction manual for the CCOSS model was provided as Pepco (2E)-1.

836 Pepco's Brief at 195.

837 Pepco's Brief at 195, *citing* Pepco (2E) at 4:6-22 (Schafer Rebuttal).

838 Pepco's Brief at 195, *citing* Pepco (2E) at 5:15-22 (Schafer Rebuttal).

839 Pepco's Brief at 195, *citing* Pepco (2E) at 6:14-8:11 (Schafer Rebuttal).

371. **AOBA**. AOBA witness Timothy Oliver explains that in prior cases Pepco has represented that income taxes should be allocated among classes based on taxable income and that the Commission has supported the Company's income tax allocation method declaring that allocation of income taxes be based on "the sums of money paid by customers for electric service."[840] AOBA contends that there is no correlation between "the sums of money paid by customers for electric service" and the Federal and state income tax amounts allocated to each rate class.[841]

372. AOBA argues that while both Residential and Commercial customers have paid positive sums of money to Pepco during the test year, they do not receive proportional allocations of the benefits of the negative income taxes attributed to Pepco's District of Columbia jurisdictional service. According to AOBA, the Commission should find that Pepco's income tax allocations in this proceeding departs from precedent and therefore must be rejected.[842]

DECISION

373. Pepco's CCOSS is substantially similar to prior CCOSS and is based on the JCOSS with the inclusion of additional classes. Although AOBA has again raised the issue of the allocation of income tax in prior cases, the Commission declines to change our income tax pronouncements that "[t]axes are levied on the sums of money paid by customers for electric service, not on the basis of class rate base or some underlying 'costs' of the seller to provide the service."[843] There is no compelling reason or basis warranting deviation from that position in this case.

XVI. CLASS REVENUE ALLOCATION

374. **Pepco.** Pepco witness Blazunas uses a Four-Step Method for revenue allocation in order to address the disparities in rate-class-specific rates of return, as recognized by the Commission in various prior decisions.[844] Pepco asserts that the methodology described below is based upon the results of the CCOSS and focuses on the class-specific Unified Rate of Return ("UROR").[845]

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[840] AOBA's Brief at 64, *citing Formal Case No. 1103*, Order No. 17424, at 155-156, ¶ 398, n. 797; and *Formal Case No. 1087*, Order No. 16930, at 115, ¶ 306.

[841] AOBA's Brief at 64.

[842] AOBA's Brief at 65.

[843] *See Formal Case No. 1087*, Order No. 16930, at 115, ¶ 306; *see also Formal Case No. 1103*, Order No. 17424, at 155-156, ¶ 398, n. 797.

[844] Pepco (F) at 7:9-18 (Blazunas Direct).

[845] Pepco (F) at 8:1-19 (Blazunas Direct). UROR is equal to class ROR divided by system average ROR. For a complete description of UROR see Pepco (F) at 8:21-9:6 (Blazunas Direct).

- Step 1: Determines which, if any, rate classes have a UROR significantly higher than the system average. Pepco indicates these classes will not receive any allocation of the distribution rate increase;
- Step 2: Determines which, if any, rate classes have a UROR within a close range of the system average return. These classes will receive an allocation of the distribution rate increase equal to the overall system average increase (percentage);
- Step 3: Determines which, if any, rate classes have a UROR significantly lower than the system average. These classes will receive an allocation of the distribution rate increase greater than the overall system average increase (percentage); and
- Step 4: Determines that the remaining rate classes, if any, receive an allocated increase of the remaining revenue to be collected in proportion to their current level of annualized distribution revenue.

375. Witness Blazunas explains that the Company uses the ratemaking principles of cost causation and gradualism, that the Commission has recognized in recent decisions, to create this methodology.[846] He suggests the size of the allocation is selected in order to achieve the following results: (1) prevent Step 2 classes from shifting materially further from the system average rate of return; (2) prevent the rate of return for Step 1 classes' from increasing or moving significantly below the system average rate of return; (3) ensure that the rate of return for Step 1 classes' also does not decrease nor move significantly above the system average rate of return; and (4) limit the maximum increase to any individual rate schedule to reflect consideration of the Commission's guiding ratemaking principles. [847]

376. Witness Blazunas testifies further that, currently, all commercial classes and schedules (MMA, RT, TS, and TN) have a UROR above 1.0, while schedules R and SL-E have negative UROR and SL-S has a positive UROR below 1.0.[848] Therefore, witness Blazunas proposes that the Company allocate the revenue to classes based on the following:

- First, Rate Schedules GS-3A and TN both have URORs above 3.0. Therefore, he proposes no increase for these rate schedules as the 10 current rates for these rate schedules already recovers amounts greater than their respective fully allocated cost of service.[849]
- Second, no rate schedule currently has a class rate of return within the range of the UROR Steady State (equal to +/- 10% of a UROR of 1.0). Therefore, he

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[846] Pepco (F) at 9:19-21 (Blazunas Direct).

[847] Pepco (F) at 10:24 (Blazunas Direct).

[848] Pepco (F) at 13:16 (Blazunas Direct).

[849] Pepco (F) at 19:8-11 (Blazunas Direct).

proposes an increase for any rate schedule equal to the system average increase of 22.13%. [850]

- Third, approximately 36% of the total increase is allocated to Rate Schedules R, SL-E, and SL-S. These rate schedules have a UROR less than 0.9, or below the UROR Steady State described above. Witness Blazunas proposes an additional adjustment within this step that consists of reducing the amount allocated to Rate Schedule SL-S by 25% and applying this amount to Schedule R. This proposed adjustment reduces the effective Multiplier to System Average Increase for Rate Schedule SL-S from 1.80 to 1.35, which is closer to the increase the Commission has allocated to this class in recent prior cases and reflects the fact that this class has a positive Current UROR only 0.38 below the target 1.0, in contrast to the negative Current URORs of R and SL-E at or exceeding -1.0.[851]
- In accordance with the final step of the Four-Step Method, the remaining amount of the increase is allocated to the remaining rate classes based on their level of current annualized distribution revenue for the 12-month period ending June 30, 2019, as shown in row 45 of PEPCO (F)-1. [852]

377. Additionally, witness Blazunas reduces the increase assigned to Schedule SL-S by 25% and applies this amount to Schedule R to recognize the SL-S Schedule has a positive UROR but below 1.0. Thus, the total residential classes (R and MMA) allocation is 37.19% and the commercial classes is 62.81%.[853] Witness Blazunas also proposes to use the same percent of revenue allocation for each of the three years of the EMRP as shown in PEPCO (F)-3.[854] The results of witness Blazunas' Four-Step Method are shown in the following table: [855]

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[850] Pepco (F) at 19:12-15 (Blazunas Direct).

[851] Pepco (F) at 19:16-20:6 (Blazunas Direct).

[852] Pepco (F) at 20:7-11 (Blazunas Direct).

[853] Pepco (F) at 20 – Table 4 (Blazunas Direct).

[854] Pepco (F) at 25:6–11 (Blazunas Direct).

[855] Pepco (F) at 21, Table 4 (Blazunas Direct).

Table 13: Results of Four-Step Method of Revenue Allocation

	Rate Schedule	Current ROR	Proposed ROR	Current UROR	Proposed UROR	Allocation of the Increase
Over Contributing Rate Schedules 1.1<UROR<=3.0	MMA	8.90%	11.49%	1.83	1.47	2.10%
	GS-LV	10.84%	14.11%	2.23	1.81	9.33%
	MGT-LV	12.37%	15.57%	2.54	1.99	26.31%
	GT-LV	9.89%	12.99%	2.03	1.66	14.88%
	GT-3B	10.51%	13.06%	2.16	1.67	0.08%
	GT-3A	11.03%	14.09%	2.27	1.80	10.39%
	RT	8.22%	10.78%	1.69	1.38	1.35%
	TS	9.25%	12.25%	1.90	1.57	0.04%
Over Contributing Rate Schedules UROR>3.0	GS-3A	23.40%	23.40%	4.81	3.00	-
	TN	17.34%	17.34%	3.56	2.22	-
Under Contributing Rate Schedules UROR<0.90	R	-4.87%	-2.17%	-1.00	-0.28	35.09%
	SL-S	3.00%	5.38%	0.62	0.69	0.21%
	SL-E	-5.05%	-4.10%	-1.04	-0.52	0.21%
Total		4.87%	7.81%	1.0	1.0	100%

Lastly, Pepco witness Blazunas notes that intervenors tend to favor their respective client base, whereas the Company takes into account gradualism and past precedent.

378. **OPC.** OPC witness Dismukes states that a UROR of less than 1.00 is simply a function of a prior policy decision, not necessarily the result of some arbitrary or intentionally designed inequity.[856] Witness Dismukes provides Exhibit OPC (A)-3 and highlights the Commission-approved increases in base rates between 2.21 and 2.48 times the system average increase in *Formal Case Nos. 1076, 1087,* and *1103*.[857] Witness Dismukes further highlights the UROR for the CCOSS noting that the UROR did not improve.[858]

379. Witness Dismukes then turns to the results of the more recent cases where the residential class received a lower ratio of the relative increase and notes that the Company was "reporting residentialURORs that are worse than previous years, despite the fact that the residential class received a rate increase consistent with the system average rate increase in *Formal Case No. 1139* and received a disproportionately small rate decrease in the Company's last rate

856 OPC (A) at 26:6 (Dismukes Direct).

857 OPC (A) at 30:1 (Dismukes Direct).

858 OPC (A) at 30:14-15 (Dismukes Direct).

case."[859] Witness Dismukes' concludes that costs are simply increasing at a faster pace than rates that can reasonably be assigned to residential customers.[860] Based on this conclusion, witness Dismukes recommends that the Commission rethink its policy of eliminating negative URORs and focus on the reliability issue, *i.e.*, that the Commission set aside its policy of eliminating negative class ROR until such time that the Commission can be assured that any enhanced residential responsibility allocation will lead to an improvement in its estimated UROR.[861] OPC also recommends rejecting the Company's revenue allocation proposal using a multiplier of 1.8 and substituting a 1.25 multiplier for classes with a negative return.[862] Lastly, OPC witness Dismukes argues the EMRP revenue allocation (1.8 multiplier) is discriminatory against residential customers and results in an unequitable allocation among classes.[863]

380. OPC witness Dismukes notes in his rebuttal testimony that GSA's estimate of the residential and streetlight subsidy is equal to $114 million ($112 million for residential), and while the Company's proposed revenue allocation achieves its goal of moving residential rates closer to cost of service, it actually exacerbates the issue by increasing the total subsidy by nearly $3 million to more than $115 million.[864] OPC does not support GSA's 2.0 multiplier because "[h]istoric experience has shown that this proposed solution does not work" and reiterates the Office's allegation about reliability investment and pursuit of 100% cost of service.[865] OPC also rejects GSA's recommendation to limit any revenue decrease from ESM and PIM to rate classes with non-negative class rate of return.[866]

381. **AOBA.** AOBA witness Bruce Oliver argues that the class ROR for Residential has moved further below the system average ROR, as he warned in *Formal Case No. 1139*, and that the class UROR has declined.[867] He provides AOBA's Exhibit (A)-4 as a history of UROR in prior cases. Witness Oliver argues that the benefits of the Exelon merger have insulated residential customers from Pepco's increasing costs, noting Company witness McGowan's statement that the Customer Base Rate Credit] ("CBRC") "has resulted in no residential increases in the District

[859] OPC (A) at 30:16 (Dismukes Direct).

[860] OPC (A) at 32:11-16 (Dismukes Direct).

[861] OPC (A) at 32:17-33:6 (Dismukes Direct).

[862] OPC (A) at 37:8-38:5 (Dismukes Direct)

[863] OPC (4A) 5:8 and 17:9 (Dismukes Supplemental Surrebuttal).

[864] OPC (2A) at 5:11-17 (Dismukes Rebuttal).

[865] OPC (2A) at 5:9 (Dismukes Rebuttal).

[866] OPC (2A) at 7:7 and 7:17 (Dismukes Rebuttal).

[867] AOBA (A) at 99:7-21 (B. Oliver Direct).

since March 2014."[868] AOBA also contends that residential customers have become more affluent while commercial office space vacancies have risen to record levels.[869]

382. AOBA asserts that the Company's development of the multiplier is arbitrary, inconsistent with the Company's calculation of prior multipliers, and has no ties to cost causation.[870] With the growing affluence of the Company's non-RAD customers and the implementation of rate assistance for senior and disabled citizens, AOBA proposes that the remaining residential users can make a positive contribution to Pepco's return requirements by targeting a UROR of 0.10 under a traditional test year or a UROR of 0.33 at the end of the MRP.[871] AOBA witness Timothy Oliver proposes to allocate, in each of the three years of the MRP, 50% of AOBA's proposed revenue increases to the Residential class, producing cumulative percentage increases of 65.4%, 82.4%, and 101.3%, resulting in a UROR of -0.06, 0.09, and 0.26, respectively.[872]

383. In rebuttal, AOBA witness Bruce Oliver argues that OPC witness Dismukes "failed to adequately document his alleged connection between the Company's capital spending and improving relative rates of return."[873] AOBA argues that: (1) the connection should be the requested rate increase and its impact on each class of customers;[874] (2) residential customers have been insulated by the CBRC and CIF (Customer Investment Fund) from rate increases for more than a decade, while commercial customers have carried the burden of the Company's return and the effects of the residential classes negative return;[875] (3) OPC has not addressed the growing affluence of non-RAD and non-senior or disabled-citizen Rate R customers;[876] and (4) OPC does not recognize future building efficiency standards, that when combined with the BSA, will create a negative feedback loop to drive commercial tenants to neighboring jurisdictions.[877] Witness Oliver states that OPC's lower recommended revenue increase should allow for a greater multiplier, and OPC's 1.25 multiplier is not reasonable in the context of large differences in class UROR.[878] Lastly, witness Oliver dismisses OPC's suggestion to ignore the elimination of negative

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[868] AOBA (A) at 101:19-102:1 (B. Oliver Direct).

[869] AOBA (A) at 103:10-11 (B. Oliver Direct).

[870] AOBA (A) at 106:4-13 (B. Oliver Direct).

[871] AOBA (A) at 114:17-115:7 (B. Oliver Direct).

[872] AOBA (B) at 67:1-10 (T. Oliver Direct).

[873] AOBA (2A) at 2:17 (B. Oliver Rebuttal).

[874] AOBA (2A) at 2:17-21 (B. Oliver Rebuttal).

[875] AOBA (2A) at 3:7-17 (B. Oliver Rebuttal).

[876] AOBA (2A) at 3:18-19 (B. Oliver Rebuttal).

[877] AOBA (2A) at 4:7-10 (B. Oliver Rebuttal).

[878] AOBA (2A) at 5:1 (B. Oliver Rebuttal).

class returns until there's "victory" over reliability because "victory" is undefined; the implication is that all reliability investments are the same, and this will perpetuate or increase the problem.[879]

384. **GSA**. GSA witness Goins acknowledges Pepco's proposed four-step revenue allocation methodology is underpinned using the UROR developed within the CCOSS and argues one of the basic objectives of the 4-Step Method is to address the longstanding negative rates of return problem for the residential class. He notes negative class rates of return indicate that rates for the class neither provide a return on the distribution investment nor cover the class' assigned responsibility for Pepco's operating costs.[880] Noting further that the residential and one of the street lighting classes have negative RORs and URORs, Witness Goins states that non-residential customers are heavily subsidizing residential and street lighting customers and that the subsidy has existed for over a decade.[881] Goins estimates the annual subsidy at current rates at $114 million ($112 million for residential customers).[882]

385. GSA suggests an alternative revenue spread using a Step 3 Multiplier of 2.0 in place of Pepco's proposed 1.8 for residential and SL-E customers. This proposal moves all classes closer to the cost of service (residential moves from -1.00 to -0.24) and reduces the residential subsidy (from $112.3 to $111.7 million).[883] Should an MRP be approved, GSA suggests two modifications: (1) the use of a 2.0 multiplier; and (2) if there is any revenue decrease from an earning sharing mechanism or PIM penalties, the revenue should flow only to classes with an UROR of at least 0.9 in order to demonstrate a serious commitment to address the negative ROR issue and mitigate the subsidy.[884]

386. GSA argues that the interclass subsidy has become so extreme that the rates reflecting that subsidy can no longer be considered "reasonable, just, and nondiscriminatory," as required by DC's Home Rule Act. While the Commission has "broad discretion" in setting rates, those rates must fall within a "zone of reasonableness."[885] GSA notes that the Commission has also repeatedly recognized the relationship between cost causation and rate design. In addition, GSA points out that while the Commission may take non-cost factors into account, those non-cost factors should not be permitted to result in rates that are unduly discriminatory.[886]

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[879] AOBA (2A) at 9:19-10:10 (B. Oliver Rebuttal).

[880] GSA at 33:20 and 33:17 (Goins Direct).

