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July 24, 2024

***By Electronic Filing***

Brinda Westbrook-Sedgwick  
Commission Secretary  
D.C. Public Service Commission  
1325 G Street, N.W., Suite 800  
Washington, D.C. 20005

**Re: Formal Case No. 1176**

In the Matter of the Application of the Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia

Dear Ms. Westbrook-Sedgwick:

Enclosed for filing please find the Limited Brief of the Apartment and Office Building Association of Metropolitan Washington in the above-referenced proceeding.

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

Sincerely,

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

Frann G. Francis, Esq.

cc: All parties of record



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

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

**LIMITED BRIEF  
OF THE APARTMENT AND OFFICE BUILDING  
ASSOCIATION OF METROPOLITAN WASHINGTON**

**I. INTRODUCTION**

The Apartment and Office Building Association of Metropolitan Washington (“AOBA”), pursuant to the Commission’s Notice of Legislative-Style Hearing – July 30, 2024<sup>1</sup> hereby files AOBA’s limited brief regarding the Application of the Potomac Electric Power Company (hereinafter “Pepco” or “the Company”) to implement a multiyear rate plan for electric distribution service in the District of Columbia. This limited brief addresses only matters fundamental to AOBA’s concerns regarding Pepco’s pursuit of approval of a second multiyear rate plan. However, this limited brief does not address all matters of concern to AOBA regarding the content of, and support for, the numerous rate and ratemaking proposals set forth by the Company in its application and subsequent filings of supplemental and rebuttal testimony. It is AOBA’s understanding that the Commission has not at this time determined to schedule evidentiary hearings.<sup>2</sup> However,

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<sup>1</sup> Notice of Legislative-Style Hearing - July 30, 2024, issued June 13, 2024.  
<sup>2</sup> Formal Case No. 1176, Order No. 22013, paragraph 30, issued June 28, 2024.

if the Commission elects not to approve the March 12, 2024 Office of the People’s Counsel (“OPC”), the District of Columbia Government (“DCG”), and AOBA Motion to Dismiss, or, In the Alternative, Motion for Summary Disposition dismissing Pepco’s MRP, or the June 10, 2024 OPC and AOBA Motion to Dismiss, or, In the Alternative, Motion for Summary Disposition dismissing Pepco’s test year case and its MRP, (hereinafter referred to collectively as “Joint Motions” or “Joint Motion 1” and “Joint Motion 2”), AOBA submits that evidentiary hearings will be necessary, and a full brief on the issues in this proceeding should be scheduled to follow the completion of evidentiary hearings.<sup>3</sup>

## II. BACKGROUND

On April 13, 2023, Pepco filed an application for approval of a multiyear rate plan which would establish the Company’s base distribution rates for the District of Columbia for three years (i.e., calendar years 2024, 2025 and 2026) on the basis of forecasted capital and operating expenditures. As subsequently developed through testimony filed on behalf of AOBA, the Office of the Peoples’ Counsel (“OPC”), and the District of Columbia Government (“DCG”), numerous substantive and procedural deficiencies in Pepco’s Application and supporting testimony have been identified.

Pursuant to Order No. 21886, on August 31, 2023, Pepco filed Supplemental Direct Testimony presenting the “*lessons learned*” from the Modified Enhanced Multiyear Plan Pilot (“Modified EMRP Pilot”).<sup>4</sup> In that Order, the Commission required Pepco to “*explain in quantitative and qualitative terms the benefits of the Modified EMRP Pilot.*”

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<sup>3</sup> Pepco has indicated in its June 17, 2024 Response in Opposition to the June 10, 2024 Motion to Dismiss that there are issues of material that the Commission will need to decide, stating at page 2, that the “*Joint Movants cannot reasonably argue that there are no genuine issues of material fact . . .*”

<sup>4</sup> Formal Case No. 1176, Order No. 21886, paragraphs 1, 23, 24, July 28, 2023.

Order No. 21886 further required Pepco to provide testimony addressing “*the problems identified and lessons learned from the Modified EMRP Pilot.*”<sup>5</sup>

Also, pursuant to Order No. 21886, Pepco was directed to file testimony supporting “*a traditional one-year rate case for the test period Calendar Year 2023.*”<sup>6</sup> On October 16, 2023, Pepco filed Supplemental Direct Testimony presenting a Traditional Test Year (“TTY”) revenue requirement based on six months of actual data and six months of projected costs.<sup>7</sup>

On January 12, 2024 OPC, AOBA, and DCG filed Direct Testimony in response to Pepco’s Application and Supplemental Direct Testimony. Pepco submitted Rebuttal Testimony on February 27, 2024; and AOBA, DCG and OPC filed Surrebuttal testimony on or before April 22, 2024.

In addition, on **March 12, 2024**, OPC, AOBA and the District of Columbia Government (“DCG”) jointly filed a Motion to Dismiss or, in the Alternative, Motion for Summary Disposition (“Joint Movants Motion to Dismiss”). Moreover, on **June 10, 2024**, OPC and AOBA filed a second Motion to Dismiss or, in the Alternative, Motion for Summary Judgment Disposition of both Pepco’s Multiyear Plan (“MYP”) and its Traditional Test Year Filing (“TTYF”), i.e., the dismissal of Pepco’s Application.

On June 28, 2024, the Commission issued Order No. 22013 denying the Joint Motions while stating that “*The Commission’s denial of the Motions is not a decision on the merits of the Application*” of Pepco’s request to implement new distribution rates in the District of Columbia.<sup>8</sup> Importantly, the Commission required Pepco to supplement its

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<sup>5</sup> Formal Case No. 1176, Order No. 21886, paragraphs 1, 23, 24, July 28, 2023.

<sup>6</sup> Formal Case No. 1176, Order No. 21886, paragraph 1, 24, July 28, 2023.

<sup>7</sup> Formal Case No. 1176, Order No. 21886, paragraphs 1, 23, 24, July 28, 2023.

