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**People's Counsel**

July 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 Pre-Hearing Brief*, filed in the above-captioned case by the Office of the People's Counsel for the District of Columbia.

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**

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

**THE OFFICE OF THE PEOPLE’S COUNSEL FOR THE DISTRICT OF COLUMBIA’S  
PRE-HEARING BRIEF**

**I. INTRODUCTION**

Pursuant to Order No. 22015<sup>1</sup>, the Office of the People’s Counsel for the District of Columbia (“Office” or “OPC”), the statutory representative of District of Columbia (“District”) ratepayers concerning utility matters,<sup>2</sup> respectfully submits this Pre-hearing Brief in the above-captioned case regarding a request for a rate increase filed by the Potomac Electric Power Company (“Pepco” or the “Company”).

**II. SUMMARY**

OPC will advance three main points in its Brief. *First*, OPC reaffirms its position outlined in two earlier dispositive motions: Pepco’s petition for a rate increase, which consists of two applications, a multiyear rate plan proposal (“MYP”) and traditional test-year filing (“TTYF”) should be dismissed, or, in the alternative, the Commission should find that no issues of material fact exist, and the petition should be denied as a matter of law. OPC will also address recent filings submitted by Pepco, including the Errata to the Final Quarterly ROR Report for Calendar Year

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<sup>1</sup> *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”), Order No. 22015, rel. July 10, 2024.*

<sup>2</sup> D.C. Code § 34-804.

2023. The actuals in the revised financial report continue to show that Pepco’s projections were grossly inaccurate. Both the MYP and TTYF overstate the projected rate base and revenue deficiency – two central drivers for Pepco’s requested rate increase. Thus, little has changed substantively, and Pepco’s petition should be denied. In fact, supplemental filings submitted by Pepco highlight other discrepancies in Pepco’s petition that would frustrate the development of any evidentiary record from which the Commission could issue a decision.

*Second*, should the motions be denied, OPC maintains that the Commission would be required to have an evidentiary hearing. Denying the dispositive motions means that material fact issues exist in a contested case. By statute, a contested case affecting the rates offered by a public utility requires an evidentiary hearing. OPC will also explain why the procedural approach taken in a recent rate case, Formal Case No. 1169, in which there was no evidentiary hearing, is not appropriate for this proceeding.

*Third*, OPC will argue that should the Commission decide not to dismiss or deny the petition via summary disposition,<sup>3</sup> the purported legislative-style hearing scheduled in this case does not satisfy the statutory requirement for a formal hearing. Furthermore, the legislative-style hearing is deficient as it precludes witnesses from testifying and is being conducted absent proper notice. OPC will argue that further proceedings are likely necessary to reconcile challenges with developing a record in this case and responding to the latest supplemental filings.

### **III. BACKGROUND**

#### **A. The Commission approves a multiyear rate plan pilot.**

In Formal Case No. 1156, the Commission approved a modified version of a multiyear rate plan proposal submitted by Pepco as an 18-month pilot (“MRP Pilot”), which would span from

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<sup>3</sup> The term “summary disposition” and “summary judgment” are used interchangeably.

July 1, 2021, until December 31, 2022.<sup>4</sup> It approved an ROE of 9.275%, an overall ROR of 7.17%, and a cumulative rate increase of \$108.6 million.<sup>5</sup> The approved revenue requirement was a 33% reduction from Pepco’s initial \$162 million proposal.<sup>6</sup> The Commission recognized that “any changes to traditional ratemaking” must be “deliberative,” with focus given to the “structure and framework” in evaluating alternative forms of ratemaking (AFORS) so as to mitigate unintended operational or financial outcomes.<sup>7</sup> It recognized that any permanent shift away from traditional ratemaking may require “multiple rate proceedings to fully implement AFORS.”<sup>8</sup>

In approving the MRP Pilot, the Commission required Pepco to submit financial reports, including annual information and reconciliation filings for 2021 and 2022, which would allow for comparisons between Pepco’s projections and the actual results for each of those years.<sup>9</sup> The Commission contemplated that this review process would also include a prudency review, which would allow for a rate reduction should Pepco be found to be “over-earning” and an opportunity to recover under-earnings.<sup>10</sup>

The Commission also ordered a stay-out provision until January 2, 2023.<sup>11</sup> Furthermore, Pepco was required to file quarterly financial reports through Calendar Year 2023 (CY 2023), *i.e.*,

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<sup>4</sup> *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”),* Order No. 20755, ¶ 473, rel. June 8, 2021. Pepco proposed its multi-year plan on May 30, 2019. It proposed the enhanced multi-year rate plan on June 1, 2019, which the Commission subsequently adopted with modifications.

<sup>5</sup> *Id.* ¶ 476(d)(v)-(vii).

<sup>6</sup> *Id.* ¶ 4.

<sup>7</sup> *Formal Case No. 1156,* Order No. 20273, ¶ 86, rel. December 20, 2019.

<sup>8</sup> *Id.*

<sup>9</sup> *Formal Case No. 1156,* Order No. 20755 ¶ 160.

<sup>10</sup> *Id.* ¶ 161.

<sup>11</sup> *Id.* ¶ 160.

the twelve months ending December 31, 2023.<sup>12</sup> These quarterly earnings filings were to help “recognize any potential over-earning or under-earning” occurring during the Pilot and CY 2023.<sup>13</sup> Evaluation of the filings for the MRP Pilot would be part of the pilot’s reconciliation process. Evaluation of CY 2023 would take place as part of the next base rate case.<sup>14</sup>

## **B. Pepco Files a New Application for a Rate Increase**

### *1. Pepco Proposes a Multiyear Rate Plan*

On April 13, 2023, Pepco filed an application for approval to increase rates for the Company’s electric distribution service within the District of Columbia through the implementation of a multiyear rate plan (the “MYP Application”).<sup>15</sup> The MYP Application proposed a \$190.7 million cumulative rate increase in base distribution revenue over three years, from 2024-2026, based on an ROE of 10.50%.<sup>16</sup> Included in the MYP is the recovery of capital investments made in 2023.<sup>17</sup>

### *2. Concerns Regarding Evaluation of the MYP and the Procedural Schedule*

OPC and other parties raised concerns over the MYP Application, including whether it was ripe for consideration, as no review of the MRP Pilot had occurred, which would be necessary before adopting a multiyear rate plan on a permanent basis.<sup>18</sup> After no consensus was reached on

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<sup>12</sup> *Id.* ¶ 162.