[881] GSA at 34:9 (Goins Direct).

[882] GSA at 35:16 (Goins Direct).

[883] GSA at 37:1 (Goins Direct).

[884] GSA at 39:3 (Goins Direct).

[885] GSA Brief at 40.

[886] GSA Brief at 40–41.

387. Given the size of the persistence of the subsidy, GSA urges the Commission to take a significant step toward resolving the issue in this case. GSA recommends that, at a minimum, the Commission adopt Witness Goins' proposed 2-times the system average increase approach, and if the Commission wishes to move faster toward eliminating the interclass subsidy, it could adopt a revenue spread somewhere between Witness Goins' proposal and witness Oliver's proposal, such as 2.5 times the system average increase for under-earning classes.[887]

DECISION

388. The Commission has wide discretion in setting class revenue requirements. Traditionally, in setting class revenue requirements for Pepco, we have considered the cost of service for each class, as well as a broad range of other cost and non-cost factors. While the Commission has a policy of gradually lessening the disparities between rate classes and moving towards a UROR, there is no requirement of uniformity among the rates of return from different customer classes.[888] For example, customer class rates of return may vary based on the risk to Pepco, because the level of risk is a valid factor to be considered in rate design.[889] Differences can be based not only on quantity, but also on the nature, time, and pattern of use, to achieve reasonable efficiency and economic operation.[890] Other valid non-cost factors that may be considered in setting both customer class revenue requirements and rate designs include "equitable considerations" such as value of service and ability to pay, the quality of service delivered, historical rate patterns, the need to conserve energy resources, and other market-place realities, as well as principles of gradualism and rate continuity.[891]

389. Pepco proposes a revenue allocation/rate design approach that is similar to prior cases. Pepco starts with a 1.8 "multiplier" to increase the allocation to continue the process, which results in the UROR moving from -1.0 to -0.28. For the EMRP case, Pepco proposes the use of the same revenue allocation and rate design with adjustments reflecting the three years of the EMRP.

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[887] GSA Brief at 47-48.

[888] *See, e.g.*, *Washington Gas Light Co. v. Public Serv. Comm'n*, 450 A.2d 1187, 1207 (D.C. 1982); *Apartment House Council of Metro. Washington, Inc. v. Public Serv. Comm'n*, 332 A.2d 53, 57 (D.C. 1975) ("equal return from customer classes is not required"); *Formal Case No. 1076*, Order No. 15710, ¶ 340 ("The courts have never imposed a requirement of uniformity among the rates of return from different customer classes."), ¶ 342 ("Historic rate patterns in the District of Columbia have been that the residential classes pay lower class RORs than the commercial class RORs"), ¶ 340 n. 687 (one factor in setting class RORs is that "at the retail level the costs of electricity are commonly tax deductible business expenses for retail business customers but not for retail Residential customers").*See also, Formal Case No. 1139*, Order No. 18846, ¶ 453, rel. July 25, 2017 ("Order No. 18846").

[889] *See, e.g., Formal Case No. 1053*, Order No. 14712, ¶ 337.

[890] *See, e.g., Apartment House Council of Metro. Washington,* 332 A.2d at 57; *Formal Case No. 1076*, Order No. 15710, ¶ 340, n. 689, rel. March 2, 2010 ("Order No. 15710").

[891] *See, e.g., Washington Gas Light Co.,* 450 A.2d at 1199-1209*; Formal Case No. 1076*, Order No. 15710, ¶ 340, n. 690; *Formal Case No. 869*, Order No. 9216 at 133-134, rel. March 3, 1989.

390. OPC and GSA use Pepco's revenue allocation methodology but apply different multipliers to implement their suggested revenue allocations. This revenue allocation issue applies to both the traditional case and EMRP given Pepco's assumption that during the EMRP years, the revenue allocation percentage to residential classes stays the same.[892] Pepco proposes to use a 4-Step Method for revenue allocation in order to address the disparities in rate-class-specific rates of return, as stated by the Commission in various prior decisions. This methodology exempts from increased classes (GS-3A, TN) having a UROR > 3.0; applies a consistent system average increase to classes with UROR > 1.0; and applied a "multiplier" of 1.80 to classes (R, SL) with a UROR < 1.0. OPC used Pepco's methodology but applies a multiplier of 1.25. GSA uses Pepco's methodology but applied a multiplier of 2.00. AOBA proposes to apply the entire increase in the traditional case to the underperforming classes.

391. We believe that AOBA's approach is too drastic for residential customers and is inconsistent with our gradualism approach. AOBA's approach results in a 100% increase or more at the end of the EMRP, doubling residential customers' rate increase resulting in rate shock. Because the rates we are awarding are effective for two years, 2021 and 2022, doubling the rates in two years in our opinion is not reasonable at this time, especially given the uncertain impact of the COVID-19 pandemic on the District.

392. The Commission received and docketed numerous statements from ratepayers urging the Commission to not award a rate increase due to increased unemployment rates and loss of income as a result of the COVID-19 pandemic.[893]

393. In addition to our statutory obligation under D.C. Code § 34-808.02,[894] the Commission must also remain cognizant of all of the cost factors that impact rates and ensure that in every instance rates remain just and reasonable. These considerations of equity, the economy of the District, and gradualism play a significant role in our decision to not move as aggressively towards reducing the commercial class subsidization of residential class costs.[895] All of these

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[893] For example, District resident Connor Brown states, "As you well know, we are in the middle of a pandemic with unprecedented levels of unemployment and lost incomes. Electricity is the single largest monthly expense for many (myself included) in the district aside from rent and we cannot afford for it to become even more expensive." Comments by Connor Brown, *Formal Case No. 1156,* Item No. 285 (filed September 21, 2020). District resident Jasmine Chen states, "Even prior to COVID-19, a quarter of DC residents qualified for energy assistance, but only about 40 percent of those eligible got help. The recession has only exacerbated energy poverty: At the end of August, Pepco reported that over 50,000 customers—one in six customers in the District—have fallen into debt with Pepco during the pandemic." Written Comments by Jasmine Chen (December 21, 2020). The DC Consumer Utility Board quoted GSA witness Dr. Goins' surrebuttal testimony that "[n]ow is simply not the time to approve three consecutive annual rate increases for Pepco's customers under a new multi-year ratemaking scheme that few states have tried." Written comments by DC Consumer Utility Board at 3 (September 28, 2020).

[894] *See* D.C. Code § 34-808.02 ("In supervising and regulating utility or energy companies, the Commission shall consider the public safety, the economy of the District, conservation of natural resources, and the preservation of environmental quality.").

[895] *Formal Case No. 1139*, Order No 18846, ¶ 457.

concerns lead us to conclude that a similar percentage allocation to residential classes as adopted in *Formal Case No. 1139,* remains viable.

394. In *Formal Case No. 1139,* 20.20% of the total revenue increase was allocated to residential classes (R and MMA).[896] In that case, Pepco's rate increase was distributed among the customer classes in a manner that continued to gradually adjust rate structures so that rates moved closer to being cost-based for all customer classes while minimizing rate shock in that proceeding.[897] Given the uncertainty of the COVID-19 impact on our local economy, we have decided to adopt Pepco's four-step methodology with a 20% allocation to R and MMA, a nearly identical percentage increase we made in Pepco's last fully litigated rate case, *Formal Case No. 1139*. Using the 20% scenario, the residential Rate Schedule R percent increase is less than other commercial classes subject to an increase (including Schedule MMA) because, in order to limit the revenue allocation to 20% using the Pepco methodology, the multiplier we have adopted is approximately 0.89 for residential and SL-E customers.[898]

395. We make this revenue requirement allocation recognizing that adopting a 20% residential allocation only marginally addresses the commercial class' subsidization of the residential class' costs. As we have previously stated, Pepco's rate increase will be distributed among the customer classes in a manner that continues to gradually adjust rate structures so that rates move closer to being cost-based for all customer classes while minimizing rate shock in this proceeding.[899]

396. We note that our decision to adopt a 20% allocation does provide some benefit to commercial customers by maintaining any increase in residential customer charges to a minimum – only a $1 increase - and correspondingly assigning a greater increase to energy charges which will moderate the impact of the DC PLUG charges on commercial customers. In addition, we share OPC's concern about the objective of promoting energy efficiency programs as required by the CleanEnergy DC Act. We also recognize that our customer charge is high compared to other Mid-Atlantic states and that a low-use customer would be harmed by a high customer charge. Considering these factors, as well as OPC's and GSA's comments we support a moderate increase to the residential customer charge.

397. The Modified EMRP awards Pepco a net $21.8 million revenue increase in the 2021 rate effective period from July 1, 2021, to December 31, 2021. About 20% of Pepco's $21.8 million revenue increase (or $3.78 million to R and $0.58 million to MMA) will be allocated to

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[896] *Formal Case No. 1139*, Order No 18846, ¶ 455.

[897] *Formal Case No. 1139*, Order No 18846, ¶ 456.

[898] Multiplier is the ratio of the Schedule R class percentage increase to the percentage increase applied to those commercial classes receiving the system average increase. *See* Pepco (F) at 11 (Blazanus Direct). Pepco (F) 12:21-13:3 (Blazunas Direct).

[899] *Formal Case No. 1139,* Order No. 18846, ¶ 456.

the Residential classes. We believe that our decisions setting class revenue requirements for 2021 are reasonable as set out in the table below:

Table 14: Customer Class RORs

Current				**Commission approved (FC 1156)**		
	Class Revenues (in millions)	Class ROR	UROR	Class Revenue Increase (in millions)	Class ROR	UROR
R	$ 78.14	-4.87%	-1.000	$ 3.78	-4.54%	-0.812
MMA	$ 10.69	8.90%	1.828	$ 0.58	9.71%	1.737
GS-LV	$ 46.68	10.84%	2.226	$ 2.60	11.87%	2.122
GS-3A	$ 0.05	23.40%	4.807	$ -	23.40%	4.185
MGT-LV	$ 132.76	12.37%	2.540	$ 7.34	13.37%	2.392
GT-LV	$ 76.02	9.89%	2.032	$ 4.15	10.87%	1.943
GT-3B	$ 0.42	10.51%	2.159	$ 0.02	11.31%	2.023
GT-3A	$ 51.99	11.03%	2.267	$ 2.90	12.00%	2.145
RT	$ 6.74	8.22%	1.689	$ 0.38	9.03%	1.614
SL-S	$ 0.64	3.00%	0.616	$ 0.02	3.29%	0.588
SL-E	$ 0.45	-5.05%	-1.037	$ 0.02	-4.93%	-0.882
TS	$ 0.20	9.25%	1.900	$ 0.01	10.19%	1.822
TN	$ 0.07	17.34%	3.562	$ -	17.34%	3.101
Total DC	**$ 404.86**	**4.87%**	**1.000**	**$ 21.80**	**5.59%**	**1.000**

XVII. BILLING DETERMINANTS ERRATA

398. On July 28, 2020, Pepco filed errata testimony correcting the forecasted demand billing determinants used in the rate design for commercial classes on demand components of their rate in the Original MRP and the EMRP.[900] On July 31, 2020, Pepco filed Supplemental Testimony explaining the correction and its impacts.[901] Pepco indicated that the Errata does not affect the overall revenue requirement in the Original and EMRP rate plans, class cost of service study, the revenue allocation to each class, and the ability to provide RY1 and RY2 full offsets to incremental base distribution revenue and a partial offset to the RY3 revenue increase for the EMRP.

399. By Order No. 20617, the Commission directed Pepco to convene a technical conference with the Parties to address: (1) any revenue requirement impact as a result of the Errata,

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[900] Errata to Pepco (4F) (Blazunas Rebuttal) and Pepco (5F) (Blazunas Surrebuttal).

[901] Errata Supplemental Testimony.

including any impact on class revenue requirement; (2) any impact on class cost of service as a result of the Errata; (3) all rate design effects arising from Pepco's corrections noted in its Errata, including all price component rate design changes for all affected commercial classes, as well as the process for determining all required rate design corrections; and (4) any impact of the Errata on residential classes billing determinants.[902]

400. On September 10, 2020, Pepco convened the conference and presented a PowerPoint exhibit.[903] On September 15, 2020, AOBA and OPC filed post technical conference comments raising, among things, various concerns relating to rate design, the use of forecasting billing determinants for any MRP, the annual billing determinants update, and other BSA and billing determinant issues related to the pandemic impact on Pepco's application.[904]

A. Effect of the Errata

401. **Pepco.** Pepco explains that the error and corresponding correction only affect rate design for commercial customers with demand components and does not impact residential classes or commercial customers without demand components. Pepco further explains that the forecasted demand billing determinants ("FDBD") were derived using load factors for each class in the traditional test period. FDBD in the forecasted MRP year is based on (a) the load factors in the test period and (b) the actual kW demand. Pepco indicates that incorrect kW demand in the test period will lead to incorrect load factors used to project FDBD. Witness Blazunas indicates that he should have, but did not, use those corrected actual demand (kW) billing determinants to calculate corrected load factors with which to derive corrected forecasted demand (kW) billing determinants for the duration of the EMRP. As a result, the FDBD were incorrect in his Rebuttal and Surrebuttal testimonies for commercial customers with demand components for MRP and EMRP. The Company claims that without a correction, base distribution rates will be too low for the affected customer classes and that will lead to a larger difference between billed and authorized distribution revenue in the monthly BSA filing and result in higher BSA deferral balances for the affected classes.[905]

402. Witness Blazunas states that currently effective (*Formal Case No. 1150*) base distribution rates were designed utilizing the incorrect actual demand (kW) billing determinants for the applicable test period. In short, the incorrect actual demand (kW) billing determinants used for the test period were too high relative to the correct actual demand (kW) billing determinants for the test period. This results in demand rates that are too low which further resulted in an under-recovery of the billed demand revenue as well. The Company estimates an under-recovery of

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[902] *Formal Case No. 1156*, Order No. 20617, rel. August 21, 2020.

[903] *Formal Case No. 1156,* Item No. 275 (filed September 14, 2020).

[904] *Formal Case No. 1156,* Item Nos. 276 and 277 (filed September 15, 2020).

[905] Pepco (6F) at 4:7 (Blazunas Third Supplemental).

billed distribution revenue for the affected classes equal to approximately $12.7 million per year, and approximately $20.8 million in total for the period August 2018 through March 2020.[906]

403. Absent a correction to the Original MRP Proposal and EMRP rate designs, the Company estimates that this issue would result in a cumulative under-recovery of billed distribution revenue as compared to authorized revenue equal to approximately $18.0 million for the duration of the EMRP.[907] Pepco witness Blazunas indicates that the demand measurement produced in the billing report double-counted actual demand (kW) in months with rate changes. Consequently, the output produced demand (kW) that were higher than actual demand (kW) during the test period.[908]

404. Pepco asserts that the Errata correction does not affect the four-step class allocation methodology it used in the Company's rate design, nor does it affect forecasted customer count or forecasted kWh.[909] Pepco witness Shaffer also provides testimony stating the correction has no impact on the CCOSS because demand billing determinants are not used in the CCOSS.[910]

405. **OPC.** OPC witness Dismukes argues that the Company's Errata testimony highlights a long-standing defect in Pepco's data and data quality measures that has resulted in negative consumer impacts on demand customers due to large, growing BSA balances.[911] He recommends the Commission open a separate proceeding for a comprehensive evaluation of the BSA operations and quality control procedures. OPC recommends that the proceeding should also address recovery of the existing deferred balances that have resulted from the Company's identified error, including the prudence of allowing recovery from ratepayers of deferred funds that have arisen solely as a result of imprudent management.[912]

406. Dismukes points out that Pepco's Supplemental July 31st Testimony confirmed the current base demand distribution rates were designed using incorrect actual billing determinants resulting in under-collection of demand revenues and larger monthly BSA adjustments for customers with demand rate components and increased BSA deferral balances. Dismukes notes this is the first time the Company acknowledged the error in historical rates.[913] OPC's witness also notes that the Company explained it was made aware of the problem by an employee of

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906 Pepco (6F) at 5:9 (Blazunas Third Supplemental).

