



June 25, 2024

By Electronic Filing

Brinda Westbrook-Sedgwick
Commission Secretary
D.C. Public Service Commission
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 for filing please find the Response in Support of the Office of People's Counsel Motion to Suspend the Procedural Schedule of the Apartment and Office Building Association of Metropolitan Washington in the above-referenced proceeding.

If you have questions, please contact me at ffrancis@aoba-metro.org or call my cell at (301) 518-9700. Thank you for your attention in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Frann G. Francis".

Frann G. Francis, Esq.

cc: All 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)	

**RESPONSE IN SUPPORT OF THE OFFICE OF PEOPLE’S COUNSEL
MOTION TO SUSPEND THE PROCEDURAL SCHEDULE
OF THE APARTMENT AND OFFICE BUILDING
ASSOCIATION OF METROPOLITAN WASHINGTON**

I. INTRODUCTION

Pursuant to Rule 105.8 of the Public Service Commission of the District of Columbia’s (“Commission”)¹ Rules of Practice and Procedure, the Apartment and Office Building Association of Metropolitan Washington (“AOBA”) respectfully submits this Response in support of the Office of the People’s Counsel for the District of Columbia (“Office” or “OPC”), Motion to Suspend the Procedural Schedule and Request Clarification (“OPC Motion” or “Motion”) filed on June 24, 2024.

In its Motion, OPC requests that the Commission suspend the current requirements for the submission of “limited” briefs and a potential legislative-style hearing.² In its Motion, OPC further requests that this Commission issue an order on the two “dispositive” motions the Commission currently has under consideration before dates

¹ 15 DCMR § 105.8.

² As presently scheduled the “limited” briefs are due on July 17, 2024, and the legislative style hearing is set for July 30, 2024.

for a potential hearing and/or briefing are set by the Commission. Additionally, OPC requests clarification on certain outstanding issues.

II. BACKGROUND

On **March 12, 2024**, OPC, AOBA and the District of Columbia Government (“DCG”) jointly filed a Motion to Dismiss or, in the Alternative, Motion for Summary Disposition (“Joint Movants Motion to Dismiss”). In that Motion, the Joint Movants requested the dismissal of Pepco’s MYP Application filed on April 13, 2023 on legal and procedural grounds.

On **May 3, 2024**, Pepco filed its ROR Report for Q4 2023 which included Attachments A and B, that purportedly provided the Company’s financial results for its District of Columbia operations, as well as its jurisdictional cost allocations for the 12 months Ended December 31, 2023. The filing showed Pepco achieving a D.C. Adjusted Return on Equity (“ROE”) of 9.511%, with Operating Income \$3.1 million in excess of the level necessary to yield the Company’s authorized D.C. Jurisdictional Return on Rate Base.³

On **June 10, 2024**, based partly on Pepco’s May 3, 2024 filing indicating the Company was overearning its authorized rate of return for calendar year 2023, OPC and AOBA filed a second Motion to Dismiss or, in the Alternative, Motion for Summary Judgment Disposition of both Pepco’s Multi Year Plan (“MYP”) and its traditional test year

³ AOBA notes that Pepco’s ROR Reports implicitly assume that all of Pepco’s capital and operating expenditures during the period examined were prudently and cost-effectively incurred. Yet, Pepco has presented no support for that presumption. As AOBA has well documented in this proceeding (see Exhibits AOBA (A), AOBA (A)-1, AOBA (2A) and AOBA (2A)-1), Pepco’s deviations from the capital and operating cost budgets the Company presented in Formal Case No. 1156 are substantial and the Company has failed to provide any evidence of the cost-effectiveness or prudence of the costs it has actually incurred since the Commission’s issuance of Order No. 20755.

filing (“TTYF”) filed on October 16, 2023, i.e., the dismissal of Pepco’s Application. Additionally, OPC and AOBA requested the Commission deny Pepco’s Application, grant summary judgment finding there is no need for a rate increase as no material facts are in dispute.

On June 13, 2024, the Commission issued a Notice of Legislative-Style Hearing.

The Commission’s Notice states:

This Notice informs the Parties that the Public Service Commission of the District of Columbia (Commission) has two pending dispositive motions. If these motions are not granted, the Commission will convene a legislative-style hearing on July 30, 2024, . . . to allow the Parties to present oral arguments before the Commissioners regarding the issues that the Parties believe are fundamental to the Commission’s decisions in this proceeding.

Parties seeking to present oral arguments at the July 30 hearing shall file a limited brief of no more than 30 pages identifying the issues to be discussed, including arguments and references to testimony by July 17, 2024.