<sup>8</sup> Formal Case No. 1176, Order No. 22013, paragraph 1, June 28, 2024.

ROR filings with additional information including: 1) a detailed explanation of all adjustments, including RMA 12 – GAAP BSA Revenue Recognition Reserve and detailed support for those adjustments; 2) detailed documentation and explanation of the development of each of the jurisdictional allocation factors used in the Jurisdictional Cost of Service Studies (“JCOSS”) and their calculations; and 3) detailed demonstration of the prudence of Pepco’s Calendar Year 2023 capital and operating expenditures.<sup>9</sup> AOBA finds paragraph 29 of Order No. 22013, and the associated bullet points, particularly salient with respect to issues regarding Pepco’s actual **2023** performance under Order No. 20755 and the prudence of Pepco’s actual capital and operating expenditures under the rates approved by the Commission as a result of Formal Case No. 1156. As will be discussed further, below, Pepco’s quarterly ROR Reports over the last five quarters leave much to be desired, as they inappropriately assume (without analytic support) that all of Pepco’s actual expenditures have been prudently incurred despite large deviations from the costs the Company’s presented in its projected budgets in Formal Case No. 1156.

### III. ARGUMENT

In Order No. 20755 in Formal Case No. 1156, the Commission adopted “***an 18-month pilot rate plan***” for Pepco covering the period July 1, 2021 through December 31, 2022. In that Order the Commission also granted Pepco an additional net rate increase of \$38.4 million for 2023, even though 2023 was beyond the period of the approved “***18-month pilot rate plan.***”<sup>10</sup> In support of the adoption of a Modified EMRP for Pepco, the Commission found that “*the Modified EMRP should ... provide ratepayers more*

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<sup>9</sup> Formal Case No. 1176, Order No. 22013, paragraph 29, June 28, 2024.

<sup>10</sup> Formal Case No. 1156, Order No. 20755, issued June 8, 2021, page 192, Attachment A.

*transparency in assessing the utility spending and investment decisions.*<sup>11</sup> However, the record of this proceeding clearly documents dramatic departures from the budgets presented in Formal Case No. 1156 that Pepco has made in its actual spending for the periods for which Pepco had employed forecasted budgets for ratemaking purposes. In the face of such substantial departures from budgeted costs on a project-by-project basis, there can be no legitimate claims that the Company has been transparent in the presentation of costs on which it proposes to set rates.<sup>12</sup>

AOBA submits that the Pilot MRP (or modified EMRP Pilot) has been a failure! It has not yielded the benefits that were anticipated by the Commission when the Pilot MRP was approved. As a result, authorization of another multi-year rate plan for Pepco at this time cannot be justified.

The benefits of multi-year rate plans that the Commission anticipated when it approved Pepco's "pilot" MRP in Order No. 20755 have not materialized. Among the benefits that Pepco attempts to ascribe to its proposed MYP in this proceeding are:

- (a) Improved collaboration and transparency;
- (b) Facilitation of investments that support the District's goals and policies;
- (c) Provision of a longer-term view of future capital and O&M investments;
- (d) Smoothing of rates and avoidance of risk of large year-to-year rate increases;
- (e) Reduced regulatory costs;

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<sup>11</sup> Formal Case No. 1156, Order No. 20755, issued June 8, 2021, page 177, paragraph 473, (Emphasis Added).

<sup>12</sup> Direct Testimony of Bruce R. Oliver, Exhibits AOBA (A)-1, (A)-2, AOBA (2A)-2, and (2A)-3.

- (f) Provision of revenue certainty for the Company for a period of time.<sup>13</sup>

However, these claimed benefits reflect little more than a recitation of the MRP benefits that Pepco claimed in Formal Case No. 1156. In Order No. 20755 the Commission stated: “*Through this pilot the Commission will benefit from lessons learned to facilitate the adoption of regulations for MRP and other AFOR applications.*”<sup>14</sup> Yet, nowhere in this proceeding does Pepco provide a substantive examination of “*lessons learned*” from its pilot MRP. The Maryland Public Service Commission (“MDPSC”) has rejected Pepco’s requested second MRP due, at least in part, to the Company’s failure to address “*lessons learned*” from its initial MYP in that jurisdiction.<sup>15</sup>

The testimony submitted in this proceeding by witnesses for AOBA, OPC, and DCG, all agree that Pepco’s request for another multi-year rate plan in this proceeding should be rejected. Of particular concern to AOBA in this proceeding are:

- (1) The Company’s large projected growth in rate base in the context of declining kWh deliveries and minimal customer growth;
- (2) The dramatic increase Pepco seeks in its authorized Return on Equity (“ROE”);
- (3) Pepco’s demonstrated lack of ability to forecast its future capital expenditures by project with reasonable accuracy;
- (4) Pepco’s failure to provide evidence of the cost-effectiveness and prudence of its actual expenditures;
- (5) Pepco’s failure to address the “*lessons learned*” from the “*pilot rate plan*” which was ordered by Order No. 20755 and reiterated in Order Nos. 21886 and 22013.<sup>16</sup>

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<sup>13</sup> Direct Testimony of Bruce R. Oliver, Exhibit AOBA (A), pages 24-25.

<sup>14</sup> Formal Case No. 1156, Order No. 20755, page 60, Footnote 408.

<sup>15</sup> MDPSC Case No. 9702, Order No. 91181, page 2, June 10, 2024.

<sup>16</sup> Direct Testimony of Bruce R. Oliver, Exhibit AOBA (A), Executive Summary, ii.

