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July 24, 2024

Ms. Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission
of the District of Columbia
1325 G Street, N.W., Suite 800
Washington, DC 20005

Re: Formal Case No. 1176

Dear Ms. Westbrook-Sedgwick:

Enclosed please find Potomac Electric Power Company's Limited Brief in the above-referenced proceeding.

If you need additional information or have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Kimberly A. Curry

Kimberly A. Curry

Enclosures

cc: All parties of record

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

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

**LIMITED BRIEF
OF
POTOMAC ELECTRIC POWER COMPANY
ON FUNDAMENTAL ISSUES**

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July 24, 2024

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**LIMITED BRIEF OF
POTOMAC ELECTRIC POWER COMPANY ON FUNDAMENTAL ISSUES**

Pursuant to the directive of the Public Service Commission of the District of Columbia (the “Commission”) in the Notice of Legislative-Style Hearing (“Notice”) issued on June 13, 2024, as amended on July 10, 2024, Potomac Electric Power Company (“Pepco” or the “Company”) hereby submits its Limited Brief addressing the issues that are fundamental to the Commission’s decision in this proceeding.¹ This Brief and the Company’s detailed testimony establishes that Pepco’s multiyear rate plan (“MYP”) is reasonable, benefits customers, and should be approved by the Commission.

Substantial evidence in the record supports approval of the Company’s Climate Ready Pathway. Approval of the MYP as an alternative form of regulation (“AFOR”) is reasonable and will provide important incremental benefits to customers as well as greater regulatory flexibility for the Commission. The MYP is consistent with the framework the Commission adopted in Order No. 20273 in Formal Case No. (“FC”) 1156 (the “AFOR Order”), including satisfying the requirements specified in D.C. Code § 34-1504(d)(2),² and the structure of the MYP the Commission approved in FC 1156 after determining that an MYP provides a range of benefits to customers, stakeholders, the Company and the Commission, and should be approved here.

¹ The Notice limits this brief to no more than 30 pages. The Company’s discussion of issues is, therefore, truncated and presented at a high level. Reference is provided to the testimony filed by the Company Witnesses addressing the more technical aspects of Pepco’s MYP application and Traditional Test Year Compliance Filing (“TTYCF”) and explaining why the Company’s positions are reasonable and should be adopted. Additionally, because of the page limitation, certain issues, for example depreciation, are not addressed in the brief, however, the Company is not waiving, and reserves its right to assert, any issues or arguments not included herein.

² D.C. Code § 34-1504(d)(2) states:
The Commission may adopt an [AFOR] if the Commission finds that the [AFOR]:
(A) Protects consumers;
(B) Ensures the quality, availability, and reliability of regulated electric services; and
(C) Is in the interest of the public, including shareholders of the electric company.

I. DISCUSSION

A. THE COMMISSION SHOULD APPROVE THE PROPOSED MYP BECAUSE IT IS SUPPORTIVE OF CUSTOMERS AND BOTH COMMISSION AND DISTRICT POLICIES.

1. The Company's Proposed MYP Aligns with Commission and District Policy Goals and Will Provide Benefits.

Pepco's proposed MYP covers investments planned for 2024-2026 plus capital investments that were placed in service in 2023 and are benefitting customers.³ The Commission adopted framework principles for AFORs, such as MYPs, in the AFOR Order.⁴ The proposed MYP conforms with that framework and meets the fundamental criteria discussed in the Commission's AFOR Order.⁵ In addition, Pepco's MYP achieves the Commission's underlying policy for AFORs, which is to align utility financial incentives with customer needs and the District's policy goals,⁶ advance equity and affordability and improve contracting opportunities for diverse and local businesses.⁷

³ Pepco's MYP in FC 1176 does not propose new Performance Incentive Mechanisms ("PIMs"), because the report of the PIMs Working Group in FC 1156 is under consideration by the Commission. See PEPCO (4H) Canter Rebuttal at 36:18-19.

⁴ AFOR Order at ¶4 (the Commission emphasized that the adoption of any AFOR "protects consumers, ensures the quality, availability, and reliability of regulated utility services, and is in the interest of the public, including shareholders of the utility."). As discussed below, the testimony of the Company's witnesses demonstrates that the proposed MYP meets these objectives.

⁵ PEPCO (A): O'Donnell Direct at 5:5-10; PEPCO (A): O'Donnell Direct at 42, Table 3 (listing how the Company's MYP addresses each of the ten AFOR factors). These investments were not included in base rates in FC1156.

⁶ AFOR Order at ¶6.

⁷ PEPCO (2J): Hightower Rebuttal at 6:4-13 (The goal of the Company's affordability and equity initiatives is to reduce the energy burden for such customers in the District); PEPCO (A): O'Donnell Direct at 45:11-14 (noting that longer term planning under an MYP creates more opportunities for the Company to enter into multi-year contracts with suppliers). See also March 27, 2024 Evening Public Hearing Tr. at 35-36 (Contractor representative from NUCA testifying that "[f]or contractors, they need a ramp-up, . . .if it's a multiyear plan, they have time to hire and to get their . . .infrastructure in place so that they can do the job. . .So I would be more for the multiyear plan"). *Id.* at 36 (representative from the National Association of Minority Contractors testifying that "it's best to have a three-year plan because then you have the opportunity to design and implement the services and support that needs to be given to the community because most of the things are not one-year events").

The proposed MYP provides benefits to customers, the Commission, the Company and stakeholders.⁸ Among those benefits are: transparency into planned investments; predictable rate increases spread over a period of years; reduced frequency of rate proceedings; more focused alignment between the Company's plans and the District's climate change initiatives; the ability for Pepco to invest at the pace and level necessary both to continue to meet customer needs and prepare for the District's electrification plans; and the MYP allows the Company to be financially healthy and meet its obligations to customers, stakeholders, and investors.⁹ In addition, the MYP will support Pepco's continued ability to invest in the District's workforce and positively impact the District's economy.¹⁰ The Commission recognized that an MYP provides many of these benefits when it approved the MYP in FC 1156.¹¹

The use of an MYP relieves the Commission and interested parties of the regulatory burden of multiple, annual rate proceedings that otherwise would be necessary to support the Company's ongoing investment in the District and therefore, should be approved.¹² The financial strength the

⁸ See generally, PEPCO (A): O'Donnell Direct.

⁹ PEPCO (A): O'Donnell Direct at ii.

¹⁰ See generally, PEPCO(A): O'Donnell Direct and PEPCO(A)-1(Confidential); PEPCO (M): McClure Rebuttal at 2:11-18. Pepco's Supplier Diversity Program engages with diversity-certified suppliers so that they have the maximum opportunity to participate in contract opportunities with the Company; and PEPCO (N): Tuladhar Rebuttal at 10:1-16. Dr. Tuladhar of NERA explains the flaws in the economic benefits analysis in OPC Witness Dismukes' OPC (A)-12. He explains that OPC Witness Dismukes systematically underestimates the economic benefits of the MYP and overestimates the economic costs, including, for example, omitting the benefits of O&M spending; omitting the benefits of electricity transmission and distribution; failing to reflect the actual rate increases proposed in the MYP and relying on a 30-year time horizon without justification.

¹¹ See, e.g., FC 1156, Order No. 20755 at ¶¶ 473-474.

¹² PEPCO (A): O'Donnell Direct at 45:10-11; PEPCO (A): O'Donnell Direct at 45:17-21, citing the Commission's conclusions in FC 1156, Order No. 20755 at ¶6, that the Company would need to continue making significant capital investments to "improve the quality, availability, and reliability of electric service to consumers in the District" and that the MYP would help to make such continued investments possible.

MYP provides fosters an environment that promotes reliability, resiliency and safety, while maintaining affordability as referenced in Sections A.3 and B.5 below.¹³

2. *The MYP Is Supportive of and Advances the District's Climate Goals.*

This proposed MYP is intended to support a “Climate Ready Grid,” the Company’s term for infrastructure and processes that advance system-readiness and support District customers through the energy transformation required by the District’s climate policies¹⁴ to move towards a highly electrified and interactive system, which necessitates a reliable and resilient electric distribution system. The MYP will better position Pepco to meet the District’s requirements.¹⁵

While some parties have argued that the Company’s plans should be expressly linked to specific District climate initiatives,¹⁶ Pepco’s overall commitment is demonstrated through its Climate Ready Pathway.¹⁷ The goal is to continue to enhance reliability and resiliency to support decarbonization, decrease reliance on fossil fuels, enable continued increases in Distributed Energy Resources (“DERs”), and increase electrification. Without Pepco’s plans, the District’s climate goals cannot be met within the timeframe the District has set. An MYP aligns the

¹³ PEPCO (A): O’Donnell Direct at 18:1-22:12; PEPCO (H): Cantler Direct at 5:20-23; and PEPCO (J): Hightower Direct at 29:3-34:19.

