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People's Counsel

June 24, 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. 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

Dear Ms. Westbrook-Sedgwick:

Enclosed, please find *The Office of the People's Counsel for the District Of Columbia's Motion to Suspend the Procedural Schedule and Request Clarification*, being filed by the Office of the People's Counsel for the District of Columbia in the above-referenced case.

If there are any questions regarding this matter, please contact me at 202.261.1192.

Sincerely,

/s/ Ankush Nayar
Ankush Nayar
Assistant People's Counsel

Enclosure

cc: Parties of Record

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

In the Matter of the	§	
Application of the Potomac Electric Power	§	
Company for Authority	§	
to Implement a Multiyear Rate	§	Formal Case No. 1176
Plan for Electric Distribution Service	§	
in the District of Columbia	§	

**THE OFFICE OF THE PEOPLE’S COUNSEL FOR THE DISTRICT OF
COLUMBIA’S MOTION TO SUSPEND THE PROCEDURAL SCHEDULE AND
REQUEST CLARIFICATION**

Pursuant to Rule 105.8 of the Public Service Commission of the District of Columbia’s (“Commission”)¹ Rules of Practice and Procedure, the Office of the People’s Counsel for the District of Columbia (“Office” or “OPC”) respectfully submits this Motion to Suspend the Procedural Schedule and Request Clarification on the Commission’s June 13, 2024 Notice (“Notice”),² by which the Office seeks to suspend the briefing schedule and tentative hearing date scheduled for July 30, 2024, due to new information filed by the Potomac Electric Power Company (“Pepco” or the “Company”), which makes the procedural schedule outlined in the Notice unfeasible. OPC also moves for the Commission to issue an order on the two dispositive motions under consideration first, and then develop a procedural schedule for a potential hearing and briefs if needed. Additionally, OPC seeks clarification on several outstanding issues related

¹ 15 DCMR § 105.8.

² *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 (“Formal Case No. 1176”), Notice of Legislative-Style Hearing – July 30, 2024, rel. June 13, 2024.*

to the tentative hearing and briefs in this matter, particularly if the Commission elects not to suspend the procedural schedule.

I. BACKGROUND

There are currently two dispositive motions pending before the Commission: The first was filed on March 12, 2024,³ and the second was filed on June 10, 2024.⁴ The March 12, 2024 motion was filed by OPC, the District of Columbia Government (“DCG”), and Apartment and Office Building Association of Metropolitan Washington (“AOBA”), while the motion filed on June 10, 2024, was filed by OPC and AOBA. The first dispositive motion focuses on dismissing Pepco’s petition for a multiyear rate plan (“MYP”), or in the alternative, moving for summary disposition and denying the requested rate increase in the MYP. The second dispositive motion seeks dismissal of both the MYP and Pepco’s Traditional Test Year Filing (“TTYF”) or, in the alternative, moves for the Commission to deny Pepco’s request for a rate increase by summary judgment. The June 10th motion also relies on financial information filed by the Company on May 3, 2024, in Formal Case No. 1156, which indicates, among other things, that Pepco was earning over its authorized rate for Calendar Year 2023 (“CY 2023”).⁵

On June 13, 2024, the Commission notified the parties via the Notice that there would be a legislative-style hearing on July 30, 2024, if the Commission did not grant either dispositive motion.⁶ Additionally, parties desiring to participate in the oral argument would be required to

³ *Formal Case No. 1176*, Motion to Dismiss or, in the Alternative, Motion for Summary Disposition of the Office of the People’s Counsel for the District of Columbia, District of Columbia Government, and the Apartment and Office Building Association of Metropolitan Washington, filed March 12, 2024.

⁴ *Formal Case No. 1176*, Motion to Dismiss, or in the Alternative, Motion for Summary Judgement by the Office of the People’s Counsel for the District of Columbia, and the Apartment and Office Building Association of Metropolitan Washington, filed June 10, 2024.

⁵ *See id.*

⁶ *Formal Case No. 1176*, Notice ¶ 1.

provide a pre-hearing brief of no more than 30 pages by July 17, 2024.⁷ The Commission did not provide a specific date by which it would issue a decision on the dispositive motions. Nor did it specify how it would proceed if the motions were partially granted.

The Commission noted that it was attempting to follow the same process from Formal Case No. 1169.⁸ The Notice referred to a legislative-style hearing and specified that each intervening party would be afforded a 30-minute oral argument in this case. The Commission stated that witnesses need not attend but did not specify whether they would be prohibited from speaking or providing testimony at the hearing.

Pepco filed a response opposing the first dispositive motion on March 22, 2024.⁹ On June 17, 2024, Pepco filed a response opposing OPC's and AOBA's June 10th dispositive motion.¹⁰ On June 21, 2024, Pepco submitted two additional filings. The first was a Quarterly Financial Report ending March 31, 2024, in Formal Case No. 1156.¹¹ This Report provides new financial information regarding Pepco for Calendar Year 2024; it also indicates, for the first time, that Pepco's final Quarterly Financial Report for CY 2023, filed on May 3, 2024, contained an error, which "caused an overstatement of the rate of return and return on equity," and that the Company

⁷ *Id.* ¶ 2.

