

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

February 9, 2024

FORMAL CASE NO. 1176, IN THE MATTER OF THE APPLICATION OF THE POTOMAC ELECTRIC POWER COMPANY FOR AUTHORITY TO IMPLEMENT A MULTIYEAR RATE PLAN FOR ELECTRIC DISTRIBUTION SERVICE IN THE DISTRICT OF COLUMBIA, Order No. 21955

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) denies the Office of the People’s Counsel for the District of Columbia’s Motion for Limited Stay of the Procedural Schedule Adopted in Order No. 21902 Pending Appeal of Order Nos. 21886 and 21903 and Renewed Motion for Limited Stay and Request for Expedited Ruling as moot.

II. BACKGROUND

2. On April 13, 2023, the Potomac Electric Power Company (“Pepco” or “Company”) filed its application for approval to increase rates through the implementation of a Multiyear Rate Plan (“MRP”), also referred to as the “Climate Ready Pathway,” for its electric distribution service in the District of Columbia for the years 2024 through 2026.¹ On July 28, 2023, the Commission issued Order No. 21886, which, among other things, directed Pepco “to file supplemental testimony with accompanying exhibits to explain in quantitative and qualitative terms the benefits of problems identified, and lessons learned from the Modified Enhanced Multiyear Rate Plan Pilot (“Modified EMRP Pilot”) approved in Order No. 20755.”² Additionally, the Commission directed Pepco to file supplemental testimony and exhibits along with supporting schedules to support a traditional historical test year rate application for the test period ending December 31, 2023.³

3. The Office of the People’s Counsel for the District of Columbia (“OPC” or “Office”) filed a Request for Reconsideration of Order No. 21886, which the Commission denied.⁴ The Office filed a Petition for Review of Order Nos. 21886 and 21903 to ask the District of Columbia Court of Appeals to vacate the Commission’s decisions in Order Nos. 21886 and 21903 to the extent they

¹ *Formal Case No. 1176, 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. 1176*”), Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia, filed April 13, 2023 (“Pepco Application”).

² *Formal Case No. 1176*, Order No. 21886, ¶¶ 1, 24, and 29, rel. July 28, 2023.

³ *Formal Case No. 1176*, Order No. 21886, ¶¶ 1, 24, and 30.

⁴ *Formal Case No. 1176*, The Office of the People’s Counsel for the District of Columbia’s Request for Reconsideration of Order No. 21886, filed August 28, 2023; *Formal Case No. 1176*, Order No. 21903, rel. September 14, 2023.

establish the process whereby the Commission will simultaneously evaluate a Modified EMRP Pilot and Pepco's MRP proposal in *Formal Case No. 1176*.⁵

4. The Office also filed a Motion for Limited Stay of the procedural schedule adopted in Order No. 21902 pertaining to the review of the Modified EMRP Pilot and the MRP filed in this proceeding pending resolution of OPC's Petition for Review of Order Nos. 21886 and 21903.⁶ On November 22, 2023, Pepco filed a response to OPC's Motion.⁷ The Commission granted, in part, and denied in part, the Motion for Enlargement of Time of the Apartment and Office Building Association of Metropolitan Washington and adopted a modified procedural schedule.⁸ OPC subsequently filed a Renewed Motion for Limited Stay and Request for Expedited Ruling.⁹

5. The District of Columbia Court of Appeals dismissed OPC's Petition for Review of Order Nos. 21886 and 21903 because the Petition pertains to non-final, non-appealable orders.¹⁰

III. DISCUSSION

6. **OPC Motion.** OPC argues that the Commission has not evaluated the performance of the Modified EMRP Pilot approved in Order No. 20755 and has not approved or deployed performance incentive mechanisms ("PIMs") after having stated parties and other stakeholders would have an opportunity to evaluate the overall performance and effectiveness of the Modified EMRP.¹¹

7. OPC contends that evaluating the Modified EMRP Pilot at the same time the Commission and parties evaluate Pepco's MRP proposal in this proceeding contravenes the process established in *Formal Case No. 1156*.¹² OPC asks the Commission to stay those aspects of the procedural schedule adopted in Order No. 21902 pertaining to the review of the Modified EMRP Pilot approved in *Formal Case No. 1156* and the MRP filed in this proceeding pending resolution of OPC's Petition for Review of Order Nos. 21886 and 21903 before the District of

⁵ DCCA No. 23-AA-0959, *Office of the People's Counsel of the District of Columbia v. District of Columbia Public Service Commission*, Petition for Review, filed November 13, 2023.