¹⁴ PEPCO (A): O’Donnell Direct at 13:20-21 – 14:1 (“Pepco’s capital spending plan is designed to support a safe, reliable and resilient electric distribution system through investments that are foundational for a Climate Ready Grid.”); PEPCO (H): Cantler Direct at 6:14-22:

The Climate Ready Grid is a series of investments into, among other things, the reliability and resiliency of Pepco’s distribution system in the face of the energy transformation. . .The construction report, . . . contains investments that are needed to support reliability and resiliency which is increasingly important as customers rely on electrification for their everyday needs – including transportation, heating and cooling.

¹⁵ PEPCO (4H): Cantler Rebuttal at 6:19-23 – 7:1-4 (Refuting OPC Witness Mara’s allegations that the Company’s construction plans were simply business as usual by testifying that “[t]he investments included in this MYP represent the Company’s proactive approach to initiate the foundational framework that will enable and promote an energy transformation, one that is codified in District policy, and one that is forward-looking to a more highly electrified and interactive system, which is structurally resilient enough to withstand and adapt to the growing concerns of climate change...”).

¹⁶ See e.g., AOBA (A): B. Oliver Direct at 8:3-9; OPC (E): Mara at 7:4-6.]

¹⁷ PEPCO (4H): Cantler Rebuttal at 6:14-7:4.

Company's capital investments with these objectives on a going-forward basis and over a longer timeframe than under traditional ratemaking, which is based on what has already occurred. The Commission should approve the MYP because it comports with District policy.

3. *The MYP Is Financially Reasonable and Includes Enhancements to Programs That Assist Limited Income Customers.*

In his Rebuttal Testimony, Company Witness Leming provided the revised revenue requirements for the MYP period.¹⁸ If the Company's proposed revenue requirement is adopted, the total 2026 bill for an average residential customer will have grown at a rate of only 2.43% since 2011, below the overall rate of inflation for that period of time.¹⁹ Section B.5 below discusses Pepco's proposals to mitigate the bill impacts to limited-income customers through enhancements to the Residential Aid Discount ("RAD") and Arrearage Management Program ("AMP"). The Commission should approve Pepco's MYP because it sufficiently addresses affordability.

B. THE COMMISSION SHOULD APPROVE THE CLIMATE READY PATHWAY BECAUSE ITS COMPONENTS ARE REASONABLE.

1. *The MYP Builds on the MYP Approved in FC 1156 and Incorporates Lessons Learned from That Proceeding.*

Consistent with the AFOR Order framework and similar to the previously approved MYP, the proposed MYP provides baseline revenue and cost information and explains the processes on which the Company's projections rely.²⁰ The MYP retains the re-opener provision,²¹ a deferred

¹⁸ PEPCO (3B): Leming Rebuttal at 2:1-12 (3B)-1. (The Company updated its revenue requirement to reflect adjustments primarily resulting from the removal of capital projects no longer anticipated to close during the MYP period, remedial investigation and feasibility costs associated with the Company's Benning Road facility, and removal of meters that the Company had installed on community renewable energy facilities).

¹⁹ PEPCO (3E): Bonikowski Rebuttal at 51, Table 6 and PEPCO (3E)-7 provides the bill impacts over the three-year term of the MYP for all major rate classes.

²⁰ PEPCO (B): Leming Direct at 27:10-13.

²¹ PEPCO (B): Leming Direct at 16:13-20.

accounting mechanism,²² and an asymmetric reconciliation process.²³ The reconciliation process mitigates the possibility that Pepco will over-earn its authorized return over the three-year term of the MYP, avoiding shifting risks to customers, while also facilitating the review of the Company's performance.²⁴

The proposal also includes certain enhancements to the MYP adopted in FC 1156.²⁵ One key change is that the proposed MYP aligns rates with investments by using the revenues and expenses developed in the Company's Long-Range Plan ("LRP") rather than using an escalator. As Company Witness Leming testifies, the LRP provides the best current estimates for planned distribution projects in the District. The LRP, unlike a fixed escalation factor applied to the base year, more accurately adjusts for the impacts of supply chain challenges and the impact of inflation for the full term of the MYP in ways that a fixed escalator cannot.²⁶ The goal is to best align rates

²² PEPCO (B): Leming Direct at 16:3-7. The Deferred Accounting Mechanism approved in FC 1156 required: "(1) that the request should have at least a minimum of a \$1 million impact; and (2) that provides whether the costs: (i) are truly extraordinary and unavoidable, (ii) are unusually large and non-recurring, and (iii) create a material degradation in Pepco's earnings that likely would impair Pepco's financial integrity if the deferred accounting treatment." FC 1156, Order No. 20755 at ¶164.

²³ The annual reconciliation processes in the MYP are consistent with the process adopted by the Maryland Public Service Commission in Order No. 89482 and align with the process that the Commission authorized in FC 1156. It consists of (1) an "annual information filing" comparing projected data to actuals; (2) a "consolidated reconciliation and prudence review" in a subsequent rate case; and (3) a "final reconciliation and prudence review" after the conclusion of the term of the MYP. PEPCO (B): Leming Direct at 10:6-9; 14:3-15:19.

²⁴ PEPCO (A): O'Donnell Direct at 36:16-19; PEPCO (B): Leming Direct at 9:23-10:2; PEPCO (2B): Leming Rebuttal at 13:11-19.

²⁵ Nothing the opposing parties proffer contradicts or undermines the Commission's prior determination in Order No. 21886 that the Commission can "assess lessons learned from the Modified EMRP Pilot and develop an evaluation framework in assessing Pepco's "Climate Ready Pathway MYP" ... while also considering a traditional one-year rate case, as the Commission did in Formal Case No. 1156." Formal Case No. 1176, Order No. 21886, July 28, 2023, at ¶1. *See also* Order No. 21886 at ¶¶24, 29; Order No. 21955 at ¶¶ 11, 12 (denying OPC's motion for a stay and renewed motion for stay).

²⁶ *See* PEPCO (B): Leming Direct at 9:7-20 ("The LRP reflects the Company's best current estimates regarding the specific distribution programs and initiatives Pepco will undertake in the District and considers impacts of inflation and supply chain issues during the 3-year term of the MYP. An escalation factor approach, however, which was used for FC 1156, is not able to reflect such year-to-year changes and thus is not the optimal solution to best align the Company's rates (and revenues) with the costs that it will incur to provide electric distribution service to customers in the District").

with investments to provide service to customers throughout the term of the MYP. Again, this is an effort to more accurately reflect actual costs that will be incurred during the term of the MYP rather than relying on a fixed-cost assumption that may not be accurate over the course of the MYP.

An additional learning from FC 1156 is that extended periods without updating rates sufficient to recover costs defers rate increases to a later time period.²⁷ This diminishes the ability of customers to experience gradual rate changes and fails to align rates and revenues appropriately. For this reason, among others, the Company proposes that the next MYP be filed during the final year of the expiring MYP.

The Company also improved its billing determinants processes, rebuilding its modeling based, in part, on consultation with an outside expert and with industry best practice.²⁸ The importance of updated and accurate billing determinants is another lesson learned from the experience under the prior MYP.²⁹ As noted in the Final Bill Stabilization Adjustment (“BSA”) Audit Report that Atrium Economics LLC (“Atrium”) submitted in FC 1156, using updated billing determinants is essential to aligning rates accurately with authorized revenues.³⁰ The Company recognizes that the MYP process is evolving, and accordingly, strived to incorporate improvements in that process into its MYP.

2. *Retroactive Disallowance of Certain BSA Deferral Balances Is Unwarranted and Contrary To Established Precedent.*

a. *The FC 1150 Normalization Adjustment Is Properly Recoverable*

²⁷ PEPCO (B): Leming Direct Testimony at 13:5-10.

²⁸ See, PEPCO (K): Efimova Direct Testimony at 24:6-14 - 26:1-2.; extensive documentation on the enhanced billing determinants forecast methodology is provided in PEPCO (K)-1.

²⁹ PEPCO (A): O’Donnell Direct Testimony at 55:5-23 - 56:1-2.

³⁰ See BSA Audit Report Executive Summary at iv.