907 Pepco (6F) at 5:22 (Blazunas Third Supplemental).

908 Pepco (6F) at 6:14 (Blazunas Third Supplemental).

909 Pepco (6F) at 9:19 (Blazunas Third Supplemental).

910 Pepco (3E) at 1:19 (Schafer Supplemental).

911 OPC (5A) at 1:18 (Dismukes Second Supplemental).

912 OPC (5A) at 2:1-12 (Dismukes Second Supplemental).

913 OPC (5A) at 5:15-6:10 (Dismukes Second Supplemental).

Atlantic City Electric and Delmarva Power in February 2020,[914] and the inflated demand billing information was also used to develop rates for *Formal Case Nos. 1139* and *1150*.[915] The inaccurate internal report has been used by the Company since 2015.[916]

407. OPC witness Dismukes disagrees with the Company's assertion that the error will not lead to adverse customer rate impacts and notes demand customers have been adversely affected since it arose in *Formal Case No. 1139*. Dismukes asserts that the error affects nearly 8,800 individual customers and 73% of the Company's total annual sales.[917] Dismukes explains that the demand revenue shortfall is collected through the BSA, which is a volumetric charge, creating cross-subsidization of customers (intraclass) with lower load factors by customers with higher load factors.[918] Dismukes states that the Company's proposed correction of GT-LV kWh rates in RY1 of the EMRP would be a 6% increase in volumetric rates of $27.6 million compared to the previous $26.0 million.[919] According to Dismukes, Pepco's amendment does not wipe out the deferred BSA balances as Pepco plans to collect the full deferral balances for any remaining customers in addition to any rate increases that result from this case.[920] OPC submits that the impact on under-collection of demand rates was not revealed by the Company until July 31, 2020, and the interaction with the deferred BSA balances was not made clear until the September 10, 2020, Technical Conference.[921] Witness Dismukes notes the Company has still not provided sufficient information to ensure the error is truly corrected so as to not be repeated in the future.[922] OPC claims the BSA has removed incentives for the Company to prudently manage its billing operations as the BSA recovers revenues regardless of the source, including lost sales due to economic conditions such as COVID-19 and rate design mistakes.[923] OPC also asserts that Pepco has not conducted an audit of its demand reports, nor investigated the reason for the accumulation

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914 OPC (5A) at 6:11-7:8 (Dismukes Second Supplemental) also Pepco Response to Staff Data Request No. 26-9.

915 OPC (5A) at 7:5-8 (Dismukes Second Supplemental).

916 OPC (5A) at 7:9 (Dismukes Second Supplemental); Pepco Response to OPC Data Request No. 61-3 (Exhibit OPC (5A)-6).

917 OPC (5A) at 8:1-9:2 (Dismukes Second Supplemental).

918 OPC (5A) at 9:3-15 (Dismukes Second Supplemental).

919 OPC (5A) at 10:4-14 (Dismukes Second Supplemental).

920 OPC (5A) at 11:9-16 (Dismukes Second Supplemental).

921 OPC (5A) at 12:1-14 (Dismukes Second Supplemental).

922 OPC (5A) at 12:15-13:5 (Dismukes Second Supplemental).

923 OPC (5A) at 15:1-11 (Dismukes Second Supplemental).

of the large BSA deferral balances.[924] According to OPC, Pepco has not proposed to shoulder or share in the responsibility for the revenue shortfall that resulted from its error.[925]

408. **AOBA.** AOBA claims the Company has not made a correction but has changed its methodology or assumptions. AOBA asserts Pepco has falsified its bill impact analyses. AOBA witness B. Oliver alleges that the Company's chosen response to changed demand billing units for each Rate Year increases the kWh distribution charges, thus shifting cost responsibility from low load factor to high load factor customers. Oliver is concerned that the Company will use forecasted numbers of customers to calculate rates for each Rate Year as compared to using actual customer counts as in the BSA process.[926]

409. Oliver explains that in prior cases Pepco weather normalized its kWh use by rate class but made no weather normalization adjustments to its demand billing determinants. He argues that the Company changed its methodology in the errata filing by using non-weather normalized load factor relationships for 2018 to dictate the load factor relationships and kW demand billing units used for each projected rate year.[927] Oliver also argues there is no foundation for a finding that the 2018 one-year actual load factor relationships used by the Company are any more indicative than the actual kW and kWh relationships for any other period of time or the Company's prior assumption that billing demands would not change with weather normalization of actual kWh.[928]

410. AOBA asserts that the Company's representations that rates for all customers will be frozen if not correct and that GT-LV and MGT-LV customers will experience increases, some as much as double-digit percentage increases.[929] Witness Oliver notes that the methodology to estimate the bill impact the Company used for RY3 was different than that used for RY2, with RY3 using an imputed BSA adjustment, which for the GT-LV class is 18.6% of distribution revenue, although the BSA caps annual adjustments at 10%.[930]

411. AOBA has concerns that the BSA mechanism of number of customers times the authorized revenue per customer is inappropriate because the actual number of customers cannot be known for a projected year.[931] AOBA claims that the revised demand determinants remove 240 MW of billing demand units with no assessment by the Company of how that revision would

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[924] OPC (5A) at 13:18 and 14:2 (Dismukes Second Supplemental).

[925] OPC (5A) at 15:12-17 (Dismukes Second Supplemental).

[926] AOBA (5A) at 2:14-5:4 (B. Oliver Second Supplemental).

[927] AOBA (5A) at 11:1-12:6 (B. Oliver Second Supplemental).

[928] AOBA (5A) at 12:8 (B. Oliver Second Supplemental).

[929] AOBA (5A) at 20:12-21:2 (B. Oliver Second Supplemental).

[930] AOBA (5A) at 23:5 and 25:13 (B. Oliver Second Supplemental).

[931] AOBA (5A) at 31:3-17 (B. Oliver Second Supplemental).

impact its distribution system.[932] In addition, AOBA notes the Rider ERR credits "simply disguise the rate shock" and are the Company's efforts to gain approval of larger increases.[933]

412. Witness Oliver recommends the deferred BSA balances due to the incorrect billing demands are the Company's responsibility and should be deducted for the affected classes.[934] AOBA contends that the BSA deferred balance for the GT-LV class has more than doubled from April 2019 and February 2020, and the balance for the MGT-LV and the GT-LV classes has grown by almost $20 million during the COVID-19 period ending August 2020. AOBA also claims that the Errata filing undermines the argument that the Company's MRP proposals will reduce regulatory costs.[935]

413. **Pepco Rebuttal**. Pepco witness Blazunas summarizes the issue as having two parts: (1) actual demand billing determinants used in this and prior cases; and (2) forecasted demand billing determinants used in this proceeding and addressed in the errata.[936] Blazunas testifies that there was an issue with the actual demand billing determinants used by the Company in *Formal Case Nos. 1139* and *1150* and the Traditional rate design in this case.[937] The impact on the demand rates designed as part of the Original MRP and EMRP made the designed rates too low, but this was not discovered until he was responding to Staff Data Request 24-24. According to Blazunas, this error occurred because the forecasted demand determinants (kW) are derived from the forecasted kWh sales and the monthly load factors based on 2018 data, which was incorrect.[938] He points out that his Errata testimony was limited to that correction and to avoid adding additional testimony to the record.[939]

414. In response to OPC's recommendations, witness Blazunas states that the problem was in the report variant and not in actual meter data used for billing, and the Company has confirmed the problem does not affect customer counts or volumetric usage used for billing determinants for the rate design in this case. Blazunas lists quality controls added by the Company as well as additional quality controls the Company intends to implement.[940] Blazunas does not

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932 AOBA (5A) at 34:16-35:6 (B. Oliver Second Supplemental).

933 AOBA (5A) at 35:10-35:4 (B. Oliver Second Supplemental).

934 AOBA (5A) at 38:14-21 (B. Oliver Second Supplemental).

935 AOBA (5A) at 47:11-48:7 (B. Oliver Second Supplemental).

936 Pepco (7F) at 2:2 (Blazunas Fourth Supplemental).

937 Pepco (7F) at 3:10-4:7 (Blazunas Fourth Supplemental).

938 Pepco (7F) at 4:8-5:10 (Blazunas Fourth Supplemental).

939 Pepco (7F) at 5:11-6:3 (Blazunas Fourth Supplemental).

940 Pepco (7F) at 10:3 (Blazunas Fourth Supplemental). Pepco indicates that the Company implemented the following quality controls:(1) created a new demand report variant and verified that it accurately reflects the demands billed to individual customers; (2) verified the underlying cause of errors is not present in the report variants used to aggregate customer counts and volumetric usage; (3) added an additional verification step of having both the revenue

agree with OPC that a new proceeding should be conducted for a comprehensive evaluation of BSA operations because it is beyond the scope of Order No. 20632, and the error did not impact the operation of the BSA. He submits that the BSA continues to function as originally approved in *Formal Case No. 1053* to address the misalignment of fixed costs and variable rates, and the calculation of prospective rates, in this case, using corrected demand billing determinants will stop this issue (incorrect demand rates from prior cases) from contributing to the BSA monthly deferred balances. Blazunas projects that, based on the EMRP rates proposed (effective April 1, 2021) in his Third Supplemental testimony, that Pepco will collect the existing BSA deferred balances by July 2022 for MGT-LV and October 2024 for GT-LV.[941]

415. Pepco asserts that none of AOBA's topics (such as an incorrect bill impact analysis and incorrect rate design) in its October 9, 2020, testimony are specifically related to the Company's errata filing.[942] Witness Blazunas argues that AOBA's contention that a forecast cannot be in error until after the forecast period should be disregarded because the Company has used the same methodology for the entirety of this case; the forecasts use the best available data consistent with the methodology, and no other party has raised an issue with the Company's methodology; nor has AOBA suggested an alternative.[943] Blazunas submits that the Company's bill impact reflects only the revenue requirements and not the changes to distribution rates due to changes in billing determinants; has been the subject of numerous data requests; the approach to recognize the change in rates due to changes in billing determinants is consistent with prior cases and was used in *Formal Case No. 1150*.[944] He notes the Company's use of volumetric charges for the rate design in RY1 and RY2 has not changed from the June 1, 2020, Surrebuttal Testimony.[945] He dismisses other AOBA issues raised as not relating to the Company's errata filing, including the use of the authorized BSA revenue requirements calculation and differences between historical and forecast periods.[946]

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requirements and rate design witnesses jointly review and sign-off on revenue requirements calculations; (4) completed a Key Financial Control to ensure approved rates yield Commission-approved level of revenue; (5) subjected billing determinant data to Sarbanes Oxley controls, (6) established an annual evaluation and external audit for the design and operating effectiveness of the controls. Additionally, Pepco is planning to implement the following quality controls: (1) utilize validated billing determinants in the reconciliation process, including a comparison of calculated revenues and actual booked revenue; (2) include revenue proofs and calculation of monthly BSA revenue per customer targets in the compliance filing; (3) implement a Billing Determinant Verification Process using a sample of customer bills; (4) provide a comparison of forecasted billing determinants by class and three years of historical billing determinants; and (5) will submit these analyses as a part of future rate case filings.

[941] Pepco (7F) at 13:1 (Blazunas Fourth Supplemental).

[942] Pepco (7F) at 15:4 (Blazunas Fourth Supplemental).

[943] Pepco (7F) at 17:1 (Blazunas Fourth Supplemental).

[944] Pepco (7F) at 19:1 (Blazunas Fourth Supplemental).

[945] Pepco (7F) at 21:4 (Blazunas Fourth Supplemental).

[946] Pepco (7F) at 23:1 (Blazunas Fourth Supplemental).

416. Pepco rejects AOBA's assertion that the Company should not be able to recover deferred BSA balances due to the incorrect demand billing determinants because the Company should have an opportunity to correct a known issue with the Original MRP and EMRP rate designs with the best data available, and the balances represent authorized revenues approved for collection that have not been billed to customers.[947] Pepco also rejects AOBA's assertion that the Company has no handle on the causes of its growing revenue under-recovery balances for its demand-metered rate classifications, pointing out that the Company corrected actual demand billing determinants for the traditional rate design in April 2020 and the Original MRP and EMRP rate design in the July 2020 errata filing.[948]

417. Pepco states that in order to minimize the variance between the Company's allowed level of revenue and the actual revenues collected due to differences between the forecasted and actual billing determinants for the applicable period, the Company would file an Annual Billing Determinant Update. The Annual Billing Determinant Update filing would use the level of revenue for the applicable period and the methodology for the design of the rate components for each approved rate schedule but would incorporate the most up-to-date forecasted billing determinants for the applicable rate-effective period. The first such update would be included in Pepco's compliance filing following the Commission's decision in this proceeding and would cover rates in both 2020 and 2021. The Annual Billing Determinant Update filing in connection with rates that would become effective on January 1, 2022, would be made in October 2021.[949]

418. Pepco submits that the only party to directly challenge the Annual Billing Determinant Update was AOBA, which contended that the parties will not have the opportunity to challenge the reasonableness of Pepco's forecasted billing determinants. Pepco goes on to state that, other than the initial filing following the Commission's decision in this proceeding, parties will have at least 60 days to review and respond to the Annual Billing Determinant Update.[950]

419. **AOBA's Reply**. AOBA maintains that Pepco has demonstrated it cannot forecast its costs accurately for even short periods of time into the future.[951] Moreover, AOBA contends,

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[947] Pepco (7F) at 27:3 (Blazunas Fourth Supplemental).

[948] Pepco (7F) at 28:7 (Blazunas Fourth Supplemental).

[949] Pepco's Initial Brief at 226-227.

[950] Pepco's Initial Brief at 228.

[951] By letter addressed to the Commission's Secretary dated January 21, 2021, AOBA requests that the Commission take administrative notice of the documents attached to the letter. The attachments are updates filed by Pepco on January 11, 2021, at the Maryland Public Service Commission ("MD PSC") to incorporate corrections to the forecast billing determinants used in Pepco's proposed rate design in its Maryland Multi-year Rate Plan Application filed on October 26, 2020, and docketed as MD PSC Case No. 9655. According to AOBA, the updates portray the on-going problems that plague Pepco's rate filings and the questionable accuracy and reliability of the Company's development and utilization of forecasted billing determinants. For these reasons, AOBA requests the Commission to take administrative notice of MD PSC Order No. 8968, which extended the Maryland PSC procedural schedule five weeks to allow the parties to conduct an appropriate review of the Errata Testimony and updates in MD PSC Case No. 9655. No replies to AOBA's request have been filed by any other party in this case. We are well aware

the Company has requested authority to revise both its billing determinants and base rate charges annually and that it will revise its forecasted billing determinants for the first year of MRP implementation at the end of this case after all litigation is completed. Under that scenario, AOBA argues that opportunities for stakeholder review of the changes in the Company's forecasted billing determinants and rates will be, at best, limited. According to AOBA, the rates and charges Pepco proposed in this proceeding represent little more than a dress rehearsal with final billing determinants and rate designs to be determined later. As a result, AOBA claims there is no guarantee that the billing determinants, rates, and charges presented in the Company's Revised MRP Enhanced rate designs will be representative of the rates that can be anticipated in the Company's compliance rate designs.[952]

DECISION

420. Billing determinants are the units on which prices are actually levied (*e.g.,* kilowatts of demand, kilowatt-hours) and typically are estimated based on overall energy consumption and peak energy demand, and the number of customers.[953] In establishing billing determinants the first and major step is developing an accurate forecast of consumption. We have carefully reviewed the Errata, the testimony and briefs of the parties, and the discussions from the technical conference and conclude that the following items are not affected by the Errata: (1) the proposed revenue requirement for the EMRP; (2) the requested ROR; (3) the projected rate base; (4) the class cost of service study and results; (5) the class revenue requirement and revenue allocation among classes in the MRP and EMRP; (6) the annual BSA target; and (7) for rate classes without demand, no rate changes were required.[954] Due to the FDBD change, only the commercial classes with demand charges required final tariff rate changes (changes made to kWh rates) attributable to the Errata. These include the following classes: GS-LV, GS-3A, MGT-LV, GT-LV, GT-3B, and GT-3A.[955]

421. Thus, we find that the billing determinant errors only affected one component of the rate design for commercial classes, demand charge revenue. The root cause of this billing determinant error arose around August 2018, when Pepco incorrectly extracted demand components from the billing system during the preparation for setting new billing determinants.[956] As part of the package of Errata rate design fixes for these commercial customers, Pepco has

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of Pepco's update filings in in the Maryland proceeding and MD PSC Order No. 8968. Although the record in our case closed on December 23, 2020, we see no need to take administrative notice in our record of matters in Maryland's orders that are in the public record.

[952] AOBA's Reply Brief at 4-5.

[953] *See Fundamentals of Energy Regulation*, Lesser and Giacchino, p. 209 (2nd Ed. 2013),

[954] We have reviewed the Supplemental Errata (6F) and Second Supplemental (7F) of Witness Blazunas and concur with Pepco's claim that the listed items are unaffected.

[955] Pepco (6F) at 2:8 and 9:4 (Blazunas Third Supplemental).

[956] Pepco (6F) at 5:9 (Blazunas Third Supplemental).

increased the volumetric rate within the volumetric revenue component for commercial customer revenue requirements, while simultaneously reducing billing determinants for the demand charge component of commercial class revenue requirements.[957] However, as total volumetric revenue for the class increases, it offsets the demand revenue decline. The increased amount is equal to the decreased amount, and thus the total revenue for the class stays the same before and after the Errata.