<sup>13</sup> *Id.*

<sup>14</sup> *Formal Case No. 1156*, Order 21042, ¶ 217, rel. October 26, 2021.

<sup>15</sup> *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 (“MYP Application”).

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.*

<sup>18</sup> *Formal Case No. 1176*, The Office of the People’s Counsel for the District of Columbia’s Comments Regarding a Procedural Schedule, pp. 9-10, filed June 23, 2023 (“OPC Comments”); *Formal Case No. 1176*, Comments of the Apartment and Office Building Association of Metropolitan Washington

a procedural schedule, OPC along with the District of Columbia Government (DCG) and the Apartment and Office Building Association of Metropolitan Washington (“AOBA”) proposed a procedural schedule, which provided for a sequential review that began with the MRP Pilot.<sup>19</sup> Consideration of the MYP would depend on the results of this review.<sup>20</sup>

While the Commission declined to adopt this schedule, it did order Pepco to submit two sets of supplemental filings: (1) a traditional test year application (“TTYF”) with supporting work papers, testimony, and exhibits, based on Calendar Year 2023 serving as the test period; and (2) a self-review of the MRP Pilot with supporting testimony, highlighting “problems identified and lessons learned” from the Pilot.<sup>21</sup> Additionally, Pepco was to explain in “quantitative and qualitative terms” the benefits of the MRP Pilot.<sup>22</sup> The review of the MYP, the TTYF, and the MRP Pilot were to occur simultaneously in the same proceeding.<sup>23</sup>

### **C. Supplemental Filings and the First Dispositive Motion**

By August 31, 2023, Pepco had filed its supplemental review of the MRP Pilot.<sup>24</sup> On October 16, 2023, it filed its TTYF.<sup>25</sup> In its TTYF, Pepco claimed that without a rate increase, it

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in Support of the Procedural Schedule Proffered by the Office of People’s Counsel, the District of Columbia Government and AOBA, p. 2, filed June 23, 2023 (“AOBA Comments”); *Formal Case No. 1176*, The District of Columbia Government’s Comments in Support of its Proposed Procedural Schedule, p.3, filed June 23, 2023 (“DCG Comments”).

<sup>19</sup> *Formal Case No. 1176*, OPC Comments at 4, 5-6.

<sup>20</sup> *Id.*

<sup>21</sup> *Formal Case No. 1176*, Order No. 21886, ¶¶ 1, 23-24, rel. July 28, 2023.

<sup>22</sup> *Id.* ¶ 29.

<sup>23</sup> *See id.* at Attachment A.

<sup>24</sup> *Formal Case No. 1176*, Potomac Electric Power Company’s Supplemental Direct Testimony, filed August 31, 2023.

<sup>25</sup> *Formal Case No. 1176*, Potomac Electric Power Company’s Testimonies and Exhibits for the Traditional Test Year Compliance filing directed by the Public Service Commission of the District of Columbia in Order No. 21886, filed October 16, 2023 (“Pepco Supplemental Testimony-TTYCF”).

would face a revenue deficiency of \$108.2 million.<sup>26</sup> In addition to the TTYF, Pepco included projected data for CY 2023 in its MYP that purported to show under-earnings for CY 2023, which Pepco attributed to regulatory lag associated with the stay-out provision.<sup>27</sup> Specifically, Pepco projected a \$29 million revenue deficiency for 2023 in the MYP, which it sought to recover from customers through new rates to be in effect in 2024.<sup>28</sup>

On March 12, 2024, OPC, AOBA, and the DC Government filed a limited Motion to Dismiss, or in the Alternative, Motion for Summary Disposition, seeking to strike the MYP from this case.<sup>29</sup> The basis for that motion focused on, among other areas, the structural deficiencies facing the MYP application. The Commission has yet to rule on that motion on the merits.

#### **D. Pepco's Financial Reporting and the Second Dispositive Motion**

On May 3, 2024, the Company filed its final Quarterly ROR Report for 2023.<sup>30</sup> The Report indicated that the Company had earned an ROE of 9.511% and a ROR of 7.17%.<sup>31</sup> The ROE was 24 basis points higher than the 9.275% authorized by the Commission in Order No. 20755. This resulted in extra earnings of \$4.275 million for CY 2023.<sup>32</sup>

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<sup>26</sup> Exhibit Pepco (2B) (Leming) at 5:13-14.

<sup>27</sup> Exhibit Pepco (A) (O'Donnell) at 32:14 – 33:4.

<sup>28</sup> *Id.*

<sup>29</sup> *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, rel. March 12, 2024.

<sup>30</sup> *Formal Case No. 1156*, Pepco Quarterly ROR Report for the 12 Months Ended December 31, 2023, filed May 3, 2024 ("Pepco Quarterly ROR Report").

<sup>31</sup> *Id.* at 1, Attachment A, p. 1.

<sup>32</sup> The \$4.275 million is delineated by Pepco as the downward adjustment necessary for the Company to meet the authorized ROE of 9.275%. *See id.* at Attachment A, p. 1.

Notable drivers for the deviation in the actuals from the projections in both the TTYF and MYP were the actual rate base and the operating income for CY 2023. The actual D.C. adjusted rate base for CY 2023 was \$2,653,203,000, and the actual operating income was \$189,884,000.<sup>33</sup> By comparison, for the TTYF, Pepco projected the rate base to be \$3,023,435,000 and the operating income to be \$153,172,000.<sup>34</sup> In the MYP, the projected rate base was \$2,757,779,000, and the projected operating income was \$173,582,000.<sup>35</sup>

On June 12, 2024, OPC and AOBA jointly filed a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (“Second Dispositive Motion”), seeking dismissal of the MYP and the TTYF, or, in the alternative, requesting the Commission to grant summary judgment denying both of Pepco’s applications.<sup>36</sup> No final decision has been issued on the merits for the Second Dispositive Motion.

