

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

ORDER

June 30, 2022

**GD-2022-01-E, IN THE MATTER OF THE COMPLAINT AND INVESTIGATION INTO
POTOMAC ELECTRIC POWER COMPANY'S COMMUNITY RENEWABLE ENERGY
FACILITY PRACTICES, and**

**FORMAL CASE NO. 1171, IN THE MATTER OF THE INVESTIGATION INTO
COMMUNITY RENEWABLE ENERGY FACILITY PRACTICES IN THE DISTRICT,
Order No. 21174**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) grants the Office of the People’s Counsel for the District of Columbia and the District of Columbia Government’s (Collectively, “Joint Petitioners”) Petition for an Investigation into the Potomac Electric Power Company’s (“Pepco” or “Company”) Community Renewable Energy Facility (“CREF”) practices.¹ The Commission opens *Formal Case No. 1171, In the Matter of the Investigation into Community Renewable Energy Facility Practices in the District* (“*Formal Case No. 1171*”). Additionally, the Commission holds the Joint Petitioners’ Joint Motion for a Pre-Hearing Conference and Solar United Neighborhoods of D.C.’s (“SUN”) Motion for Leave to Intervene in abeyance.²

II. BACKGROUND

2. The District of Columbia (“District”) enacted the Community Renewable Energy Act of 2013 (“CREA”) which permits, *inter alia*, Community Net Metering (“CNM”) and provides an opportunity for District residents to benefit from renewable energy production.³ On March 23, 2022, Joint Petitioners filed a Joint Complaint and Petition for an Investigation into Pepco’s CREF Practices. On March 28, 2022, Pepco requested until May 9, 2022, to respond to the allegations

¹ *GD-2022-01-E, In the Matter of the Complaint and Petition for an Investigation into Potomac Electric Power Company’s Community Renewable Energy Facility Practices* (“*GD-2022-01-E*”), The Office of the People’s Counsel for the District of Columbia and the District of Columbia Government’s Petition for Investigation into Potomac Electric Power Company’s Community Renewable Energy Facility Practices (“*Joint Petition*”), filed March 23, 2022.

² *GD-2022-01-E*, The District of Columbia Government’s and Office of the People’s Counsel for the District of Columbia’s Joint Motion to Convene Pre-Hearing Conference, filed May 20, 2022 (“*Joint Motion*”).

³ 60 *D.C. Reg.* 015138-015144 (November 1, 2013); *See also* D.C. Code § 34-1518.01 (2013).

in the Joint Petition.⁴ By Order No. 21137, the Commission granted Pepco's request.⁵ On May 9, 2022, Pepco filed its Response to the Joint Petition.⁶ On May 20, 2022, Joint Petitioners filed a Motion to Convene a Pre-hearing Conference.⁷ The Joint Petitioners' request for an investigation was also supported by numerous community comments.⁸ On June 1, 2022, Pepco filed its Response to the Joint Motion to Convene a Pre-hearing Conference.⁹ SUN filed a Motion for Leave to Intervene¹⁰ and a Letter in Support of the Joint Petition.¹¹

III. DISCUSSION

3. Joint Petitioners allege that Pepco has committed, or continues to commit, seven violations of District law:

- I. Pepco violated D.C. Code § 34-1518(b)(5) and 15 DCMR §907.4 by installing Pepco's own production meters on CREFs;
- II. Pepco violated D.C. Code §§ 906.4 and 907.9 by failing to account for and remit unsubscribed energy produced by CREFs;
- III. Pepco is violating D.C. Code §§ 34-1518(b)(5)(I)-(J) and 15 DCMR §§ 907.5-907.6 by failing to timely and accurately provide CREF Subscribers with Community Net Metering ("CNM") Credits;
- IV. Pepco may be violating D.C. Code § 34-1518(b)(5)(K) by failing to consistently account for carryover credits;
- V. Pepco has violated 15 DCMR §§ 304.16(b), 304.17, and 304.18 through 304.21 by failing to timely report billing errors related to CREFs;

⁴ *GD-2022-01-E*, Motion of Potomac Electric Power Company for an Enlargement of Time to Answer, filed March 28, 2022.

⁵ *GD-2022-01-E*, Order No. 21137, rel. April 8, 2022.

⁶ *GD-2022-01-E*, Potomac Electric Power Company's Response to the Office of the People's Counsel of the District of Columbia's and the District of Columbia Government's Joint Complaint, filed May 9, 2022.