422. Pepco's Errata allows the Company to discontinue the further build-up of a growing gap between recorded revenue per the Company's books and billed revenue (or cash revenue). This difference in recorded revenue per books versus billed or cash revenue has been accumulating in the BSA deferral since August of 2018. The Errata fixes will not correct this existing deferral balance, but the corrections will help keep the BSA deferral from further growing after the rate effective period.

423. Pepco's failure to monitor and analyze the growing deferred BSA balances has created timing and fairness problems for its demand rate customers. Those customers paid the rates developed by the Company and the revenues billed to them, understanding that any shortfalls in class consumption could be recouped by the Company through the BSA, subject to a 10% cap on the tariff rates. We point out that the BSA is intended to account for changes in usage due to variations in weather or energy-efficiency programs. The timing issue occurs because the customers have paid the billed amounts and did not know to book or reserve a liability for under-collected revenues due to Pepco's error. Collecting the "rate error" shortfall years after it occurred creates the timing issue. While the "rate error" undercharged the demand component, Pepco's use of the BSA to collect the shortfall creates a fairness issue since the BSA is a volumetric rate. Shifting collection of the shortfall from demand to volumetric creates a mismatch between the customers that benefitted from lower rates and those customers that are now being assessed through the BSA to pay for the shortfall through the deferral.

424. We find that Pepco's error represents a material weakness in internal controls which went on for an extended period of time. Pepco has represented that it developed and put into place some protection to prevent this problem from occurring again that if properly executed, detect the problem with the demand billing determinants.[958] While it is not clear to us that Pepco's internal controls will solve the Errata problems for the future, *i.e.*, which would assure prevention of this billing determinant error in the future, we are persuaded that having these internal controls will help Pepco identify any errors early on.

425. In response to OPC's concerns, we will perform a comprehensive evaluation of the BSA operations and Pepco's quality control procedures. The Commission will investigate and evaluate the BSA and conduct an audit of the BSA amounts and calculations after August 2018, including the pandemic period.

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[957] *See generally*, Pepco (6F)-22, Attachment D (Blazunas Third Supplemental Exhibit).

[958] Pepco (7F) at 12:1-7 (Blazunas Fourth Supplemental).

426. Other than the Errata issue itself, the Parties have expressed concern about the reasonableness of billing determinants in this proceeding. Pepco's final billing determinants for EMRP are presented in its Errata filing. There Pepco explains that there was an error in the variant report that overstated demand billing determinants. The Commission has reviewed Pepco's Errata filings which corrected the Billing Determinants error and found them to be reasonable. The Commission notes that commercial billing kWh are projected to decrease around 3 percent from 2020 to 2022 based on Pepco's forecast, and the residential kWh sales are projected to increase from 2020 to 2022.[959] This trend is consistent with our experience since March 2020. No party challenges Pepco's representation of the cause of the error and even though AOBA criticized the accuracy of the billing determinants forecasts, AOBA has not provided alternative forecasting numbers for kW, kWh, or number of customers for the 2021 and 2022 EMRP in order to enable the Commission to consider an alternative.[960] OPC also expressed concerns about the accuracy of the billing determinants, but neither OPC or the Parties have presented any error in Pepco's corrected billing determinants. Thus, there is no countervailing evidence that would convince us to change our conclusion that Pepco's billing determinants are reasonable.

427. Pepco has used the same approach to calculate the BSA impact and rate impact as in previous rate cases, including the latest litigated rate case, *Formal Case No. 1139*.[961] Pepco notes that "[o]ver time, as the billing determinants change and as usage change and the BSA amount changes, those changes aren't rate increases, they are just adjustments to collect the revenues that the Commission previously approved."[962] To the extent that forecasted billing determinants are not the same (or within a reasonable range) as actual billing determinants, the BSA mechanism adjusts to provide the revenue per customer determined at the end of a rate case. However, monitoring is required as opposed to blind reliance on the BSA. Thus, overall, we are persuaded that Pepco's use of current billing determinants, including corrected demand billing determinants is reasonable.[963]

428. Pepco represents that it has and will implement extra controls and mechanisms to ensure future billing determinants are more accurately developed.[964] We believe such additional controls if properly monitored by the Company on a timely basis should result in forecasted billing determinants that are free of errors such as the demand billing determinant error and provide the Company and the Commission with an early warning if another unforeseen error should arise that affects the billing determinants and distribution revenue. To fully assess the impact of the billing

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959 For example, based on Pepco's errata filing, the residential R class is projected to increase kWh from 2020 to 2022 by 2.5 percent and the GT-LV is projected to decrease by 3.0% in kWh from 2020 to 2022 and the MGT-LV is projected to decrease by 3.0% in kWh from 2020 to 2022.

960 Pepco's Initial Brief at 207.

961 Formal Case No. 1139, Order No. 18846, ¶ 306.

962 Pepco's Reply Brief at 136.

963 Pepco's Reply Brief at 13

964 *Supra* footnote 979; *see also* Pepco's Initial Brief at 206. Pepco's Reply Brief at 140-141.

determinants error, we will conduct an audit of the BSA and convene a technical conference(s) to further discuss the mechanics of the BSA as discussed above.

429. AOBA believes that an annual billing determinants update would make the compliance filing like a dress rehearsal and conflicts with bill certainty and rate certainty, we agree.[965] To address AOBA's concerns, we will reexamine the billing determinants forecast for rates to be effective January 1, 2023, when the offsets expire. Pepco is directed to provide new rates and new billing determinants to be used for CY2023 on July 30, 2022. Pepco's filing shall also provide a BSA revenue per customer update.

430. Pepco is also directed to host a technical conference(s) on the new billing determinants and new rates for 2023 within 15 days after the July 30, 2022, filing. Parties can seek discovery within 15 days thereafter. Data responses are due 10 days after receiving the data requests. Parties may file comments by September 15, 2022. Pepco may provide an updated filing by October 15 based on parties' comments if necessary. Subsequently, the Commission will render a decision on the new billing determinants and new rates starting January 1, 2023.

431. Finally, Pepco has confirmed that the impact from the demand billing determinants ("DBD") errors, from August 2018 to March 2020 is approximately $20.8 million.[966] The Commission independently reviewed the BSA surcharges and deferred balances for demand-metered classes from the period of August 2018 to July 2020 and observed the increase in deferred balance overall and has concerns regarding the BSA surcharges and deferral balance. We believe that the issue of the BSA surcharges and deferred balances should be further reviewed in the larger context of whether the BSA is operating as intended. Therefore, the Commission directs that this issue be discussed in the technical conference(s). The technical conference(s) are to be facilitated by Commission Staff and shall be held within 120 days after the new rates become effective on or around November 1, 2021. Pepco shall file a report on the technical conference(s) within 90 days after the first technical conference.

XVIII. <u>RATE DESIGN</u>

432. Having determined the appropriate revenue requirement for Pepco, the Commission must now determine how to distribute Pepco's revenue increase among the Company's customer classes, as well as the appropriate rate design to charge each class member, and the specific changes that should be made to Pepco's existing tariffed rates.[967] Rate Design involves two functions: (1) the design of inter-class rates, which involves the assignments of revenue requirement between the various customer classes (revenue allocation), and (2) the design of intra-class rates, which involves the manner in which the class revenue requirement will be collected from customers within the class. As a guide to determine how much of any rate increase

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965 *See* AOBA's Reply Brief at 5 and 16. ("For example, there can be no "*rate certainty*" or "*bill certainty*" for District ratepayers if Pepco is permitted to revise its forecasted billing determinants and base rate charges on an annual basis." AOBA's Reply Brief at 16.

966 Pepco (6F) at 5:12 (Blazunas Third Supplemental).

967 *Formal Case No. 1139*, Order No. 18846, ¶ 401.

(or decrease) should be assigned to a particular customer rate class, we examine the class rates of return reflected in Pepco's CCOSS. These results are then translated into a relative rate of return, which measures as a percentage the actual individual customer class rate of return compared to the utility's system average or overall rate of return.

433. Once the revenue requirement is allocated among the various classes, intra-class rates may be designed. Intra-class rate design is guided by important policy considerations, including gradualism, energy conservation, economic impacts, as well as cost causation. Almost all rate classes have a customer charge, which is designed to recover fixed utility costs, such as the cost of meters. Additionally, Pepco customers have a volumetric charge, which is designed to recover variable costs. That is, each customers' bill has a fixed, monthly customer charge and a volumetric, per kilowatt-hour ("kWh") charge. Several commercial classes also have a demand charge for the customer's peak load used based on kilowatts ("kW").

434. **Pepco.** Pepco proposes a rate design methodology to move customer charges for all classes toward cost-based rates from the CCOSS with the remaining revenue increase applied to demand (if applicable) and volumetric charges. For the EMRP, the annually updated determinants (2021 or 2022) are used with the proposed respective annual revenue requirements (2021 or 2022) per class to develop the new rates for each class.[968] Pepco notes that the commercial classes are forecasted to have decreasing sales over the EMRP period.[969] The residential class (Schedule R) is forecasted to have decreasing usage per customer over the EMRP period but increasing numbers of customers.[970] The impact of this change requires rates to increase to reflect increasing revenue requirements.[971] Pepco proposes to provide updated billing determinants prior to each EMRP rate year to allow for this update. This effectively resets the number of customers for Pepco for each EMRP rate year.[972]

435. Pepco witness Blazunas proposes three steps to design rate structures for each customer rate schedule: (1) determine the level of the customer charge; (2) determine the level of the demand charge (if applicable); and (3) determine the level of the energy (volumetric) charge.[973] Blazunas uses guiding principles that he contends reflect the directives given in prior Commission decisions, placing greater emphasis on customer and demand charges and less on volumetric charges, consistent with gradualism and cost causation. He submits that the proposed customer charges are informed by the current level relative to the Unit Cost from the CCOSS,[974] and uses

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[968] Pepco (5F) at 5:1-12 (Blazunas Surrebuttal).

[969] Pepco (6F)-22 at 73-213 (Blazunas Third Supplemental Exhibit, Attachment D).

[970] Pepco (5F)-6 at 1-7 (Blazunas Surrebuttal Exhibit).

[971] Pepco's Brief at 226-227 and fn. 1232.

[972] Pepco (F) at 32:5-10 (Blazunas Direct). Although Blazunas referred to the MRP in his Direct Testimony, the same is applicable to the EMRP. *See* Pepco (5F) at 3:7-4:8 and Pepco (5F)-6 at 1-7.

[973] Pepco (F) at 27:3-8 (Blazunas Direct).

[974] Pepco (F) at 28:5-9 (Blazunas Direct).

one or more of four possible methods,[975] and does not include a customer charge increase for any rate schedule for any year in the EMRP that would exceed the schedule's Unit Cost from the CCOSS.[976] Demand charges are set by subtracting the scheduled revenue increase, obtained from the increase in the customer charge, and proportioning the remaining required increase between the demand and energy charges for three-part rate schedules.[977] The remaining increase, after the customer charge increase for two-part schedules, is collected by the demand or energy charge according to the rate structure.[978] Winter and summer volumetric charges are increased proportionally.[979]

436. Witness Blazunas states that the design of distribution rates uses the same principles for the MRP and traditional ratemaking.[980] The Company is proposing to use forecasted customer and energy billing determinants for each rate year ('RY") of the EMRP for each rate schedule and to use a constant load factor to estimate demand determinants.[981] Additionally, Blazunas states that the Company is not proposing any rate structure changes for any rate schedule.[982] A multi-year rate design for each class's rate elements is provided in Pepco (F)-5,[983] and the compliance rate design is provided in Pepco (F)-13.[984] The Company provides proof of revenue for the EMRP, including weather normalization and BSA impacts, in Pepco (F)-6[985] and provides bill comparisons for all major rate classes Pepco (F)-7.[986]

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[975] Pepco (F) at 28:10-20 (Blazunas Direct). The four approaches are: (1) the Percentage Revenue Requirement Increase where the share of the revenue increase collected through the customer charge is set to equal a target percentage amount of the increase in the revenue requirement; (2) Parity with Unit Cost where rate schedules with an existing customer charge that is reasonably close to the Unit Cost, the customer charge is either increased or decreased so that it is set equal to the Unit Cost; (3) Percent Movement to Unit Cost which approach presents a gradual and moderated percentage-based movement to full cost (equal to the Unit Cost); and (4) Class Average Increase which applies the same overall revenue percentage increase (relative to the current level of distribution revenue for a particular rate schedule) to the customer charge.

[976] Pepco (F) at 29:3-4 (Blazunas Direct).

[977] Pepco (F) at 29:7-12 (Blazunas Direct).

[978] Pepco (F) at 29:13-15 (Blazunas Direct).

[979] Pepco (F) at 30:1-2 (Blazunas Direct).

[980] Pepco (F) at 30:16-20 (Blazunas Direct).

[981] Pepco (F) at 31:10-15 (Blazunas Direct).

[982] Pepco (F) at 31:1-9 (Blazunas Direct).

[983] Pepco (F) at 34:16 (Blazunas Direct).

[984] Pepco (F) at 54:16 (Blazunas Direct).

[985] Pepco (F) at 50:14 (Blazunas Direct).

[986] Pepco (F) at 35:1 (Blazunas Direct).

437. **OPC.** OPC witness Dismukes testifies that he compared residential customer charges to other regional electric utilities in Exhibit OPC (A)-8.[987] Dismukes also compared residential (and other classes) monthly customer-related costs of $27.67 to monthly customer-charge revenue (proposed) of $17.40 and notes it is 62.9% of costs in Exhibit OPC (A)-9.[988] He cites a 2009 study he performed showing a positive relationship between electric consumption and income.[989] He recognizes some low-income customers are RAD customers who will not be affected by the Company's proposal[990] but in Exhibit OPC (A)-10 contends that lower-income customers spend a higher percentage of their household income on electricity. He argues that increased customer charges reduce economic incentives for ratepayers to control monthly utility bills through energy efficiency and conservation.[991] OPC, therefore, recommends no change in any of the customer charges.[992] OPC also recommends that volumetric rates for the Residential class "should be increased proportionally, thereby maintaining the existing relationship between usage blocks."[993]

438. **AOBA.** AOBA witness Timothy Oliver argues the Company has incorrectly computed the MMA Unit Cost per Customer and the $74.18 value is overstated[994] and that the Company used the number of MMA accounts rather than the number of MMA dwelling units. Correcting the denominator results in an MMA Unit Cost per Customer of $1.36 at present rates and $1.27 at proposed rates.[995] AOBA proposes a 50% reduction in the per dwelling unit per month to $5.92 and a $3.20 reduction per year under the MRP to an eventual $2.24 in 2022.[996]

439. AOBA also highlights anomalies in Rate T (Temporary rate class) due to the Company allocating the increase by revenue coupled with a significant downward change in winter energy sales and a significant increase in summer sales.[997] AOBA proposes the Rate T charges per kWh be adjusted in proportion to the current distribution charges per kWh.[998]

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[987] OPC (A) at 42:1 (Dismukes Direct).

[988] OPC (A) at 42:19 and 43:10 (Dismukes Direct).

[989] OPC (A) at 46:13-47:7 (Dismukes Direct).

[990] OPC (A) at 47:8 (Dismukes Direct).

[991] OPC (A) at 49:13-19 (Dismukes Direct).

[992] Exhibit OPC (A)-11 (Dismukes Direct Exhibits).

[993] OPC (A) at 57:10-11 (Dismukes Direct). Pepco is not opposed to OPC's suggestion. *See* Pepco (4F) at 8:24 (Blazunas Rebuttal).

[994] AOBA (B) at 69:10-15 (T. Oliver Direct).

[995] AOBA (B) at 71:8-12 (T. Oliver Direct).

[996] AOBA (B) at 72:11-73:7 (T. Oliver Direct).

[997] AOBA (B) at 74:1-9 (T. Oliver Direct).

[998] AOBA (B) at 74:17-75:2 and Table 6 (T. Oliver Direct).