On **June 17, 2024**, Pepco filed a response to the AOBA and OPC June 13, 2024, Motion to Dismiss.

Four days later, on **June 21, 2024**, Pepco filed (in Formal Case No. 1156) a Quarterly ROR Report for the twelve months ended March 31, 2024. That filing provided financial results for the Company’s District of Columbia jurisdictional service and supporting jurisdictional cost allocations for the 12 Months Ended March 31, 2024. Pepco’s presentation in that filing claims a D.C. Adjusted ROE of 8.662% and a revenue deficiency of \$11.55 million. Also, in that filing Pepco indicates that “*In preparing this report, Pepco has determined that there was an error in the 2023 Report, . . .*” Pepco indicated it would be filing an “errata” to the 2023 report. Pepco filed its “errata” to its computed financial results for the twelve months ended December 31, 2023 on June 24, 2024. Pepco’s revised Q4 2023 ROR Report suggests that the Company’s achieved

ROE was 9.155%, or slightly below its authorized ROE of 9.275%. Again, each of Pepco's ROR filings simply presumes the prudence of all costs the Company has incurred for each period examined despite substantial deviations from the composition of its previously presented capital and operating budgets.

III. ARGUMENT IN SUPPORT OF OPC

AOBA supports OPC's June 24, 2024, request for the Commission to suspend the July 17, 2024 date for the submission of "limited briefs," as well as the Commission's identified potential date for a legislative-style hearing. AOBA also supports OPC's request that the Commission first issue its decision on the two dispositive motions referenced above.⁴ OPC further requests clarification of certain issues related to the limited briefs and legislative-style hearing.

If this Commission grants either of the two dispositive motions in whole or in part, the issues in this case will be reduced substantially, and the parties will then be able to focus their resources on the essential elements of the remaining portion(s) of the case. Additionally, if the Commission does not grant summary dismissal of any portion of the case, the parties will then need more time to review and verify the data that Pepco has recently submitted, including the errata to Pepco's May 3, 2024 ROR Report. However, first, Pepco must be required to support, and explain in testimony, all adjustments made in its ROR Reports for both the Twelve Months Ended December 31, 2023, and the Twelve Months Ended March 31, 2024. The Company must also be required to provide greater documentation and explanation of its development of each of the jurisdictional

⁴ The Joint Motion filed by OPC, AOBA, and the District of Columbia Government on March 12, 2024, and the June 10, 2024 Motion filed by OPC and AOBA.

allocation factors employed in the Jurisdictional Cost of Service Studies (“JCOS”) included in those filings. At this point in time, Pepco has not supported either of its filings with explanations and testimony. It should not be the burden of other parties to discover the data, assumptions, and calculations the Company has relied upon in the development of those filings. Moreover, the Commission must require Pepco to demonstrate the prudence of its calendar year 2023 capital and operating expenditures, as rates for CY 2023 were premised on what have proven to be unreliable forecasts, and the composition of Pepco’s actual expenditures have deviated substantially from the forecasted cost budgets the Company presented in Formal Case No. 1156.

The need for reconciliations and demonstrations of prudence of actual expenditures continues as long as rates are set on the basis of forecasted budgets. There has been no demonstration of the prudence of any or all of Pepco’s actual CY 2023 expenditures within Formal Case No. 1176. Thus, there is no basis for the Commission to accept Pepco’s quarterly ROR filings for 2023 and/or the first quarter of 2024 as reasonable, accurate and appropriate assessments of the Company’s earned returns for those periods.

At this point in the proceeding there is a substantial confusion. Pepco has filed new earnings statements based on data, calculations and assumptions that the parties are unable to verify. Without further support for, and verification of, that information in the record of this proceeding, those filings should have no role in the Commission’s determinations and should not bias the Commission’s rulings with respect to the pending Motions. The parties should not be expected to accept the content of Pepco’s quarterly ROR Report, as presented, as the parties have no basis for assessing other calculational

errors or reporting mistakes they may contain. Thus, AOBA reiterates that Pepco's quarterly ROR filings in Formal Case No. 1156 warrant no weight and cannot be relied upon without further scrutiny.

IV. CONCLUSION

WHEREFORE, for all of the reasons set forth in this response, AOBA requests that the Commission suspend the current schedule and rule on the dispositive motions.

Respectfully submitted,



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Dated: June 25, 2024

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CERTIFICATE OF SERVICE
Formal Case No. 1176

I hereby certify on this 25th day of June 2024, that the attached Response in Support of OPC Motion to Suspend the Procedural Schedule was filed electronically on behalf of the Apartment and Office Building Association of Metropolitan Washington and copies were electronically delivered to the service list below:

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