

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

ORDER

February 8, 2024

**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. 21952**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) notifies the Joint Petitioners that the auditor contract has been executed. The Commission directs the Potomac Electric Power Company (“Pepco”) to perform the reconciliation within 90 days of the date of this Order. Pepco is responsible for the necessary data to conduct the reconciliation, and a failure to provide the auditor with the data and reconciliation throughout the 90-day period could result in fines. The Commission grants Solar United Neighbors’ Motion to Intervene and directs other interested parties to submit Petitions to Intervene within 30 days of the date of this Order. Pepco is directed to provide additional data regarding metering costs within 30 days of the date of this Order in accordance with paragraph 18. Stakeholders will have 60 days from the date of Pepco’s filing to comment.

II. BACKGROUND

2. On March 23, 2022, the Office of the Attorney General for the District of Columbia (“OAG”) 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

3. On May 13, 2022, the DC Solar United Neighbors (“SUN”) filed a Motion to Intervene.²

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 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, Solar United Neighbors’ Motion for Leave to Intervene & Notice of Appearances,* filed May 13, 2022.

4. By Order No. 21174 dated June 30, 2022, the Commission granted the Joint Petitioner's Petition for an Investigation. The Commission at that time also held SUN's Motion for Leave to Intervene in abeyance, because "[w]hile 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."³

5. By Order No. 21600 issued on April 24, 2023, the Commission found that Pepco is currently in violation or has been in violation of relevant laws and regulations as identified in three of the seven Counts in the Joint Petitioners' Petition.⁴ The Commission directed Commission Staff to appoint an independent auditor within 120 days of the Order, **paid by Pepco**, to oversee a reconciliation of all CREF crediting dating back to May 8, 2015. Pepco was given 90 days from the appointment of the Commission auditor to complete the reconciliation.⁵ The Commission also directed Pepco to file a report that described how Pepco metering costs for CREFs have been assigned.⁶

6. On May 15, 2023, Pepco filed its 20-Day Report in Response to Order No. 21600 that stated that Pepco has spent \$564,358 on metering costs and an estimated \$241,000 in labor costs to install 348 CREF meters. Pepco stated that the total metering costs of \$805,358 are in its rate base and were paid by customers, but that it was unable to provide actual costs in the timeframe given and that the labor costs were only estimates.⁷

7. In Order No. 21649 released on June 26, 2023, the Commission ruled that its finding in Order No. 21600 "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."⁸

³ *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. 21174, rel. June 30, 2022.

⁴ *GD-2022-01-E and Formal Case No. 1171*, Order No. 21600, ¶ 1, rel. April 24, 2023 ("Order No. 21600").

⁵ Order No. 21600, ¶ 40.

⁶ Order No. 21600, ¶ 15.

⁷ *Formal Case No. 1171*, Twenty-Day Report of Potomac Electric Power Company Pursuant to Order No. 21600 at 1-2, filed May 15, 2023.

⁸ *GD-2022-01-E and Formal Case No. 1171*, Order No. 21649, ¶ 9, rel. June 26, 2023.

8. On July 26, 2023, Pepco filed the amendment to its 20-Day Report, revising the cost of meter hardware and installation downward to \$647,602.99⁹ (a reduction of \$157,755.01 from the \$805,358 presented in the 20-Day Report). According to Pepco, this updated cost is based on actual material costs for the meters and averages for labor costs. Pepco also argued: “customers have not fully paid these dollars in rates yet and Pepco argues, that, if the Commission directs a reimbursement back to customers, Pepco should be allowed to present evidence demonstrating what customers have already paid for, and that, if the Commission orders reimbursement, those reimbursements be limited to only those amounts that customers actually paid for in rates.”¹⁰

9. On September 13, 2023, the Joint Responders filed a letter noting that more than 120 days have passed since Order No. 21600 was issued. They asked: 1) Has staff appointed an independent auditor pursuant to Order No. 21600; 2) If staff has not yet appointed an independent auditor, please explain the reasons for the delay; 3) Will staff file a notice in the docket of Formal Case No. 1171 when it has appointed an independent auditor pursuant to Order No. 21600.¹¹

10. By Order No. 21908 released on September 28, 2023, the Commission directed “that technical conferences be scheduled and facilitated by Commission Staff within 15 days of the date of this Order. The technical conferences will help parties and stakeholders to establish a protocol and flush out details of any issues experienced in Pepco bringing its CREF metering practices into compliance with the law and our directives. The technical conferences are also to be used as a vehicle to explore and propose permanent automated solutions.”¹² Five such technical conferences have been held.