⁷ *GD-2022-01-E*, Joint Motion.

⁸ *See e.g. GD-2022-01-E*, Comments and Acknowledgment, filed May 31, 2022, to June 21, 2022.

⁹ *GD-2022-01-E*, Response of Potomac Electric Power Company to Joint Motion to Convene Pre-Hearing Conference, filed June 1, 2022 ("Pepco's Response").

¹⁰ *GD-2022-01-E*, Solar United Neighbors of D.C.'s Motion for Leave to Intervene, filed May 10, 2022.

¹¹ *GD-2022-01-E*, Solar United Neighbors of D.C.'s Letter in Support of the Joint Petition, filed June 7, 2022.

- VI. Pepco has violated 15 DCMR §§ 304.2 by billing CREF systems for Net Energy Metering (“NEM”); and
- VII. Pepco’s actions constitute neglect, waste ratepayer resources, and frustrate the ability of the District to achieve its Carbon Reduction Goals.

Each allegation and Pepco’s response are set forth below.

Allegation No. 1

4. **Joint Petitioners:** Joint Petitioners cite D.C. Code § 34-1518(b)(5)(H) which requires that the amount of electricity generated each month be determined by a revenue quality production meter installed and paid for “*by the owner of the CREF*” (emphasis added).¹² According to Joint Petitioners, contrary to DC Law, Pepco refuses to grant an Authorization to Operate (“ATO”) until the CREF has installed a Pepco-owned meter.¹³

5. **Pepco:** Pepco doesn’t deny that it requires CREFs to use Pepco meters. However, Pepco argues that the statutory provision on which Joint Petitioners rely has to be read in conjunction with D.C. Code § 34-303 which prohibits the use of meters that the Commission has not approved, and D.C. Code § 34-1552(c)(2) which requires that all submetering equipment be subject to the same rules and standards established by the Commission for accuracy testing and record keeping of meters installed by the electric utilities. Pepco states that, as far as it is aware, the Commission has not approved any third-party CREF production meters to be used on Pepco’s distribution system.¹⁴ Regarding the requirement for uniform standards, Pepco states that it can control the testing, maintenance, accuracy, and operations of Pepco’s meters but does not have such ability or control over third-party meters.¹⁵ Moreover, Pepco asserts that only Pepco’s AMI meters can connect with Pepco’s AMI communications systems due to cybersecurity concerns and technical barriers.¹⁶

Allegation No. 2

6. **Joint Petitioners:** Joint Petitioners contend that Commission Rules require that if a CREF is not fully subscribed then Pepco, in its role as the Standard Offer Service (“SOS”) Administrator, is obligated to purchase the CREF facility’s unsubscribed energy and to remit monthly payment to the CREF Subscriber Organization.¹⁷ Joint Petitioners allege that the Subscriber Organizations have not been receiving these payments on a monthly basis, either due

¹² Joint Petition at 17.

¹³ Joint Petition at 18.

¹⁴ Pepco’s Answer at 15 *citing Formal Case No. 1019*, Order No. 12989, ¶ 7, rel. November 13, 2003.

¹⁵ Pepco’s Answer at 16-17.

¹⁶ Pepco’s Answer at 17.

¹⁷ Joint Petition at 21.

to delays in payments or missing payments.¹⁸ Further, Joint Petitioners allege when payments are provided Pepco doesn't include an explanation of how the amounts were calculated.¹⁹ Joint Petitioners argue that the lack of transparency prevents CREF Subscriber Organizations from calculating the amount in payments missing or confirming that Pepco is properly calculating the credit based on the PJM Locational Marginal Price, as required.²⁰

7. **Pepco:** Pepco states that it's under no statutory or regulatory obligation to explain the calculation every time payments are provided so they haven't violated anything by not providing them.²¹ Even so, Pepco goes on to explain why calculating the payment has been a challenge.²² According to Pepco, when it purchases unsubscribed energy acknowledged at the PJM Locational Margin Price ("LMP"), the price is set in real-time and it is a fluctuating and dynamic hourly price.²³ However, Pepco's billing system is not configured for a pricing model based on hourly inputs.²⁴ Therefore, Pepco must do the calculation with a manual input process and that, in turn, required the Company to engage a third party to develop a macro that has enhanced the capability of the manual spreadsheet process. Eventually, that process was overwhelmed by an increasing number of CREFs and the Company had to develop multiple macros. Pepco recognizes that Subscriber Organizations need to verify calculations, so the Company is developing statements that identify the month, payment amounts, and payment calculations associated with the payment received.²⁵ In parallel, Pepco asserts that the Company is planning a process for implementing a billing solution that provides a statement with each payment that identifies the payment as an unsubscribed energy payment and provides dates and calculated unsubscribed energy.²⁶