⁸ *Id.* ¶ 2 n.2 (referring to *Formal Case No. 1169, In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service* ("Formal Case No. 1169"), Order No. 21885, rel. July 27, 2023).

⁹ *Formal Case No. 1176, Response of Potomac Electric Power Company in Opposition to the Motion To Dismiss Or, In the Alternative, Motion for Summary Disposition*, filed March 22, 2024.

¹⁰ *Formal Case No. 1176, Response of Potomac Electric Power Company in Opposition to Motion to Dismiss or, in the Alternative, Motion for Summary Judgment*, filed June 17, 2024 ("Pepco's Motion in Opposition").

¹¹ *Formal Case No. 1156, 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* ("Formal Case No. 1156"), Pepco Q1 Rate of Return Report for the Twelve Months Ended March 31, 2024, filed June 21, 2024. Pepco states that this "quarterly" report was filed pursuant to Commission Order 20755, though it fails to cite to which page or paragraph.

would be filing an errata to that report.¹² The Company did not provide a specific date as to when it would file the errata.

The second filing submitted on June 21, 2024, was a letter filed in Formal Case No. 1176, informing the Commission that the Company had just filed a Quarterly Financial Report in Formal Case No. 1156.¹³ This filing also reiterated that Pepco is now earning below its authorized rate of return on an adjusted basis.¹⁴

II. DISCUSSION

OPC moves to suspend the schedule for the pre-hearing brief and the legislative-style hearing. At this time, there is too much uncertainty as to whether the hearing will take place, and Pepco's errata filing will require additional time for the parties to review unless the Commission dismisses or awards summary judgment denying Pepco's petition. Accordingly, OPC moves that the Commission first rule on the dispositive motions and then establish a procedural schedule if necessary. OPC also requests clarification on certain issues related to the hearing and the pre-hearing brief if the Commission decides against suspending the proceedings, which are outlined in further detail below.

A. The Commission should suspend the hearing and briefing schedule.

1. Parties will need additional time to review Pepco's errata filing, and the current schedule is untenable.

The proceeding should be suspended because parties would not be able to engage in a meaningful legislative-style hearing, as additional time is needed to examine Pepco's errata filing, which it has yet to submit. As Pepco has only just disclosed that there are financial discrepancies

¹² *Id.* at p. 2.

¹³ *Formal Case No. 1176*, Pepco Notice to the Commission re ROE, p. 1, filed June 21, 2024.

¹⁴ *Id.*

in its earlier filings, it is impractical to continue with any hearing or briefing schedule, tentative or otherwise, until these issues are resolved. Moreover, per Commission Rules, the Company can submit an errata five days in advance of a hearing, which in this case would be after the deadline for briefs and would naturally be insufficient time for technical experts and parties to review the filing.¹⁵

Depending on the extent of the errata filing, it may be likely that other quarterly financial reports would need to be revised or revisited. This also leaves open the possibility that additional discovery will be needed. It remains unclear if, and to what extent, the filing impacts the dispositive motion filed on June 10th by OPC and AOBA and whether the parties would need to submit an additional filing or amend the dispositive motion in response to the errata. Similarly, it is unclear to what extent this will impact the Commission's decision and timeframe for issuing a ruling. Accordingly, suspending the hearing and briefing schedule is the prudent course of action.

2. Suspending the procedural schedule promotes administrative efficiency and would not prejudice any party.

It is not administratively efficient to proceed with any briefing schedule or hearing date at this time, due to the unknowns surrounding Pepco's errata filing. It is not efficient as parties may have to issue discovery, revise their existing testimony, submit additional filings, or may need to amend their briefs or oral argument in response to the errata. This problem is compounded by the fact that the parties do not know how or when the Commission will rule on the dispositive motions, which casts further uncertainty as to what to discuss in the briefs, argue at the tentative hearing, or whether there will even be a hearing and corresponding need to submit a brief.

Recognizing that the oral argument may not even take place and that the Commission has only conditionally approved the hearing date of July 30, 2024, no party will be prejudiced by

¹⁵ 15 D.C.M.R 133.2

suspending the proceeding until there is further clarity. Instead, parties would be prejudiced if the Commission were to proceed without consideration of Pepco's errata filing and prevent additional time for parties to review it. Additionally, it would be beneficial for the parties to understand how the Commission will rule on the dispositive motions and whether a hearing will even take place, prior to expending resources preparing for a hearing or writing a pre-hearing brief. Furthermore, the Commission may need additional time to review the new financial information in order to reach an informed and well-reasoned decision on the pending dispositive motions. Thus, suspending the proceedings as it relates to the briefing schedule and hearing date promotes administrative efficiency and will not prejudice any party.