11. On October 31, 2023, Pepco filed a Second Addendum to its 20-Day Report stating that only \$156,531.99 of the CREF metering costs have been recovered in rates, to-date, and that while Pepco disagrees with a refund and reserves its right to contest a refund, that any refund ordered by the Commission should be limited to \$156,531.99.¹³ Pepco stated that after correcting the number of meters to 370, “the total meter cost is \$604,825.38 and the total labor cost is \$44,050.90 for a total of \$648,876.28.”¹⁴ Pepco states that not all of the costs have been paid in

⁹ *Formal Case No. 1171*, Addendum to Twenty-Day Report of Potomac Electric Power Company Pursuant to Order No. 21649 (“Addendum to 20-Day Report.”) at 1, filed July 26, 2023.

¹⁰ Addendum to 20-Day Report at 1.

¹¹ *Formal Case No. 1171*, Letter Inquiry from the Office of the People’s Counsel and the District of Columbia Government into the appointment of an independent auditor, filed September 13, 2023.

¹² *GD-2022-01-E* and *Formal Case No. 1171*, Order No. 21908, ¶ 26, rel. September 28, 2023.

¹³ *Formal Case No. 1171*, Second Addendum to Twenty-Day Report of Potomac Electric Power Company Pursuant to Order No. 21649 (“Second Addendum to 20-Day Report”) at 1, filed October 31, 2023.

¹⁴ Second Addendum to 20-Day Report at 1.

rates because “the costs have been depreciated over the life of the asset.”¹⁵ The filing includes the following tables:¹⁶

CREF Meter Costs in Authorized Revenues

FC 1150 Revenues	\$ 1,160.96
FC 1156 RY1 Revenues	\$ 53,949.57
FC 1156 RY2 Revenues	\$ 68,767.81

Revenues collected related to Pepco meters:

Total Revenues Through October 2023 Related to CREF Meter Installations							
	2018	2019	2020	2021	2022	2023 YTD	Total
Total Revenues Collected	\$ 535.85	\$ 1,071.70	\$ 1,071.70	\$ 25,308.85	\$ 63,063.49	\$ 52,552.91	\$ 143,604.50

Revenue collected related to meter installation labor:

Total Revenues Through October 2023 Related to CREF Meter Installations							
	2018	2019	2020	2021	2022	2023 YTD	Total
Total Revenues Collected	\$ 44.63	\$ 89.26	\$ 89.26	\$ 2,246.42	\$ 5,704.32	\$ 4,753.60	\$ 12,927.49

Total collected meter and labor revenues:

Total Revenues Through October 2023 Related to CREF Meter Installations							
	2018	2019	2020	2021	2022	2023 YTD	Total
Total Revenues Collected	\$ 580.48	\$ 1,160.96	\$ 1,160.96	\$ 27,555.27	\$ 68,767.81	\$ 57,306.51	\$ 156,531.99

12. On December 20, 2023, the Commission filed a Notice of Agency Funding Requirements (“NOAFR”) in this case notifying the parties of its intent to assess Pepco \$200,000.¹⁷ The OAG commented on the NOAFR on December 28, 2023, requesting that the Commission disallow any cost recovery of the \$200,000 from ratepayers.¹⁸ Pepco responded to the OAG on January 5, 2024, stating that the Commission should not act on the OAG’s request because it is “premature and unnecessary,” because Pepco has not sought recovery in *Formal Case No. 1176*.¹⁹

13. On January 12, 2024, the Commission directed Pepco to deposit \$200,000 to the Treasury of the District of Columbia and clarified that this “will cover the Commission’s cost of

¹⁵ Second Addendum to 20-Day Report at 2.

¹⁶ Second Addendum to 20-Day Report at 3.

¹⁷ *GD-2022-01-E* and *Formal Case No. 1171*, Notice of Agency Funding Requirements, rel. December 20, 2023.

¹⁸ *GD-2022-01-E* and *Formal Case No. 1171*, District of Columbia Government’s Comments in Response to Notice of Agency Fund Requirements, filed December 28, 2023.

¹⁹ *GD-2022-01-E* and *Formal Case No. 1171*, Pepco’s Response to Comments of District of Columbia Government on Notice of Agency Fund Requirements, filed January 5, 2024.

retaining an independent auditor per Order No. 21600 to oversee a metering and billing reconciliation process performed by Pepco.”²⁰

III. DECISION

14. The Commission has executed a contract with the auditor.²¹ In view of the delay between execution of the contract and issuance of this Order, Pepco will have 90 days from the issuance of this Order to perform the reconciliation.²² It is Pepco’s responsibility to have all the necessary data available to conduct the reconciliation, especially given the lengthy period of time that has passed since the expiration of the original 120-day period. Failure to provide the auditor with necessary data as the reconciliation and audit are conducted within the 90-day period could result in fines.

15. The issue currently before us is a potential factual dispute over the exact amount that should be returned to ratepayers. At this juncture, we think the best course of action is to allow interested stakeholders to intervene as parties so that they have the ability to propound data requests to obtain the information necessary to determine whether there is a legitimate issue of fact warranting a hearing.