Allegation No. 3

8. **Joint Petitioners:** Joint Petitioners complain that the Subscriber Organizations have consistently received untimely and inaccurate credit allocation reports that are often amended and reissued. Joint Petitioners point out that pursuant to D.C. Code §34-1518(b)(5)(I)-(J) "the determination of the monetary value of credits allocated to each subscriber to a particular community renewable energy facility shall be based on each subscriber's percentage interest of the total production of the community renewable energy facility and each month, the value of the credits allocated to each subscriber shall be calculated by multiplying the quantity of kilowatt

¹⁸ Joint Petition at 22-23.

¹⁹ Joint Petition at 23.

²⁰ Joint Petition at 23.

²¹ Pepco's Answer at 25-26.

²² Pepco's Answer at 25-26.

²³ Pepco's Answer at 22.

²⁴ Pepco's Answer at 22.

²⁵ Pepco's Answer at 25.

²⁶ Pepco's Answer at 25.

hours allocated to each subscriber by the subscriber's CREF credit rate." Additionally, Joint Petitioners cite to Commission Rules §§ 907.5-907.6 which further dictate that "each billing period, the Electric Company shall calculate the value of the CNM Credit for subscribed energy allocated to each subscriber by multiplying the quantity of kilowatt-hours allocated to each Subscriber by the CREF Credit Rate." The Rules require that Pepco note the CNM Credit, as well as the kWh and price upon which it is based, as line items on a Subscriber's Electric Company bill. Joint Petitioners complain that the information Pepco provides is untimely, with an inexplicable delay of two months, and possibly inaccurate when it shows that the CREF credit is unusually low or even zero. According to Joint Petitioners, a CREF credit can't be zero unless the CREF was damaged or offline for an entire month.²⁷

9. **Pepco:** Pepco asserts that the Joint Petitioners' complaint regarding delay and inaccuracy is based almost entirely on the credit allocation report which, according to Pepco, the Company provides as a courtesy rather than pursuant to a statutory or regulatory requirement. Inasmuch as the report is a courtesy, Pepco argues that it hasn't violated anything even if the report comes later than expected or contains an inaccuracy that is later revised. Pepco concedes that there have been problems. In some instances, damage to a meter on the customer side of the meter has occurred and prevented the meter from recording generation. When that kind of problem comes to Pepco's attention, the Company works with the customer to resolve the issue. Other times, it's a problem that requires updates to the Company's billing processes.²⁸ According to Pepco, the billing process issue has been further complicated by DOEE's decision to aggregate the Solar for All CREFs because a delay in reading one meter in the aggregated group will delay credits applied to the entire group.

Allegation No. 4

10. **Joint Petitioners:** Joint Petitioners point out that D.C. Code § 34-1518(b)(5)(K) requires that any credits generated by CREFs and allocated to subscribers that exceed the amount owed by the subscriber shall carry over from the month to month until the value of any remaining credits is used.²⁹ Joint Petitioners allege that the credit allocation reports provided by Pepco to CREF Subscriber Organizations do not contain information on whether bill credit amounts contain carry-over credits.³⁰ Additionally, Joint Petitioners allege that Pepco's practice is to pay any credit amount over 100% of the subscriber's usage back to the customer as a line item on their bill.³¹ However, Joint Petitioners argue that there is no easy way for the CREF Subscriber Organization to reasonably verify that this is occurring and greater transparency is necessary to provide customers with accurate information regarding the current value of their credits.³²

²⁷ Joint Petition at 25.

²⁸ Pepco's Answer at 31-32.

²⁹ Joint Petition at 30.

³⁰ Joint Petition at 30.

³¹ Joint Petition at 30.

³² Joint Petition at 30.

