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**People's Counsel**

January 26, 2024

Brinda Westbrook-Sedgwick  
Commission Secretary  
Public Service Commission  
of the District of Columbia  
1325 G Street, N.W., Suite 800  
Washington, D.C. 20005

**Re: Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia**

Dear Ms. Westbrook-Sedgwick:

Enclosed for filing in the above-referenced proceeding please find the *Office of the People's Counsel for the District of Columbia's Comments on Pepco's Proposed Request for Proposals and Power Purchase Agreement*.

If there are any questions regarding this matter, please contact me at 202.727.3071.

Sincerely,

/s/ Ade Adeniyi

Ade Adeniyi

Assistant People's Counsel

Enclosure

cc: Parties of Record

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF THE DISTRICT OF COLUMBIA**

**In the Matter of:** )  
 )  
**The Development and Designation of** ) **Formal Case No. 1017**  
**Standard Offer of Service in the** )  
**District of Columbia** )

**OFFICE OF THE PEOPLE’S COUNSEL  
FOR THE DISTRICT OF COLUMBIA’S COMMENTS ON  
PEPCO’S PROPOSED REQUEST FOR PROPOSALS  
AND POWER PURCHASE AGREEMENT**

**I. INTRODUCTION**

The Office of the People’s Counsel (“OPC” or “Office”), the statutory representative of District of Columbia ratepayers in utility proceedings,<sup>1</sup> hereby respectfully submits its Comments on Pepco’s Proposed Request for Proposals and Power Purchase Agreement.

**II. BACKGROUND**

To help meet the requirements of the District’s Renewable Portfolio Standard (“RPS”), in 2019, the Public Service Commission for the District of Columbia (“Commission”) established a pilot program to procure renewable energy through long-term power purchase agreements (“PPA”).<sup>2</sup> The PPA was to purchase electricity generated by solar or wind power facilities located within the PJM Interconnection region (“PJM”).<sup>3</sup> The Commission intended to take direct action to reduce greenhouse gas emissions by using the PPA to promote the construction of new

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<sup>1</sup> D.C. Code § 34-804

<sup>2</sup> *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia (“Formal Case No. 1017”),* Order No. 19897, April 12, 2019.

<sup>3</sup> *Id.* ¶ 1.

renewable energy generation.<sup>4</sup> As OPC advocated, the Commission set the target at 5% of the Standard Offer of Service (“SOS”) retail load to be able to monitor the impact of the PPA on ratepayers before increasing the target quantity.<sup>5</sup> The Commission ordered the Potomac Electric Power Company (“Pepco” or the “Company”) to be the counterparty to the PPA and, in 2020, the Commission approved Pepco’s RFP and draft PPA.<sup>6</sup>

The RFP, released in 2020, required initial proposals to provide the following: (1) a facility located in the PJM region; (2) a facility at least ten megawatts (10 MW) in size; (3) a fifteen (15)- or twenty (20)-year term; (4) evidence of the bidders’ (or their affiliates’) experience in the operation or development of onshore wind or solar electricity generating assets; (5) a delivery schedule of onshore wind or solar energy generation; (6) the current status of site control efforts and a detailed plan to achieve full site control; (7) the proposed interconnection of the facility and what rights the bidder has acquired for interconnection; (8) identities of the parties that will have the responsibility to develop, finance, construct, and operate the facility; (9) a single, fixed price for the entire term or a price with a fixed annual escalation through the entire term; (10) pricing that is not contingent on future receipt of any state and/or federal tax credits or other incentives; (11) for solar facilities, an availability guarantee of ninety percent (90%) during the first contract year and ninety-five percent (95%) in all other contract years; and (12) for onshore wind facilities, an availability guarantee of ninety percent (90%) for the entire term.<sup>7</sup> For the subsequent three years, Pepco tried to finalize this PPA, but on April 21, 2023, Pepco filed a letter informing the Commission that the PPA had been terminated by the counterparty because the counterparty had

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<sup>4</sup> *Id.* ¶ 33.

<sup>5</sup> *Id.*

<sup>6</sup> *Formal Case No. 1017*, Order No. 20636, ¶¶ 1, 5, October 1, 2020.

<sup>7</sup> *Formal Case No. 1017*, Potomac Electric Power Company’s 2020 Solicitation for New Photovoltaic Solar and Onshore Wind Power Supply Generation and Renewable Energy Purchase Agreement, filed September 23, 2020.

failed to contract for the sale of 90% of the project.<sup>8</sup> Pepco proposed that the Commission allow more flexible terms for a new RFP.

On October 26, 2023, the Commission directed Pepco to include the following terms in the RFP and in the draft PPA: (1) add existing and expanding facilities to the types of facilities that can bid; (2) include a pricing collar review; (3) add offshore wind facilities to the types of facilities that can bid; (4) lower the threshold of facilities that can bid to five (5) MW; (5) include a termination payment; (6) retain a contract duration of 15 to 20 years; (7) retain the agreement at 5% of the SOS load; and (7) retain Pepco as the counterparty to the PPA.<sup>9</sup>

Pepco now proposes a revised RFP and PPA, and the Commission seeks comments on that request.<sup>10</sup>

### **III. COMMENTS**

#### *A. Availability Guarantees and Decreased Capacity Damages Should Be Reduced.*

According to Pepco, “[t]he counterparty [for the 2020 RFP] invoked its contractual right to terminate because it had failed to contract for the sale of ninety percent (90%) of the project.”<sup>11</sup> This prompted Pepco’s suggestion to the Commission, to offer more flexible terms that would attract more bidders to the RFP. However, Pepco’s currently proposed RFP still requires proposals for solar facilities and wind facilities to be based on an availability guarantee of 95% and 90% respectively.<sup>12</sup> Given the District’s aggressive renewable energy goals, every effort should be made to enhance the increased participation of distributed energy resources such as solar and wind. However, the availability of intermittent resources such as solar and wind is impacted by natural

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<sup>8</sup> *Formal Case No. 1017*, Potomac Electric Power Letter, April 21, 2023.