#### **E. Notice of Legislative-style Hearing and Subsequent Filings Regarding CY 2023**

On June 13, 2024, the Commission notified the parties that if it did not grant either dispositive motion, a legislative-style hearing would be held on July 30, 2024.<sup>37</sup> Additionally, parties desiring to participate in the oral argument would be required to provide a pre-hearing brief.<sup>38</sup>

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<sup>33</sup> *Id.* at Attachment A, p. 1.

<sup>34</sup> Exhibit Pepco (2B)-1 at 1.

<sup>35</sup> Exhibit Pepco (B)-1 at 1.

<sup>36</sup> *Formal Case No. 1176*, Motion to Dismiss or, in the Alternative, Motion for Summary Judgment 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 (“Second Dispositive Motion”).

<sup>37</sup> *Formal Case No. 1176*, Notice ¶ 1.

<sup>38</sup> *Id.* ¶ 2.

On June 24, 2024, Pepco filed an “errata” to the ROR Report for CY 2023 (Errata ROR Report). The report indicated that Pepco’s Sale of Electricity and BSA Revenue Reserve decreased to \$16,833,000 from \$23,318,000, representing a \$6.485 million change. A revised ROE was cited at 9.155%, and a slight revenue deficiency of \$2,209,000 was now reported.<sup>39</sup>

OPC filed a motion requesting that the Commission suspend the hearing and pre-hearing brief and first issue a decision on the two pending dispositive motions; the Office also requested for clarification on the structure of the legislative-style hearing in the event it took place.<sup>40</sup> Pepco objected to OPC’s request to modify the schedule.<sup>41</sup>

On June 28, 2024, the Commission issued Order No. 22013, declining to suspend the schedule.<sup>42</sup> The Commission also temporarily denied the two dispositive motions but noted that the denial did not decide any “issue of policy or law that undergird the Motions,” nor did it decide either motion on the merits.<sup>43</sup> The Order directed Pepco to file supplemental filings further explaining the Errata ROR Report and opened a short window for discovery and responses to discovery on the filing.<sup>44</sup>

The supplemental filing required Pepco to provide a detailed explanation and support of all adjustments, including RMA12 – GAAP BSA Revenue Recognition Reserve, and a detailed description of the misstatement that required the Company to file an errata; Pepco was to provide

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<sup>39</sup> *Formal Case No. 1156*, Pepco’s Errata to the Quarterly ROR Report filed on May 3, 2024, filed June 24, 2024 (“Errata ROR Report”).

<sup>40</sup> *Formal Case No. 1176*, The Office of the People’s Counsel for the District of Columbia’s Motion to Suspend the Procedural Schedule and Request Clarification, filed June 24, 2024.

<sup>41</sup> *Formal Case No. 1176*, Response of Potomac Electric Power Company in Opposition to Motion to Suspend the Procedural Schedule and Request Clarification, filed June 26, 2024.

<sup>42</sup> *Formal Case No. 1176*, Order 22013, ¶ 1, rel. June 28, 2024 (“Order 22013”).

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* ¶ 30.

detailed documentation and explanation of the development of each of the jurisdictional allocation factors employed in the Jurisdictional Cost of Service Studies and their calculations; and it was to provide a detailed demonstration of the prudence of Pepco's Calendar Year 2023 capital and operating expenditures.<sup>45</sup> On July 5, 2024, Pepco submitted the supplemental filing.<sup>46</sup>

On July 10, 2024, in response to a request for an extension from AOBA, the Commission extended the deadline to submit discovery requests from July 11, 2024, to July 15, 2024, and extended the date to file the pre-hearing brief from July 23, 2024, to July 24, 2024.<sup>47</sup> No other modifications to the schedule were made.

#### **IV. DISCUSSION**

**A. This case should be dismissed, or alternatively, summary judgment should be granted denying Pepco's request for a rate increase.**

The dispositive motions filed by OPC and the Joint Movants should be granted, dismissing this case or denying Pepco's petition for a rate increase as a matter of law. In support thereof, the Office will first reiterate the arguments presented in the First Dispositive Motion. Second, OPC will offer support for the Second Dispositive Motion, responding to recent arguments raised by Pepco and modifications the Company has since made to its financial filings, specifically the Errata to the ROR Report for 2023. Third, OPC will show that the supplemental filings the Company was required to file, to help explain the Errata, further illustrate deficiencies in Pepco's petition and support denying the rate request.

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<sup>45</sup> *Id.* ¶ 29.

<sup>46</sup> *Formal Case No. 1176*, Pepco's Supplement to the ROR Filing, filed July 5, 2024.

<sup>47</sup> *Formal Case No. 1176*, Order 22015, ¶ 9 rel. July 10, 2024.

*1. The Commission should grant the First Dispositive Motion, dismissing the MYP Application or deny the request by granting summary disposition.*

In the First Dispositive Motion, the Joint Movants (OPC, AOBA, and DCG) moved for the MYP to be dismissed or denied by summary disposition. As there has been no final adjudication of the motion, OPC renews the request. The grounds for the motion still stand: (i) the Application is premature and deficient due to the failure to include or consider any PIMs alongside the Application; (ii) Pepco has failed to satisfy statutory burdens and meet Commission requirements, being unable to show that the MYP is advancing the District of Columbia's climate goals and objectives; (iii) the MYP improperly seeks recovery of programs that have yet to be approved in other proceedings; and (iv) Pepco's self-assessment of the MRP Pilot fails to establish any net benefits to ratepayers, thus not warranting adoption of a multiyear plan on a permanent basis. OPC refers the Commission back to the original Motion, as there is no need to further reiterate the same points here.