440. **AOBA Supplemental Surrebuttal.** AOBA witness Bruce Oliver argues the rate designs for MMA, GS-ND, GSD-LV, MGT-LV, and GT-LV, proposed to implement Pepco's EMRP, clearly depict Rate Year 1 and 2 increases in charges for various rate schedules.[999] He argues the billing determinant update is designed to enhance the certainty of Pepco's revenue collection without benefit to Pepco's customers.[1000] Oliver also alleges that Pepco used the Bill Stabilization Adjustment in Exhibit Pepco (5F)-6 in a different manner from how it is used in Pepco (F)-6 and Pepco (4F)-6, and the Pepco Surrebuttal bill comparisons include imputed adjustments for BSA charges in current rates[1001] but not proposed rates.[1002] Oliver notes a comparison of the "current" rates used in the Bill Impact Analysis presented in Exhibit Pepco (3E)-3 in *Formal Case No. 1150* did not match tariff rates in effect at the time that the exhibit was prepared.[1003]

441. **GSA.** GSA witness Goins argues that relying heavily on the customer charge for two-part rate customers' (non-demand) increases creates four problems: (1) it disproportionately affects low-usage customers; (2) it dampens incentives for customers to adopt energy efficiency measures; (3) it exacerbates the skewed and excess allocation of DC PLUG costs to non-residential customers; and (4) it restricts the Commission's flexibility to address the residential rate subsidy.[1004] Goins takes no position on whether a residential demand rate should be introduced in this case, but he recommends reducing the percentage of residential rate increases recovered through higher customer charges from Pepco's proposed 40% to a lower level "perhaps 25% or less."[1005]

442. **Pepco Rebuttal.** Pepco witness Blazunas rejects AOBA's concerns about the MRP Annual Billing Determinant Update, noting the filing will occur 60 days prior to the rate effective date for each MRP period and the update is necessary to minimize the variance between Pepco's allowed level of revenue and actual revenues collected due to the difference between forecasted and actual billing determinants. He argues the Company's forecast calculation involves weather, energy efficiency, and usage patterns.[1006]

443. Blazunas rejects OPC's position to not increase the customer charge and noted the Commission collected the entire increase within the customer charge for residential customers in

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[999] AOBA (4A) at 5:23-6:6 (B. Oliver Supplemental Surrebuttal).

[1000] AOBA (4A) at 7:1-9 (B. Oliver Supplemental Surrebuttal).

[1001] AOBA (4A) at 23:5-20 (B. Oliver Supplemental Surrebuttal).

[1002] AOBA (4A) at 44:1-12 (B. Oliver Supplemental Surrebuttal).

[1003] AOBA (4A) at 25:1-17 (B. Oliver Supplemental Surrebuttal).

[1004] GSA at 40:3 (Goins Direct).

[1005] GSA at 41:14 (Goins Direct).

[1006] Pepco (4F) at 22:1 (Blazunas Rebuttal).

Formal Case No. 1103 and continued that practice in *Formal Case No. 1139*.[1007] Lastly, Pepco witness Blazunas rejects GSA's recommendation to reduce the customer charge, citing Commission policy that the proposed customer charges are reasonable and a modest movement toward full customer charge unit cost.[1008]

DECISION

444. Pepco proposed a rate design methodology to move customer charges for all classes toward cost-based rates from the CCOSS, with the remaining revenue increase applied to demand (if applicable) and volumetric charges. The Modified EMRP adopts Pepco's proposed customer charge and rate designs (revenue allocation to different components such as demand charge, customer charge and volumetric charge). The methodology is consistent with past practice. The Commission, however, modifies Pepco's methodology for the Rate Schedule R and MMA Customer Charge as detailed below.

A. Decision on AOBA's Concerns about the Customer Charge

445. AOBA witness Tim Oliver argues the Company has incorrectly computed the MMA Unit Cost per Customer by using the number of MMA accounts rather than the number of MMA dwelling units.[1009] A master metered account incurs a monthly customer charge for each dwelling unit served under the master meter. For instance, with the current monthly customer charge of $11.84 per dwelling unit, an apartment building with 10 dwelling units served by a master meter currently receives a monthly bill including customer charges totaling $118.40. The Company calculated the MMA Unit Cost per Customer to be $79.65 at present rates and $74.18 at proposed rates.[1010] AOBA provides a correction to the MMA Unit Cost per Customer, using the number of dwelling units, which results in a Unit Cost of $1.36 at present rates and $1.27 at proposed rates.[1011] AOBA proposes that, under an MRP, the MMA customer charge be reduced to $2.24 by 2022 to push the charge closer to the Unit Cost while ensuring the charge will not fall below the full customer-related costs for MMA.[1012]

446. Company witness Blazunas indicates in Rebuttal Testimony that Pepco was not opposed to reducing the MMA customer charge per dwelling unit per month along the lines AOBA had suggested,[1013] and the Company subsequently incorporated the per dwelling unit computation

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[1007] Pepco (4F) at 8:9 (Blazunas Rebuttal).

[1008] Pepco (4F) at 13:13 (Blazunas Rebuttal).

[1009] AOBA (B) at 69:10-15 (T. Oliver Direct).

[1010] Pepco (E) at 17:4, Table 4 (Schafer Direct).

[1011] AOBA (B) at 71:8-14 (T. Oliver Direct).

[1012] AOBA (B) at 72:11 – 73:7 (T. Oliver Direct).

[1013] Pepco (4F) at 9:13 (Blazunas Rebuttal).

into the rate design for the MRP Enhanced Proposal.[1014] However, AOBA complained that Pepco only adjusted the MMA customer charge in rate design for 2022 but failed to do so for 2021.[1015] Pepco countered that, as a result of the offsets customers proposed in 2021 under the MRP Enhanced Proposal, 2022 is the only year in which there is an overall distribution rate increase for classes.[1016]

447. We approve AOBA's change to the MMA rate design which Pepco incorporated as reasonable, and we direct that the change in MMA rate design be established beginning January 1, 2022 (effective in 2022). We agree with Pepco that the customer charge reduction need only be implemented in 2022. Pepco must ensure that the change to count dwelling units is correctly implemented into the 2022 rate design and that appropriate changes in the tariff schedule are made. We, therefore, direct Pepco to begin the development of the 2022 MMA rate design no later than August 1, 2021, in consultation with AOBA and other interested parties. If Pepco cannot reach a consensus on the rate design with AOBA and other interested parties, then the parties may file a statement explaining what changes should be made, if any. Pepco's proposed new MMA billing determinants for 2022 shall be submitted on October 30, 2021. Thereafter, Parties may file comments on Pepco's filing within 10 days following the Company's filing of the new MMA billing determinants.

B. Decision on Rate Schedule R Customer Charge Increase

448. Historically, the Commission recovered the awarded revenue increase through the customer charge. Customer Charges intend to recover the costs incurred by a utility for fixed costs. Our decision affirmed the Commission's policy of moving the design of residential distribution rates away from volumetric (kWh) rates, and towards rates that are based more on customer and demand charges. Placing the increase on Customer Charges is appropriate because, after deregulation, Pepco is primarily a "wires only" distribution company, whose major costs are fixed costs that should be recovered through fixed charges.[1017] The Company originally proposed increasing the Customer Charge for R customers by $3.47 per month. In this instance, the Commission is persuaded by OPC's and GSA's concern that a significant increase to customer charges disproportionately affects low-usage residential customers and diminishes the incentive for customers to adopt energy efficiency and to take other steps to reduce energy use. With a higher proportion of fixed charges (or customer charges), the savings from energy conservation or energy efficiency will be smaller since the demand-side management programs only affect customers' volumetric charges or usage charges. We also share OPC's and GSA's concerns that continuous loading of the rate increase on the residential customer charge runs counter to the CleanEnergy Act's climate goals because increasing fixed charges and reducing volumetric charges will reduce the bill savings as a result of implementing energy efficiency programs.

[1014] Pepco (5F-6) at 14 (Blazunas Surrebuttal Exhibit).

[1015] AOBA Initial Brief at 73.

[1016] Pepco's Reply Brief at 131-132.

[1017] See *Formal Case No. 1139* Order No. 18846, ¶ 459.

Therefore, we have decided not to collect the entirety of the revenue increase by increasing the customer charge.

449. The Commission orders an overall $1.00 increase in the Customer Charge for the Residential class. However since we only have a 6-month 2021 rate effective period remaining, we have decided not to increase the current $15.09 customer charge in 2021 rates but add the $1.00 increase to the R class 2022 customer charge.[1018] The $1.00 increase is approximately 43% of the total increase of $2.33 for customer bills in 2022. When we compare the current Customer Charges and the new Customer Charges that we are approving, with the Customer Charge in the Company's CCOSS, we find that the new Customer Charge is still well below the actual fixed costs of serving the Residential customer class.[1019]

450. Further, we are persuaded by OPC's argument that in the increasing block design, the increase in the discounted volumetric block rate for the first 400 kWh of use for the Residential class is disproportionate to the proposed increase to rates for use greater than 400 kWh/month. The Commission, therefore, adopts OPC's recommendation, accepted by Pepco, to proportionally increase the revenue for the Schedule R volumetric blocks, thereby maintaining the existing relationship between usage blocks.

C. Decision on Rate Schedule T

451. The Company incorporated AOBA's seasonal differential approach into the Schedule T rate design in the EMRP proposal. We find AOBA's approach will result in just and reasonable Schedule T rates, and, therefore, Pepco is directed to file a Schedule T tariff in the Company's compliance filing.

[1018] As GSA points out Pepco's emphasis on customer charges is consistent with the Commission's previous preference for recovering fixed distribution charges through fixed monthly charges. However, in order to support the District's climate goals, the Commission is obligated to take a different approach at this time, while still moving rates towards their cost of service, albeit gradually.

[1019] Pepco (4F)-6 at 2 of 64 (Blazunas Rebuttal). The unit cost for R is $ 27.67 based on Pepco's CCOSS.

D. Decision on Allocation of ERR Credits

452. AOBA asserted that the Rider ERR credits would lead to a significant decrease in distribution rates for select classes in the year 2022. AOBA claimed that classes MMA, GS-3A, and GT-3B would experience lower rates in 2022 than in 2021.[1020] AOBA asserted that many of the rate classes would experience a steep rate increase at the expiration of Rider ERR. AOBA further contended that the allocation of ERR credits among classes is inequitable and unjustified, as some classes would see a rate increase of greater than 10% in 2022 while other classes would see a substantial decrease. Further, the pause in regulatory asset amortization and acceleration of additional subtraction modification pieces of Rider ERR allocated based on the CCOSS, while the EDIT acceleration is allocated based on previous credit allocation is inconsistent according to AOBA.[1021]

453. Pepco indicated the Company's approach to the allocation of credits under Rider "ERR" was designed to exhaust the available benefits for each rate class by the end of the MRP term. Under this approach, the value to customers was maximized by crediting each rate class its full allocated revenue offset derived from each benefit stream.[1022] However, AOBA argued that no determination should be made with respect to the necessity and appropriateness of Pepco's proposed revenue offsets and cost deferrals, and/or ERR Credits, until a determination has been made regarding the overall level of revenue increase for Pepco that the Commission determines to be necessary and appropriate at this time because, if Pepco's revenue increase request is reduced or rejected, the need for, and value of such revenue offsets and/or cost deferrals may be greatly diminished.[1023]

454. Under Pepco's EMRP proposal, classes TN and GT-3B experience net rate credits (payments to customers for taking service) for rate year 2022,[1024] thus we agree with AOBA that Pepco's suggested ERR methodology is uneven and should be rejected.

E. Pepco's Compliance Filing

455. Pepco is directed to file revised rate schedules and supporting exhibits, consistent with this Opinion and Order, no later than June 21, 2021. Rates authorized in this Opinion and Order shall be effective on July 1, 2021, at 12:01 a.m., unless otherwise ordered by the Commission. In addition to the usual compliance filing documents, the Company's compliance filing should also include: (1) all work papers in electronic format; (2) a detailed narrative for each

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[1020] AOBA's Initial Brief at 24.

[1021] AOBA's Initial Brief at 69.

[1022] Pepco's Initial Brief at 210.

[1023] AOBA's Reply Brief at 9-10.

[1024] Pepco (6F)-22, at 71 (Blazunas Fourth Supplemental Exhibit). Taking the Total Revenue Requirement column (column V) and subtracting the Rate Year 3 Rider ERR Offset column (column W), classes TN and GT-3B have a negative total Revenue Requirements for 2022.

rate schedule explaining how the individual rate elements were derived; (3) the compliance filing submitted must be certified as correct and accurate by the same Company officers that certify its Sarbanes Oxley submittals; and (4) the authorized BSA revenues per customer.

F. Bill Impact of Modified EMRP

456. In terms of total impact between 2021 through 2023, the following table provides the residential ratepayer estimated bill increase using the billing determinants provided for EMRP. Based on the Modified EMRP billing determinants approved in this case, the total monthly bill increase for the average residential customer through 2023, is approximately $5.25, which is slightly less than 7% of a typical residential customer's total bill.

Table 15: Net Revenue Increases After Offsets/Credits

	Pepco Original MRP Rate Increase Application (millions) (May 30, 2019)	Modified EMRP as Authorized (millions) (effective July 1, 2021)	Monthly Bill Impact for Average Residential Customer (annualized)
2020	$ 84.9	-	-
2021	$ 40.4	$ 21.8	$ 1.07
2022	$ 36.4	$ 48.4	$ 2.33
2023	-	$ 38.4	$ 1.85
Total	**$ 161.8**	**$ 108.6**	**$ 5.25 (equates to a 6.4% increase of total bill)**

XIX. OTHER TARIFF CHANGES

A. Additional CBRC Offsets

457. Pursuant to Order No. 19741,[1025] the Commission approved a new experimental electricity rate class for both senior citizens and disabled residents of the District.[1026] Although Pepco is not proposing any tariff changes to the level of the Senior Citizen and Disabled Resident rate credit as a part of this proceeding,[1027] the CBRC funding will continue to be able to finance the $7.50 per month credit for this class until the end of 2022 or longer. Order No. 19741 requires

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1025 *Formal Case No. 1149*, *In the Matter of the Investigation into the Structure and Application of an Experimental Rate Class for Both Senior Citizens and Disabled Residents in the District of Columbia* ("*Formal Case No. 1149*"), Order No. 19741, rel. November 8, 2018 ("Order No. 19741").

1026 Order No. 19741, ¶ 16.

1027 Pepco (F) at 36:16 – 37:4 (Blazunas Direct).

Pepco to "file a notice with the Commission when there are 24 months of funding remaining in the CBRC allocated to support this experimental Senior Citizen/Disabled Rate Credit."[1028]

458. **Pepco.** Pepco committed to provide a CBRC of $25.6 million to offset rate increases for Pepco customers approved by the Commission in any base rate case filed after the close of the Pepco-Exelon merger.[1029] In its February 11th letter, Pepco indicates that due to the depletion of the CBRC funding for the R class, it will update the CBRC offset on residential customers' bills from the current ($1.37) credit to $0.00 for bills generated beginning February 16, 2021.[1030] If the Commission approves the CBRC for the R class in *Formal Case No. 1156*, then the Company will reinstate the credit.[1031]

459. The Company notes in its February 11th filing that Rate Schedule TN's CBRC had, for the period in which it was in effect (August 2017 to August 2018), been incorrectly applied to customers' bills, resulting in an underpayment of the credit for this period.[1032] Pepco states that it is currently taking steps to remediate this issue and apply the credits as originally directed.[1033] However, Pepco states that a residual CBRC balance will likely remain after the billing correction is made and will remain in place unless the Rate Schedule TN CBRC is reinstated, or the funds are reallocated.[1034]

B. Additional Modified EMRP Tariffs

460. **AOBA.** AOBA witness Bruce Oliver argues that the Company has not provided any tariff language for the potential rate adjustments under the MRP.[1035] AOBA argues that a tariff mechanism for addressing rate adjustments appears necessary but no such mechanism is found in Pepco's tariff proposals in the Company's direct testimony.[1036]

1028 Order No. 19741, ¶ 19.

1029 *Formal Case No. 1119*, *In the Matter of the joint Application of Exelon Corporation, PEPCO holdings, Inc, Potomac Electric Power Company, Exelon Energy Delivery Company, L.L.C., and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction*, Order No. 18610, Attachment B, Commitment No. 2, rel. April 4, 2016.

1030 *Formal Case No. 1119*, Pepco's Letter to the Commission Regarding the Customer Base Rate Credit to Offset Future Rate Increases ("Pepco's Letter"), filed February 11, 2021.