<sup>9</sup> *Formal Case No. 1017*, Order No. 21918 at ¶ 1, October 26, 2023.

<sup>10</sup> *Formal Case No. 1017*, Notice, January 17, 2024.

<sup>11</sup> *Formal Case No. 1017*, Potomac Electric Power Letter, April 21, 2023.

<sup>12</sup> *Id.* at §5.7.

events that may be beyond the control of the energy supplier. Therefore, it may be challenging to consistently meet 90% or 95% availability. OPC recommends that the Commission carefully review this requirement to ensure that it will not be unduly prohibitive and limit the participation of potential bidders. Alternatively, the Commission can consider changes to the RFP by including energy storage to enhance availability. If that is not possible, OPC recommends that the availability guarantees should be reduced in the initial years of the contract with a provision to review the power supply agreement should the supplier be unable to maintain availability requirements.

Pepco proposes Decreased Capacity Damages<sup>13</sup> if, on the Initial Delivery Date, Pepco's share is less than 100% but greater than or equal to 90% of its Original Share for 12 months after the Initial Delivery Date. Pepco states "Seller shall pay to Buyer liquidated damages in an amount equal to the product of: (i) the Original Buyer's Share minus (ii) the Buyer's Share determined as of the Guaranteed Initial Delivery Date, multiplied by one hundred thousand dollars (\$100,000.00)."<sup>14</sup> OPC recommends that Pepco provide the basis and calculation for this value because such transparency will aid stakeholder review to ensure that the Decreased Capacity Damages will neither be too high to attract qualified bidders nor so low that it adversely impacts ratepayers in the event of supplier default. More importantly, OPC recommends that the Commission review closely whether Decreased Capacity Damages should be reduced, particularly in the early stages of the pilot.

*B. Performance Assurance Should Be Flexible.*

Pepco states: "Performance Assurance will be equal to \$90 per MWh times the annual buyer energy limit under contract with a term of fifteen years, and equal to \$120 per MWh times the

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<sup>13</sup> *Id.* at Art. 3.5.

<sup>14</sup> *Id.* at Art. 3.5.

annual buyer energy limit under contract with a term of 20 years. The amount of required Performance Assurance will decline annually during commercial operation.... The letter of credit must be in a form acceptable to Pepco, in whose favor the letter of credit is issued.”<sup>15</sup>

OPC recommends that Pepco provide the basis and calculation for these values because such transparency will aid stakeholder review to ensure that the Performance Assurance will neither be too high to attract qualified bidders nor so low that it adversely impacts ratepayers in the event of supplier default. OPC also recommends that (1) the Performance Assurance could be the greater of either (i) \$90 per MWh for a 15-year contract and \$120 for a 20-year contract, or (ii) the prevailing retail market price of electricity per MWh plus a 10% administrative charge; (2) Pepco specify the measure by which the Performance Assurance would decline annually; and (3) Pepco state the *acceptable form* of a letter of credit and add that it will not unreasonably refuse letters of credit issued in its favor.

*C. The Escalation Factor Should Be Flexible.*

Pepco’s Proposal Pricing is for the Company to pay a price (in \$/MWh) for the entire 15- or 20-year term and prices may be either a) a single, fixed price for the entire term or b) a price with a fixed annual escalation through the entire term.<sup>16</sup> OPC notes that an escalation factor is affected by many factors such as inflation, market shifts, costs of doing business, purchasing strategies, technological change, and so on. Therefore, best practices in determining escalation factors should (i) realistically reflect actual costs, (ii) be based on robust long-term assumptions about fuel prices, (iii) be presented as a constant dollar or index value, etc. However, Pepco’s proposed escalation factor is a fixed annual rate for the entire term. OPC recommends that this

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<sup>15</sup> *Id.* at § 8.

<sup>16</sup> *Formal Case No. 1017*, Potomac Electric Power Company’s 2024 Solicitation for Existing, Repowered, or New Photovoltaic Solar and Wind Power Supply Generation, at §5.3, January 16, 2024.

escalation factor not be fixed but rather reviewed every five years and be used as a basis for contract re-negotiation in a manner that will not harm ratepayers. OPC notes that the Federal Energy Regulatory Commission's guide for the calculation of escalation factors is the National Institute of Standards and Technology Energy Escalation Rate Calculator.

**IV. CONCLUSION**

**WHEREFORE**, OPC respectfully requests that the recommendations contained herein be considered and adopted by the Commission.

Respectfully submitted,

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Dated: January 26, 2024

## CERTIFICATE OF SERVICE

### Formal Case 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia

I hereby certify that on January 26, 2024, a copy of the Office of the People's Counsel for the District of Columbia's Comments *on Pepco's Proposed Request for Proposals and Power Purchase Agreement*. was served on the following parties of record by hand delivery, electronic mail, or first-class mail, postage prepaid:

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