

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

ORDER

June 26, 2023

**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. 21649**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) clarifies that its decision on penalties in Order No. 21600 does not shield the Potomac Electric Power Company (“Pepco” or “the Company”) from reimbursing ratepayers for costs associated with the installation and removal of Community Renewable Energy Facility (“CREF”) meters that were installed contrary to law.

II. BACKGROUND

2. On March 23, 2022, the Office of the Attorney General for the District of Columbia and the Office of the People’s Counsel for the District of Columbia (collectively, “Joint Petitioners”) filed a Joint Complaint and Petition for an Investigation into Pepco’s CREF Practices.¹ The Complaint alleged 7 separate instances where Pepco had either violated the statute or the Commission’s regulations.

3. By Order No. 21600, the Commission found that Pepco is currently in violation or has been in violation of relevant laws and regulations as identified in three (3) of the seven (7) Counts.² Among other things, the Order directed that Pepco file a report within 20 days (“20-Day Report”) with a 15-day comment period thereafter that describes: 1) “... how Pepco metering costs for CREFs have been assigned, and the amounts (if any) that have been passed on to ratepayers or paid by CREF developers”; 2) “... a detailed description of billing improvements the Company

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 Joint Complaint and Petition for Investigation into Potomac Electric Power Company’s Community Renewable Energy Facility Practices, filed March 23, 2022.

² *GD-2022-01-E and Formal Case No. 1171, In the Matter of the Investigation into Community Renewable Energy Facility Practices in the District* (“Formal Case No. 1171”), Order No. 21600 (“Order No. 21600”), ¶ 1, April 24, 2023.

has made...”; and 3) “... an explanation of what, if any, progress has been made in redesigning the bill...”³

4. Pepco filed its 20-Day Report on May 15, 2023.⁴ Joint Petitioners filed Reply Comments on May 30, 2023.⁵ Pepco filed a Motion and Reply on June 6, 2023.⁶

5. This order addresses only the CREF meter installation and removal costs.

III. DISCUSSION

6. **Pepco 20-Day Report:** Regarding metering costs, Pepco states that from 2017 to 2022, it spent \$564,358 in meter costs for 348 Pepco meters on CREFs, which includes transformers. Additionally, Pepco estimates that it has spent approximately \$241,000 in labor costs to install the Pepco meters on CREFs over the same period.⁷ As for the assignment of costs, Pepco states: “Pepco’s meter and labor costs are in its rate base and paid for by customers. Pepco is not aware of any instance in which these costs were directly assigned to a CREF developer.”⁸

7. **Joint Commenters:** Joint Commenters request that “the Commission should issue an order directing Pepco to: (1) conduct a full accounting – rather than an approximate estimate – of the labor costs it has spent installing Pepco meters at 348 CREFs within the District from 2017 through the present; and (2) reimburse ratepayers for charging them the cost of installing Pepco’s unlawful meters at CREFs in violation of its clear statutory obligation to use CREF meters to allocate subscribed and unsubscribed energy.”⁹ Joint Commenters also argue, “The amount to be reimbursed through rates should be calculated by adding the cost of the meters – \$564,358 – to the more thoroughly accounted for labor costs to install the meters at CREFs from 2017 through the present, and include an appropriate adjustment for inflation since 2017. Further, the Commission should instruct Pepco that it is prohibited from including the cost of removing the unlawful meters under Order No. 21600 in its rate base and charging those expenses to customers going forward

³ Order No. 21600, ¶¶ 15, 25, and 28.

⁴ *Formal Case No. 1171*, Twenty-Day Report of Potomac Electric Power Company Pursuant to Order No. 21600 (20-Day Report), May 15, 2023.

⁵ *GD-2022-01-E* and *Formal Case No. 1171*, Joint Comments of the District of Columbia Government and Office of the People’s Counsel for the District of Columbia in Response to Twenty-Day Report of the Potomac Electric Power Company Pursuant to Order No. 21600 (“Joint Comments”), May 30, 2023.

⁶ *Formal Case No. 1171*, Motion of Potomac Electric Power Company for Leave to File a Limited Reply to Joint Comments of District of Columbia Government and Office of People’s Counsel to Twenty-Day Report (“Pepco Reply”), June 6, 2023.

⁷ 20-Day Report at 1-2.

⁸ 20-Day Report at 2.

⁹ Joint Comments at 6.

because customers should not have to pay costs stemming from Pepco's violation of the CREF metering statute."¹⁰

8. **Pepco Reply:** "The Company requests that it be permitted to address a request in the Joint Comments that Pepco not be able to recover the costs for installing, and removing, its meters on Community Renewable Energy Facilities ("CREFs") because their request is contrary to the conclusions in Order No. 21600."¹¹ Pepco argues that it should not have to reimburse ratepayers for the cost of the Pepco meters installed on CREFs because the Commission concluded that Pepco's legal interpretation was an issue of "first impression" and declined to assign penalties to Pepco for its legal violation. As such, Pepco finds that the Joint Commenters' request is contrary to the Commission's ruling in Order No. 21600. Pepco also argues that Joint Commenters are expanding the inquiry beyond what was ordered for the 20-Day Report by introducing cost recovery.¹²

IV. DECISION

9. Pepco's reliance on Order No. 21600 is misplaced. In Order No. 21600, we declined to impose a financial penalty because we gave Pepco the benefit of the doubt that its flawed reading of the law and our regulations was not a deliberate attempt to undermine them. However, the fact that we saw no reason to punish Pepco with a financial penalty does not create a shield against a claim that Pepco should be prohibited from dumping the consequences of the Company's error onto the backs of ratepayers. When it comes to assigning costs to ratepayers, Pepco must first show that the shift in costs is just and reasonable and that showing has not, and cannot, be made (at least under these circumstances). We direct Pepco to provide an addendum to the 20-Day Report with the total actual costs incurred for its meters installed on CREFs from 2015 to present, including the number of meters and the actual labor costs, within 30 days of the date of this Order. Upon receipt of the total metering costs, we will provide additional direction to Pepco regarding how to proceed with reimbursing the ratepayers.

¹⁰ Joint Comments at 7.

¹¹ Pepco Reply at 1.

¹² Pepco Reply at 1-2.

THEREFORE, IT IS ORDERED THAT:

10. The Potomac Electric Power Company is **DIRECTED** to amend its 20-Day Report to include the information in Paragraph 9 of this Order.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, reading "Brinda Westbrook-Sedgwick". The signature is written in a cursive, flowing style.

CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**