1031 Pepco's Letter at 2.

1032 Pepco's Letter at 1-2.

1033 Pepco's Letter at 1.

1034 Pepco (F) at 48:22 – 50:12 (Blazunas Direct).

1035 AOBA (A) at 112:11-16 (B. Oliver Direct).

1036 AOBA (A) at 112:18 – 113:1-3 (B. Oliver Direct).

461. **OPC.** OPC argues that Pepco proposed a Rate Deferral Mechanism Rider ("RDM" or "Rider RDM") to recover proposed rate increases under the MRP for the periods January 1 through June 30, 2021, and January 1 through June 30, 2022.[1037] Rider RDM is designed to function as a rate credit for proposed rate increases during these periods until January 1, 2023, when the previous credit will be recovered as a separate charge on customers' bills over the three years 2023 through 2025.[1038] The purpose of the RDM is to reduce the potential for rate shock and defers the proposed second-and third-year rate increases under the MRP.[1039] OPC states that Pepco's Rider RDM will lead to the exact problem the Company intends to solve in that ratepayers could see an additional rate adjustment to recover any under-collection from the prior MRP.[1040] Therefore, OPC argues that the Commission should reject the RDM and associated Rider RDM because they "attempt to solve a problem . . . by introducing new problems that are potentially of even greater concern due to its financial impact on ratepayers."[1041]

462. **Pepco Rebuttal.** In rebuttal, Pepco states that the RDM can be withdrawn. In response to AOBA's concerns about the tariff not referring to MRP adjustments, the Company submitted proposed tariff language.[1042]

463. **Pepco Surrebuttal.** Pepco introduces a new tariff identified as the "Rider ERR" in its EMRP proposal. The Rider ERR is designed to offset increases to customers' base distribution rates in 2022. It is a credit to customers totaling approximately $63.3 million.[1043] It is to be in effect for the period January 1, 2022, through December 31, 2022.[1044] Pepco proposes to exclude RAD customers from this offset because those customers already receive the RAC, which includes a full offset to their base distribution rates.[1045] Pepco indicates the Rider ERR applies to all the rate classes and covers all the rate components, not just the customer charge.[1046]

1037 OPC (A) at 53:4-8 (Dismukes Direct).

1038 OPC (A) at 53:8-11 (Dismukes Direct).

1039 OPC (A) at 54:3-5 (Dismukes Direct).

1040 OPC (A) at 54:16-19 – 55:1-8 (Dismukes Direct).

1041 OPC (A) 57:1-4 (Dismukes Direct).

1042 Pepco (4F) at 24:1-10 (Blazunas Rebuttal). Rate Adjustments - The Multiyear Rate Plan ("MRP") rates contained herein are subject to annual adjustments pursuant to the Company's Annual Reconciliation Filings and Annual Billing Determinant Updates. Proposed rates incorporating the Company's Annual Reconciliation Filings and Annual Billing Determinant Updates will be filed at least 60 days prior to the rate-effective date of each period of the MRP.

1043 Pepco (5F) at 6:3-10 (Blazunas Surrebuttal).

1044 Pepco (5F) at 6:7-8 (Blazunas Surrebuttal).

1045 Pepco (5F) at 7:3-6 (Blazunas Surrebuttal).

1046 Pepco (5F) at 6:12-13 (Blazunas Surrebuttal).

DECISION

464. Initially, the Modified EMRP that we are adopting does not use the RDM: therefore, a RDM tariff is not required and adoption of Pepco's Rider ERR is also unnecessary. We approved Pepco's proposal to increase the CBRC by $3.6 million to offset the 2021 rate increase. In order to determine the remaining CBRC balances to be credited against this rate increase, we direct Pepco to file individual CBRC balances for each applicable class in the compliance filing of this case. Thus, when the new rates for this case become effective, we expect Pepco to reinstate the CBRC for residential customers with a credit of $1.37 per month starting July 1, 2021, to March 31, 2022.[1047]

465. Pepco's tariff language or new rider regarding the annual reconciliation process (including an annual informational filing in 2022 and a final reconciliation filing in 2023) as directed in this Order shall be submitted in its compliance filing. Pepco shall file updated tariff sheets reflecting rates calculated to recover the Company's approved revenue requirement for the approved Modified EMRP period for 2021 and 2022. Finally, Pepco shall also file a Senior Citizen and Disabled Resident tariff in the compliance phase of this proceeding.

XX. OTHER MATTERS

466. The Commission has an established policy of "providing the community with access to participation" in utility rate cases.[1048] We heard from Pepco customers, civic organizations, small businesses, senior citizens, suppliers and advisers to Pepco, employees of outside reliability contractors, the Ward 3 Democratic Committee, concerned District citizens, solar energy advocates, Advisory Neighborhood Commissions ("ANCs") and ANC Commissioners, the Sierra Club, and AARP. The Commission has reviewed and assessed all the community comments.

A. Community Comments

467. The State Director of AARP District of Columbia, Louis Davis, Jr, commented that their most significant concern is protecting the city's seniors.[1049] Davis states that the 3-year rate increases add unnecessary complications to such a volatile future. Additionally, the 44% monthly rate increase will not only make it more difficult for customers to manage their expenses but would, in turn, make the District one of the highest rate areas in the country. AARP instead requests that the monthly rates remain the same or preferably be reduced to benefit customers. AARP goes on to express skepticism for the $300 million distribution system upgrade budget. AARP states that

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[1047] With the adoption of the Modified EMRP, the CBRC credit of $1.37 for residential (R) customers will resume for another 9 months. As proposed the credit would have started in April 2021 but due to the passage of time the CBRC residential credit will start in July 2021 and end in March 2022.

[1048] *Formal Case No. 912, In the Matter of the Application of Potomac Electric Power Company for an Increase in Retail Rates for the Sale of Electric Energy ("Formal Case No. 912")*, Order No. 10080 at 5, rel. August 20, 1992.

[1049] *See* written comments of Louis Davis, Jr. (October 21, 2020).

during the pandemic, such budgets should be put on hold or allocated elsewhere to continue to eradicate the health crisis in the District.[1050]

468. Several residents support Pepco's rate increase. Nicole Quiroga, President and CEO of the Greater Washington Hispanic Chamber of Commerce, agrees with several residents that Pepco's new rate plan is beneficial to the Latino demographic they serve.[1051] They, along with Groundswell Community Power, highlight the $100,000 energy assistance supplement being crucial for businesses and families in need to help sustain them through the pandemic.[1052] Several commenters that are concerned for or represent small businesses and contractors support the proposed "freeze of energy delivery rates at current levels for more than 18 months, until January 2022."[1053] Residents appreciate the ability to predict future costs after this freeze to incorporate into their budgets the two (2) year payment availability for existing debt. Others, like Charise Williams, also fully support an Arrearage Management Program ("AMP") that raises its income eligibility limits to include more families under its provisions. Commenters appear to be split on whether Pepco is already or needs to incorporate more programs regarding cleaner and greener energy.[1054]

469. On the other hand, several Northwest/Petworth residents cite OPC's fact sheet (https://bit.ly/2Wo5gBp) that Pepco's plan raises utility rates between 2020-2022 to nearly $136 million,[1055] and "OPC and DOEE witnesses have found that the plan does not support a cleaner, smarter, sustainable environment or otherwise advance the District's ambitious environmental and climate action goals."[1056] Several residents request that: (1) the rate application be denied; (2) "D.C. Council members support legislation for an economic feasibility study on the implementation of alternative utility models such as municipalization and community choice aggregation;" (3) "the D.C. Council pass legislation to indefinitely ban utility shutoffs and evictions as well as reconnect all disconnected ratepayers and cancel all outstanding utility debt;" and (4) "D.C. elected officials and candidates reject all political donations from Pepco, return all such donations accepted previously, and come out in public opposition to Pepco's rate increase."[1057] Several residents, including former D.C. Council candidate at Large, Ed Lazere, state that minorities in the city are the majority of low-income residents struggling to pay utility bills pre-pandemic asserting that during the pandemic one in six additional residents have been

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[1050] *See* written comments of Louis Davis, Jr. (April 20, 2020).

[1051] *See* written comments of Nicole Quiroga on behalf of the Greater Washington Hispanic Chamber of Commerce (October 8, 2020).

[1052] *See* written comments of Groundswell Community Power (June 9, 2020).

[1053] *See* written comments of Deryl McKissack on behalf of McKissack &McKissack Inc. (June 9, 2020).

[1054] *See* written comments of Charise Williams (December 21, 2020).

[1055] *See*, *e.g.*, written comments of Colin Alford (July 21, 2020).

[1056] OPC Consumer Factsheet, June 26, 2020, page 3.

[1057] *See, e.g.,* written comments of Sebastian Rosemont (July 31, 2020).

forced into debt with Pepco and therefore Pepco's rate increase should be denied.[1058] Further, ANC3B states that the Commission should reject Pepco's Application because while certain benefits to ratepayers may be beneficial, "it is not necessary . . . to approve the long-term changes in ratemaking processes that Pepco has put forward."[1059] ANC4C supports the suspension of this rate case because, it believes, Pepco has not made the necessary changes in its Application to address the expected economic impacts of the COVID-19 pandemic.[1060]

B. Overview and Summary of Commission Decisions on Issues Raised by Community Comments

470. To compensate Pepco for the costs it incurred during the test year, including significant capital expenditures to improve the reliability and quality of its service (with fewer and less lengthy outages) to District ratepayers for our community, the Commission is awarding Pepco a $108.6 million rate increase in this case (before offsets), with a $21.8 million net revenue requirement increase in 2021, and a $48.4 million increase in 2022 and $38.4 million in 2023. This represents a 33% reduction of the $162 million increase that Pepco requested originally. We ensure that residential customers will experience less than one dollar[1061] modest monthly bill increase for the remainder of 2021 because we are offsetting any increase with offsets partially funded by Pepco's shareholders. Thus, for 2022 the bill impact is a modest increase of $2.33, with an increase of $1.85 beginning January 2023. Although we do not take any rate increase lightly, our decision is the first net increase to residential distribution bills since 2014 and is comparable to the recently awarded WGL rate increase negotiated by OPC and other interested stakeholders.[1062] The EMRP continues the CBRC funding to finance the $7.50 per month rate credit for Senior Citizens and Disabled Residents throughout the term of the EMRP. Additionally, the Commission's recent action expanding the eligibility criteria for RAD customers provides additional financial assistance to our most vulnerable ratepayers to meet their electric bills.[1063]

471. As noted by small commercial customer advocates the EMRP provides those customers with substantial protections and benefits including allowing commercial business deposits to be applied to any overdue balances, accepting installment plans, and offering supplemental emergency efficiency rebates and loans.

472. Lastly, our PIMs decision refutes OPC, DOEE, and other consumers' contentions that Pepco's plan does not support a cleaner, smarter, sustainable environment or otherwise

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[1058] *See* written comments of Ed Lazere (September 29, 2020).

[1059] Written comments of ANC3B (July 9, 2020).

[1060] *See* written comments of ANC4C (May 13, 2020).

[1061] The CBRC credit of $1.37 for residential customers per month will be effective July 1, 2021.

[1062] *Formal Case No. 1162*, Order No. 20705.

[1063] *Formal Case No. 1164, In the Matter of the Inquiry into the Impacts of the Covid-19 Pandemic on District Utilities and Consumers,* Order No. 20749, rel. May 27, 2021 ("Order No. 20749").

advances the District's ambitious environmental and climate action goals. The Commission has structured the Modified EMRP such that it is accompanied by a robust set of tracking PIMs, which will promote the District's Climate and Clean Energy goals. These tracking PIMs will be monitored by the Commission to ensure that Pepco is not only contributing to the District's clean energy and climate goals but also provide energy savings for District residents.

XXI. CONCLUSIONS REGARDING MODIFIED EMRP PILOT

473. In Order No. 20273, we established the framework for using an MRP as an alternative to traditional ratemaking methods and determined that a properly constructed MRP can produce just and reasonable rates and yield several benefits over time. Among those benefits were shortening the cost recovery period, providing more predictable revenues for utilities and more predictable rates for consumers, spreading changes in rates over multiple years, and decreasing administrative burdens on regulators by staggering filings over several years.[1064] The Commission finds that this Order will generally achieve these goals. Although Pepco's EMRP represents a paradigm shift from traditional ratemaking, in this instance the two-plus year proceeding results in a moderate two-plus (MRP) year $5.25 rate increase for the typical residential customer. We believe that both the utility and ratepayers benefit from the Modified EMRP because, in the long-term, the plan reduces regulatory lag and the costly administrative burdens associated with the frequency of resource intensive rate cases by staggering filings over several years. Also, the Modified EMRP provides the Company with a shortened cost recovery period, provides predictability in their revenue requirements, provides more predictable rates for customers, and spreads changes in rates over a multiple-year period. As structured, the Modified EMRP should help Pepco better manage risks and expenses and provide ratepayers more transparency in assessing the utility spending and investment decisions.

474. With respect to customer benefits, the Modified EMRP is designed to among other things, make rates more predictable for customers, with rate increases spread gradually over multiple years. In this case, the prolonged proceeding and the exigency of the COVID pandemic led the Commission to approve a pilot 18-month EMRP with offsets through 2022 that lessons the impact of Pepco's EMRP rate increase. Adopting the Modified EMRP as a pilot program provides the Commission, the Parties, and other stakeholders with an opportunity to improve the MRP process and prudently evaluate the overall performance and effectiveness of the Modified EMRP. Unlike a traditional proceeding, our requirement for an annual informational filing provides the Commission with an opportunity to make adjustments during the Modified EMRP period should Commission intervention be warranted. Further, the reconciliation process we adopt ensures that any over earning by Pepco due to an over-spending is refunded to customers. The Climate-driven tracking PIMs that we adopt are a first step to better align utility incentives, cost reduction, and cost containment with the public interest, including the District's climate and clean energy commitments. The Commission believes that the tracking PIMs provide the Commission and the Parties an opportunity to assess how PIMs can efficiently incentivize our utilities to move aggressively in achieving the District's climate and clean energy goals.

[1064] Order No. 20273, ¶ 92.

475. The Commission is committed to exploring how alternative forms of regulation can be implemented in the District of Columbia to encourage service improvements, management innovation, and operational efficiencies that facilitate the deployment of distributed energy resources and grid modernization efforts in the District. We again encourage all Parties to remain open to alternative forms of regulation during this period of growth and change in the District.[1065] The Commission finds that the Modified EMRP as detailed in this Order, protects consumers, ensures the quality, availability, and reliability of regulated electric services, and is in the interest of the public, including shareholders of the electric company as prescribed by law. Therefore, the Commission adopts the Modified EMRP subject to the conditions set forth within.

XXII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

476. Based on the evidence in the record of this proceeding, the Commission makes the following findings of fact and conclusions of law:

a. That Pepco has presented a suitable Alternative Form of Regulation proposal because the proposal includes baseline revenues based on a historical test year, explains how the Company will project revenues and expenses, and provides a mechanism for Parties to reconcile any forecasted components to subsequent actuals for each year of the multi-year rate plan term;

b. That Pepco's Alternative Form of Regulation proposal is responsive to criteria that the Commission prescribed in Order No. 20273:

i. The proposal protects consumers, ensures the quality, availability, and reliability of regulated utility services; and is in the interest of the public and shareholders because, as modified, it provides structured effects and credits, including shareholder funding;

ii. The proposal advances the public safety, the economy of the District, the conservation of natural resources, and the preservation of environmental quality, including effects on global climate change and the District's public climate commitments;

iii. The proposal contains a ratemaking mechanism, which advances or otherwise aligns with the District's public policy goals because it includes tracking PIMs that are important for establishing future fully functional PIMs that will carry financial consequences for the Company;

iv. The proposal provides baseline revenue and cost information that clearly explains that the revenues and costs are based upon the historical operating revenues and expenses as of June 30, 2019, and are held constant through the Modified EMRP;

[1065] *Formal Case No. 1139*, Order No. 18846, ¶ 593.

v. The proposal provides measurable, quantitative, and qualitative benefits to customers from offsets/credits and additional shareholder funding offered by Pepco;

vi. The proposal impacts the operational incentives of the utility with respect to maintaining a high level of customer service while fostering productivity and cost control; maintains the financial strength, credit ratings, and financial flexibility of the utility; and helps ensure a consistently high level of energy delivery system reliability, while promoting safe and reliable operations over time;

vii. The proposal contains a rate design that clearly describes the allocation across customer classes over time and describes an authorized rate design with specific directions in revenue allocation and rate design;

viii. The proposal mitigates the risk of over-earning Pepco's authorized return during the duration of AFOR for the benefit of the customers, while also preserving the Commission's ability to conduct cost prudency reviews as needed;

ix. The proposal provides the appropriate level of transparency and reporting into the utility's operational and capital plans because the Company included its capital expenditure and operational plan for review.

x. The proposal includes reconciliation and escalation mechanisms that work together to avoid any unreasonable shifting of risk to utility customers;

xi. The proposal includes a PIM to address GHG emission reduction;

c. That the Original Multi-Year Rate Plan is not in the best interests of ratepayers because it does not meet the requirements of D.C. Code § 34-1504(d), nor does it take into account the social and economic conditions that have occurred as a result of the COVID-19 pandemic;

d. That a Modified EMRP, with additional offsets and shareholder funding, is adopted as an 18-month pilot rate plan subject to the following conditions:

i. The Modified EMRP is executed as a pilot MRP program through the end of CY 2022, equating to an 18-month initial MRP term;

ii. The Modified EMRP is structured with reasonable ratepayer protections to help ensure against Pepco over-earning circumstance;

iii. Pepco provides a total package of $11.4 million of shareholder-funded customer benefits including $7.8 million for residential and streetlight bill offsets, and $3.6 million of CBRCs for residential customers;

iv. Pepco initiates a $5 million small commercial customer energy efficiency program, encompassing rebates and loans;

v. The Commission authorizes a total revenue increase of $108.6 million over 2021-2023 which reflect a 33% reduction in revenue requirements from Pepco's original $162.0 million MRP proposal;

vi. The Modified EMRP's authorized ROE is 9.275% and the overall ROR is 7.17% to recognize the reduction in financial risk and regulatory lag; and,

vii. The Modified EMRP is accompanied by a robust set of tracking PIMs, which primarily focus on the District's Climate and Clean Energy goals.