The factors listed above contribute to the requested **rate increases** in this proceeding that will challenge the affordability of electric service for **all classes of customers in the District**.<sup>17</sup>

### **1. Lack of Transparency**

Pepco's projections of capital expenditures have proven highly unreliable. The record of this proceeding clearly documents dramatic differences between the capital expenditures Pepco budgeted by project for Rate Year 2 of the EMRP approved by the Commission in Formal Case No. 1156 and the actual capital expenditures by project the Company has subsequently reported. Exhibit AOBA (A)-1 demonstrates that for its EMRP Rate Year 2 Pepco had:

- **\$96.8 million** of budgeted projects in FC 1156 for EMRP Rate Year 2 for which **ZERO** dollars were actually spent;
- **\$120.3 million** of budgeted projects in FC 1156 for EMRP Rate Year 2 for which Pepco actually spent only **\$66.1 million**.
- **\$52.8 million** of budgeted projects in FC 1156 for EMRP Rate Year 2 for which Pepco actually spent **\$116.4 million** (i.e., more than **double** the amounts budgeted).
- **\$38.6 million** of actual expenditures on projects that were not included in the Company's FC 1156 for EMRP budget for Rate Year 2.<sup>18</sup>

The substantial deviations from Pepco's projected capital budgets, outlined above, emphasize Pepco's inability to project its future costs with reasonable reliability.<sup>19</sup> The

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<sup>17</sup> See Exhibit AOBA (A), pages 9, 45-46, 70-72, 125 as well as Attachment D to Exhibit AOBA (A), Exhibit AOBA (2A), pages 7-8.

<sup>18</sup> See Exhibit AOBA (A)-1 that accompanies the Direct Testimony of AOBA witness Bruce R. Oliver, Exhibit AOBA (A), as well as Exhibit AOBA (2A)-2 provided with the Surrebuttal Testimony of AOBA witness Bruce Oliver, Exhibit AOBA (2A).

<sup>19</sup> No one expects the Company to forecast its future expenditures with perfect accuracy. However, the magnitudes of the variations in costs by project that are observed greatly erode the confidence that the

observed deviations from the budgets Pepco filed in Formal Case No. 1156, also serve to **undermine Pepco's claims of transparency** with respect to its capital planning. The value of any review of the Company's budgeted costs before the start of a multi-year rate plan is greatly diminished, if not fully expunged, when Pepco's actual expenditures exhibit such large deviations from its projections in terms of both the levels of the Company's actual expenditures by project and the composition (or mix) of projects that comprise its projected and actual expenditures.<sup>20</sup> There can be little value associated with pre-implementation review of budgeted costs when subsequent actual expenditures show little resemblance to the budgets provided in support of the Company's rate request.

AOBA understands that Pepco may face "*emergent*" requirements that may not be anticipated in the preparation of budgets for future periods. AOBA also recognizes that "*emergent*" requirements may require alteration of the priorities assigned to various projects. When such unforeseen requirements and changes in priorities are as large as Pepco's actual expenditures during the "pilot" EMRP indicate, little confidence can be placed in the value of benefits derived from the Company's actual expenditures. However, the magnitudes of the variations in costs by project that are observed greatly erode the confidence that the Commission can express in a determination with respect to the reasonableness of relying on such projections as the basis for setting rates for future periods. Pepco offers no evidence of "*collaboration*" with any party or group outside of

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Commission can express with respect to the reasonableness of relying on such projections as the basis for setting rates for future periods.

<sup>20</sup> The Affidavit by AOBA witness Bruce Oliver, provided as Attachment A to this Brief, demonstrates that Pepco's 2023 actual capital expenditures, as detailed in the Company's July 5, 2024 Supplemental ROR Information filing, Attachment 2, also depart significantly from the Company's representations of its budgeted costs. Furthermore, the content of that Attachment 2 does not provide compelling justification for the observed departures from the Company's budgeted capital expenditures or demonstration of the cost-effectiveness of the Company's reported 2023 plant in-service additions.

the Company and its parent entities (i.e., PHI and Exelon) in the decision making processes that produced the now observable departures from Pepco's budgeted expenditures. Thus, this Commission can only conclude that transparency and collaboration have been essentially non-existent subsequent to the Commission rendering of its rate order in Formal Case No. 1156.

A key to successful use of budgeted costs for ratemaking purposes is the ability to have reasonable confidence in the benefits that specific planned expenditures will provide as well as the cost-effectiveness of planned expenditures. The dramatic departures from Pepco's budgeted costs that are now observable, substantially erode confidence in Pepco's estimates of the benefits that its multiyear rate plan proposals can be expected to be realized. Setting rates on the basis of unreliable forecasts may serve the objectives of the Company and its parent entities, but it does not yield necessary and appropriate ratepayer protections.<sup>21</sup>

As a subsidiary of a holding company (i.e., Exelon), Pepco is under pressure to grow its earnings year-over-year to support growth in Exelon's stock price.<sup>22</sup> However, for a system such as that operated by Pepco in the District of Columbia, the Company faces minimal customer growth and negative growth in kWh deliveries.<sup>23</sup> In that

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<sup>21</sup> Formal Case No. 1139, Order No. 18846, paragraph 594, states "*Our focus in considering any alternative mechanism will include a review of the benefits that accrue to customers as opposed to solely focusing on the utility.*"

<sup>22</sup> It is well established in the financial literature, as well as in the testimony of Pepco witness McKenzie (Exhibit Pepco (F)) in this proceeding, that stock price is influenced by investors earnings growth expectations. Exelon has advertised to its investors that it will achieve substantial annual growth in rate base and earnings from its utilities, and the failure of a utility, such as Pepco, to produce results that comport with that expectation undermines the confidence that investors place in Exelon's earnings growth projections. Pepco should not be considered a growth oriented investment, but as a subsidiary of Exelon it is expected to exhibit the attributes of a "growth" oriented investment. [Exelon Reports Fourth Quarter and Full Year 2023 Results and Initiates 2024 Financial Outlook February 21, 2024](#)

<sup>23</sup> Exhibit Pepco (K), the Direct Testimony of Pepco Witness Efimova, page 21, lines 12-15 and Tables 2-3, pages 22-23 respectively.

environment, the main tools for Pepco to grow its earnings is through growth in the investment on which it is provided an authorized return on equity as well as increases in its authorized ROE. As a result, Pepco has significant incentive to grow its rate base regardless of the impacts of such investment growth on the affordability of electric service in the District of Columbia.