Under the FC 1150 Settlement,³¹ Schedule GT-LV rates were designed using forecasted customer counts; however, the FC 1150 Settlement provided that the Schedule GT LV BSA targets were to be calculated based on actual customer counts.³² As discussed in Order No. 19433, the Commission accepted the settlement proposal to use the actual number of customers to calculate the GT-LV per customer revenue for use in the BSA updates.”³³ The FC 1150 Normalization Adjustment resulted in under recoveries until the rates established in FC 1156 became effective on July 1, 2021. The Final BSA Audit Report indicated that the FC 1150 Normalization Adjustment resulted in \$27.1 million in under-recovered revenue.³⁴

OPC mischaracterizes the FC 1150 Normalization Adjustment as being a Pepco administrative error and inappropriately claims that Pepco should be held financially liable for under-recovered revenue that resulted from this adjustment.³⁵ The Commission should reject OPC’s argument because this adjustment was part of the Commission-approved FC 1150 Settlement, to which both OPC and AOBA were signatories.³⁶

The Motion for Clarification of the FC 1150 Settlement clearly addressed this matter.³⁷ Moreover, footnote 167 in Order No. 19433 approving the FC 1150 Settlement references Pepco’s Responses to Staff Data Request Nos. 3-5 and 8-3 that demonstrate the parties to the FC 1150 Settlement agreed to design GT-LV rates using projections for customer counts, billed demand, and sales.³⁸ Similarly, the Final BSA Audit Report indicated that the FC 1150 Normalization

³¹ The Commission approved the FC1150 Settlement pursuant to Order No. 19433 (Aug. 9, 2018).

³² PEPCO (3E): Bonikowski Rebuttal at 21:17-22:3.

³³ FC 1150 & 1151, Order No. 19433 at ¶48.

³⁴ Final BSA Audit Report at Table 2-9.

³⁵ OPC (A): Dismukes Direct at 100:11-17; 110:17-23; OPC (A)-19.

³⁶ Order No. 19433 at ¶1.

³⁷ PEPCO (3E): Bonikowski Rebuttal at 22:11-28 (quoting FC 1150 Motion to Clarify at ¶¶2,5,8.)

³⁸ PEPCO (3E): Bonikowski Rebuttal at 22:30-23:4; PEPCO (3E)-17.

Adjustment “was a negotiated settlement with the Commission and intervenors to acknowledge that the customer forecast in rates was too high.”³⁹ There is no basis for OPC’s suggestion that the BSA deferral balances should be reduced by \$27.1 million on account of the FC 1150 Normalization Adjustment, and it would be inappropriate to now retroactively deny recovery of these balances.⁴⁰

Additionally, as the Final BSA Audit Report discussed, through the operation of the BSA, the under-recovery attributable to the FC 1150 Normalization Adjustment that remains in the BSA deferral balances has been declining.⁴¹ Using the same approach described in the Final BSA Audit Report, as of December 2023, Company Witness Bonikowski calculated that approximately \$3.4 million remained uncollected.⁴² This amount has further declined over 2024. The Final BSA Audit Report concluded that the primary driver of the current BSA deferral balances was the continued use of stale billing determinants from FC 1156 followed by the impact of COVID-19.⁴³

The BSA has performed as the FC 1150 Settlement intended and as the Commission authorized. Moreover, because the BSA is a Commission-approved tariff and rate, it would be contrary to well-settled precedent to retroactively adjust it to eliminate a balance that has already been appropriately accrued and substantially collected,⁴⁴ and would be further contrary to well

³⁹ BSA Final Audit Report at 48, F-2.3(2).

⁴⁰ As discussed further in Subsection (b) below, OPC’s suggestion to retroactively alter the operation of the Commission-approved BSA tariff is contrary to well-established precedent.

⁴¹ The Final BSA Audit Report indicated that approximately \$7 million of the under-recovery attributable to the FC 1150 Normalization Adjustment remained in the BSA deferral balances as of December 31, 2022. Final BSA Audit Report at F-2.3(6) & Table 2-16.

⁴² PEPSCO (3E): Bonikowski Rebuttal at Table 3; PEPSCO (3E)-15. The Final BSA Audit Report indicated that, through the operation of the BSA, by December 31, 2022, approximately \$7 million of the under-recovery attributable to the FC 1150 Normalization Adjustment remained in the BSA deferral balances. See Final BSA Audit Report at F-2.3(6) & Table 2-16. This amount was reduced to \$3.4 million by December 31, 2023. PEPSCO (3E): Bonikowski Rebuttal at Table 3; PEPSCO (3E)-15.

⁴³ Final BSA Audit Report at F-2.3(5) and Table 2-11.

⁴⁴ See, e.g., *District of Columbia v. Pub. Serv Comm’n*, 905 A.2d 249 (D.C. 2006).

established precedent to deny recovery of any remaining small deferral balance as noted above. The FC1150 Normalization Adjustment is properly recoverable because it was a product of a Commission-approved settlement.

b. It is Proper to Recover the Balances Related to the Billing Determinants Error.

OPC also argues that the BSA deferral balances associated with the demand billing determinant error the Company identified and corrected in FC 1156 should be disallowed,⁴⁵ an argument that should be rejected as it constitutes a retroactive attempt to modify the operation of a Commission-approved tariff. Moreover, these deferral balances arose because the billing determinants used to set rates established in FC 1150 were overstated and thus Pepco collected less in rates than the Commission actually authorized.⁴⁶

In FC 1156, Pepco determined that a double counting issue in months with a time slice⁴⁷ had resulted in overstated demand billing determinants. Although this was corrected in FC 1156, the demand rates established in FC 1150 were lower than if they had been based on actual

⁴⁵ OPC (A): Dismukes Direct at 100:5-11; 110:17-23; OPC (A)-19.

⁴⁶ As the Final BSA Audit Report noted, the billing determinant error “allowed customers to enjoy lower rates than they otherwise would have experienced had the correct billing determinants been used.” Final BSA Audit Report at iv.

⁴⁷ A “time slice” occurs when there are multiple price values within a bill period (such as a month within which a rate change occurs), and that price is set up to be prorated within that period. FC 1156, PEPCO (7F): Blazunas Fourth Supp. at 4. Company Witness Blazunas explained “for an individual customer when the report is pulling it, if there’s a time slice, it is double counting it for that individual customer;” however, because customers are not all billed on a single day of the month but rather throughout a month, there was not necessarily a double counting for the entire class within one month as a result of the time slice issue with the variant report, particularly when the change in Commission-approved rates becomes effective in the middle of month, as was the case in FC 1150/1151. FC 1156, Hearing Tr. at 175-176.

demand.⁴⁸ The Final BSA Audit Report estimated this resulted in a \$15.1 million under recovery of billed distribution revenues through base distribution rates.⁴⁹

OPC suggests removal of the full \$15.1 million from the BSA deferral balance. However, this significantly overstates the remaining amount attributable to the FC 1150 billing determinant error. The Final BSA Audit Report indicated that, through the operation of the BSA, by December 31, 2022, approximately \$2 million of the under-recovery from this driver remained in the BSA deferral balances.⁵⁰ Using the same approach described in the Final BSA Audit Report, Pepco estimated that, as of December 2023, approximately \$1.1 million in revenue under-recoveries remained uncollected.⁵¹ This amount further declined in 2024.

The demand billing determinant error that Pepco identified and corrected in FC 1156 did not affect the Commission-approved revenue requirement or the calculation of the BSA revenue per customer targets in FC 1150.⁵² The error resulted in demand-metered commercial customers paying artificially low rates because of the billing determinants established FC 1150. Customers, in effect, deferred paying a portion of the Commission-approved revenue requirement in FC 1150.

⁴⁸ In FC 1150, the billing determinants used to establish most rates were for the 12 months ended September 30, 2017, a period that included the change in rates the Commission approved in FC 1139 as those rates became effective on August 15, 2017, and thus had the time slice issue.

⁴⁹ Final BSA Audit Report at 37 (F-2.2(2) and Table 2-7). Following Pepco's identification and correction of the billing determinant error in FC 1156, the Company also implemented a range of corrective actions to mitigate the risk of any similar error occurring in the future. See FC 1156, PEPCO (7F): Blazunas Fourth Supp. at 10-12. Following a comprehensive evaluation of the BSA operations and Pepco's quality control procedures, the Final BSA Audit Report found that Pepco had a robust system of internal controls and concluded that the Company's "internal controls are reasonable and appropriate to lessen the potential for errors in inputs to the BSA calculation." Final BSA Audit Report at 72.

⁵⁰ See Final BSA Audit Report at F-2.3(6) & Table 2:16.

⁵¹ See PEPCO (3E): Bonikowski Rebuttal at Table 3; PEPCO (3E)-15.

⁵² PEPCO (3E): Bonikowski Rebuttal at 20:6-8.