e. That the Modified EMRP is in the public interest and in the interest of the company's shareholders;

f. That the Modified EMRP strikes a balance between the regulatory requirements placed on the utility to offer reliable services at just and reasonable rates, and meeting the District's policy goals with respect to the Clean Energy Act and Climate goals;

g. That the Modified EMRP: (1) strengthens Pepco's credit profile; (2) reduces regulatory lag and provides Pepco certainty in revenue requirements; (3) allows Pepco to maintain top decile electric reliability industry performance in the District; and (4) allows Pepco to redeploy efforts from litigation focusing on continuing enhancements to the interconnection process, and pending DERs initiatives;

h. That the Modified EMRP provides customers with: (1) mitigated revenue increases during the health emergency; (2) a Customer Rate Assistance Package that is shareholder funded ($11.4 million); and (3) infrastructure investments that foster continued grid modernization, grid reliability, grid resiliency, and energy infrastructure projects (distribution automation and smart grid programs, neighborhood reliability programs (Most Susceptible Neighborhood Reliability Program), Area Reliability Programs (BARP and the 12th and Irving Programs), Harrison Substation upgrade, upgrades/replacements on distribution transformers, DC PLUG, and the Capital Grid project;

i. That the Modified EMRP addresses the impact of the COVID-19 pandemic on ratepayers, and it balances the utility's cost recovery with the rate impact on customers in the near-term and is in the best interests of ratepayers;

j. That the Modified EMRP years 2021 and 2022 is appropriate because it provides an opportunity to reduce the regulatory burdens on the Commission and stakeholders by not having to adjudicate back-to-back rate cases;

k. That the Modified EMRP, after applying customer bill offsets, results in a net $21.8 million rate increase over the balance of 2021 for all customer classes, followed by a $48.4 million net increase in 2022, and a net rate increases of $38.4 million in 2023;

l. That Commission approval of the Modified EMRP also: (1) includes revenue offsets applicable to each rate schedule; (2) provides Residential and Street Light Rate Assistance offsets/credits of roughly $11.4 million from shareholder funding to partially offset distribution rate increases during the 2021 period; (3) defers $60 million of capital spending to 2023 or later and include further cap-ex reductions; (4) pauses Regulatory Asset Amortization for two years—2021 and 2022; (5) accelerates customer benefits related to the entire Maryland Subtraction Modification Tax Benefit in 2022; and (6) recognizes savings from the EBSC Transformation initiative;

m. That a reconciliation and prudency process is adopted encompassing two steps that: (1) includes an annual information filing that compares revenue requirement line items based on updated 2021 projections; and (2) provides for final reconciliation and prudency review no later than 90 days after the end of the Modified EMRP;

n. That Pepco is directed to provide updated detailed capital additions (by project) and O&M expense projections (by FERC account) for CY 2021 and CY 2022, 120 days from the date of this Order;

o. That for the annual prudence review and modified reconciliation, Pepco is directed to file the CY 2021 Reconciliation filing by March 31, 2022;

p. That the Parties shall have 45 days from the date of the two reconciliation filings to conduct discovery with any comments filed within 60 days of the annual filing;

q. That Pepco is permitted a deferred accounting mechanism provided that such deferral includes a $1 million revenue requirement threshold and requests are reviewed by the Commission on a case-by-case basis;

r. That the adoption of a Modified EMRP along with a package of Clean Energy Act/climate goal-driven tracking PIMs represent a first step in advancing the District's climate goals and implementing alternative forms of regulation for electric rates;

s. That Pepco shall maintain the continuation or establishment of collaborative working groups or programs to further advance the District's goals. The working groups and programs shall include (a) continuation of the PIMs working group, (b) convening technical conferences on the BSA processes and improvements, and (c) continuation of the senior citizen and disabled resident bill credit program;

t. That Pepco's proposed package of economic offsets and deferral of capital expenditures provides benefits to all customers since the increase to distribution bills will be spread out through the 18-month Modified EMRP period and 2023;

u. That the modified proposal with offsets/credits help to mitigate rate shock;

v. That the Modified EMRP includes multiple customer assistance programs for residential customers to help alleviate the economic impact of the COVID-19 pandemic. These include (1) suspension of service disconnections; (2) extending the suspensions of disconnection and waiving of late fees; (3) working with customers to use customer assistance programs, including installment arrangements and budget billing; (4) use of customer assistance programs including waiver of late fees; (5) educating consumers on federal and local energy assistance; (6) supporting COVID-19 relief efforts in the amount of an $825,000 charitable donation; and (7) providing health and childcare benefits to support employees who do essential work;

w. That Parties shall have 45 days from the date of the annual filing for reconciliation (including AIF and final reconciliation) to conduct discovery with any comments filed within 60 days of the annual filing;

x. That with respect to other customer assistance programs for residential customers, Pepco shall implement or, if already in effect, maintain the following:

   i. *Deposits Held*: For those residential customers with deposits, at the customer's request, the deposit will be applied to any overdue balances to reduce the customer's Accounts Receivables balances and/or installment plan payments. Such customers will not be billed new deposits for up to 12 months and after the 12-month period, Pepco will allow deposits to be billed through the dunning process only;

   ii. *Installment Plan:* the Commission accepts Pepco's proposal to adjust the terms of the flexible Installment Plan program to offer residential customers Installment Plans that extend beyond the 12-month period. Based on the customers' needs, Installment Plans could be extended an additional 12 months, for a total installment period of 24 months, with no upfront fees or payments required; and

   iii. *Marketing and Promotion of Energy Assistance Programs*: the Commission accepts Pepco's proposal to temporarily increase marketing and promotion of the Low-Income Home Energy Assistance Program ("LIHEAP") and RAD program through Company channels. The Company shall market and promote the availability of the extended installment plans, along with existing programs such as Budget Billing;

y. That with respect to other customer assistance programs to assist small commercial customers, Pepco shall implement or, if already in effect, maintain the following:

i. *Deposits Held*: For those small commercial customers with deposits, at the customer's request, the deposit will be applied to any overdue balances to reduce the customer's Accounts Receivables balances and/or installment plan payments. Such customers will not be billed new deposits for up to 12 months, and after the 12-month period, Pepco will allow deposits to be billed through the dunning process only;

ii. *Installment Plan*: The Commission accepts Pepco's proposal to adjust the terms of the Flexible Installment Plan program to offer small commercial customers Installment Plans that extend beyond the 12-month period with a possibility of extending an additional 12 months, for a total installment period of 24 months, with no upfront fees or payments required;

iii. *Budget Billing*: The Commission accepts Pepco's proposal to waive Section 8(a) of Pepco's General Terms and Conditions in order to offer budget billing/average payment plans to small commercial customers;

iv. *House of Worship and Non-Profit Customer Credit*: The Commission accepts Pepco's proposal to offer a limited reduction to the distribution rate for District Houses of Worship and nonprofit organizations engaged in human services activities. The metered demand for these customers will be reduced up to 7 kW monthly for a 12-month period. To be eligible for the limited rate change, the entity must: 1) provide proof of 501(c)(3) tax-exemption status or proof that the entity qualifies to meet the 501(c)(3) requirements; and 2) be engaged in human services activities;

v. *Small Commercial Customer Bill Deferral*: Small commercial customers, such as restaurants, small retail and other small customers, would be able to defer the distribution portion of their bills for a period of two months and to pay that balance at a later date and/or over an 18-month period; and

vi. *Supplemental Energy Efficiency Rebates and Loans*: The Commission accepts Pepco's proposal to offer supplemental energy efficiency rebates and loans, as applicable, to incentivize energy efficiency for small commercial customers with a maximum demand under 150 kW and accelerate the availability of these programs in light of the current pandemic (this includes Small Commercial Customer Energy Advance Program and Supplemental Energy Efficiency Program);

z. That the Commission approves Pepco's request for modifications to the Arrearage Management Program and the following may be recorded as a regulatory asset and considered for recovery in a future rate case: (1) $1.0 million for the House of

Worship and Non-Profit Customer Credit; (2) $2.0 million for the Energy Efficiency 0% interest loans to purchase energy efficiency products; and (3) $3.0 million for the supplemental energy efficiency incentive program;

aa. That the Commission directs a stay-out provision which prohibits Pepco from filing a new MRP rate application until at least January 2, 2023, with rates to become effective no earlier than January 1, 2024;

bb. That the Commission may reopen the Modified EMRP at any time; that parties petition the Commission to reopen the Modified EMRP at any time in the event of an extraordinary circumstance that is outside of the utility's control that would warrant the Commission's intervention to ensure existing rates are just and reasonable or under extraordinary circumstances that threaten the fiscal solvency of the utility, and that Pepco may seek a reopener upon a showing that modification/termination is necessary to comply with applicable federal and local law or if continuation could cause irreparable financial harm due to exogenous factors beyond Pepco's control such as non-precedented cyber and physical (terror) attacks;

cc. That tracking PIMs are, currently, more useful to allow the Commission and stakeholders an opportunity to evaluate Pepco's performance against a designated tracking PIM. The following PIMs are adopted:

i. A Pepco greenhouse gas emission reduction tracking PIM for the District;

ii. An Energy Savings tracking PIM for the District;

iii. A Peak Demand Reduction tracking PIM for the District;

iv. A Total deployed Distributed Energy Resources tracking PIM for the District; and

v. A CEMI-3 performance tracking PIM for customers in the District;

dd. That Pepco shall reconvene the PIMs Working Group within 45 days of the issuance of this Order to allow for the development of additional financial/tracking PIMs;

ee. That Pepco is directed to collaborate with the PIMs Working Group, Commission Staff, and the Parties to propose the data measurement methodologies for each of these five PIMs within 90 days of this Order. Parties will then have 15 days to comment before the Commission approves the reporting and tracking of these PIMs;

ff. That the PIMs Working Group shall develop additional financial/tracking PIMs for the future. The PIMs Working Group should submit their recommendations regarding future tracking/financial PIMs within 90 days after the Commission approves the reporting and tracking of the five PIMs;

gg. That Pepco shall thereafter report on each tracking PIM's performance quarterly;

hh. That to review various aspects of the implementation of the tracking PIMs, the Commission will periodically sponsor technical conferences/workshops which provide the Commission with an opportunity to make mid-course corrections, if necessary;

ii. That the offsets to the revenue increase include (1) Pause in Regulatory Asset Amortization–$22.9 million applied to 2021 and 2022; (2) Acceleration of the Maryland Subtraction Modification Tax Benefit—$27.6 million applied in 2022; and (3) the COVID-19 Rate Relief of $7.8 million offered by the Company to certain ratepayers;

jj. That Pepco's proposed test year of actual results for the twelve (12) months ending on June 30, 2019, is reasonable and is an appropriate starting point for purposes of evaluating the merits of Pepco's Application;

kk. That the removal of post-test year ratemaking adjustments from the starting point before applying escalators to the EMRP to avoid a double count of such adjustments in the projected EMRP years is appropriate;

ll. That Pepco's adoption and elimination/modification from the EMRP starting period of the following ratemaking adjustments of (1) RMA PEPCO-7 – Reflection of 3-Year Average Overtime Level; (2) RMA PEPCO-20b – Reflection of Benning Environmental Reg Asset-Forecast; (3) RMA PEPCO-28 – Reflection of the Frederick Douglas Bridge Project; (4) RMA PEPCO-34 – Reflection of CTA Regulatory Asset (modified to OPC's adjusted CTA amount) is approved;

mm. That Pepco's modification of the regulatory asset/amortization associated with RMA PEPCO-36 – Reflection of CTO Regulatory Asset (OPC-13) to remove the regulatory asset/amortization request is rejected and that the savings from the EBSC Transformation initiative will be reflected in 2021 and 2022;

nn. That a 2.17% escalation factor is reasonable;

oo. That Pepco's proposed capital structure of 50.68% equity, which is based on actual results for the year ending June 30, 2019, is reasonable and sufficient to help maintain Pepco's current investment grade credit rating;

pp. That a capital structure for Pepco that contains 50.68% common equity and 49.32% long-term debt is adopted and approved;

qq. That a return on equity in the range of 9.20% to 9.35%, which has a midpoint of 9.275%, is within the zone of reasonableness for this case;

rr. That Pepco's cost of debt of 5.01% is reasonable in this case;

ss. That the appropriate overall cost of capital for Pepco is 7.17%;

tt. That the recovery of Benning Remediation Regulatory Asset approved in *Formal Case No. 1150* as reflected in RMA PEPCO-5 is accepted and OPC RMA-19 is rejected;

uu. That Pepco's request for regulatory asset treatment of the Benning Road costs incurred since the *Formal Case No. 1150* Settlement (as reflected in Pepco RMA-20a) and ARSP costs is denied and Pepco is directed to track the costs incurred pending a future determination of the allocation of responsibility for cost recovery;

vv. That Pepco is directed to adjust the Modified EMRP to reflect Pepco's forecasted savings in 2021 and 2022 from EBSC's Transformation Initiative and shall include the costs incurred as reported in RMA-36. Both the CTO regulatory asset and amortization will be included in the starting period, and the expected allocated O&M savings of $2.3 million will be recognized in both 2021 and 2022;

ww. That a reduction in Pepco's capital additions is warranted. The Commission, in making modifications to the EMRP, assumed a reduction in additions to EPIS of $25 million per year in 2021 and 2022. This reduction also reduces depreciation expense, accumulated depreciation, and ADIT in calculating the Modified EMRP revenue requirements;

xx. That a forecasted rate base of $2,206.4 million for 2020, $2,333.5 million for 2021, and $2,472.3 million for 2022 is approved;

yy. That the $539.9 million of operating revenues incorporated in the Modified EMRP is approved;

zz. That Pepco's Bill Stabilization Adjustment should continue under the Modified EMRP because decoupling is still needed to remove the disincentive to facilitate Pepco's implementation of energy efficiency and demand response programs;

aaa. That technical conference(s)) be convened to discuss possible reform of the BSA to address revenue pressures unrelated to the Company's energy efficiencies efforts. The technical conference(s), to be facilitated by Commission Staff, shall be held within 120 days after the new rates become effective. We also direct that Pepco file a report with the Commission within 90 days after the first technical conference explaining the proposals and recommendations made by the parties at the conference and the final or consensus recommended course of reforming the BSA;

bbb. That the following unopposed or uncontested RMAs involving Operating Expense Adjustments are accepted: RMA Pepco-4 Removal of DC Power Line Undergrounding (DC PLUG) initiative costs; RMA Pepco-6 Annualization of Formal Case No. 1150 base revenues; RMA Pepco-8 Annualization of wage increases; RMA Pepco-9 Annualization of employee health and welfare costs; RMA Pepco-10 Reflection of 2019 pension and Other Post-Employment Benefits (OPEB) expense; RMA Pepco-11 Removal of supplemental executive retirement plans (SERP); RMA Pepco-12 Removal of certain executive incentive plan costs; RMA Pepco-13 Removal of adjustments to deferred compensation balances; RMA Pepco-14 Reflection of 3-year average regulatory expense; RMA Pepco-15