11. **Pepco:** Pepco states that it is carrying over excess credit from month to month until all credits are fully used as the law requires but the credit is located on customer bills in the “Total Credit Amount” line included in the balance of all other credits as opposed to appearing as an individual line item.³³ The Company contends that, while this particular practice does not violate any law or Commission rule, the Company is exploring a bill redesign to provide greater transparency, enhance the customer experience, and include a summary on the bill to show the carryover credit.³⁴

Allegation No. 5

12. **Joint Petitioners:** Joint Petitioners point to Commission Rules §§ 304.16 through 304.21 that establish billing error reporting requirements.³⁵ Joint Petitioners allege that Pepco has failed, or refused, to provide the Commission, OPC, and its customers with timely and complete billing error notifications required by the rules.³⁶ Joint Petitioners allege that Pepco has filed four (4) billing error notices regarding CREF billing but additional billing errors have occurred that Pepco has failed to report.³⁷ Joint Petitioners provide ten (10) examples of billing errors that occurred but were not reported in violation of the Commission’s rules.³⁸

13. **Pepco:** Pepco maintains that it has not violated Commission reporting standards for billing errors.³⁹ With respect to three (3) purported billing errors - the first, third and sixth – are not reporting errors because the Company reported them to the Commission.⁴⁰ Pepco argues that four of the purported errors do not qualify as reportable billing errors under Commission regulations.⁴¹ The second and ninth alleged billing errors resulted from meter reading timing issues caused by problems in CREF generation allocation rather than the types of errors listed in the Commission Rules.⁴² The seventh alleged billing error, according to Pepco, was the result of a DOEE request on how to apply credits from a VCREF that led to a series of discussions and the creation of Solar for All group 19 (an exclusively VCREF group).⁴³ Pepco argues that this billing

³³ Pepco’s Answer at 34.

³⁴ Pepco’s Answer at 35.

³⁵ Joint Petition at 31-32.

³⁶ Joint Petition at 32.

³⁷ Joint Petition at 32-33.

³⁸ Joint Petition at 33.

³⁹ Pepco’s Answer at 38.

⁴⁰ Pepco’s Answer at 38-39.

⁴¹ Pepco’s Answer at 39.

⁴² Pepco’s Answer at 40-41.

⁴³ Pepco’s Answer at 41-42.

error is not due to an error enumerated by Commission rules and is not required to be reported.⁴⁴ The fifth alleged billing error is vague and fails to provide sufficient information, however, Pepco believes it is an issue with Solar for All Group 06.⁴⁵ Pepco asserts that the issue associated with Solar for All Group 06 was a result of the generator not functioning properly and not a result of the Company's equipment or actions.⁴⁶ As such Pepco asserts the undercounting of the generation was not an error by Pepco and Commission Rules do not require the Company to report the issue.⁴⁷ The remaining billing error is, to Pepco, lacking in sufficient detail for Pepco or anybody else to tell whether it's a reportable error or not, and, consequently, this part of the complaint should be dismissed.

Allegation No. 6

Joint Petitioners: Joint Petitioners state that, contrary to Commission Rule § 304.22 which prohibits CREF generation from being eligible for net energy billing and despite the fact that CREFs are generators, not customers, Pepco has been sending bills to CREFs that resemble net metering bills.⁴⁸ As proof that Pepco is billing CREFs for net energy metering, Joint Petitioners point to Pepco's own Billing Error Notification Report filed on February 22, 2022, which shows that Pepco is sending bills to Subscriber Organizations.⁴⁹

14. **Pepco:** Pepco asserts that Joint Petition's own exhibits show that Pepco is allocating CNM credits rather than NEM credits to subscribers but concedes that the manner in which the Company zeros out certain charges on the bill might be confusing. According to Pepco, although it has clear legal authority to zero out the Commission-jurisdictional charges, such as the customer charge and energy charge in the distribution portion, it is unclear that the Company has the legal authority to zero out the "Energy Assistance Trust Fund," "Sustain Energy Trust Fund," "Public Space Occupancy Surcharge," and "Delivery Tax," which are all set and required by the District.⁵⁰ Pepco states that it has stayed within the law but suggests that additional clarity from the Commission defining how Pepco should be treating the District-set charges and the Supply Charges for Supplier Organizations would benefit the process.⁵¹

Allegation No.7

15. **Joint Petitioners:** Joint Petitioners assert that Pepco's practices and policies, with respect to the implementation of CREF-related statutes and regulations, frustrate the District's

⁴⁴ Pepco's Answer at 42.