The BSA has functioned appropriately to reconcile revenues for each rate class to the Commission-authorized revenue level,⁵³ and the recovery of these amounts is reasonable.⁵⁴

Finally, OPC's suggestion would retroactively alter the BSA tariff, contrary to well-established precedent. In FC 1156, the Commission did not eliminate the BSA, holding that it would "not terminate the BSA because decoupling remains a valuable incentive for the utility to implement energy efficiency and demand response programs."⁵⁵ Despite the arguments of some parties in FC 1156, the Commission did not disallow any BSA deferral balances, indicate that the balances were subject to adjustment, or alter the manner in which the deferral balances are collected through the BSA. The deferral balances are not the result of an error in the BSA.⁵⁶ Because the BSA is a Commission-approved tariff and rate, under well-settled precedent, it cannot be adjusted retroactively to eliminate a balance that has already appropriately been accrued and substantially collected.⁵⁷ Denying Pepco recovery of any remaining small deferral balance that is due to the billing determinant error corrected in FC 1156 and resulting from the Commission-approved rate is unlawful and contrary to well-established precedent.

c. The Commission Could Consider an Alternate Method to Recover the Portion of the BSA Deferral Balances Attributable to COVID-19.

Both OPC and AOBA suggest recovery of the portion of the BSA deferral balance related to declining customer usage during the COVID-19 pandemic outside of the BSA and through the

⁵³ PEPCO (3E): Bonikowski Rebuttal at 20:8-13.

⁵⁴ PEPCO (3E): Bonikowski Rebuttal at 20:3-15. Moreover, under the current BSA tariff, Pepco does not earn a return on the BSA deferral balances.

⁵⁵ Order No. 20755 at ¶315.

⁵⁶ The Final BSA Audit Report indicated "Errors in billing determinants are not analogous to errors in the BSA mechanism or the BSA targets which the company is authorized to recover." Final BSA Audit Report at iv.

⁵⁷ See, e.g., *District of Columbia v. Pub. Serv Comm'n*, 905 A.2d 249 (D.C. 2006).

Company's COVID-19 regulatory asset, with a return on any unamortized balance.⁵⁸ While Pepco agrees in principle with such an alternative approach, the amounts that other parties suggest should be transferred to a regulatory asset are unreasonable.⁵⁹

Using the method described in the BSA Final Audit Report to analyze the drivers of BSA deferral balances, Pepco's analysis shows that, if the Commission were to adopt the parties' suggestion, \$46.8 million should be removed from the Schedule GT-LV BSA deferral balance⁶⁰ and recovered through a regulatory asset, with a return at the Company's Commission-approved rate.⁶¹

3. The MYP's Proposed RORs Are Reasonable.

Pepco has established that overall rates of return of 7.77% for 2024, 7.78% for 2025 and 7.79% for 2026 requested in the MYP are reasonable.⁶² These overall rates of return were, based

⁵⁸ AOBA (A): B. Oliver Direct at 134:14-19; OPC (A): Dismukes Direct at 111:3-5. In Surrebuttal Testimony, OPC indicated that any transfer BSA deferral balances associated with declines in GT-LV customer usage during the COVID-19 pandemic through a regulatory asset should be assessed only to GT-LV customers and not all customers. OPC (2A): Dismukes Surrebuttal at 22:7-15.

⁵⁹ PEPCO (3E): Bonikowski Rebuttal at 18:3-11; 33:15-18. OPC suggests that \$69.5 million be transferred to recovery outside of the BSA. AOBA indicates that between March 2020 and the end of June 2021, in excess of \$39.7 million in revenue under-recoveries for the GT-LV class "should be primarily attributed to governmental restrictions on business and personal activities during the pandemic and identified for recovery outside of the BSA mechanism." AOBA (A): B. Oliver Direct at 61:5-9. See also *id.* at 126:1-3 ("significant portion of Pepco's current BSA deferred revenue is appropriately identified as COVID-19-related and should be recovered outside of the Company's BSA mechanism.")

⁶⁰ Schedule GT-LV remains the only rate class for which a substantial proportion of 2020-2022 under-collections remain in the BSA. PEPCO (3E): Bonikowski Rebuttal at 34:7-8. For non-GT LV customers, all revenue under-recoveries from 2020 and 2021 and over 92% of revenue under-recoveries related to declining energy usage between 2020 and 2022 have already been reconciled through BSA surcharges. *Id.* at 34:9-13.

⁶¹ PEPCO (3E): Bonikowski Rebuttal at 33:19-34-21; PEPCO (3E)-15. Approximately \$26.3 million of revenue under-recoveries the Final BSA Audit Report identified as directly related to COVID-19 remain uncollected as of December 2023. *Id.* at 34:2-3. Additionally, an incremental \$25.9 million is associated with other declines in energy usage and demand during the period in which the Final BSA Audit Report identified COVID-related impacts. *Id.* at 34:3-6. Of this total \$52.1 million in under-collections, approximately \$46.8 million is associated with the GT-LV class. *Id.* at 34:6-7.

⁶² PEPCO (C): Holden Direct at 16, Table 3.

on a capital structure of 50.50% common equity and 49.50% long-term debt⁶³ and the Company's requested ROE of 10.50%.⁶⁴ Although OPC does not dispute that an increase in Pepco's ROE is warranted, it suggests a lower increase than the Company requests.⁶⁵

Despite objective evidence that establishes that long-term capital costs have increased substantially since the Commission's decision in FC 1156,⁶⁶ AOBA advocates for a reduction in Pepco's ROE to 9.1%. There is no credible support for the reduction AOBA suggests, and current financial market conditions and interest rate environment do not support AOBA's position. Between June 2021 and December 2023 the yield on 10-year Treasury Bonds, 30-year Treasury Bonds and Baa-rated utility bonds increased by 250, 198 and 227 basis points, respectively.⁶⁷ During the same period, the Federal Funds rate increased from 0.13% to 5.38%.⁶⁸ It is implausible that Pepco's ROE could have decreased from the level approved in FC 1156 when

⁶³ The proposed capital structure is intended to maintain the Company's current credit ratings and is consistent with those of other utilities in Pepco's peer group. The capital structure, consistent with Commission precedent, excludes short term debt. The Company's proposed capital structure also complies with Merger Commitment 93, which requires the Company to maintain a rolling 12-month average annual equity ratio of at least 48%. PEPCO (C): Holden Direct at 17:2-4.

⁶⁴ PEPCO (C): Holden Direct at 16, Table 3.

⁶⁵ OPC suggests an ROE of 9.35% for the MYP and 9.55% for the TTYCF.

⁶⁶ A comparison of the average yields on U.S. Treasury securities and Baa-rated public utility bonds during January 2023 with those in June 2021, when Order No. 20755 in FC 1156 was issued, shows there has been a substantial increase in the returns on long-term capital demanded by investors. The average yield on utility bond yields increased by over 200 basis points during this period. PEPCO (F): McKenzie Direct at 19-20 & Table 2. Company Witness McKenzie also explained that since FC 1139, in which the Commission left Pepco's ROE unchanged at 9.5%, the yield on public utility bonds has increased over 120 basis points and the midpoint of the target range for the Federal Funds rate has increased 425 basis points. PEPCO (3F): McKenzie Rebuttal at 19.

⁶⁷ PEPCO (3F): McKenzie Rebuttal at 7, Table AMM-R1. Company Witness McKenzie explained that it took 22 years for interest rates to fall by one half, but more recently the Baa utility bond yield has almost doubled in just 22 months. *Id.* at 16:4-5.

⁶⁸ PEPCO (3F): McKenzie Rebuttal at 7, Table AMM-R1.

other capital costs have increased significantly.⁶⁹ The Company’s RORs are reasonable and should be approved.

4. *The Commission Should Continue the BSA and Adopt as Reasonable Pepco’s Proposed Modifications to the BSA in Connection with the MYP.*

The BSA decouples the revenue a utility collects and the amount of kWh sold and serves to make the utility indifferent to a decline in sales volumes due, for example, to the implementation of energy efficiency goals.⁷⁰ It aligns with the District’s public policy and climate goals by allowing the Company to support programs—such as Solar for All, DER, community solar, EE, and innovative rate designs (e.g., net energy metering, time-of-use rates)—that result in decreased customer electricity usage without incurring financial harm.⁷¹ Additionally, the BSA protects customers from bill variations caused by extreme weather.⁷²

In FC 1156, the Commission rejected arguments that the BSA should be terminated, stating that other jurisdictions had not eliminated similar decoupling mechanisms when they implemented an MYP.⁷³ The Commission also found that the BSA “continues to be a credit-positive feature for the company and helps maintain its Investment grade credit rating.” *Id.* Further, the Maryland Public Service Commission (“MD PSC”) recently accepted that “the BSA and the MYP Adjustment are separate mechanisms with different goals.”⁷⁴

⁶⁹ As Company Witness McKenzie noted, AOBA’s ROE recommendation is unmoored from fundamental principles of finance and violates the basic, common-sense relationship between interest rates and the cost of equity. PEPCO (3F): McKenzie Rebuttal at 10:10-11:2.

