

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



**BRIAN L. SCHWALB**  
**ATTORNEY GENERAL**

**Public Advocacy Division**  
**Housing and Environmental Justice Section**

**ELECTRONIC FILING**

July 24, 2024

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

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

Dear Ms. Westbrook-Sedgwick:

On behalf of the District of Columbia Government, please find its enclosed Limited Pre-Legislative Style Hearing Brief in the above-captioned proceeding. If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,

BRIAN L. SCHWALB  
Attorney General

By: /s/ Brian Caldwell  
BRIAN CALDWELL  
Senior Assistant Attorney General  
(202) 727-6211 – Direct

Email: [brian.caldwell@dc.gov](mailto:brian.caldwell@dc.gov)

cc: Service List

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

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

**DISTRICT OF COLUMBIA GOVERNMENT’S  
LIMITED BRIEF IN ADVANCE OF LEGISLATIVE-STYLE HEARING**

Pursuant to Order No. 22013 of the Public Service Commission of the District of Columbia (Commission or PSC), as modified by Order No. 22015, the District of Columbia Government (DCG or the District), through the Office of the Attorney General, respectfully submits its Limited Brief in Advance of the Legislative-Style Hearing in the above-captioned proceeding. As the Commission directed, the District submits this brief to highlight the “relevant legal and policy issues that the [District] believe[s] [to be] fundamental to the Commission’s decisions in this proceeding.”<sup>1</sup>

**I. FUNDAMENTAL ISSUES BEFORE THE COMMISSION  
FOR DECISION**

The District has reviewed the Application, testimonies and responses to data requests submitted by the Potomac Electric Power Company (Pepco or the Company) in support of its proposed Multiyear Rate Plan (MRP) and has concluded, for reasons described in greater detail below that Pepco’s proposed MRP is fundamentally flawed and should be rejected as not being in the public interest.

---

<sup>1</sup> Formal Case No. 1176, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia*, Order No. 22013, ¶ 1 (rel. June 28, 2024).

**A. Pepco has Failed to Demonstrate the Benefits of its First MRP that was Approved as a Pilot Program.**

Pepco has failed to meet its burden of proof to establish that its first multiyear rate plan (Modified EMRP) was in the public interest such that it justifies the continuation of a multiyear form of ratemaking. In its Order No. 20273, the Commission set an overarching policy framework by which it would evaluate whether an Alternative Form of Regulation (AFOR), including the MRP, is in the public interest.<sup>2</sup> According to that policy framework, one important area that the Commission must evaluate is whether the MRP “provides benefits that are measurable, quantitative, and qualitative to customers, as opposed to solely focusing on the AFORs benefits to the utility.”<sup>3</sup>

Another important consideration is whether the MRP advances the District’s public climate commitments.<sup>4</sup> But no significant evaluation of the Modified EMRP was ever conducted, even though Pepco’s Modified EMRP was approved on a Pilot Program basis. The record of this proceeding is completely devoid of evidence establishing that the Modified EMRP provided *any* customer benefits or advanced the District’s climate and energy goals in any meaningful way.

For example, Pepco did not or could not quantify the incremental benefits of the Modified EMRP to its customers.<sup>5</sup> Pepco simply did not perform this analysis.<sup>6</sup> Nor could Pepco identify a single capital investment it made during the EMRP’s Pilot period that was intended to help the District’s decarbonization and clean energy goals.<sup>7</sup> Similarly, Pepco could

---

<sup>2</sup> Formal Case No. 1156, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia*, Order No. 20273, ¶ 6 (*rel.* Dec. 20, 2019).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Pepco Response to AOBA DR 10-2 (failed to provide any “workpapers, data, analyses, assumptions, and studies” quantifying EMRP’s benefits).

<sup>6</sup> Pepco Response to DCG DR 8-10.

<sup>7</sup> Pepco Response to AOBA DR 10-4(a)

not list any investments it made on reliability and resiliency during the Modified EMRP Pilot period.<sup>8</sup> In fact, the record evidence indicates that Pepco's Modified EMRP investments went primarily towards replacing aging infrastructure and performing corrective maintenance and not towards a climate ready grid focused on resiliency.<sup>9</sup>

Indeed, Pepco's Modified EMRP is simply a business as usual plan and there is nothing special about it that would have prevented Pepco from filing its climate solutions plan, energy efficiency and demand response plan, and net metering petition in the context of a traditional cost of service rate application.<sup>10</sup> Pepco has been unable to identify any ratepayer benefits at all from the Company's expedited recovery of investments over the term of the Modified EMRP.<sup>11</sup> And in terms of lessons learned from its Modified EMRP, the Company could not identify how, going forward, it will measure the success of its investments in meeting the District's climate and clean energy goals.<sup>12</sup>

In short, to the extent that the Commission is looking to the Modified EMRP Pilot for evidence that a multiyear rate plan advances the public interest in terms of benefits to customers and the District's climate and energy goals, it will find none. The takeaway from Pepco's Modified EMRP Pilot is that it was simply a business-as-usual plan that advanced Pepco's interests alone by providing it with up-front funding at guaranteed levels and for a guaranteed term. The Commission should return to traditional cost of service ratemaking as Pepco's Modified EMRP Pilot was a failure.