*2. The Commission should grant the Second Dispositive Motion.*

In the Second Dispositive Motion, OPC and AOBA moved to dismiss the entire case, or alternatively, that the Commission award summary judgment denying both the MYP and TTYF as a matter of law. The Motion supplemented the First Dispositive Motion, focusing on data from the recently filed ROR Report for CY 2023. OPC and AOBA argued that the actuals from the ROR Report demonstrated that the MYP and TTYF contained erroneous information and inaccurate projections; Thus, the Commission was precluded from considering either application. Because the MYP and TTYF continue to contain erroneous information, OPC reiterates dismissing or denying the petition as a matter of law on this basis, as it is articulated in the Second Dispositive Motion.

The Joint Movants also argued that based on the ROR Report, which showed the Company was over-earning, the case should be dismissed rather than updating both applications with actuals, as no rate increase was necessary; additionally, because the Company was over-earning, ratepayers should be entitled to a refund instead of a rate increase.

Pepco submitted a response opposing the motion (Response) and subsequently filed the Errata ROR Report for CY 2023. In its Response, Pepco effectively dismisses the ROR Report and downplays the divergence between the adjusted rate base and revenues in the Report and the Company's projections.<sup>48</sup> At the same time, based on the Errata ROR Report, Pepco now conveniently claims that it did not over-earn in CY 2023.

OPC will address these arguments in turn – first demonstrating that comparisons between the actuals and projections, as articulated in the Second Dispositive Motion are both appropriate and required by Commission Order. Second, it will explain why changes to the ROR Report do not cure the deficiencies that warrant denying Pepco's requested rate increase.

- i. Reliance on the adjusted figures in the ROR Report is necessary and shows Pepco's applications for a rate increase are based on inaccurate and unreliable financial data.

A comparison of the adjusted values in the ROR Report with Pepco's projections is appropriate and necessary for evaluating any requested rate increase by Pepco. It is not disputed that the ROR Reports were to conform to the ratemaking adjustments approved in Formal Case No. 1156. These reports would be used to determine whether Pepco earned above or below what it was authorized to during the Pilot and CY 2023. And what the Company was authorized to earn remained in effect until new rates were set by the Commission: The "revenue requirements

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<sup>48</sup> *Formal Case No. 1176*, Response of Potomac Electric Power Company In Opposition to Motion Dismiss Or, in the Alternative, Motion for Summary Judgment, pp. 8, 17 (June 17, 2024) ("Pepco Response").

and the rates approved remain in place and carries over until the Commission sets new rates in a subsequent rate case proceeding.”<sup>49</sup> Accordingly, the ratemaking adjustments used to assess the revenue requirement and, subsequently, Pepco’s rates for service remain in place until the Commission issues a new order setting new rates.

For this reason, Pepco’s protests against comparing the actuals from the 2023 ROR Report with the projections in the TTYF and MYP, due to adjustments that the Company had to include in the ROR Reports, are meritless.<sup>50</sup> Pepco appears to nevertheless present three basic points in support of this position. First, it essentially argues that the actuals themselves are unfair. In particular, the Company bemoans the approved ratemaking treatment for the BSA, which requires the Company to report certain BSA earnings it has not actually recovered. This is nothing more than attempting to relitigate Formal Case No. 1156. Treatment of the BSA could change in the future, but the methodology in evaluating the Company’s current financial position cannot be ignored simply because the Company does not like it.

Second, Pepco argues that its projections include newly proposed adjustments, which leads to different figures. But this largely ignores the main reason projections are included in a rate case in the first place; they are included because at the time of filing, the actuals are not available for a particular timeframe. However, when the actuals become available, the Commission has a legal obligation to consider this information, as discussed in the Second Dispositive Motion.<sup>51</sup> Here, Pepco also ignores that any proposed adjustments embedded in its projections are speculative as they have not been approved.

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<sup>49</sup> *Formal Case No. 1156*, Order 21042, ¶ 150, rel. October 26, 2021.

<sup>50</sup> *Formal Case No. 1176*, Pepco Response, pp. 8, 17.

<sup>51</sup> Second Dispositive Motion, p. 10.

Third, Pepco goes on to advocate that a more appropriate comparison would be between unadjusted values from its projections and the actuals, but it provides no clear explanation as to why – particularly since Pepco’s proposed revenue requirement in its petition includes proposed ratemaking adjustments. Moreover, it would make little sense for the Commission to award a credit to ratepayers based on an approved ratemaking treatment in one instance, only to turn around, ignore it, and give the Company a rate increase in another – all in a single proceeding.

- ii. Pepco’s Errata ROR Report does not change the basis for granting the Second Dispositive Motion.

While Pepco pushes back against the ROR Report, it nevertheless filed an errata to the ROR Report, modifying the Company’s reported revenues. This came after filing its Response to the Second Dispositive Motion. The Company now claims it no longer over-earned during CY 2023, perhaps hoping to undermine the Second Dispositive Motion. In the process, it arguably undermined its initial Response, which discounted the evidentiary value of the ROR Report to begin with. Regardless, the Errata ROR Report changes little. It reaffirms that Pepco inflated the projected rate base in both applications. While there is now a reported revenue deficiency for CY 2023, it is a far cry from the millions of dollars projected in the MYP and TTYF, which the Company claimed it needed to recover in this case. Because the figures are still grossly inaccurate in both applications, the underlying basis for denying both applications still remains. While in the past, the Commission would require Pepco to update its figures using actuals, when they became available, here it has not elected to do so. Moreover, the Company has declined as well. Accordingly, as the figures are unreliable, neither rate application can be approved.

### *3. Pepco’s supplemental filings only expose further problems.*

The supplemental filings submitted in recent weeks, to help explain the Errata, further highlight the problem of developing a record in this case, particularly in the absence of a formal

hearing. The ROR Report for 2023 raises concerns, including capital investments that are considerably over budget.<sup>52</sup> These quarterly reports also have included projects located in Maryland, and some of the investments Pepco seeks recovery for were included in Pepco's Maryland rate case.<sup>53</sup> It is not the burden of OPC or other intervening parties to sort out these entanglements – that burden is on the Company. Thus far it simply has failed to meet this burden. The result is an unclear and deficient record. While an evidentiary hearing and more time for review may help ameliorate the problem, at this juncture, the preferable option is dismissing the matter or denying the rate request via summary judgment due to the number of unaddressed issues with Pepco's petition.