⁴⁵ Pepco's Answer at 42-43.

⁴⁶ Pepco's Answer at 43.

⁴⁷ Pepco's Answer at 42-43.

⁴⁸ Joint Petition at 35.

⁴⁹ Joint Petition at 35.

⁵⁰ Pepco's Answer at 46.

⁵¹ Pepco's Answer at 46.

ability to achieve clean energy and equity goals set forth in the legislation.⁵² Additionally, Joint Petitioners argue that Pepco's failure to timely and accurately apply CREF payments raises questions about how many CNM Credits are unaccounted for and undermines the public confidence in CREFs causing financial harm to CREF Subscriber Organizations.⁵³

16. **Pepco:** Pepco asserts that its process comports with law, is reasonable, and does not frustrate the District's climate and energy goals.⁵⁴ Furthermore, the Company states that it is focused on a path forward of supporting DOEE and other Subscriber Organizations and continuous improvement of the processes for managing the provision of services to CREFs in the District of Columbia.⁵⁵

Requested Relief

17. Joint Petitioners request that the Commission: compel Pepco to remove its proprietary meters and only use the revenue-grade meters installed by developers to determine CREF's electricity generation;⁵⁶ institute a formal investigation into Pepco's CREF practices;⁵⁷ procure an independent third-party audit of Pepco's metering and crediting process; and impose sanctions against Pepco for violating both the law and Commission regulations.

IV. DECISION

18. Joint Petitioners allege that Pepco has engaged in particular conduct that violates the law or Commission regulations. In nearly every instance, Pepco does not deny the underlying facts but rather argues that the Company's actions are not violative of any law or Commission Rule. Inasmuch as the resolution of the allegations in the complaint turn on an interpretation of applicable statutes and regulations, this matter is a question of law rather than a dispute over genuine issues of fact requiring an evidentiary hearing. Although we recognize that the Joint Petitioners and Pepco have laid out their positions in their respective pleadings, we will give both sides an additional opportunity to submit legal briefs before ruling on the merits. Putting the legal issues aside for the moment, the pleadings reflect that Pepco's process is less than clear about whether CREF accounts have been properly credited as Pepco claims. This may be a simple accounting issue that can be resolved through an audit. If issues of fact subsequently arise, then a pre-hearing conference may be warranted. Both sides should also be aware that regardless of our ruling on the legal arguments in the Petition, the Commission may choose to proactively open a rulemaking proceeding to consider modifying the regulations to make this process more transparent and responsive to persons who are trying to help the District meet its climate goals.

⁵² Joint Petition at 36.

⁵³ Joint Petition at 39-40.

⁵⁴ Pepco's Answer at 47.

⁵⁵ Pepco's Answer at 51.

⁵⁶ Joint Petition at 41.

⁵⁷ Joint Petition at 41.

19. Accordingly, the Commission grants the Joint Petition and opens *Formal Case No. 1171*. The Commission holds in abeyance the Joint Petitioners' Motion for a Pre-Hearing Conference at this time. The Commission invites the Joint Petitioners and Pepco to file legal briefs no later than 20 days from the date of this Order. Joint Petitioner and Pepco may file reply briefs no later than ten 10 days from the date of this Order. Additionally, Commission Staff shall prepare a proposed Scope of Work ("SOW") for the audit and will share the SOW with the Joint Petitioners and Pepco for comment. While the Commission reviews the legal questions, it is unclear what, if any, additional process will be required or if formal parties would be appropriate in this matter. Therefore, the Commission holds SUN's Motion for Leave to Intervene in abeyance as well. However, under the circumstances, SUN is free to file a legal brief or comment on the proposed SOW.

THEREFORE, IT IS ORDERED THAT:

20. The Commission **GRANTS** the Joint Petition for an Investigation into Potomac Electric Power Company's Community Renewable Energy Facility Practices but **HOLDS IN ABEYANCE** the Joint Motion for a Pre-Hearing Conference;

21. The Commission **OPENS** *Formal Case No. 1171*;

22. The Commission **INVITES** Joint Petitioners and Pepco to file legal briefs within 20 days of the date of this Order and reply briefs within 10 days thereafter; and

23. The Commission **HOLDS IN ABEYANCE** Solar United Neighborhoods of D.C.'s Motion for Leave to Intervene.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**