---

<sup>8</sup> Pepco Response to DCG DR 8-3(a).

<sup>9</sup> Pepco Response to AOBA 1-9(b).

<sup>10</sup> Pepco Responses to DCG DR 9-22(a), and OPC DR 4-1(b).

<sup>11</sup> Pepco Response to OPC DR 5-2(b-h).

<sup>12</sup> Pepco's Response to OPC DR 4-1(a).

**B. Granting Pepco an MRP Does Not Make Sense in the Absence of an Integrated Distribution Plan Containing a Grid Modernization Planning Component and a Non-Wires Alternative Performance Incentive Mechanism.**

As DCG expert witness Courtney Lane explained in her testimony, an MRP only makes sense if Pepco develops a comprehensive long-term Integrated Distribution Plan (IDP) with a Grid Modernization Plan component.<sup>13</sup> Without these tools, it is impossible to assess the reasonableness of any individual planned investment in Pepco's MRP.<sup>14</sup> If Pepco wants ratepayer funds in advance of making its capital investments, as its MRP provides, Pepco must be able to demonstrate and explain to the Commission and stakeholders how individual planned investments fit together as well as into the overall distribution plan. Pepco's MRP does not do this.

Pepco's distribution planning process remains opaque. Instead of referring to an IDP, the Commission and Stakeholder must rely on unverified assertions by Pepco of its capital investment needs. For example, Pepco often refers to its MRP as the "Climate Ready Grid" even though there is little evidence that Pepco made significant investments in resiliency under the Modified EMRP.<sup>15</sup> A related example is Pepco's assertion that it needs an MRP to support electrification even though there is no evidence that anticipated load growth will result from electrification in the foreseeable future. Indeed, the Department of Energy and Environment (DOEE) performed a study entitled "The Strategic Electrification Roadmap for Buildings and Transportation in the District of Columbia" in which it found that Pepco's system is well-equipped to handle any projected load increases from building and transportation electrification

---

<sup>13</sup> Exhibit DCG (A), pg. 5 (filed Jan. 12, 2024).

<sup>14</sup> *Id.* at pg. 45.

<sup>15</sup> See Pepco Response to AOBA DR 1-9(b).

through the year 2032. Even Pepco's 10-year load forecast does not directly account for the effects of electrification.<sup>16</sup>

Moreover, because overall load on Pepco's system is not expected to exceed current capacity levels until at least 2032, there is less of a need for Pepco to invest in traditional utility assets.<sup>17</sup> Any IDP investment, therefore, should include a Benefit Cost Analysis (BCA), which compares the benefits and costs of traditional utility assets with alternative, climate-friendly solutions such as Distributed Energy Resources (DER), including Non-Wires Alternatives (NWA) in meeting location-specific load growth.<sup>18</sup> An IDP combined with a BCA for each planned investment will provide much needed transparency to Pepco's opaque distribution planning process and capital investments needs. Any proposed MRP that does not have these basic tools is unreasonable and should be rejected outright.

Additionally, one component that should be included as a subset of Pepco's IDP is a grid modernization plan. A grid modernization plan would focus on those planned investments that are designed to provide grid resiliency and further the District's climate and energy goals.<sup>19</sup> A grid modernization plan would ensure that Pepco is making the right investments to accommodate the incorporation of increased DERs on Pepco's system.<sup>20</sup> Right now, not even Pepco is able to indicate how much additional hosting capacity for solar and other DER would result from its proposed MRP.<sup>21</sup> Any attempt by Pepco to equate its distribution construction plan with a grid modernization plan is erroneous.

---

<sup>16</sup> Pepco Response to AOBA DR 1-11(a)(c).

<sup>17</sup> *Id.* at pg. 43.

<sup>18</sup> *Id.* at pgs. 43-44.

<sup>19</sup> *Id.* at pg. 46.

<sup>20</sup> *Id.* at pg. 49.

<sup>21</sup> Pepco Response to DCG DR 5-12.

Finally, to incentivize Pepco to incorporate NWAs into its system, the foregoing tools should be combined with a Performance Incentive Mechanism (PIM) for NWAs.<sup>22</sup> As set forth in the testimony of DCG Witness Lane’s expert testimony, an NWA PIM would “encourage Pepco to proactively identify all NWA opportunities, seek the least-cost NWA solution regardless of whether it is a capital investment, and be rewarded for maximizing ratepayer savings.”<sup>23</sup> Currently, when reviewing the cost-effectiveness of an NWA solution, it is Pepco’s practice not to account for the monetized value of avoided carbon emissions or the locational value of DRs.<sup>24</sup> In other words, Pepco is undervaluing the benefits of NWAs. An NWA PIM could encourage Pepco to account for all the benefits of incorporating NWAs into its system.