⁶ *Formal Case No. 1176*, The Office of the People's Counsel for the District of Columbia's Motion for Limited Stay of the Procedural Schedule Adopted in Order No. 21902 Pending Appeal of Order Nos. 21886 and 21903, filed November 13, 2023 ("OPC Motion").

⁷ *Formal Case No. 1176*, Potomac Electric Power Company's Response to the Office of the People's Counsel Motion for Limited Stay, filed November 22, 2023 ("Pepco Response").

⁸ *Formal Case No. 1176*, Order No. 21937, rel. December 6, 2023.

⁹ *Formal Case No. 1176*, The Office of the People's Counsel for the District of Columbia's Renewed Motion for Limited Stay and Request for Expedited Ruling, filed January 12, 2024 ("OPC Renewed Motion").

¹⁰ DCCA No. 23-AA-0959, *Office of the People's Counsel of the District of Columbia v. District of Columbia Public Service Commission*, Per Curiam Order, filed January 16, 2024.

¹¹ *Formal Case No. 1176*, OPC Motion at 4-5 (citations omitted).

¹² *Formal Case No. 1176*, OPC Motion at 5 (citations omitted).

Columbia Court of Appeals.¹³ OPC argues that it will experience actual, imminent harm, which the normal appellate process cannot remedy because the deliberative review process has been eliminated and replaced with a process where the Modified EMRP Pilot approved in *Formal Case No. 1156* and the MRP filed in this proceeding will be reviewed simultaneously,¹⁴ and Pepco cannot claim that it is harmed by being required to evaluate the Modified EMRP Pilot before proceeding with evaluation of a subsequent MRP proposal.¹⁵

8. **Pepco Response.** Pepco argues that case precedent has held that appeals from the Commission's procedural or evidentiary rulings are interlocutory and not immediately reviewable.¹⁶ Pepco also argues that the Commission has broad discretion to control its calendar and set its proceedings' agenda and scope of inquiry.¹⁷ Pepco asserts that the Commission's decision to address lessons learned from the Modified EMRP Pilot, Pepco's MRP application, and the traditional test year compliance filing was reasonable, and OPC presents no valid reason why a limited stay should be granted.¹⁸ Pepco argues that since a decision in this proceeding will not likely be rendered until mid-2024, OPC's appeal is interlocutory and not ripe for review.¹⁹ Pepco argues that OPC is not likely to succeed on the appeal, having brought an improper interlocutory appeal.²⁰

9. **OPC Renewed Motion.** In its Renewed Motion, OPC contends that since the modified procedural schedule adopted in Order No. 21937 maintained the simultaneous review process at the heart of OPC's appeal, the Office asks the Commission to stay no later than January 19, 2024, those portions of the procedural schedule established in Order No. 21937 that pertain to the simultaneous review of the Modified EMRP Pilot approved in *Formal Case No. 1156* and Pepco's MRP proposal in *Formal Case No. 1176*.²¹

IV. DECISION

10. Because the District of Columbia Court of Appeals dismissed OPC's Petition for Review of Order Nos. 21886 and 21903 due to the petition pertaining to non-final, non-appealable

¹³ *Formal Case No. 1176*, OPC Motion at 5-6.

¹⁴ *Formal Case No. 1176*, OPC Motion at 10-11.

¹⁵ *Formal Case No. 1176*, OPC Motion at 12-13.

¹⁶ *Formal Case No. 1176*, Pepco Response at 6-7 (citations omitted).

¹⁷ *Formal Case No. 1176*, Pepco Response at 8, 12-13 (citations omitted).

¹⁸ *Formal Case No. 1176*, Pepco Response at 8-9.

¹⁹ *Formal Case No. 1176*, Pepco Response at 11.

²⁰ *Formal Case No. 1176*, Pepco Response at 11.

²¹ *Formal Case No. 1176*, OPC Renewed Motion at 4-5.

orders, the Commission denies the OPC Motion and the OPC Renewed Motion as moot.

THEREFORE, IT IS ORDERED THAT:

11. The Office of the People’s Counsel for the District of Columbia’s Motion for Limited Stay of the Procedural Schedule Adopted in Order No. 21902 Pending Appeal of Order Nos. 21886 and 21903 is **DENIED**; and

12. The Office of the People’s Counsel for the District of Columbia’s Renewed Motion for Limited Stay and Request for Expedited Ruling is **DENIED**.

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**