⁷⁰ FC 1156, Order No. 20755 at ¶311.

⁷¹ PEPCO (3E): Bonikowski Rebuttal at 3:6-4:3, 7:6-16. In the absence of decoupling, the Company has a disincentive to encourage customers to conserve energy as this lowers distribution revenue. *Id.* at 7:1-4.

⁷² FC1053, Order No. 14712 at ¶351 (Ratepayers benefit “because the BSA insulates customers from the bill variations caused by weather extremes”).

⁷³ FC 1156, Order No. 20755 at ¶315.

⁷⁴ MD PSC Case No. 9702, Order No. 91181 at 189 (June 10, 2024).

Additionally, the Commission established an audit of the BSA.⁷⁵ The Commission selected Atrium to perform the audit.⁷⁶ In its final audit report dated July 7, 2023, Atrium found that “the BSA is well designed, such that the structure, processes, and procedures of the BSA mechanism are sufficient to achieve the objectives prescribed by the DC Commission and are aligned with best industry practices.”⁷⁷

The use of forecasted billing determinants within an MYP that account for changes in usage do not eliminate the need for an BSA within an MYP.⁷⁸ Importantly, the BSA is necessary to protect customers from fluctuations in their bills during increased energy usage during extreme weather. Further, the removal of the BSA in the MYP would disincentivize Pepco from promoting any initiatives (e.g., energy efficiency) past the point where they would reduce usage to a level below the baseline included in the Company’s forecast.⁷⁹ Similarly, the MYP’s reconciliation process does not eliminate the ongoing need for the BSA. They are separate mechanisms that are designed to achieve different objectives. The BSA “focuses on factors beyond the Company’s control, along with programs offered by the Company, that create either over- or under-collection of revenues from customers. The annual reconciliation process is focused on Company spending, relative to a Commission-approved revenue requirement”⁸⁰

⁷⁵ FC 1156, Order No. 20755 at ¶425; FC 1156, Order No. 21042 at ¶129.

⁷⁶ FC 1156, Order No. 21531 (September 21, 2022).

⁷⁷ BSA Audit – Final Report at iv. *See also id.* at 28-29. Atrium did suggest a number of enhancements that could be made to the BSA. Several of the BSA enhancements Pepco has proposed as part of the MYP are consistent with Atrium’s suggestions.

⁷⁸ PEPCO (3E): Bonikowski Rebuttal at 8:7-9:2

⁷⁹ PEPCO (3E): Bonikowski Rebuttal at 8:12-15. Additionally, a forecast will not be able to capture the impact of emergent programs that start after the forecast is prepared. *Id.* at 8:15-17.

⁸⁰ PEPCO (3E): Bonikowski Rebuttal at 9:5-12.

As part of its MYP, Pepco proposed several enhancements to the BSA structure and mechanics to better align the BSA with an MYP rate environment in which rates are based on forecasted billing determinants, costs, and revenues and to improve intraclass equity and increase rate predictability and transparency for customers.⁸¹ Specifically, Pepco proposed the following four enhancements to the BSA to increase customer benefits, including improvements supported or not opposed by AOBA:⁸² 1) change the revenue basis of the BSA from revenue per customer targets to a flat revenue target per class as approved in an MYP;⁸³ 2) transition from a monthly reconciliation and surcharge to an annual reconciliation and surcharge;⁸⁴ 3) add a demand charge component to the BSA surcharge for demand-metered classes;⁸⁵ and 4) display the BSA surcharge as a separate line item on customer bills.⁸⁶ Generally, the parties did not object to these modifications if the Commission approved continuation of the BSA. The Commission should continue use of the BSA and approve these enhancements.

5. *The MYP Contains Important Initiatives that Advance Affordability and Equity.*

As part of the MYP, Pepco proposed to enhance enrollment in the RAD program and AMP, which are focused on the Company's most economically vulnerable customers. The RAD program credits qualifying customers with the Residential Aid Credit, which is equal to nearly all of the

⁸¹ PEPCO (E): Bonikowski Direct at 60:4-9. Some of Pepco's proposed enhancements to the BSA were also incorporated into the TTYCF; however, as indicated further below, several of the proposed enhancements are not appropriate in the context of the TTYCF. Company Witness Bonikowski also detailed the additional billing determinant controls that Pepco committed to in FC 1156. *Id.* at 58:16-59:5. He presented the results of the Company's "Billing Determinant Verification Process," PEPCO (E)-13, as well as a comparison of forecast tariff-level customer counts, kWh sales, 5 and billed demand, against historical billing determinant data, PEPCO (E)-14.

⁸² See AOBA (A): B. Oliver Direct at 66:11-17 (supporting line item on bill); 64: 2-11 (not opposing move to flat revenue target); and, 65:1-2 (not opposing annual mechanism).

⁸³ PEPCO (E): Bonikowski Direct at 61:13-63:4.

⁸⁴ PEPCO (E): Bonikowski Direct at 63:7-65:4.

⁸⁵ PEPCO (E): Bonikowski Direct at 65:6-66:10.

⁸⁶ PEPCO (E): Bonikowski Direct at 66:13-18. Company Witness Bonikowski discussed the transition between the current BSA structure and Pepco's proposed structure. PEPCO (E): Bonikowski Direct at 67:3-10.

distribution portion of a monthly Pepco bill.⁸⁷ In 2022, Pepco averaged approximately 26,000 RAD customers each month, which was significantly higher than in past years.⁸⁸ However, a large number of customers that qualify for the RAD program are not currently enrolled in RAD.⁸⁹

To address this issue, Pepco committed in the MYP to additional marketing and outreach and leveraging direct customer engagement opportunities. Additionally, to further expand enrollment, the Company proposes categorical eligibility, which would qualify any customer for the RAD program who has already been qualified by any District of Columbia governmental agency for low-income assistance, such as Medicaid, Supplemental Nutrition Assistance Program or Temporary Cash Assistance.⁹⁰

The parties did not challenge the Company's AMP enhancements included in the Company's MYP. Currently, customers must affirmatively enroll in AMP and once enrolled, Pepco places the customer on budget billing and the customer receives a credit of 1/12 of their total arrearages with each subsequent bill that is fully paid.⁹¹ Pepco is proposing to implement an automatic enrollment approach similar to the one the Commission approved for WGL's AMP in

⁸⁷ PEPCO (J): Hightower Direct at 29.

⁸⁸ PEPCO (J): Hightower Direct at 29:12-13. The number of customers enrolled in RAD fluctuates by month because, while DOEE qualifies customers for RAD for a 12-month period, Pepco's approved tariff allows customers to remain enrolled in RAD for 18 months. *Id.* at 29:10-12.

⁸⁹ PEPCO (J): Hightower Direct at 29:22-24. This is not limited to the RAD program. In 2020, 76,602 were eligible for the federal Low Income Home Energy Assistance Program ("LIHEAP") assistance but only 9,654 received benefits or approximately 12% of those eligible.

⁹⁰ PEPCO (J): Hightower Direct at 30:15-18. Pepco would continue to rely on DOEE for qualifying RAD customers through DOEE's existing processes, which includes income verification; however, this would not be the sole method available for eligible low-income customers to be enrolled in the RAD program. PEPCO (J): Hightower Direct at 31:8-12. The incremental costs associated with Company personnel engaged in application processing is expected to be approximately \$160,000 per year. *Id.* at 32:12-14. Increased RAD enrollment will also likely increase the RAD surcharge. *Id.* at 32:14-16.

⁹¹ PEPCO (J): Hightower Direct at 33:2-4.

Order No. 21536.⁹² Pepco will automatically notify customers within fifteen days of their enrollment in AMP, and these customers will have forty-five (45) days to opt out of the program.⁹³

While the parties are generally not opposed in concept to efforts to increase participation in the RAD program, the Commission should not consider these program enhancements in a separate proceeding, as some of the parties suggest. The Company has not proposed that the Commission alter the eligibility threshold for the RAD program but, rather, make it easier for customers who are eligible to enroll in the RAD program.⁹⁴ The Company's proposal is designed to assist eligible limited-income customers to participate in the RAD program to receive the important benefits it provides,⁹⁵ and the Commission should approve the proposal to assist the Company's most economically vulnerable customers.