Reflection of 3-year average storm costs; RMA Pepco-16 Removal of employee association costs; RMA Pepco-17 Removal of industry contributions and membership fees; RMA Pepco-18 Removal of institutional advertising/selling expenses; RMA Pepco-21 Reflection of customer deposit interest expense and credit facility expense and maintenance costs; RMA Pepco-22 Annualization of software amortization; RMA Pepco-23 Removal of executive perquisite expenses; RMA Pepco-24 Annualization of Approved Depreciation Rates; RMA Pepco-25 Reflection of 8.25% D.C. Income Tax Rate Change; RMA Pepco-27 Annualization of *Formal Case No. 1151* Proposed Base Revenue Reduction (TCJA Impact); RMA Pepco-30 Removal of Control Center Capital Lease due to Expiration; RMA Pepco-31 Reflection of Additional Subtraction Modification; RMA Pepco-32 Removal of BSC Billed Depreciation (Merger Commitment 39); RMA Pepco-38 Interest Synchronization; RMA Pepco-39 Removal of Non-Recurring Expense Charges; RMA Pepco-40 Inclusion of July 1, 2018-August 13, 2018 Deferred Costs; RMA Pepco-43 Inclusion of DLC Program Revenues; RMA Pepco-44 Removal of Facilities Depreciation and EP Leasehold Improvement Amortization;

ccc. That Pepco's RMA PEPCO 33 Reflection of Current Rate Case Costs as reasonably incurred expenses in litigation in this matter is approved;

ddd. That Pepco's RMA 41 Reflection of Run-Rate Manhole Inspection Costs are accepted and approved;

eee. That OPC RMA-15 is accepted that Pepco should remove the following out-of-period service company costs: (1) PHISCO gross receipt taxes; (2) EBSC liability insurance; and (3) EBSC software cloud use taxes that occurred pre-test-year. Costs should reflect normal and recurring annual operating conditions. The Commission accepts OPC's adjustment to disallow out-of-period costs that occurred prior to the test year. The adjustment increases net operating income by $500,000.;

fff. That Pepco can continue to use the depreciation rates already approved by the Commission in Order No. 19433;

ggg. That RMA-Pepco-26, Pepco's request that the rate base reflect the 13-month average NPP EDIT balance of $129.7 million and the NPNP EDIT balance of $19.1 million as noted in Pepco (3D)-2 Amortization Schedules is approved;

hhh. That in the absence of an explicit statement in the Settlement Agreement, Pepco should utilize the actual book balances and PP credits computed by the Company's tax accounting system. For ratemaking purposes, the PP EDIT amount should be based on the amount recorded in the Company's records of $142.1 million;

iii. That Pepco provided customers with the TCJA benefits from January 1, 2018, until August 13, 2018, through a one-time payment; thus, the difference of $2.5 million has already been refunded as part of the *Formal Case No. 1150/1151* Settlement Agreement;

jjj. That the tax flow-through adjustment for ratemaking purposes is denied. That the base test year ended June 30, 2019, to reflect the *actual* 13-month average PP EDIT balance of $139.5 million is directed; that the NPP and NPNP EDIT balances should conform to the amounts agreed to in the *Formal Case No. 1150/1151* Settlement Agreement; and that the 13-month average balances in rate base as of June 30, 2019, are $129.7 million and $19.1 million for NPP and NPNP EDIT, respectively. That the "Adjustment to Tax Flow Through" under Section Two of RMA Pepco-26 is denied;

kkk. That Pepco's proposal to accelerate $103.1 million of the NPP EDIT balance to offset the impact of the rate increase is denied;

lll. That the Company's revised proposal for Pepco RMA-29 to include the NPNP DDIT asset of $5.853 million on a gross basis is denied; PHISCO non-property ADIT are not a component of rate base. The adjustment reduces rate base by $5.3 million and increases operating expenses by $848,000;

mmm. That Pepco's treatment and characterization of EBSC income taxes allocated to the Company is inappropriate and does not comport with the utility standalone principle, a regulatory argument the Company has defended, and the Commission has recognized in the past. OPC-14 Removal of Charge for ESBC Residual Income Taxes is approved and increases net operating income by $163,000;

nnn. That the following unopposed or uncontested tax-related adjustments are approved: (1) RMA-Pepco-25 – 8.25% Income Tax Rate Change; (2) RMA PEPCO-27 Tax Cuts Revenue Debit; (3) RMA PEPCO-31 Maryland "Statutory Subtraction" Modification Tax Benefit;

ooo. That Pepco's Jurisdictional Cost Allocation Study is reasonable;

ppp. That Pepco's Class Cost of Service based on the Jurisdictional Cost Allocation Study is reasonable;

qqq. That the Modified EMRP adopts Pepco's four-step methodology (approximately (0.89 multiplier) with a 20% allocation to residential Rate Schedule R and MMA) in this rate case;

rrr. That Pepco is awarded a net $21.8 million revenue increase (after offset) in the 2021 rate effective period from July 1, 2021, to December 31, 2021. Approximately 20% of Pepco's $21.8 million revenue increase (or $3.78 million to R and $0.58 million to MMA) will be allocated to the Residential classes;

sss. That Pepco's use of current billing determinants, including corrected demand billing determinants is reasonable;

ttt. That the Billing Determinant Errata did not affect the following items: (1) the proposed revenue requirement for the EMRP; (2) the requested ROR; (3) the projected rate base; (4) the class cost of service study and results; (5) the class revenue requirement and revenue allocation among classes in the MRP and EMRP;

(6) the annual BSA target; and (7) for rate classes without demand, no rate changes were required. Only the commercial classes with demand charges required final tariff rate changes (changes made to kWh rates) attributable to the Errata. These include the following classes: GS-LV, GS-3A, MGT-LV, GT-LV, GT-3B, and GT-3A.

uuu. That the billing determinant error only affected the demand charge revenue component of the rate design for commercial customers;

vvv. That Pepco's Billing Determinant error represents a material weakness in Pepco's internal controls. The Commission will perform a comprehensive evaluation of the BSA operations and Pepco's quality control procedures. The Commission will investigate and evaluate the BSA and conduct an audit of Pepco's BSA amounts and calculations after August 2018, including the pandemic time periods;

www. That an audit of Pepco's BSA be conducted and a technical conference be convened to further discuss the mechanics of the BSA. That the BSA surcharges and deferred balances should be further reviewed in the larger context of whether the BSA is operating as intended. Therefore, the Commission directs that this issue be discussed in the technical conference(s) along with the possible reform of the BSA. The technical conference(s) are to be facilitated by Commission Staff and shall be held within 120 days after the new rates become effective. Pepco is to file a report on the technical conference(s) within 90 days after the first technical conference; That Pepco will not be required to file a billing determinant update in 2021. Pepco is directed to provide new rates and new billing determinants to be used for 2023 on July 30, 2022. Pepco shall also provide a BSA revenue per customer update in that filing;

xxx. That Pepco is directed to host a technical conference on the new billing determinants and new rates for 2023 within 15 days after the July 30, 2022, filing. Parties can seek discovery within 15 days thereafter. Data responses are due ten days after receiving the data requests. Parties may file comments by September 15, 2022. Pepco may provide an updated filing by October 15 based on Parties' comments if necessary;

yyy. That the Commission adopts Pepco's proposed customer charge and rate designs (revenue allocation to different components such as demand charge, customer charge and volumetric charge) because the methodology is consistent with past practice. The Commission, however, modifies Pepco's methodology for the Rate Schedule R and MMA Customer Charge;

zzz. That the Commission approves AOBA's change to the MMA rate design and directs the change in MMA rate design be established beginning January 1, 2022, The customer charge reduction need only be implemented for 2022. That the Commission directs Pepco to begin the development of the 2022 MMA rate design no later than August 1, 2021, in consultation with AOBA and other interested parties. If Pepco cannot reach a consensus on the rate design with AOBA and other interested parties, then the parties may file a statement explaining what changes

should be made, if any. Pepco's proposed new MMA billing determinants for 2022 shall be submitted on October 30, 2021. Parties may file comments on Pepco's filing within 10 days following the Company's filing of the new MMA billing determinants;

aaaa. That there is an overall $1.00 increase in the Customer Charge for the Residential class. There will be no increase to the current $15.09 customer charge in 2021 rates, but the $1.00 increase will be added to the R class 2022 customer charge and rates;

bbbb. That the Commission agrees to proportionally increase the Schedule R volumetric blocks;

cccc. That AOBA's seasonal differential approach for Schedule T rates will result in just and reasonable Schedule T rates. Pepco is directed to file a Schedule T tariff consistent with our ruling on the Company's compliance filing;

dddd. That the overall Modified EMRP monthly bill increase for the average residential customer is $5.25 considering all the revenue requirement impact from CYs 2021-2023;

eeee. That Pepco's compliance filing is due no later than June 21, 2021, and must include: (1) all workpapers in electronic format; (2) a detailed narrative for each rate schedule explaining how the individual rate elements were derived; (3) the compliance filing submitted must be certified as correct and accurate by the same Company officers that certify its Sarbanes Oxley submittals; and (4) the authorized BSA revenues per customer;

ffff. That Pepco shall include and file a Senior Citizen and Disabled Resident tariff in the compliance filing; and

gggg. That Pepco shall file an individual CBRC balance for each applicable class in the compliance filing related to the Other Tariff Changes section.

THEREFORE, IT IS ORDERED THAT:

477. The Potomac Electric Power Company's Multiyear Rate Plan Application filed May 30, 2019, as updated, seeking to increase rates for electric distribution service by $135.9 million is **DENIED**;

478. The Commission **GRANTS** the Potomac Electric Power Company a net revenue requirement increase of $21.8 million for the remainder of CY 2021; a net revenue requirement increase of $48.4 million in CY 2022; and a net revenue requirement of $38.4 million (after all offsets expire) in CY 2023, based on a rate of return of 7.17% on the Potomac Electric Power Company's jurisdictional forecasted rate base of $2,472.3 million and a net operating income of $98.6 million for 2022;

479. The Potomac Electric Power Company's customer class revenue requirements and rate designs shall be determined as directed in this Opinion and Order;

480. The Motions of the Potomac Electric Power Company, the Office of the People's Counsel, the Apartment and Office Building Association of Metropolitan Washington and the District of Columbia Government to correct the transcripts are **GRANTED**;

481. The Potomac Electric Power Company is directed to file a compliance filing including revised rate schedules and supporting exhibits, consistent with this Opinion and Order, no later than June 21, 2021;

482. Rates authorized in this Opinion and Order shall be effective on July 1, 2021, unless otherwise ordered by the Commission; and

483. The Potomac Electric Power Company shall comply with all other directives included in this Opinion and Order in the manner and time periods set forth herein.

A TRUE COPY: **BY DIRECTION OF THE COMMISSION**

CHIEF CLERK: **BRINDA WESTBROOK-SEDGWICK**
COMMISSION SECRETARY

Attachments:

A. Schedule 1: Modified EMRP Revenue Requirements

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

Formal Case No. 1156
Schedule 1

Potomac Electric Power Company - District of Columbia Division
Starting 12-Months Actual Ending June 30, 2019, MRP December 2020, 2021, 2022
Commission-Approved Modified EMRP Revenue Requirements

(in millions–rounded)

		Starting Point (June 30, 2019)					Approved EMRP	
Line	Description	Company (A)	Adjustments (B)	Adjusted Totals (C)	December 2019 (D)	December 2020 (E)	December 2021 (F)	December 2022 (G)
1	**Rate Base**							
2	Electric Plant in Service	$ 3,760.2	$ -	$ 3,760.2	$ 3,897.5	$ 4,178.0	$ 4,439.7	$ 4,707.5
3	Accumulated Depreciation and Amortization	(1,178.8)	-	(1,178.8)	(1,233.4)	(1,349.7)	(1,475.3)	(1,610.0)
4	Materials and Supplies	41.7	-	41.7	41.7	41.7	41.7	41.7
5	Cash Working Capital	9.5	0.0	9.6	9.6	9.6	9.6	9.6
6	Accumulated Deferred Income Taxes	(807.9)	(10.4)	(818.3)	(803.8)	(797.5)	(795.7)	(797.0)
7	Prepaid Pension/OPEB Liab. (net of tax)	69.8	-	69.8	69.8	69.8	69.8	69.8
8	Customer Deposits	(8.7)	-	(8.7)	(8.7)	(8.7)	(8.7)	(8.7)
9	Pepco Portion of Servco Assets	29.2	-	29.2	28.8	25.3	20.8	17.2
10	Regulatory Assets & Liabilities	55.0	(5.1)	49.9	46.5	37.6	31.4	42.2
11	Unamortized Credit Facility Costs	0.4	-	0.4	0.3	0.2	0.2	0.1
12	Total Rate Base	$ 1,970.4	$ (15.5)	$ 1,954.9	$ 2,048.3	$ 2,206.4	$ 2,333.5	$ 2,472.3
13	Rate of Return	7.39%		7.17%	7.17%	7.17%	7.17%	7.17%
14	Return Requirement	$ 145.6	$ (5.4)	$ 140.2	$ 146.9	$ 158.2	$ 167.3	$ 177.3
15	**Operating Revenues**							
16	Sale of Electricity	$ 533.1	$ -	$ 533.1	$ 533.1	$ 533.1	$ 533.1	$ 533.1
17	Other Operating	6.8	-	6.8	6.8	6.8	6.8	6.8
18	Total Operating Revenues	$ 539.9	$ -	$ 539.9	$ 539.9	$ 539.9	$ 539.9	$ 539.9
19	**Operating Expenses**							
20	Operation and Maintenance	$ 157.0	$ (0.9)	$ 156.1	$ 157.8	$ 161.2	$ 164.7	$ 168.3
21	EBSC Transformation Initiative Savings	-	-	-	-	-	(2.3)	(2.3)
22	Depreciation and Amortization	123.7	(1.2)	122.5	122.1	128.4	137.7	145.6
23	Other Taxes	146.5	-	146.5	146.5	146.5	146.5	146.5
24	D.C. Income Tax	5.2	0.1	5.3	5.2	4.1	2.7	1.5
25	Amortization of DC EDIT (FC 1150)	(10.9)	-	(10.9)	(9.8)	(3.6)	(1.2)	-
26	Federal Income Tax	15.4	0.3	15.7	14.2	10.2	7.1	4.0
27	Amortization of Federal EDIT (FC 1150)	(22.2)	(0.2)	(22.4)	(22.4)	(22.4)	(22.4)	(22.4)
28	Total Operating Expenses	$ 414.8	$ (2.0)	$ 412.8	$ 413.6	$ 424.6	$ 433.0	$ 441.3
29	**Total Operating Income**	$ 125.1	$ 2.0	$ 127.1	$ 126.3	$ 115.3	$ 106.9	$ 98.6
30	**Income Deficiency**	$ 20.5	$ (7.4)	$ 13.1	$ 20.6	$ 42.9	$ 60.4	$ 78.7
31	Revenue Conversion Factor	1.3796		1.3796	1.3796	1.3796	1.3796	1.3796
32	**Revenue Deficiency**	$ 28.3	$ (10.2)	$ 18.0	$ 28.4	$ 59.2	$ 83.3	$ 108.6

Escalation 2.17%

Modified EMRP Revenue Requirements without EDIT Offset - Rate Effective 7/1/21

(in millions–rounded)

Description	(6-months) Jul-21 Dec-21	Dec-22	Dec-23	Total
	Prorated			
EMRP Gross Revenue Requirements (before Offsets)	$ 41.7	$ 108.6	$ 108.6	
Offsets:				
1. Pause Regulatory Asset Amortization 2021-2022	(12.1)	(10.8)	-	(22.9)
2. Accelerate MD Additional Subtraction Modification	-	(27.6)	-	(27.6)
3. Accelerate Non-Protected Property EDIT Amortization	-	-	-	-
4. COVID-19 Rate Relief*	(7.8)	-	-	(7.8)
Change in Net Revenue (after Offsets)	**$ 21.8**	**$ 70.2**	**$ 108.6**	
Incremental	**$ 21.8**	**$ 48.4**	**$ 38.4**	

B. Schedule 2: Modified EMRP Rate of Return

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA Formal Case No. 1156
Schedule 2

Potomac Electric Power Company - District of Columbia Division
Starting 12-Months Actual Ending June 30, 2019, MRP December 2020, 2021, 2022
Commission-Approved Modified EMRP Rate of Return

Line	Description	Ratio	Cost %	Weighted Cost %
	(A)	(B)	(C)	(D)
	Approved			
1	Long-Term Debt	49.32%	5.01%	2.47%
2	Short-Term Debt	0.00%	0.00%	0.00%
3	Common Equity	50.68%	9.275%	4.70%
4	Total	100.00%		7.17%

C. Schedule 3: Ratemaking Adjustments and Revenue Requirements Effect

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

Formal Case No. 1156
Schedule 3

Potomac Electric Power Company - District of Columbia Division
Starting 12-Months Actual Ending June 30, 2019, MRP December 2020, 2021, 2022
Starting Period (June 30, 2019) Ratemaking Adjustments and Revenue Requirements Effect

(in thousands)

Line	Description		Rate Base	Operating Income	Revenue Requirement
1	Company's Starting Revenue Deficiency				$ 28,295
2	Impact of Recommended Rate of Return (Schedule 2.1)				(5,981)
3	Return on Equity	9.275%			
4	Rate of Return	7.17%			
5	Impact of Ratemaking Adjustments				
6	RMA-1 Federal Excess Deferred Income Tax (EDIT) Amortization (Pepco-26, OPC-8)		$ (10,412)	$ 547	(1,785)
7	RMA-2 PHISCO Deficient Deferred Income Tax Amortization (Pepco-29, OPC-9)		(3,818)	848	(1,548)
8	RMA-3 Adjust Cash Working Capital to Include RMAs (Pepco-37, OPC-17)		22		2
9	RMA-4 Remove Charge for EBSC Residual Income Taxes (OPC-14)			163	(225)
10	RMA-5 Remove Out of Period Servco Costs (OPC-15)			500	(690)
11	RMA-6 Interest Synchronization (Pepco-38, OPC-18)			(105)	145
12	RMA-7 Reflection of CTO (RMA-36, OPC-13) and EBSC Transformation Initiative Savings		894	(199)	362
13	RMA-8 Remove Benning Road Post FC1150 Settlement Spent for RI/FS & CT Basins Removal (Pepco 20a, OPC 20)		(2,177)	229	(531)
			$ (15,491)	$ 1,983	(10,249)
14	Revenue Deficiency as of June 30, 2019				$ 18,046