Pepco's proposed MYP in this proceeding constitutes a projected spending plan for which **no accountability for actual performance** has been demonstrated to date. At a time when the District of Columbia Government is attempting to pursue policies that call for greater electrification of energy end uses, efficient and cost-effective use of ratepayer resources is a necessity, and Pepco must be directed to maximize its performance within more limited budgets. Escalation of electricity prices for District ratepayers at rates well beyond the general rate of cost inflation will only diminish incentives for greater electrification of energy end-uses and magnify customers rate burdens.

AOBA submits that the record demonstrates that Pepco's projected capital and operating cost budgets for future rate years are **not a sound basis** for this Commission to rely upon in determining the Company's costs of service for future rate years. Any transparency that might have been attributed to the Company's presentation of detail regarding its projected capital expenditures in Formal Case No. 1156 has been lost as a result of dramatic departures from the budgets it presented in that case. Pepco must not be allowed to simply spend to achieve general conformance with aggregated budget amounts which yield no true accountability for management's spending decisions.

The Commission has endeavored to provide Pepco more timely and reliable revenue collections through a multi-year rate plan, but those efforts have served primarily

to feather the nests of this utility's investors and executives at the expense of District ratepayers. Pepco's "pilot" multi-year rate plan has clearly denigrated Pepco's accountability for its actions and the benefits it provides to District ratepayers. When utility rates are established on the basis of projected costs (i.e., estimates of future costs), the utility must be held responsible for demonstrating the prudence of its actual expenditures on a project-by-project basis for capital additions and an account-by-account basis for operating expenditures. To date, Pepco's accountability for its actual expenditures is almost non-existent.

Even when cost comparisons are limited to **total** budgeted expenditures versus total actual expenditures, it is apparent that Pepco has exceeded the costs on which the Commission premised its rate determinations for the pilot multi-year plan and for calendar year 2023. Yet, Pepco provides no compelling evidence that its expenditures in excess of those previously budgeted were necessary or cost-justified. To date, Pepco has carried no burden of proof for the prudence and cost-effectiveness of the actual expenditures it has incurred.

AOBA has identified multiple inconsistencies and shortcomings in the information Pepco has provided to date through its annual reconciliation filings and the testimony and exhibits on which it relies to support its multi-year rate plan proposal in this proceeding. In general, Pepco has failed to provide the data and calculations the Company relied upon to develop its projections. Although the Company describes its costs for each capital project and O&M account, it fails to document the data and calculations on which the cost projections it asks the Commission to rely upon in setting rates were actually computed.

Pepco represents that costs offset by CIAC were eliminated from its budget estimates for capital projects, but the amounts eliminated cannot be verified independently.

AOBA submits that at least some of Pepco's representations regarding CIAC considerations are inconsistent with Pepco's actual experience. For example, AOBA witness Bruce Oliver's Surrebuttal Testimony notes that Pepco's Rate Year 2 (2022) Annual Reconciliation Filing cites "**higher than anticipated CIAC**" as the "**primary driver**" of the variance between its projected budget for Rate Year 2 Commercial New Business Connections (ITN Number 75093) and its reported actual 2022 costs for Commercial New Business Connections.<sup>24</sup> Yet, the Company's actual historic data for CIAC billed to Commercial customers indicates Pepco's Commercial CIAC revenues for 2022 actually showed a noticeable decline.<sup>25</sup> This inconsistency is symptomatic of problems found throughout Pepco's development and presentation of the forecasted budgets on which it asks this Commission to rely in setting rates going forward.

The annual reconciliations and information filings provided by Pepco for the years of the pilot MRP and for calendar year 2023 do not demonstrate the prudence and cost-effectiveness of Pepco's actual expenditures. The cryptic explanations of variances that Pepco has provided fall well short of any reasonable demonstration of prudence and provide no assessment of the benefits and costs of the projects that Pepco has chosen to fund (which, as demonstrated above and in Exhibit AOBA (A)-1, deviated markedly from its budgeted costs by project).

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<sup>24</sup> Pepco's March 31, 2023 Annual Reconciliation Filing for Rate Year 2, Appendix 1, Schedule 4, Page 1 of 6, Line 48.

<sup>25</sup> See Exhibit AOBA (A), page 35, line 10, through page 36, line 3; and Pepco's response to AOBA Data Request 7-2d.

## **2. Pepco's Requested ROE is Unrealistic**

A key driver of the magnitude of Pepco's revenue increase request in this proceeding is the 10.50% ROE the Company has requested. In Formal Case No. 1156 the Commission authorized an ROE for Pepco of 9.275%. Thus, Pepco seeks an unprecedented **122.5 basis points** increase in its authorized Return on Equity.

The Maryland Public Service Commission ("MDPSC") recently reviewed Pepco's authorized ROE for that jurisdiction in Case No. 9702. Based on a very similar record,<sup>26</sup> the MDPSC concluded a 9.50% ROE for Pepco was appropriate.<sup>27</sup> Moreover, the 9.50% ROE authorized for Pepco in MDPSC Case No. 9702 represented a slight **downward** adjustment from the ROE previously authorized for Pepco in Maryland.

For calendar year 2023 and the first quarter of 2024 Pepco's reported Adjusted ROE results by quarter are summarized in Table 1 below:

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<sup>26</sup> In both Formal Case No. 1176 before this Commission and Case No. 9702 before the MDPSC, Pepco has sought approval of a 10.50% ROE. Moreover, Case No. 9702 before the MDPSC was filed roughly one month after Pepco's filing of Formal Case No. 1176 in DC, and the two cases addressed rate proposals for substantially overlapping time periods. In this case (Formal Case No. 1176), Pepco proposes to establish rates for a three year period from 2024 through December 31, 2026. In Case No. 9702 before the MDPSC, Pepco proposed to set rates for the period April 1, 2024, to March 31, 2027. In other words, 33 months of the periods addressed by these two cases are overlapping.