## II. CONCLUSION

Wherefore, the Commission should reject Pepco’s proposed MRP and return to traditional cost of service ratemaking until such time as Pepco proposes an MRP that sufficiently addresses the above-identified fundamental issues and is not otherwise fundamentally flawed.

Respectfully submitted,

BRIAN L. SCHWALB  
Attorney General

JENNIFER JONES  
Deputy Attorney General  
Public Advocacy Division

BETH MELLEEN  
Assistant Deputy Attorney General

ARGATONIA WEATHERINGTON  
Chief, Housing and Environmental Justice Section

---

<sup>22</sup> Exhibit DCG(A) at pg. 26.

<sup>23</sup> *Id.*

<sup>24</sup> Pepco Response to DCG DR 5-24(f)(g).

/s/ Brian Caldwell  
BRIAN CALDWELL (D.C. Bar No. 979680)  
Senior Assistant Attorney General  
Housing and Environmental Justice Section  
400 Sixth Street NW, 10<sup>th</sup> Floor  
Washington, D.C. 20001  
(202) 727-6211

July 24, 2024

*Attorney for the District of Columbia Government*

## CERTIFICATE OF SERVICE

I hereby certify on this 24th day of July 2024, that I caused true and correct copies of the District of Columbia Government's Limited Pre-Legislative Style Hearing Brief to be emailed to the following:

Christopher Lipscombe, Esq.  
Brian O. Edmonds, Esq.  
Public Service Commission  
1325 G Street, N.W., Suite 800  
Washington, D.C. 20005  
[clipscombe@psc.dc.gov](mailto:clipscombe@psc.dc.gov)  
[bedmonds@psc.dc.gov](mailto:bedmonds@psc.dc.gov)

Michael R. Engleman, Esq.  
Robert C. Fallon, Esq.  
Engleman Fallon, PLLC  
1717 K Street NW, Suite 900  
Washington, D.C. 20006  
[mengleman@efenergylaw.com](mailto:mengleman@efenergylaw.com)  
[rfallon@efenergylaw.com](mailto:rfallon@efenergylaw.com)

Frann Francis, Esq.  
Senior Vice President and General Counsel  
Apartment and Office Building  
Association of Metropolitan Washington  
1025 Connecticut Avenue, N.W.  
Suite 1005  
Washington, D.C. 20036  
[ffrancis@aoba-metro.org](mailto:ffrancis@aoba-metro.org)

Anne C. Bancroft, Esq.  
Kimberly A. Curry, Esq.  
Dennis P. Jamouneau, Esq.  
Taylor Beckham, Esq.  
Potomac Electric Power Company  
701 Ninth Street, N.W.  
Washington, DC 20068  
[anne.bancroft@exeloncorp.com](mailto:anne.bancroft@exeloncorp.com)  
[kimberly.curry@exeloncorp.com](mailto:kimberly.curry@exeloncorp.com)  
[djamouneau@pepcoholdings.com](mailto:djamouneau@pepcoholdings.com)  
[taylor.beckham@exeloncorp.com](mailto:taylor.beckham@exeloncorp.com)

Ankush Nayar, Esq.  
Knia Tanner, Esq.  
Office of the People's Counsel  
1133 15<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20005  
[anayar@opc-dc.gov](mailto:anayar@opc-dc.gov)  
[ktanner@opc-dc.gov](mailto:ktanner@opc-dc.gov)

Kristi Singleton, Esq.  
Kelly Y. Burnell, Esq.  
U.S. General Services Administration  
1800 F Street, N.W. #2016  
Washington, D.C. 20405  
[kristi.singleton@gsa.gov](mailto:kristi.singleton@gsa.gov)  
[Kelly.burnell@gsa.gov](mailto:Kelly.burnell@gsa.gov)  
[Lariza.sepulveda@gsa.gov](mailto:Lariza.sepulveda@gsa.gov)  
[dgoinspmg@verizon.net](mailto:dgoinspmg@verizon.net)

Nikiya M. Hall White  
Julianny Tate  
Potomac Electric Power Company  
701 Ninth Street, N.W.  
Washington, DC 20068  
[nikki.white@pepcoholdings.com](mailto:nikki.white@pepcoholdings.com)  
[jcarvalho@pepco.com](mailto:jcarvalho@pepco.com)

Hussain Karim, Esq.  
Department of Energy & Environment  
1200 First Street, N.E., 5<sup>th</sup> Floor  
Washington, D.C. 20002  
[Hussain.karim@dc.ovg](mailto:Hussain.karim@dc.ovg)

/s/ Brian Caldwell  
Brian Caldwell