Moreover, the capital investments made in 2023 still have to be reviewed for prudence. Yet, no such review has taken place. This poses further issues: A potentially non-prudent investment made in 2023 could be included in the rate base and the projections of the TTYF or MYP. It would be premature to rely on such projections or even admit such information into evidence.

**B. If the Dispositive Motions are not granted, then an evidentiary hearing is required.**

Should the Commission not grant either dispositive motion, an evidentiary hearing would be required to determine this case. While the Commission alluded to following the same format in Formal Case No. 1169, in which it decided a rate case without a formal hearing, for the reasons outlined below, such a process is untenable here and unlikely to withstand judicial review. As OPC will explain, an evidentiary or formal hearing is required in a rate case such as this by statute.

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<sup>52</sup> For example, as part of the prudence review submitted by Pepco, the Company shows Project No. 77204 shows a budget of \$220,000 but actual costs were \$1,114,000. *Formal Case No. 1176*, Pepco's Supplement to the ROR Filing, Exhibit H-2.

<sup>53</sup> Exhibit AOBA (2A) (Oliver) at 25 n. 11, 30:1-8; *see also id.* at 30:16-19.

While there may be limited exceptions to the rule, they would not be applicable here if the Commission denied either dispositive motion. The exceptions stem from circumstances where there are no issues of fact that need to be adjudicated. OPC will address these in turn. It will affirm that the Commission will ultimately have to issue a ruling on the merits of those two motions and the arguments reiterated in this brief. Denying the requests for summary judgment acknowledges that there are issues of material fact, which would trigger the requirement for an evidentiary hearing. As OPC will further demonstrate, a hearing cannot be averted on the basis that the only issues in dispute are those involving questions of law and policy.

*1. A formal hearing is required in this case if it is not decided dispositively.*

A formal hearing is required before issuing a final decision in any contested case before an administrative agency, which, by statute, includes cases before the Commission affecting the rates of service for a public utility.<sup>54</sup> A formal hearing in a contested case means an evidentiary hearing, *i.e.*, a “trial-type hearing that is ‘adjudicatory’ and ‘is concerned basically with weighing particular information and arriving at a decision directed at the rights of the specific parties.’”<sup>55</sup> At a minimum, the hearing shall afford every party “the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.”<sup>56</sup>

Much like a contested case in a court of law, there are exceptions to this rule: principally, there is no need for a hearing where there are no issues of material facts in dispute, or the need for

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<sup>54</sup> D.C. Code § 2-509 (LexisNexis 2024); D.C. Code §34-908 (“no order affecting said rates, tolls, charges, schedules, regulations, or act complained of shall be entered by the Commission without a formal hearing.”)

<sup>55</sup> *Price v. D.C. Bd. of Ethics & Gov’t Accountability*, 212 A.3d 841, 844 (D.C. 2019) (quoting *Euclid St., LLC v. District of Columbia Water & Sewer Auth.*, 41 A.3d 453, 457 (D.C. 2012)).

<sup>56</sup> D.C. Code § 2-509(b).

such a hearing can be avoided if the necessary inferences and legal conclusions can be drawn from facts already established.<sup>57</sup> Also, a hearing may not be necessary if the only issues in question are policy concerns.<sup>58</sup> However, simply because a contested case could be decided absent a formal hearing under these circumstances does not remove its designation as a contested case. The agency decision would still be subject to the standard of review applicable to a contested case. This standard requires the agency decision to be supported by substantial evidence.<sup>59</sup> And agency decisions determined to be arbitrary and capricious, an abuse of discretion, or not otherwise in accordance with the law will not be upheld.<sup>60</sup>

Here, the Commission can decide this case without an evidentiary hearing only if it were to grant one or both dispositive motions filed in this case, by which it could either dismiss the case or deny Pepco's request for a rate increase via summary judgment. The dispositive motions provide procedural reasons for dismissing the case. The motions also provide grounds for denying Pepco's petition on the basis that the Joint Movants are entitled to judgment as a matter of law. As noted earlier, OPC maintains that Pepco's own filings show that the Company has failed to meet the threshold requirements for a rate increase.

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<sup>57</sup> See *Potomac Elec. Power Co. v. Public Serv. Comm'n*, 457 A.2d 776, 789 (D.C. 1983) ("A hearing is not necessary where no material facts are in dispute or where the disposition of claims turns not on the determination of facts, but inferences and legal conclusions to be derived from facts already established").

<sup>58</sup> *Office of the People's Counsel v. PSC of the D.C.*, 797 A.2d 719, 721 n. 9 (D.C. 2002)

<sup>59</sup> D.C. Code § 2-509(e).

<sup>60</sup> *Sawyer Prop. Mgmt. of Maryland, Inc. v. Dist. of Columbia Rental Hous. Comm'n*, 877 A.2d 96, 102 (D.C. 2005); *Wilson v. D.C. Rental Hous. Comm'n*, 159 A.3d 1211, 1214 (D.C. App. 2017) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1989)).

2. *Any rate increase would require adjudicating issues of material fact.*

Even if Pepco could successfully overcome the procedural arguments warranting dismissal, the Commission would still need to adjudicate OPC's request for summary judgment. If the Commission were to grant the request for summary disposition, it would mean that there are no material issues of fact in dispute, and the movants are entitled to judgment as a matter of law. Thus far, the Commission has elected not to issue a final determination on the motions. Instead, it denied the two motions temporarily, relying on a general policy argument – stating that the issues in this case were too important to be decided via a dispositive motion at the time and would be better decided after having a “more complete record.”<sup>61</sup> However, the Commission will not be able to issue a final decision without addressing all the arguments raised in this proceeding.<sup>62</sup> And such a decision will have to be supported by substantial evidence. Thus, in issuing any final order, the Commission will have to address the arguments raised in both dispositive motions, which have been reiterated here and remain undecided.