<sup>27</sup> MDPSC Case No. 9702, Order No. 91181, issued June 10, 2024, page 148. In that Order the MDPSC concluded:

*The Commission finds that an ROE of 9.50 percent for Pepco's distribution service is appropriate, within the zone of reasonableness, supported by the evidence presented, and consistent with statutory and other legal standards. The Commission also finds that this ROE is comparable to returns investors expect to earn on investments of similar risk as demonstrated through the use of the witnesses' proxy groups, is sufficient to assure confidence in Pepco's financial integrity, and is adequate to maintain and support Pepco's credit and attract needed capital.*

**Table 1**

**Pepco's Claimed Adjusted ROE Results and  
Associated Revenue Deficiency/(Surplus) Calculations<sup>28</sup>**

Quarter	12 Months Ended	DC Adjusted ROE	BSA Revenue Removed for GAAP	BSA Reserve Earnings Impact	Revenue Deficiency/ (Surplus)
Q1 2023	03/31/2023	10.300%	\$ 456	\$ 330	(\$18,408)
Q2 2023	06/30/2023	9.925%	\$ 6,858	\$ 4,971	(\$11,894)
Q3 2023	09/30/2023	9.570%	\$16,750	\$12,141	(\$ 5,486)
Q4 2023	12/31/2023	9.511%	\$23,318	\$16,901	(\$ 4,275)
Q4 2023 Rev	12/31/2023	9.155%	\$16,833	\$12,201	<b>\$ 2,209</b>
Q1 2024	03/31/2024	8.662%	\$16,725	\$12,123	<b>\$11,550</b>

AOBA also reiterates the fact that Pepco's Final Reconciliation Filing for 2022 indicates Pepco had a **revenue excess of \$16 million** for calendar year 2022.<sup>29</sup> Moreover, AOBA notes that Pepco's assessment of its Revenue Deficiencies/(Surpluses) to date assume all of its capital expenditures have been prudently incurred. Yet, given Pepco's failure to meet its burden to demonstrate the prudence of its actual expenditures, the Commission must consider the potential that the Company's ROR and ROE assessments are understated, and any indicated revenue deficiencies are likely overstated.

The data presented in Table 1 also suggest that Pepco's claimed DC Adjusted ROE and its claimed Revenue Deficiency were heavily influenced over the first three quarters of 2023 by the earnings impact of the Company's computed BSA Reserve. However, with Pepco's revision of its Q4 2023 BSA Revenue Removed for GAAP, the earnings impact of the BSA Reserve has been essentially flat over the past three quarters

<sup>28</sup> The data presented has been extracted from Pepco's quarterly ROR filings Formal Case No. 1156.

<sup>29</sup> Exhibit AOBA (A), page 54, lines 10-14, and Pepco's Final Reconciliation Filing for 2022, filed March 31, 2023 in Formal Case No.1156.

(i.e., 2023 Q3, 2023 Q4, and 2024 Q1). With Pepco's reported BSA deferral balance for the GT-LV rate class continuing to grow, such a static assessment of GAAP Revenue Removals and BSA Earnings Impacts appears, at best, inconsistent.

Further, when viewing the BSA data presented in Table 1 (above), the Commission should also recognize that Pepco's actual revenue collections for the GT-LV rate class have **noticeably exceeded** the levels of revenue this Commission authorized for the GT-LV rate class in Formal Case No. 1156.<sup>30</sup> Pepco's computed requirements for BSA reserves and its recent claim of an earnings deficiency are nothing more than a product of Pepco's erroneous assumption that its costs of providing service by rate class increase (or decrease) in direct proportion to the number of customers Pepco serves in a given rate class. Nothing in Pepco's filing in this proceeding demonstrates that the Company's costs of serving its Rate Schedule GT-LV customers have increased in proportion to the differences between the numbers of customers in that class that were used for ratemaking purposes in Formal Case No. 1156 and the actual numbers of GT-LV customers reflected in Pepco's monthly BSA filings. Thus, the accuracy of Pepco's quarterly assessment of Rate Schedule GT-LV revenues, its GAAP-related adjustments to earnings and the legitimacy of Pepco's claimed first quarter 2024 earnings deficiency, are all matters that should be resolved on the basis of evidentiary determinations.

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<sup>30</sup> See the revenues authorized by the Commission for Rate Schedule GT-LV in Pepco's June 24, 2021 and January 11, 2023 Compliance Filings in Formal Case No. 1156 as compared to the "Allowed" BSA revenues reported for that class in Pepco's monthly BSA reports as submitted for the Commission's PEPBSAR docket.

### **3. Pepco Fails to Support the Prudence of 2023 Actual Expenditures**

The Company's response to the requirements that the Commission specified in Order No. 22013, paragraph 29 does little to facilitate the Commission's assessment of the Company's earnings for regulatory purposes. Pepco represents that the Supplemental Information in its July 5, 2024 filing in response to Order No. 22013 provides "*Detailed demonstration of the prudence of Pepco's Calendar Year 2023 capital and operating expenditures.*"<sup>31</sup> However, AOBA's examination of that filing finds that it falls well short of a demonstration of prudence for any of its Calendar Year 2023 expenditures. For example, the information contained in Attachment 2 to Pepco's July 5, 2024 Supplemental Information filing, although labeled as a "*2023 Prudence Review*" presents "*Plant In-Service*" additions that the Company seeks to include in its rate base. However, those additions reflect capital expenditures that often have been accrued over multiple years. Nothing in the data presented in Attachment 2 details either the dollar amounts of capital expenditures by year included the Company's claimed 2023 Plant In-Service additions or the dollar amounts actually incurred in Calendar Year 2023 for each ITN Number.<sup>32</sup> Thus, the information contained in Attachment 2 to Pepco's July 5, 2024 Supplemental Information Filing fails to demonstrate the prudence of the capital costs the Company actually incurred by project during calendar year 2023.