6. The O&M Costs During the Term of the MYP Are Reasonable.

The Company strives to manage overall O&M cost increases to below the rate of inflation.⁹⁶ Pepco has proposed a DC distribution O&M compound annual growth rate of 1.9% between 2023 and 2026, which is below the rate of inflation projected for this period.⁹⁷ Pepco's O&M costs are based on the Company's rigorous LRP process that uses the experience and knowledge of the various responsibility areas to integrate and align Pepco's operational and

⁹² PEPCO (J): Hightower Direct at 33:14-34:4. See FC 1164, Order No. 21536 at ¶22 (“automatic enrollment can only benefit customers by providing forgiveness of pre-program arrearages to those who are otherwise eligible but fail to apply for enrollment.”).

⁹³ PEPCO (J): Hightower Direct at 34:6-8. Once enrolled in AMP, a customer who fails to complete the program will not be negatively impacted as there is no retroactive removal for earned AMP credits and customers will still be able to enter into a deferred payment arrangement. *Id.* at 34:8-11.

⁹⁴ PEPCO (2J): Hightower Rebuttal at 11:21:12:2.

⁹⁵ PEPCO (2J): Hightower Rebuttal at 13:21. Rather than a standalone proceeding to develop a consistent measurement and monitoring of energy affordability in the District as OPC suggests, Company Witness Hightower indicates that the monthly ARDIR report and the data it provides can be leveraged to provide a view of affordability in the District. *Id.* at 14:4-8.

⁹⁶ PEPCO (G): Vahos Direct at 11:10-13.

⁹⁷ PEPCO (3G): Vahos Rebuttal at 13:1-3.

financial plans for the period.⁹⁸ It reflects the Company’s projections of the costs that will be incurred in each year of the MYP based on specific programs and initiatives Pepco will undertake and incorporates the Company’s current best estimates regarding the impacts of inflation and supply chain issues during the term of the MYP.⁹⁹

In addition to its own O&M costs, Pepco is allocated certain PHI Service Company (“PHISCO”)¹⁰⁰ and Exelon Business Services Company¹⁰¹ shared services O&M costs.¹⁰² The MYP includes these service company costs that are either directly billed or allocated to Pepco in accordance with the Cost Allocation Manual (“CAM”) that the Commission requires Pepco to file annually.¹⁰³ The CAM includes the cost accounting process of the allocations, policies, and procedures to accumulate costs of the service companies and methodologies used to assign and allocate costs.¹⁰⁴ Since the merger with Exelon in March 2016, fourteen separate independent auditor examinations of the CAM found that the allocations and charges were in accordance with the CAM.¹⁰⁵ The Company manages its O&M costs below the rate of inflation, and its shared

⁹⁸ PEPCO (G): Vahos Direct at 10-13.

⁹⁹ PEPCO (B): Leming Direct at 9:14-17.

¹⁰⁰ PHISCO provides a variety of shared services pursuant to service agreements with PHI’s three regulated subsidiaries, Pepco, Atlantic City Electric Company (“ACE”), and Delmarva Power & Light Company (“Delmarva Power”). PEPCO (G): Vahos Direct at 4:1-3

¹⁰¹ Exelon Business Services Company is a subsidiary of Exelon, Pepco’s parent company, and provides services to PHISCO, ACE, and Delmarva Power. *Id.* at 4:3-5.

¹⁰² FC 1119, Order No. 18674 (Jan. 25, 2017). The shared services Pepco receives from these service companies are delineated in the Alternate Integration Plan approved in FC 1119. PHISCO provides services only to PHI’s three regulated subsidiaries: Pepco, Atlantic City Electric Corporation (“ACE”), and Delmarva Power & Light Company (“Delmarva Power”). EBSC provides services to all Exelon companies, including Pepco. Some EBSC costs are directly billed or allocated to Pepco, pursuant to the General Services Agreement, while other EBSC costs are directly billed or allocated to PHISCO, and then to Pepco. PEPCO (G): Vahos Direct at 4:18-5:6.

¹⁰³ 15 D.C.M.R. § 3904.1; PEPCO (G): Vahos Direct at 4:21-22; PEPCO (B): Leming Direct at 72:13-73:15; PEPCO (B)-9.

¹⁰⁴ PEPCO (B): Leming Direct at 73:13-15. The Company’s 2024 CAM was filed on April 30, 2024 in PEPCAM2024-01-E.

¹⁰⁵ PEPCO (B): Leming Direct at 73:21-74:10; PEPCO (B)-9; *see also* PEPCO (3G): Vahos Rebuttal at 4:5-7.

services O&M costs are independently reviewed. For these reasons, the Commission should find that the Company's costs are reasonable.

7. *The Proposed Capital Investments During the Term of the MYP Are Reasonable and the MYP's Construction Report Is Consistent with Commission Precedent.*

As part of its Application, Pepco submitted its Construction Report,¹⁰⁶ which includes projected capital expenditures and plant additions through the MYP period.¹⁰⁷ Company Witness Cantler testified to the contents and provided an overview of the Construction Report and Pepco's capital construction program.¹⁰⁸ She indicated how the Company's capital investment strategy reflects Pepco's focus on continuing to pursue solutions to climate change through enhancing grid performance in an effort to continually provide world class customer experience that prioritizes both social equity and affordability.¹⁰⁹ The capital projects in the Construction Report will support initiatives like reliability and resiliency improvements that are intended to promote a pathway towards a climate-ready grid and will provide benefits to District customers, such as the Capital Grid project that will replace aging infrastructure, accommodate more customer generated power,

¹⁰⁶ PEPCO (H)-1 through (H)-3. Consistent with previous rate cases and Commission directives, Pepco provided its five-year capital budget and forecast through 2026. *See, e.g.*, FC 1103, Order No. 17424 at ¶¶537-539. Historically, Pepco presented its capital expenditures in three main categories: load, reliability, and customer-driven; however, Pepco is now defining and presenting capital spend by its twelve Executive Categories, as this provides a more detailed and descriptive breakout of Pepco's annual capital budget. PEPCO (H): Cantler Direct at 13:3-6. Company Witness Cantler provided a description of the general scope of work within each Executive Category as well as identifying Company Witness whose Direct Testimony supports each category's budgets and initiatives. PEPCO (H): Cantler Direct at Table 2.

¹⁰⁷ Company Witness Cantler detailed the processes and procedures the Company uses for developing Pepco's capital construction budget. PEPCO (H): Cantler Direct at 22:18-25:10.

¹⁰⁸ PEPCO (H): Cantler Direct at 18:10-20:17.

¹⁰⁹ PEPCO (H): Cantler Direct at 57:4-6.

and reduce strain on surrounding areas creating a stronger, more resilient system that will reduce the impact of major storms.¹¹⁰

The Construction Report supports the MYP. Because project planning and execution is a dynamic process involving many variables, over the course of the MYP, some projects ultimately may not follow the scheduled “start” and “finish” times. Company Witness Cantler described Pepco’s comprehensive capital budget development and planning process and the enhancements the Company has made to both capital budget development and the planning process.¹¹¹ She also indicated that each distribution project is reviewed on a monthly basis and adjustments may be made to current-year budgets to account for things like normal construction lifecycle activity or emergent need.¹¹² As a result, project deferrals may be filled with accelerated prioritized projects and, as system conditions change, projects may be added, modified, or deferred.¹¹³ Additionally, risks such as unanticipated load growth, significant weather events, unforeseen field conditions, permitting, resource and material availability, supply chain challenges, outage availability, inflation, lingering issues from the COVID-19 global pandemic, and new legislation or regulation may also impact the Company’s capital spending plans and project completion.¹¹⁴ Further, because many of Pepco’s capital projects are complex and span multiple years, as a project

¹¹⁰ PEPCO (H): Cantler Direct at 57:7-11. Company Witness Cantler provided an overview of the strong reliability performance Pepco has achieved and addressed how continued investment in reliability is imperative to maintaining consistent performance levels as new system performance issues emerge, equipment ages, and weather varies from year to year. *Id.* at V. *Id.* at 35:10-17.

¹¹¹ *See generally* PEPCO (H): Cantler Direct at III.

¹¹² PEPCO (H): Cantler Direct at 25:14-26:2. The LRP, which is developed every year, is not revised during the year to reflect these shifts in the capital budget. *Id.* at 26:2-3.

¹¹³ PEPCO (H): Cantler Direct at 26:3-10. To fund new projects identified during the current year, such as for emergent work or new business connections not previously identified, the Company will look to support the project need from an existing funding source within the capital portfolio. This may require the re-prioritization of capital projects projections to remain within the approved LRP capital budget. *Id.* at 27:12-18.