Were the Commission to deny summary judgment, it would mean, presumptively, that there *are* issues of material fact that are in dispute. And if there are issues of material fact in dispute, then an evidentiary hearing is required pursuant to statute. Thus, denying the dispositive motions, let alone awarding a rate increase, cannot be accomplished without acknowledging that issues of material fact remain in dispute, which in turn, require an evidentiary hearing.

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<sup>61</sup> *Formal Case No. 1176*, Order 22013, ¶ 28.

<sup>62</sup> *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42–43 (1983); *Evergreen Shipping Agency (Am.) Corp. v. FMC*, No. 23-1052, 2024 U.S. App. LEXIS 16457, at 10 (D.C. Cir. July 5, 2024) (failure to respond in any meaningful way to most of party's arguments is “itself arbitrary and capricious.”) (citing *Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198, 368 (D.C. Cir. 2005)).

3. *There are no facts established from which inferences and legal conclusions can be drawn that could justify a rate increase, absent a formal hearing.*

In Formal Case No. 1169, the Commission argued that the issues before it, regarding WGL’s request for a rate increase, were limited to policy considerations and questions of law and that the entire case could be resolved through the submission of written testimony, without an evidentiary hearing. In support, it cited prior Court of Appeals decisions to argue that it could avoid an evidentiary hearing where the disposition of claims turns on “inferences and legal conclusions to be derived from facts already established,” relying on *Potomac Elec. Power Co. v. Public Service Comm’n of Dist. of Columbia*, 457 A.2d 776, 789 (D.C. Ct. App. 1983).<sup>63</sup> It further classified the issues of material fact raised by the parties as questions of policy not requiring a formal hearing.

The approach in Formal Case No. 1169 was problematic, and unlikely to result in just and reasonable rates in this case – particularly as this case is akin to three rate cases in one. In *Potomac Elec. Power Co. v. Public Service Comm’n of District of Columbia*, the Court affirmed the power of the Commission to dismiss a case – not to award a rate increase – absent a hearing.<sup>64</sup> Moreover, the Commission had initially held a hearing where testimony was solicited, witnesses were questioned, and parties could present oral arguments on a motion to dismiss.<sup>65</sup> The motion was granted after the Commission found that Pepco had failed to establish a *prima facie* case for a rate increase based on emergency relief.<sup>66</sup> Ten days after being denied the rate increase, the Company

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<sup>63</sup> *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 21582, ¶ 9, rel. March 14, 2023.

<sup>64</sup> *Potomac Elec. Power Co. v. Public Service Comm’n of District of Columbia*, 457 A.2d 776, 789 (D.C. Ct. App. 1983).

<sup>65</sup> *Id.* at 781-82.

<sup>66</sup> *Id.* at 782.

again filed an application for a rate increase on the same grounds.<sup>67</sup> The Commission requested Pepco submit a filing identifying any factual changes or new legal grounds distinct from the prior petition; upon review, the Commission found none and denied Pepco's application without a hearing.<sup>68</sup> The Court of Appeals upheld the decision, affirming that there were no new facts from those already established in the prior case warranting further proceedings.<sup>69</sup>

Here, there are *no* facts established at all that could warrant a rate increase. There have been no stipulations either and the currently scheduled oral argument for July 30, 2024, does not allow for witnesses to present live testimony from which facts could be established – unlike in *Potomac Elec. Power Co. v. Public Service Comm'n of District of Columbia*.

4. *The issues in this case are not limited to policy considerations.*

The Commission may attempt to argue that the issues before the Commission are all policy issues, as it did in Formal Case No. 1169, taking a very broad approach as to what constitutes a policy matter. The Commission previously relied on *Watergate E. v. Dist. of Columbia Pub. Serv. Comm'n*, 662 A.2d 881 (1995) and *Office of the People's Counsel v. PSC of the Dist. of Columbia*, 797 A.2d 719 (2002) in support of this approach.<sup>70</sup> A closer examination reveals that neither of those cases would be applicable here.

In *Watergate*, the issue was largely limited to the interpretation of an order issued in a rate case and whether the new rate for service to the Watergate Hotel was triggered by WGL formally

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 782, 788.

<sup>69</sup> *Id.* at 789.

<sup>70</sup> *Formal Case No. 1169*, Order No. 21602, ¶ 38, rel. April 24, 2023.

filing a tariff amendment approved by the order.<sup>71</sup> The Appellant, the Watergate Hotel, focused its appeal on whether there was appropriate notice given in the initial rate case and whether there was a subsequent violation of the filed rate doctrine.<sup>72</sup> The Court found proper notice was given, and there was no violation of the filed rate doctrine.<sup>73</sup> The Appellant also argued that it should have been afforded a hearing when WGL filed an amendment to its tariffs.<sup>74</sup> But that argument had no merit as WGL was simply filing an amendment pursuant to a proceeding that had already occurred – there was no new application for a rate increase, and the only issue was one of legally interpreting the effect of the prior order in tandem with WGL’s filing.<sup>75</sup>

The Commission fares no better in its reliance on *Office of the People’s Counsel v. PSC of the Dist. of Columbia*, which was also limited to a tariff amendment. In this case, OPC had challenged the Commission’s decision to approve a tariff amendment that expanded the number of customers eligible to be classified as home-based business customers of Verizon Washington. The crux of OPC’s argument was that there was not substantial evidence supporting any modification to the customer class because the Commission had not looked at any data examining the volume of telephone usage that was attributable to home-based businesses.<sup>76</sup> Yet, the Court

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<sup>71</sup> *Watergate E. v. Dist. of Columbia Pub. Serv. Comm’n*, 662 A.2d 881, 886 (1995) (“Petitioners’ basic challenge is to the Commission’s determination that Rate Schedule No. 3 replaced Rate Schedule I in 1976 in the purchased fuel adjustment governing the Watergate. This determination is not in essence a factual finding, but rather a conclusion about the legal effect of WGL’s filings and the Commission’s rate determinations in the 1975-76 period.”).

<sup>72</sup> *Id.* at 887-88.

<sup>73</sup> *Id.* at 887, 889.