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<sup>31</sup> Pepco's July 5, 2024 Supplement to the Company's Rate of Return (ROR) filings as directed by Order No. 22013.

<sup>32</sup> See Pepco's Responses to Staff Data Requests 6-2 through 6-7, provided July 19, 2024, each of which states, "*The company has not performed any specific analysis around the 2023 O&M variance drivers between budget and actuals.*" Likewise, Pepco indicates that the additions to Plant-In-Service presented in Attachment 2 to its July 5, 2024 filing, "*could span multiple years.*" (See for example, Pepco's response to AOBA Data Requests 13-5 and 13-6). Yet, Pepco has provided no detail for the capital expenditures by year included in the Plant-In-Service additions shown in Attachment 2.

Similarly, neither Pepco's Annual Reconciliation Filings for 2021 and 2022, nor its July 5, 2024 provision of supplemental ROR information actually offers any demonstration of the prudence of Pepco's actual operating expenditures. Exhibit AOBA (A)-2 provides a comparison of Pepco's budgeted and actual O&M expenditures for Calendar Year 2022 which shows large percentage deviations from budgeted costs for most of Pepco's operating accounts.<sup>33</sup> Out of 18 separate operating accounts for which budgeted and actual costs for 2022 are presented only 3 accounts reflect variations from the Company's budgeted amounts of less than 10%. Large numbers of accounts reflect variations from budgeted costs of greater than 30%, 50%, or 100%. In other words, Pepco has not forecasted its operating expenditures by account with any greater accuracy than it has forecasted its capital expenditures by project (i.e., by ITN Number). Even basic employee-related costs such as Operation Supervision & Engineering (Account No. 958000), Administrative & General Salaries (Account No. 992000), and Employee Pensions & Benefits reflect large percentage variances from budgeted amounts. These deviations from budgeted costs are not explained by either inflation (as measured by either the CPI-U or the CPI-W), or changes in Pepco's numbers of employees.<sup>34</sup>

Pepco also makes no showing that the capital projects on which the Company has chosen to expend funds during the periods subsequent to Order No. 20755, have been cost-effective expenditures. Likewise, assessment of expected ratepayer benefits and the cost-effectiveness of planned capital projects undertaken as part of the review of Pepco's proposals in Formal Case No. 1156 are now effectively rendered meaningless.

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<sup>33</sup> See the Direct Testimony of AOBA witness Bruce R. Oliver, Exhibit AOBA (A), page 33, line 11 through 34, line 13, and Exhibit AOBA (A)-2.

<sup>34</sup> Exhibit AOBA (A)-2.

Benefits associated with projects identified in Formal Case No. 1156, but ultimately not pursued, are of no value, and no basis is provided for evaluating the benefits and/or cost-effectiveness of projects pursued by Pepco but not incorporated in budgets. If the Commission and the parties must constantly monitor Pepco's planning and activities to gain insight regarding the impacts of changes in the Company's spending plans, the value of an MYP in terms of increased transparency and reduced regulatory burdens is quickly eroded.

Under Pepco's MYP proposals the Company's financial results are driven by accounting creative treatments, not by well-managed and efficient operations or frugally planned and closely supervised capital spending programs. At present, there are few meaningful ties between Pepco's actual operations and the Company's spending decisions. It is eminently clear at this point that Pepco's incentives and those for Pepco's senior management are to grow its earnings regardless of limited customer growth and declining kWh deliveries. In such an environment the primary tool for growing earnings is capital spending. However, capital spending well in excess of growth in billing determinants can only yield increases in retail rates for electric distribution service in the District that add greater stress to an already struggling economy in the District.

As Pepco's charges for electric service in the District of Columbia increase, the prospects for an economic resurgence in the District decline. AOBA is confronting this reality on a day-to-day basis as increasing numbers of Commercial office buildings and multi-family residential buildings face foreclosure. As little as five years ago, commercial and multi-family residential buildings in the District were hot commodities. Today, many

are struggling just to survive.<sup>35</sup> For these reasons, AOBA implores the Commission to seek greater, not lesser, accountability for prudence and cost-effectiveness of Pepco's capital and operating programs. The Commission must not allow Pepco's capital spending to continue to grow at rates far in excess of reasonable projections of growth in the Company's numbers of customers and kWh deliveries. Rather, the Commission must challenge Pepco to tighten its belt and be more frugal in the Company's expenditure planning (i.e., a result that appears inconsistent with the District's actual experience under Pepco's multi-year rate plans to date). The Commission cannot rely on Pepco's forecasted budgets to set just and reasonable rates.

#### **4. Reduced Regulatory Burdens**

The MYP process has not yielded documentable reductions in regulatory burdens. The number and complexity of contested issues before the Commission in this proceeding reflects an amplification of the costs of litigating MYP filings and the reduced potential for resolution of ratemaking issues through settlement discussions. In addition, since the issuance of the Commission's rate determination order in Formal Case No. 1156, the parties have been plagued with an unending array of requirements for: (1) the reviews of filings, Commission directed technical conferences, filing of comments; and working group activities. Although the number of rate case filing may have been reduced, the workload for OPC and intervenors has not been reduced. Moreover, the evidence is compelling at this point that necessary ratepayer protection from unproductive

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<sup>35</sup> Direct Testimony of Bruce R. Oliver, AOBA (A), Attachment D. See also Direct Testimony E.M.D. O'Donnell Pepco (A), pages 48-49, stating, "*Many commercial building owners are struggling to keep their buildings even partially occupied and some are facing the difficult decision of whether to surrender properties to their lender. (Citation omitted) These difficulties faced by commercial customers will not dissipate soon.*"

expenditures necessitates more thorough and rigorous review of the Company's actual expenditures, and the detail that must be examined to assess the cost-effectiveness and prudence of the Company's actual expenditures can only further magnify regulatory burdens for all parties.