B. Clarity is needed as to the hearing and the pre-hearing brief.

Should the Commission decide not to suspend this proceeding, it is imperative that further clarity be provided regarding the tentative hearing and pre-hearing brief. While the Commission, in scheduling the brief and hearing, stated that it plans to follow the same process from Formal Case No. 1169, it has not followed that process thus far. Procedurally, in Formal Case No. 1169, parties were permitted to submit issues of material fact to the Commission for its consideration.¹⁶ There was a prehearing conference held to discuss the list of potential factual issues.¹⁷ The Commission then issued an order finding no issues of material fact existed with a discussion explaining its determination, and then expressly stated that it would not hold an evidentiary hearing in the proceeding.¹⁸ Subsequently, it scheduled a hearing for parties to present an oral argument

¹⁶ *Formal Case No. 1169*, Order No. 21582, ¶ 4, rel. March 14, 2023 .

¹⁷ *Id.* ¶ 5.

¹⁸ *Id.* ¶ 88.

and provided a timeline for submitting a pre-hearing brief.¹⁹ However, the majority of those steps have been omitted here – the Commission has only issued a Notice pertaining to a hearing date.

Moreover, the Commission has not clearly stated the exact nature and purpose of this hearing, which makes the role of a pre-hearing brief unclear as well. If the hearing were to take place, the Commission has not specified if it would constitute the final hearing in this case, be held in place of an evidentiary hearing, and whether the parties would have an opportunity to submit a post-hearing brief. If an oral argument is to be held in place of an evidentiary hearing, as the Notice suggests, the Commission has not established how it concluded that an evidentiary hearing was not necessary, particularly without feedback from the parties.²⁰ While this may ultimately be unnecessary, depending on how the Commission rules on the dispositive motions, at this time, the nature or purpose of the tentatively scheduled hearing remains unclear. Therefore, OPC respectfully requests that the Commission provide further clarity and answer the following questions related to the Notice:

1. Does the Commission plan to have an evidentiary hearing in this case? Or would the Oral Argument scheduled for July 30, 2024, in Formal Case No. 1176, which the Commission has also referred to as a “legislative-style hearing” in the Notice be held in place of the evidentiary hearing?
2. Does the Commission have a specific date in mind by which it could issue a decision on the dispositive motions referenced in the Notice? If so, could it share this date with the parties?²¹

¹⁹ *Formal Case No. 1169*, Order No. 21885, rel. July 27, 2024.

²⁰ For example, following the issuance of the Notice, Pepco stated that there are outstanding issues of material fact in its opposition to OPC and AOBA’s June 10th Motion to Dismiss, or in the Alternative, Motion for Summary Judgment.

²¹ A known date, particularly in the near term, will improve administrative efficiency. Given the breadth of issues in this case, knowledge as to whether the Commission has granted, granted in part, or denied the motions, would allow the parties to focus their discussion on relevant issues or avoid devoting resources to drafting briefs and preparing for oral argument entirely.

3. The Notice makes reference to Formal Case No. 1169 and states that the “approach” being taken in this case aligns with that taken in Formal Case No. 1169. Does this mean the oral argument on July 30, 2024, will serve as the final hearing before the Commission in this case, and if so, does the Commission plan to allow for a “post-hearing” brief as it did in Formal Case No. 1169?
4. If the hearing scheduled for July 30, 2024, is to take place, would it be held pursuant to any statutory requirement or Commission rule? If so, please identify the statute or rule.
5. Does the Commission plan on admitting pre-filed exhibits in this case in advance of the hearing on July 30, 2024, as it did in Formal Case No. 1169? If so, OPC cannot stipulate to the admission of certain exhibits in this case due to newly discovered information that it identified in its June 10, 2024 Motion to Dismiss, or in the Alternative, Motion for Summary Judgment.
6. Recognizing that OPC cannot stipulate to the admission of certain exhibits, when would the Commission consider evidentiary objections, and what is the process and timeline for submitting and receiving a determination on those objections?
7. It is OPC’s understanding that witnesses will not be permitted to provide testimony at the oral argument. Is this correct?
8. Please define the scope as to what attorneys can discuss during oral argument. What, if any, checks would be in place to prevent parties from raising new facts and information at the hearing?
9. Will the hearing be part of “the record”? What, if any, evidentiary weight will be accorded to the oral argument and the points raised by attorneys on behalf of the parties?
10. What, if any, evidentiary rules will be in place for the hearing?

Addressing these questions will allow OPC and other parties to better prepare for a hearing and better understand the procedural posture of the proceeding. The hearing date is approaching quickly. Accordingly, answering these questions quickly and without delay is vital, particularly if the case is not resolved through the dispositive motions under consideration.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, OPC respectfully requests the District of Columbia Public Service Commission to suspend the tentative briefing schedule and hearing. If

the request to suspend the proceeding is denied, then the Commission should provide clarity regarding the hearing and answer the questions submitted by the Office.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Formal Case No. 1176, In the Matter of Pepco’s Application for Approval to Increase Rates Through the Implementation of a Multiyear Rate Plan (“MYP”), also referred to as the “Climate Ready Pathway” for its Electric Distribution Service

I certify that on June 24, 2024, a copy of *The Office of the People’s Counsel for the District Of Columbia’s Motion to Suspend the Procedural Schedule and Request Clarification*, was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

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