¹¹⁴ PEPCO (H): Cantler Direct at 28:18-29:7. Company Witness Cantler discussed actions the Company is taking and strategies that have been implemented to mitigate and address supply chain issues. *Id.* at 30:6-31:2.

advances through the design, engineering and construction processes, changes in budgets will naturally occur.¹¹⁵

In reviewing the parties' positions on the Company's proposed capital investments, Pepco took the parties' positions into consideration and removed several projects from the MYP. For example, in light of new capacity load forecasts, Pepco agreed that a number of projects were appropriately deferred to beyond the MYP period.¹¹⁶ The MYP's capital investments should be approved as they reflect the projects and initiatives Pepco anticipates making during the term of the MYP to continue to provide safe, reliable, equitable, and resilient distribution service to District customers and support and advance the District's climate goals.

The Construction Report is consistent with prior Commission directives.¹¹⁷ The Construction Report provides actual capital expenditures for 2022 and budgeted capital amounts for 2023-2026 as well as the problem statement, solution, justification, and alternatives considered.¹¹⁸ The Company enhanced the information included to provide more transparency for projects that are allocated between Maryland and the District by providing specific, detailed

¹¹⁵ PEPCO (H): Cantler Direct at 29:7-11.

¹¹⁶ The specific projects were addressed in the Rebuttal Testimony of Company Witness Cantler and removed from the MYP through RMA 29 in Company Witness Leming's Rebuttal Testimony.

¹¹⁷ In Order No. 16930 in FC 1087, as clarified by Order No. 17027, the Commission acknowledged the Company's plan to undertake extensive construction work related to its distribution system in the coming years, and directed Pepco to file certain specific information regarding its distribution construction program with its next base rate application. Order No. 16930 at ¶485, as clarified by FC 1087, Order No. 17027 at ¶27. The Company has continued submitting Construction Reports in its rate cases. at ¶519.

¹¹⁸ PEPCO (H): Cantler Direct at 18:15-20. Because all capital projects projected to be undertaken in the period from 2023-2026 are described in PEPCO (H)-2, Company Witness Cantler did not discuss every Executive Category and project in her Direct Testimony, although she provided the capital investment for each Executive Category for each year of the MYP. *Id.* at Table 3. Instead, her Direct Testimony focused on a few select Executive Categories that reflect the majority of Pepco's capital spend budgeted over the course of the MYP, discussing the types of projects that are indicative of the category and addressing any noticeable fluctuation in capital spend within the 3-year term of the MYP. *Id.* at 34:1-50:10.

project sheets for all allocated projects with a budget of \$1 million or more.¹¹⁹ The Company maintains a robust forecasting process in developing its investments, and provided a comprehensive Construction Report that complies with the Commission's directives. Therefore, the Commission should find that Pepco's capital investments presented in the Construction Report are reasonable.

8. *The MYP's Allocation of the Rate Increase among Customer Classes Is Reasonable.*

Company Witness Bonikowski demonstrated that the proposed allocation of the Company's revenue requirement using the Four-Step Method is reasonable.¹²⁰ In both the development of the allocation of the revenue requirement among rate classes and base distribution rates, the Company followed the Commission's stated need to address disparities in rate class-specific rates of return as part of an approach to allocate revenue requirements while also adhering to the Commission's guiding principles of cost causation and gradualism.¹²¹

The proposed allocation balances the Commission's stated goal of moving the revenue recovered from each rate class to a level more reflective of cost causation, with consideration of gradualism.¹²² In particular, it achieves:

1. The percentage of revenue allocated to each individual rate schedule following the Four-Step Method is within a reasonable range of and consistent with the proportion of revenue allocated to these rate schedules in prior cases.¹²³

¹¹⁹ PEPCO (H): Cantler Direct at 20:2-9. In prior Construction Reports, Pepco has provided information related to allocated projects in a spreadsheet following the individual, detailed project sheets. *Id.* at 20:5-6.

¹²⁰ The same Four-Step Method was used by Company Witness Bonikowski to determine the allocation of the revenue requirement for both the MYP and the TTYCF.

¹²¹ PEPCO (E): Bonikowski Direct at 10:4-9.

¹²² PEPCO (E): Bonikowski Direct at 18:3-6.

¹²³ PEPCO (E): Bonikowski Direct at 18:7-12; PEPCO (E)-1.

2. All rate schedules with an existing UROR greater than the upper limit of the Unitized Rate of Return (“UROR”) Steady State¹²⁴ see a decrease to their UROR under the proposed revenue allocation while remaining above the lower limit of the UROR Steady State.¹²⁵
3. All rate schedules with an existing UROR less than the lower limit of the UROR Steady State, receive an increase to their UROR under the proposed revenue allocation while remaining beneath the upper limit of the UROR Steady State.¹²⁶

Because it currently has a negative ROR, the Residential Class is providing substantially less revenue than is required to cover the cost that the Company incurs to serve those customers.¹²⁷ If substantive progress is to be made toward reducing or eliminating negative class rates of return in the District,¹²⁸ a greater proportion of distribution revenue will need to be allocated to significantly under-earning classes. The Company therefore proposes that the underearning rate classes—Schedules R, SL-E and SL-S—receive a rate increase of 2.3 times the system average. The distribution of the approved revenue increase requires “balancing the ratemaking principle of gradualism with the principle of cost causation and the Commission’s stated policy of eliminating

¹²⁴ A UROR provides a measurement of the contribution of each rate class to the overall system required rate of return (i.e., all rate classes taken together), which provides an indication of whether a given rate class is contributing more or less than its fully allocated cost of service. PEPCO (E) Bonikowski at 6:14-17. UROR Steady State is a plus or minus percentage threshold to a UROR of 1.0 intended to indicate whether any rate class has a rate of return relatively close to the overall return from the entire system. *Id.* at 11:5-7.

¹²⁵ PEPCO (E): Bonikowski Direct at 18:13-16.

¹²⁶ PEPCO (E): Bonikowski Direct at 19:4-10. In Rebuttal Testimony, Company Witness Bonikowski indicated that Pepco supports AOBA’s recommendation to apply a revenue decrease to Schedule GS 3A and TN as it is expected to result in significant progress toward bringing each class’s UROR closer to those of other commercial rate classes without significantly impacting bills for any other rate class. PEPCO (3E): Bonikowski Rebuttal at 43:1-10. Company Witness Bonikowski also generally found the increased granularity in revenue allocation for over-earning rates classes proposed by AOBA to be reasonable. He indicated that, under AOBA’s proposal, classes with URORs above 2.35 would be allocated 0.9 times the system average increase, while classes with URORs between 1.1 and 2.35 would be allocated approximately 0.95 times the system average increase (i.e., 50% of the way between a 0.9 and 1.0 multiplier). PEPCO (3E): Bonikowski Rebuttal at 42:8-15.

¹²⁷ PEPCO (3E): Bonikowski Rebuttal at 40:12-14.

¹²⁸ The MYP facilitates such progress over each year of its 3-year term.

negative class rates of return.”¹²⁹ The Company’s proposed 2.3 multiplier to under-earning classes is reasonable and firmly grounded in Commission precedent.¹³⁰ This demonstrates that the Company’s rate class allocations are reasonable.

9. *The MYP’s Proposed Ratemaking Adjustments Are Reasonable and Most Are Not Disputed.*

Company Witnesses Leming and Holden detailed the various ratemaking adjustments (“RMAs”)¹³¹ the Company made to the MYP and established that each was reasonable.¹³² RMAs are generally adjustments to the per books/unadjusted rate base and operating income to adjust for cost disallowances for ratemaking purposes or to present approved or proposed ratemaking treatment of rate base or operating income items that differ from the per books amounts.¹³³ The vast majority of the Company’s proposed MYP RMAs were not challenged by any of the parties. Pepco’s RMAs are reasonable and should be approved.¹³⁴

¹²⁹ PEPCO (3E): Bonikowski Rebuttal at 40:10-12. GSA Witness Goins complained that current subsidy provided to the Residential Class “has created rates so skewed in favor of the residential class that they cannot reasonably be said to reflect cost causation or a fair sharing of costs among Pepco’s customers.” GSA (A): Goins Rebuttal at 11:6-9.

¹³⁰ PEPCO (3E): Bonikowski Rebuttal at 41:2-4. As GSA Witness Goins indicated that “Pepco’s 4-Step Method proposal makes a meaningful effort to address the residential subsidy problem and reflects the minimum residential rate increase that should be considered in this case (assuming Pepco receives its full requested increase).” GSA (A): Goins Rebuttal at 6:12-15.

¹³¹ RMAs are pro forma adjustments to the cost of service for various reasons including (but not limited to) known and measurable changes, normalization of costs, or, in some cases, to adjust the “per books” cost of service based on past Commission orders or practices regarding cost allowances and disallowances. PEPCO (B): Leming Direct at 47:13-16. For example, Pepco’s projected costs in its MYP include items for which the Company is not seeking recovery, and, therefore, certain items need to be removed from the MYP through an RMA. *Id.* at 49:2-4. Some of the RMAs, including RMAs 11a, 13 and 14, only relate to the 2022 historic test year and are for the removal of non-recurring costs that will not be incurred during the MYP period (or the 2023 bridge period). *Id.* at 49:11-14.