#### **IV. STIPULATION OF DOCUMENTS FOR ADMISSION TO THE RECORD**

The schedule set forth by this Commission in Order No. 22015, paragraph 9, calls for the “*admission of stipulated testimony, exhibits, data requests, and responses*” on August 21, 2024. At this point in the proceeding, AOBA cannot stipulate to the admission of any of Pepco's filed testimony, exhibits, data requests, and responses in the absence of opportunity to cross-examine Pepco witnesses regarding the content of those documents. To do so would deprive AOBA's members denial of their due process rights to an evidentiary hearing.<sup>36</sup> AOBA is unable to agree to admit testimony and data requests that it has found to be inaccurate, inconsistent and unreliable. AOBA also notes that nearly all of Pepco's responses to data requests relating to its July 5, 2024 Supplemental Information Filing list “*The Company*” as the sponsor. Such responses greatly impede the parties' ability to review the responses in the context of a witness's filed testimony, other information provided and to prepare cross-examination. This lack of attribution of a data response erodes transparency. Designations of sponsoring witnesses are required to support appropriate development of the record.<sup>37</sup>

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<sup>36</sup> Moreover, AOBA cannot stipulate to the admission of any document that has been provided only in electronic format.

<sup>37</sup> 15 DCMR Rule 122.13 requires “All data responses shall identify the name and the title of the person sponsoring the response.”

If the integrity of the regulatory process is to be upheld and ratepayer protections are to be ensured, Pepco must be held more directly accountable for the cost-effectiveness and prudence of the expenditures it incurs. In the absence of more rigorous Commission examination of prudence and cost-effectiveness issues, there can be no assurance of the just and reasonableness of the rates charged to Pepco customers in the District of Columbia. The Commission cannot accept Pepco's reconciliations and ROR filings as accurate and appropriate assessments of the Company's actual costs and earnings results under an MYP. Yet, appropriate enforcement of Pepco's responsibility to bear the burden of proof for prudence and cost-effectiveness determinations would necessitate evidentiary proceedings, and the Commission must recognize that such proceedings would expand, not reduce, the administrative burdens of the MYP process.

AOBA appreciates the opportunity to provide oral argument regarding the matters in the Joint Motions and other issues of fundamental importance. However, AOBA emphasizes that a legislative-style hearing is not a substitute for evidentiary hearings in a contested proceeding and does not provide due process. AOBA further submits that the parties should not be required to submit post-hearing briefs until after evidentiary hearings are completed.

## **V. CONCLUSION**

As directed in Order No. 22015, this brief focuses on matters raised in the two Joint Motions and other legal and policy matters. This brief does not address all relevant matters on which there are contested positions relating to Pepco's revenue requirements and rate structure proposals. As the Commission's scheduled legislative-style hearing will not support evidentiary determinations, AOBA submits that the scheduling of

evidentiary proceedings to address contested issues remains a necessity, if this Commission does not grant the Joint Motions.<sup>38</sup> Without such hearings, AOBA submits that the ability of the Commission to render an unappealable decision in this case is non-existent.

In summary, AOBA submits that the Commission should dismiss Pepco's MYP filing due to: (i) inconsistencies in the data Pepco has presented in its filings in this proceeding, (ii) the unreliability of Pepco's forecasts of future expenditures; and (iii) the inadequacy of ratepayer protections under the Company's MYP proposals. AOBA also submits that the Commission should conclude that the "*pilot*" MYP was a failure, as anticipated benefits failed to materialize, and reliance on traditional test year ratemaking practices is a more just and appropriate means of setting rates for Pepco.

If this Commission ultimately denies the Joint Motions on the merits, AOBA supports the Commission's establishment of rates on the basis of Pepco's traditional test year (TTY) filing **updated** to reflect 2023 actuals for the full year. In addition, AOBA submits that the Commission should reject Pepco's requested increase in its authorized ROE to a 10.50% ROE, and the Commission should establish an ROE for Pepco no higher than the Company's current 9.275% authorized ROE. (AOBA's recommended ROE is 9.10% as presented by AOBA witness T. Oliver, AOBA (B)). Finally, AOBA reiterates that in the absence of meaningful evidentiary hearings in which the merits of

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<sup>38</sup> The Commission stated, "*There being no majority consensus to dispose of this matter summarily...*" the Commission denies the Joint Motions, but the "*denial of the Motions is not a decision on the merits*" of Pepco's Application for an MYP and the traditional historical test year rate application. "Likewise, the Commission's denial of the Motions does not "*decide any issue of policy or law that undergird the Motions.*" Formal Case No. 1176, Order No. 22013, paragraph 1, June 28, 2024.

the Company's proposals and supporting presentations can be thoroughly examined, there is no justifiable basis for any authorized rate increase for Pepco at this time.

Respectfully submitted,



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Dated: July 24, 2024

**Attachment A**  
**Formal Case No. 1176**

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

**IN THE MATTER OF** )  
 )  
**THE APPLICATION OF POTOMAC** ) **Formal Case No. 1176**  
**ELECTRIC POWER COMPANY FOR** )  
**AUTHORITY TO IMPLEMENT A** )  
**MULTI-YEAR RATE PLAN FOR ELECTRIC** )  
**DISTRIBUTION SERVICE IN THE** )  
**DISTRICT OF COLUMBIA** )