16. The Commission’s standards for granting intervention have been set forth in detail in many prior Orders and can be summarized as follows:

Any person ... not named as a party in the pleadings initiating a proceeding but having a substantial interest therein, may petition the Commission for leave to intervene. Intervention is not a matter of right. Instead, pursuant to Section 106.5 [of the Commission’s regulations], intervention is entirely within the discretion of the Commission. ... The Commission has established a two-step process for determining whether an intervenor should be granted party status. First, the intervenor must establish that it has a substantial interest in the proceeding, and second, an intervenor must show that it has a “perspective so unique that only party status would allow it to have its view adequately represented.”²³

²⁰ *GD-2022-01-E and Formal Case No. 1171*, Order No. 21944, rel. January 12, 2024.

²¹ Task Order No. 1 GSA RFTOP No. PSC-24-05 (January 19, 2024).

²² Order No. 21600, ¶ 40, set a deadline for completion of the reconciliation 90 days from the date the auditor is appointed, which was January 19, 2024. This Order extends that completion date because of the delay referenced in paragraph 14.

²³ *See, Formal Case No. 1168, In the Matter of Applications for Approval of Biennial Underground Infrastructure Improvement Projects Plans and Financing Orders*, Order No. 21640, ¶ 9, rel. June 15, 2023 (citing *Formal Case No. 1145, In the Matter of Applications for Approval of Biennial Underground Infrastructure Improvement Projects Plans and Financing Orders*, Order No. 19086, ¶¶ 9-11, rel. September 6, 2017).

17. We determine that SUN has met these standards, and we, therefore, grant SUN's Motion to Intervene as a party. We further invite other interested stakeholders to file Petitions to Intervene within 30 days of the date of this Order.

18. For each of the approximately 370 meters, Pepco shall state whether recovery has been requested in *Formal Case No. 1176*, and if so, how much is being sought. In order to determine the actual amount collected thus far for meter and labor costs, we also need the following additional information from Pepco for meters whose costs were already recovered:

- The total amount recovered in rates to-date in both nominal terms and inflation-adjusted to 2024 dollars including labor costs; and
- The year that the assets would be fully depreciated.

19. The information requested in paragraph 18 is to be filed by Pepco within 30 days from the date of this Order. We also direct that any stakeholders desiring to file comments on Pepco's filing do so within 60 days from the date Pepco's filing is docketed at the Commission.

THEREFORE, IT IS ORDERED THAT:

20. The Commission notifies the Potomac Electric Power Company and the Joint Petitioners that the auditor contract has been executed;

21. The Commission **GRANTS** the Motion to Intervene of Solar United Neighbors;

22. The Commission **DIRECTS** interested parties to file Petitions to Intervene within 30 days of the date of this Order;

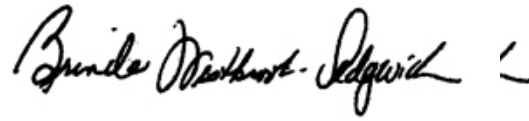
23. The Commission directs the Potomac Electric Power Company to perform the reconciliation ordered herein within 90 days from the date of this Order.

24. The Commission **DIRECTS** the Potomac Electric Power Company to provide the information outlined in paragraph 18 of this Order within 30 days of the date of this Order; and

25. Comments on the Potomac Electric Power Company's informational filing in accordance with paragraph 18 of this Order will be due within 60 days of the filing.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

A handwritten signature in black ink, reading "Brinda Westbrook-Sedgwick" with a stylized flourish at the end.

CHIEF CLERK:

BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY

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CONCURRING STATEMENT OF COMMISSIONER BEVERLY

I agree with the majority's Order that directs Pepco to comply with the reconciliation and audit within the allotted 90 days, grants SUN's intervention, and allows other intervenors in this case.

Regarding metering costs, so far, the information presented by Pepco strikes me like a moving target. While the initial cost was claimed to be more than \$800,000 that had been fully recovered in rates, that amount has been revised downward to about \$650,000 of which Pepco now claims only about \$150,000 has been recovered in rates. That may be true, but it may help us all if Pepco provided documentation to support the claim. For instance:

- What documentation does Pepco possess that demonstrates the cost of the hardware for each of the 370 meters? (*e.g.* receipts)
- What documentation does Pepco possess that demonstrates the installation costs for the 370 meters? (*e.g.* work orders, timesheets, number of technicians and roles, etc.)

Without actual data regarding the meter installations, all we will have are the initial estimates that Pepco provided and later updated with averages. This is not a directive of the Commission, and no present or future party is required to respond to it. The parties remain free to ask questions in data requests as they see fit.

Finally, I would like to personally request feedback from the stakeholders regarding the efficacy of the technical conferences that have been held to-date in *Formal Case No. 1171*. I invite participants to provide feedback to me in this docket, including recommendations to suspend, increase, improve, or redirect the technical conferences.