<sup>74</sup> WGL had been charging the rate approved in the Order but did not formally amend its tariff to reflect this until 17 years later, at which point the Watergate Hotel filed its complaint, arguing it had been over-charged for the past 17 years. *Watergate E. v. Dist. of Columbia Pub. Serv. Comm’n*, 662 A.2d 881 (1995).

<sup>75</sup> *Id.* at 886, 890.

<sup>76</sup> *Office of the People’s Counsel v. PSC of the Dist. of Columbia*, 797 A.2d 719, 721 (2002).

of Appeals found that OPC provided no counterfactual or empirical data of its own to dispute certain assumptions provided by Verizon and adopted by the Commission supporting the amendment.<sup>77</sup> The Court also noted that the Commission had determined that data on the volume of telephone usage attributable to home-based businesses was not “readily available,” would be “expensive and invasive of customer privacy” and would ultimately be “inconclusive.”<sup>78</sup>

OPC also never argued that an evidentiary hearing was required in the case. The issue of whether a hearing could be averted because only policy concerns were at issue was simply not a part of the case. The Court merely cites *Watergate* in a footnote, representing little more than dicta.<sup>79</sup> But it never formally considered whether an evidentiary hearing could be denied because the issues were purely policy considerations and not factual in nature. In fact, the contrary is true: the case was subsequently remanded, as the Court found that the Commission made two unsupported factual findings.<sup>80</sup> Thus, if anything, *Office of the People’s Counsel v. PSC of the Dist. of Columbia*, highlights the importance of fact-finding.

5. *Substantive and detailed questions about the structure and amount of a rate increase require resolving issues of material fact.*

Generally, a matter that requires “weighing particular information” for the purpose of arriving at a “decision directed at the rights of specific individuals” is an adjudicative proceeding. Adjudicative facts are “the facts about the parties and their activities, businesses and properties.”<sup>81</sup> By contrast, legislative facts pertain to general matters, not specific parties, and help decide

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<sup>77</sup> *Id.* at 728.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 726 n.9.

<sup>80</sup> *Id.* at 729.

<sup>81</sup> *PAL DC Storage, LLC v. D.C. Zoning Comm’n*, 229 A.3d 148, 155 (D.C. 2020) (quoting *Dupont Circle Citizens Ass’n v. District of Columbia Zoning Comm’n*, 343 A.2d 296, 300 (D.C. 1975)).

*questions of law and policy and discretion,”*<sup>82</sup> For this reason, legislative-style hearings may be appropriate in the context of rulemaking or in a non-adversary proceeding aimed at devising broad public policy, applicable and directed to the general public, but they are not appropriate as a substitute for a formal hearing in a contested case.

Setting aside the fact that there have been fewer procedural protections in this case than in Formal Case No. 1169, the posture of this case is markedly different. Here, Pepco’s projections conflict with updated factual data that the Company itself filed. Thus, the Commission cannot grant either application as both applications are based on outdated and inaccurate facts.<sup>83</sup>

In this case, OPC, and other intervenors also provide data, analysis, and testimony disputing the assertions raised by Pepco. This testimony includes expert or purported expert testimony from different parties, and resolving such disputes involve determining issues of material fact. The designation of witnesses as experts and the weight that should be afforded to their testimony is an issue of material fact. The Court of Appeals has held that the test of reliable expert testimony includes consideration of several factors, including whether the expert’s opinion is predicated upon a “theory or technique [that] has been tested, whether it ‘has been subjected to peer review and publication,’ ‘the known or potential rate of error,’ and ‘the existence and maintenance of standards controlling the technique’s operation.”<sup>84</sup> Additional considerations include whether the expert’s methodology has been generally accepted elsewhere and whether the principles and methods have been applied to the facts in the case reliably.<sup>85</sup>

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<sup>82</sup> *Id.* at 155 (emphasis in original).

<sup>83</sup> Both the actuals and the projections were filed by the Company.

<sup>84</sup> *Motorola, Inc. v. Murray*, 147 A.3d 751, 754 (D.C. 2016) (quoting *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 593-94).

<sup>85</sup> *Id.* at 754, 757.

Additionally, disputing opinions between experts represent disputes over issues of material fact.<sup>86</sup> In this case, parties offer opposing expert testimony and differing recommendations on a range of issues. If one assumes or accepts that Pepco has made a *prima facie* case or met the threshold requirements for a potential rate increase, there remain factual disputes related to the amount of the increase and the kind of rate plan and structure to implement such an increase.

For example, OPC has filed expert testimony opposing Pepco's proposed ROE, demonstrating that the exorbitant ROE proposed by Pepco is not necessary to attract capital.<sup>87</sup> Thus, the necessary ROE for Pepco to attract investor capital is an issue of material fact. Similarly, OPC has provided expert testimony disputing Pepco's proposed rate of depreciation.<sup>88</sup> There is also testimony disputing Pepco's revenue requirement and cost of service.<sup>89</sup>

OPC also offers expert testimony challenging the prudence of proposed investments, including whether such investments would help the District achieve its climate goals.<sup>90</sup> There is a lack of any consensus as to the economic benefits in this case and disagreement over whether the rate design coupled with the increased capital investments will effectively address cross-subsidization between rate classes.<sup>91</sup> OPC also provides expert testimony demonstrating that energy affordability is adversely impacted were the MRP Pilot to be continued through the MYP.<sup>92</sup> These are just a handful of unresolved issues, which involve material disputes of fact.

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<sup>86</sup> *Designers of Georgetown, Inc. v. E. C. Keys & Sons*, 436 A.2d 1280, 1281 (D.C. 1981) (“Contradictory expert testimony presents an issue of fact for the fact finder.”) (citing *McCrossin v. Hicks Chevrolet, Inc.*, D.C.App., 248 A.2d 917, 920 (1969)).

<sup>87</sup> Exhibit OPC (C) (Walter) at 2:9-17; *see generally id.*

<sup>88</sup> Exhibit OPC (D) (Andrews) at 3:1-28; *see generally id.*

<sup>89</sup> *See generally* Exhibit OPC (B) (Gorman).

<sup>90</sup> *See generally* Exhibit OPC (D) (Mara).