**AFFIDAVIT OF  
BRUCE R. OLIVER**

1. My name is Bruce R. Oliver. I am President and Chief Executive Officer of Revilo Hill Associates, Inc., an energy and regulatory policy consulting firm engaged by the Apartment and Office Building Association of Metropolitan Washington (“AOBA”) to review and analyze the filings of the Potomac Electric Power Company and other parties in this proceeding. In that role I have participated in every major Pepco rate proceeding in the District of Columbia and Maryland for more than 40 years.
2. I have filed Direct and Surrebuttal Testimony on behalf of AOBA in this proceeding, which have been labeled Exhibits AOBA (A) and AOBA (2A), as well as a number of associated Attachments and numerical exhibits.
3. On July 5, 2024, in response to Order No. 22013 issued by the District of Columbia Public Service Commission in this proceeding on June 28, 2024, Potomac Electric Power Company (“Pepco” or “the Company”) submitted supplemental information to support its Rate of Return (ROR) filings. I have reviewed Pepco’s July 5, 2024 supplemental information filing, as well as each of the quarterly ROR filings the Company has submitted during calendar year 2023 and calendar year 2024 to date. In addition, I have reviewed Pepco’s responses to numerous data requests submitted to Pepco by the Commission Staff, AOBA, OPC and DCG regarding the Company’s July 5, 2024 supplemental information filing.
4. Pepco’s rate application in this proceeding is premised on budgeted O&M and capital expenditures for 2024 (Rate Year 1), 2025 (Rate Year 2), and 2026 (Rate Year 3). Pepco’s budgeted costs for those rate years are built on Pepco’s forecasted budgets for Calendar Year 2023 (i.e., Pepco’s designated “Bridge Year”). Contrary to the representations of David M. Vahos in the affidavit attached

to Pepco’s July 5, 2024 supplement information filing, Pepco’s budgeted 2023 costs provide the foundation upon which the Company’s projected expenditures for each proposed Rate Year are developed. As a result, inaccuracies in the Company’s estimation of its 2023 Bridge Year costs have a direct impact on the reliability of its forecasts of budgeted expenditures for each of the Company’s proposed rate years.

5. Exhibit Pepco (H)-2, sponsored by witness Cantler in this proceeding, provides the Company’s budgeted capital expenditures on a project-by-project basis for the calendar year 2023 (i.e., the “Bridge Year”) for Pepco’s development of its forecasted budgeted capital expenditures for 2024 (Rate Year 1), 2025 (Rate Year 2), and 2026 (Rate Year 3) in this proceeding. The Affidavit of Pepco witness Cantler, which is attached to Pepco’s July 5, 2024 Supplemental Information Filing (Attachment 3), asserts the prudence of the Company’s calendar year 2023 capital project investments. However, that assertion is offered without analysis of variances from budget costs, without justification for such variances, and without demonstration of the cost-effectiveness of the expenditures actually incurred.

Moreover, as Pepco clearly indicates in its responses to multiple data requests relating to the Company’s July 5, 2024 Supplemental Information Filing, the Plant In-Service additions set forth in Attachment 2 to that July 5, 2024 filing are **not comparable** to the budgeted costs presented in Exhibit Pepco (H)-2. Further, Pepco provides no indication of the costs incurred by the Company by project in 2023 that have been included in its claimed 2023 additions to Plant In-Service. Pepco also provides no support for the development of the portions of its claimed 2023 Plant In-Service additions that reflect cost incurred in years prior to 2023. In that context, it is impossible for the Commission or any other party to assess the prudence of the Plant In-Service additions presented in Attachment 2 to Pepco’s July 5, 2024 Supplemental Information Filing. The implication of paragraph 3 in witness Cantler’s Affidavit is that, once a project is identified as “*necessary*,” costs for the project are “*prudent*” regardless of the dollar amount ultimately spent.

6. Pepco’s computed BSA revenue deferral balance for the GT-LV rate class is substantially overstated, as are its claims of BSA Reserve Earnings Impacts. In Formal Case No. 1156 this Commission accepted Compliance Filings from Pepco which computed the following revenue requirements for Rate Schedule GT-LV:

July – December 2021	\$ 43,071,618
January – December 2022	\$ 89,381,016
January – December 2023	<u>\$ 96,687,232</u>
Total	\$229,139,866

Pepco’s monthly BSA filings report the following Actual revenue collections from Rate Schedule GT-LV customers for the same periods.

July – December 2021	\$ 38,490,081
January – December 2022	\$ 85,703,190
January – December 2023	<u>\$ 92,046,565</u>
Total	\$216,239,836

Thus, Pepco’s Actual GT-LV Revenue collections for the 30-month period from July 2021 (i.e., when new rates approved in Formal Case No. 1156 first became effective) through December 2023, have under-recovered the Commission’s authorized revenues, but those under-recoveries are only **\$12.9 million** less than the Commission approved for the GT-LV rate class.

By contrast, Pepco’s monthly BSA filings reflect claimed revenue **under-recoveries** from the GT-LV rate class for the same 30-month period which total **\$63.4 million**. In other words, Pepco additions to “Allowed” revenue for the GT-LV rate class (that result from its use of substantially understated numbers of GT-LV customers in its rate design process) have **added** more than **\$50 million** to the Company’s claimed revenue deferral balances, and those inflated revenue deferral balances greatly amplified Pepco’s asserted need for GAAP-related revenue reserves, as well as the earnings impact of its GT-LV rate class revenue deferrals.

As documented in Exhibit AOBA (A)-6, the Company’s changes in its costs of service for its medium and large C&I customers since Formal Case No. 1156 do not provide cost support for the increases in revenue requirements that have resulted from the use of revenue per customer calculations to assess BSA “Allowed” revenues. In other words, the increases in Pepco’s BSA “Allowed” revenues over the revenue levels approved by the Commission in Formal Case No. 1156 are **not cost-justified**.

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

**IN THE MATTER OF**

The Application of  
Potomac Electric Power Company for  
Authority to Implement a Multiyear  
Rate Plan in the District of Columbia

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**Formal Case No. 1176**

**DECLARATION**

I, Bruce R. Oliver, do hereby declare under the penalty of perjury that I am authorized to make this Declaration on behalf of the Apartment and Office Building Association of Metropolitan Washington that the foregoing Affidavit of Bruce R. Oliver was prepared by me or under my direction and supervision; and that the contents herein are true and correct to the best of my knowledge, information and belief.



Bruce R. Oliver  
July 24, 2024

**CERTIFICATE OF SERVICE**  
**Formal Case No. 1176**

I hereby certify on this 24<sup>th</sup> day of July 2024, that the attached Limited Brief was filed electronically on behalf of the Apartment and Office Building Association of Metropolitan Washington and copies were sent via electronic mail to the service list below:

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