¹³² *See generally*, PEPCO (B): Leming Direct at 47:11-69:16; PEPCO (B)-1; PEPCO (C): Holden Direct at 5:1-14:15; PEPCO (C)-1; PEPCO (3B): Leming Rebuttal at Section III; PEPCO (3B)-1; PEPCO (3C)-1.

¹³³ PEPCO (C): Holden Direct at 5:5-9.

¹³⁴ For several RMAs relating to regulatory assets, although OPC did not challenge the adjustment itself, OPC did recommend that the regulatory asset be amortized over a six-year period rather than the 5-year period Pepco had proposed.

10. *The TTYCF Shows That Pepco Has Established a Revenue Deficiency under Both the Proposed MYP and a Traditional Cost-of-Service Approach; It Would Require Pepco File Another Rate Application in Short Order.*

Although the Company in this proceeding seeks Commission approval of an MYP, the Commission in Order No. 21886 directed Pepco to submit a traditional test-year filing based on a test year ending December 31, 2023,¹³⁵ which the Company did on October 16, 2023.¹³⁶ The TTYCF shows that a \$108.1 million¹³⁷ increase is necessary to recover the significant investments the Company has made in its electric distribution infrastructure necessary to operate the system in a safe and reliable manner and to advance the District's climate goals. Without an increase in rates, Pepco will not have the opportunity to earn a fair and reasonable ROR, as required by the United States Supreme Court's decisions in *Bluefield* and *Hope*.¹³⁸ None of the other parties dispute that the record in this proceeding establishes that some level of increase in the Company's distribution rates is warranted.¹³⁹

Additionally, based on a recommendation made in the Final BSA Audit Report,¹⁴⁰ the TTYCF included an adjustment (TTYCF 12) to reflect the total BSA regulatory asset deferral

¹³⁵ FC 1176, Order No. 21886 at ¶¶1,24,30. As discussed above, the Company's proposed MYP will provide a range of benefits that cannot be achieved through the TTYCF. See generally PEPCO (3A): O'Donnell Additional Supp. Direct at 5:13-9:16.

¹³⁶ Supplemental testimony regarding the TTYCF was submitted by Company Witnesses O'Donnell (PEPCO (3A)), Leming (PEPCO (2B)), Holden (PEPCO (2C)), Bonikowski (PEPCO (2E)), McKenzie (PEPCO (2F)), Vahos (PEPCO (2G)) and Cantler (PEPCO (3H)).

¹³⁷ In addition to various RMAs, most of which were not contested, this revenue requirement reflects an ROE of 10.50%. Although Company Witness McKenzie indicated that he continued to support a 10.50% for the TTYCF, he did caution that "this is likely to understate investors' cost of equity given the additional risks associated with the TTYCF," explaining that "a return to an historical test year approach would likely be perceived by investors as a regressive departure from industry trends that would further undermine Pepco's ability to actually earn its authorized ROE." PEPCO (2F): McKenzie Supp. Direct at 7-8.

¹³⁸ *Bluefield Water Works & Improvement v. Pub. Serv. Comm'n.*, 262 U.S. 679 (1923); *Fed. Power Comm'n., v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

¹³⁹ For example, under the traditional test year approach even OPC's analysis shows the Company would be entitled to a \$47.8 million increase and AOBA Witness T. Oliver shows an increase of \$66.7 million prior to his revenue smoothing proposal. PEPCO (3B): Leming Rebuttal at 16, Table 2 and n.28.

¹⁴⁰ Final BSA Audit Report, page xiii, Reference Section R-2.3.

balance as of June 30, 2023 in rate base.¹⁴¹ As Company Witnesses O'Donnell and Vahos discuss, the size of the current BSA deferral balance, in excess of \$100 million, negatively impacts Pepco's financials, credit metrics and cash flow.¹⁴² None of the Company's carrying costs incurred to fund the under-collected BSA deferral balances are currently reimbursed through rates.¹⁴³ In 2022, these carrying costs were approximately \$9 million per year (pre-tax) based on Pepco's current authorized rate of return.¹⁴⁴ As Company Witness Vahos testified, if the BSA deferral balance had been included in rate base in 2022, Pepco's ROE would have been reduced by 55 basis points.¹⁴⁵ However, as the projections in the MYP show, if the Commission were to approve the TTYCF, the Company will consider filing another rate case within an annual period given the pace of its capital investments necessary to maintain a safe, reliable and resilient distribution system that meets the needs of customers and advances the District's climate goals.¹⁴⁶

C. PEPSCO HAS COMPLIED WITH ORDER NO. 22013 AND NO FURTHER ACTION REGARDING THE 2023 REPORT FILED IN FC 1156 IS WARRANTED.

In Order No. 22013,¹⁴⁷ the Commission denied several motions to dismiss or suspend consideration of Pepco's MYP application in this proceeding and directed the Company to file

¹⁴¹ PEPCO (2B): Leming Supp. Direct at 14:2-6; PEPCO (2B)-1, page 14 of 45.

¹⁴² PEPCO (A): O'Donnell Direct at 40:3-13; PEPCO (3A): O'Donnell Add. Supp. Direct at 5:3-12; PEPCO (G): Vahos Direct at Section VIII.

¹⁴³ PEPCO (A): O'Donnell Direct at 40:5-7; PEPCO (G): Vahos Direct at 55:11-14.

¹⁴⁴ PEPCO (A): O'Donnell Direct at 40:3-13; PEPCO (3A): O'Donnell Add. Supp. Direct at 5:3-12; PEPCO (G): Vahos Direct at 55:14-15. In addition, as Company Witness O'Donnell explained, Pepco's current billing determinants were determined in 2019 using data from 2018 and have not been updated. Given the operation of the BSA and in particular the 10% cap on monthly adjustments, this has resulted in increasing BSA deferral balances for certain commercial customer classes. Given the size of these BSA deferral balances, Pepco has not been able to recognize some of these BSA deferral balances in revenue under GAAP accounting. PEPCO (A): O'Donnell Direct at 55:5-14.

¹⁴⁵ PEPCO (G): Vahos Direct at 56:11-13.

¹⁴⁶ See PEPCO (3B): Leming Rebuttal at 16:2-17 (Showing the impact of regulatory lag, which would require the Company to consider another rate case).

¹⁴⁷ FC 1176, Order No. 22013 (June 28, 2024).

supplemental information regarding the quarterly reports filed in FC 1156 for the 12 months ending December 31, 2023 (“2023 Report”)¹⁴⁸ and the 12-months ending March 31, 2024 (“Q1 2024 Report”). Pepco filed the requested supplemental information on July 5, 2024. The Commission also permitted the parties to submit data requests regarding these reports.¹⁴⁹

The 2023 Report shows that for calendar year 2023, Pepco earned an ROE of 7.237% on an unadjusted basis and 9.155% on an adjusted basis, which is below the 9.275% ROE the Commission authorized in FC 1156 and the 10.50% Pepco is requesting in this proceeding. For all the reasons explained in detail in the Company’s responses to the motions seeking dismissal of Pepco’s MYP application,¹⁵⁰ the 2023 Report provides no basis for the Commission to dismiss or further delay this proceeding. Even under the ROE authorized in FC 1156, which is lower than the ROE that would be reasonable under current market conditions and interest rates, Pepco would demonstrate a revenue deficiency and a rate increase be required to establish just and reasonable rates.

II. CONCLUSION

For the reasons set forth herein, the Commission should approve the Company’s proposed MYP.

¹⁴⁸ The 2023 Report was originally filed on May 3, 2024 pursuant to the Commission’s directive in Order No. 20755. Subsequently, in preparing the Q1 2024 Report, Pepco determined that the 2023 Report had an error that caused an overstatement of the rate of return and return on equity shown in the 2023 Report and promptly notified the Commission. Unless otherwise indicated, references to the 2023 Report are to the corrected filing.

¹⁴⁹ Order No. 22013 at ¶30.

¹⁵⁰ See *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; *Response of Potomac Electric Power Company in Opposition to the Motion to Dismiss or, In the Alternative, Motion for Summary Disposition*, filed June 17, 2024; and *Response of Potomac Electric Power Company in Opposition to Motion to Suspend the Procedural Schedule and Request Clarification*, filed June 26, 2024.

CERTIFICATE OF SERVICE

I hereby certify that a copy of Potomac Electric Power Company's Limited Brief has been served via email on this July 24, 2024 on:

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