<sup>91</sup> Exhibit OPC (A) (Dismukes) at 42:6-12; 73:1-3.

<sup>92</sup> *Id.* at 16: 4-6

**C. An oral argument alone is insufficient for deciding the issues in this case.**

It is questionable whether the oral argument scheduled in this case can truly be labelled a legislative-style hearing. An oral argument has its own separate definition under commission procedure from a hearing.<sup>93</sup> As discussed below, legislative or legislative-style hearings have certain features that have been omitted here. Thus, further consideration of Pepco's petition on the merits would require additional proceedings beyond an oral argument. The oral argument may be helpful to the Commission, but it does not go far enough in sorting out the problems associated with litigating essentially three different cases in one, nor in considering "an unprecedented paradigm shift"<sup>94</sup> in rate regulation. While OPC reiterates the need for an evidentiary hearing in the event the case is not decided dispositively, OPC further highlights why the current process is insufficient, even within the context of a more informal legislative-style hearing.

As discussed already, there are serious problems with the record in this case. Further proceedings and findings would therefore be needed, should neither dispositive motion be granted, in order to establish an appropriate record. A finding as to whether investments made during the Pilot, which deviated from what was proposed and approved in Formal Case No.1156, still must be made. Similarly, Pepco's filings contain discrepancies and appear to include investments that were either located in Maryland, were part of another rate case, or contain projections that have been shown to be clearly erroneous. And there remain unresolved issues of material fact regarding the amount and structure of any rate increase. A thirty-minute oral argument, without witness testimony, is simply insufficient time to address these matters.

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<sup>93</sup> An oral argument is mentioned as an optional component of a hearing but does not equate to a hearing on its own. See DCMR §139.1 (2024) ("The Commission or presiding officer ...may permit or require oral argument during or at the close of a hearing").

<sup>94</sup> *Formal Case No. 1176*, Order 22013, ¶ 28.

Pursuant to §2-509(a) parties in a contested case have to be given appropriate notice, identifying the issues at hand.<sup>95</sup> The notice shall state the “time, place, and issues involved.”<sup>96</sup> So important is it to delineate the issues involved that if they cannot “fully be stated in advance of the hearing” or if “subsequent amendment” is needed, it must be done “as soon as practicable and opportunity shall be afforded all parties to present evidence and argument with respect thereto.”<sup>97</sup> However, the Commission in this instance has provided insufficient notice, failing to identify specific issues that the oral argument is intended to cover. Instead, the Commission has given a vague, open forum, which affords counsel thirty minutes to discuss a range of issues covering essentially three different cases in a single proceeding. While OPC appreciates any opportunity to discuss this case before the Commission, the open-ended nature makes the process less efficient and conflicts with the statutory notice requirements.

Furthermore, the failure to allow witness testimony of any kind is materially deficient – even for a legislative-style hearing. Legislative hearings have previously allowed witness testimony and have often been held in furtherance of a specific policy goal. There are too many instances to list where witness testimony has been solicited. Nevertheless, one example includes the proceeding in Order No. 15043, which addressed the Commission’s investigation of the District’s near and medium-term electric reliability and electric supply adequacy.<sup>98</sup> The hearing involved review of a slide presentation prepared by PJM, a panel of witnesses to provide their

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<sup>95</sup> D.C. Code § 2-509(a)

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Formal Case No. 1064, In the Matter of the Investigation of the Near-and Medium-Term Electric Reliability and Power Supply Adequacy in the District of Columbia (“Formal Case No. 1064”), Order No. 15043, ¶ 1, rel. Aug. 22, 2008.*

perspectives and respond to the Commission’s questions and citizen testimony.<sup>99</sup> The Commission found the legislative-style hearing appropriate to help solicit information necessary to craft a policy proposal, and it was able to explicitly state that the matter was not a contested case but rather “informal” and only “exploratory.”<sup>100</sup>

The Commission has also utilized a legislative-style hearing to inquire into an isolated interruption of electric service.<sup>101</sup> The legislative-style hearing was “informational,” and was limited in its breadth to discussion regarding a single incident between senior Pepco representatives and the Commission.<sup>102</sup> This has not occurred here. An oral argument by counsel cannot be confused for witness testimony. Furthermore, there is no identified purpose or goal tied to this hearing, and it lacks any specificity in scope.

Additionally, due to the adopted schedule, parties received responses to data requests from the Company only days before the scheduled hearing. The window reopened for discovery was remarkably short – a hindrance to all parties. Under the schedule, OPC is precluded from introducing testimony to address any findings made during the discovery window either.

Regardless of what the Commission decides, a more structured and robust process is needed. This may lengthen the time it takes to issue a final decision, but only briefly, and it would provide an opportunity for a more transparent process and a more equitable result.

## V. CONCLUSION

For the reasons discussed, Pepco’s petition for a rate increase should be denied. Either the case should be dismissed, or alternatively, the applications should be denied because there are no

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<sup>99</sup> *Formal Case No. 1064*, Hearing Tr. 6:10-21, Oct. 1, 2008.

<sup>100</sup> *Id.* 6:4-8, 21-22.

<sup>101</sup> *General Docket No. 2019-03*, Order No. 20228, ¶ 1, rel. Sept. 26, 2019.

<sup>102</sup> *Id.* ¶ 4.

issues of material fact in dispute, and summary judgment is appropriate as a matter of law. If neither dispositive motion is granted, then the Commission must hold an evidentiary hearing to resolve issues of material fact, as is consistent with statutory requirements and precedent. There is no exception to the requirement for an evidentiary hearing present in this case. Moreover, the legislative-style hearing scheduled is insufficient to help reconcile the range of outstanding issues in this case, including proper review of the MRP Pilot, evaluation of the MYP and TTYF, and an examination of the policy considerations at stake. Accordingly, OPC requests that the Commission provide the relief articulated above and provide any other relief it deems appropriate.

Respectfully submitted,

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Dated: July 24, 2024

## 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 July 24, 2024, a copy of *The Office of the People’s Counsel for the District of Columbia’s Pre-Hearing Brief*, was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

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