

1 BEFORE THE PUBLIC SERVICE COMMISSION
2 OF THE DISTRICT OF COLUMBIA

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4 IN THE MATTER OF
5 THE APPLICATION OF THE POTOMAC
6 ELECTRIC POWER COMPANY FOR Formal Case No.
7 AUTHORITY TO IMPLEMENT A 1176
8 MULTIYEAR RATE PLAN FOR ELECTRIC
9 DISTRIBUTION SERVICE IN THE
10 DISTRICT OF COLUMBIA

11 _____
12 LEGISLATIVE STYLE HEARING
13 DATE: Tuesday, July 30, 2024
14 TIME: 10:00 a.m.
15 BEFORE: Chairman Emile C. Thompson
16 LOCATION: Public Service Commission of the
17 District of Columbia
18 1325 G Street Northwest, Suite 800
19 Washington, DC 20005
20 REPORTED BY: Timothy Guevara
21 JOB NO.: 6802873

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<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S</p> <p>2 List of Attendees:</p> <p>3 Richard Beverly, Commissioner</p> <p>4 Ted Trabue, Commissioner</p> <p>5 Michael Engelman, DC WASA</p> <p>6 Brian Caldwell, DCG</p> <p>7 Frann G. Francis, AOBA</p> <p>8 Ankush Nayar, OPC</p> <p>9 Kim Curry, Pepco</p> <p>10 Kristi Singleton, GSA</p> <p>11 Dennis Jamouneau, Assistant General Counsel with Pepco</p> <p>12 Sandra Mattavous-Frye, OPC</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p>1 P R O C E E D I N G S</p> <p>2 THE CHAIRMAN: Good morning. The time</p> <p>3 is 10:00 a.m. We're going to call to order the</p> <p>4 legislative style hearing of the Public Service</p> <p>5 Commission of the District of Columbia in formal case</p> <p>6 number 1176 in the Matter of the Application of the</p> <p>7 Potomac Electric Power Company for authority to</p> <p>8 implement a multi-year rate plan for electric</p> <p>9 distribution service in the District of Columbia.</p> <p>10 I'm Emile C. Thompson, chairman of the</p> <p>11 DC Public Service Commission. I'm joined by</p> <p>12 Commissioner Richard Beverly and Commissioner Ted</p> <p>13 Trabue. Today is June -- July 30, 2024, and we are</p> <p>14 convening this legislative style hearing.</p> <p>15 This legislative style hearing is being</p> <p>16 livestreamed on the Commission's website. Please turn</p> <p>17 off all cell phones, so that there are no</p> <p>18 distractions.</p> <p>19 I would now like each party to identify</p> <p>20 themselves and their representative who will be</p> <p>21 speaking today.</p> <p>22 First, we'll start with Pepco, the</p>
<p style="text-align: right;">Page 3</p> <p>1 E X H I B I T S</p> <p>2 NO. DESCRIPTION ID/EVD</p> <p>3 (None marked.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 5</p> <p>1 Potomac Electric Power Company, then the Office of the</p> <p>2 People's Counsel for the District of Columbia, and</p> <p>3 then the interveners.</p> <p>4 I understand that some parties present</p> <p>5 will not be speaking, but please introduce yourselves</p> <p>6 for the record.</p> <p>7 MS. CURRY: Good morning, Chairman,</p> <p>8 commissioners. My name is Kim Curry, and I represent</p> <p>9 Pepco. And I will be speaking today. And with me is</p> <p>10 Dennis Jamouneau, assistant general counsel with</p> <p>11 Pepco.</p> <p>12 MR. NAYAR: Good morning. Ankush</p> <p>13 Nayar, assistant people's counsel with the Office of</p> <p>14 People's Counsel. And I'm also joined by Sandra</p> <p>15 Mattavous-Frye, the People's Counsel.</p> <p>16 MS. FRANCIS: Good morning, Your Honor.</p> <p>17 I'm Frann G. Francis, appearing on behalf of the</p> <p>18 Apartment and Office Building Association, referred to</p> <p>19 as AOBA. I will be speaking today for AOBA.</p> <p>20 MR. CALDWELL: Good morning,</p> <p>21 commissioners. My name is Bryan Caldwell. I'm the</p> <p>22 senior assistant attorney general with the Office of</p>

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1 the Attorney General representing the District of
 2 Columbia Government. I'll be speaking today.
 3 MR. ENGELMAN: Good morning. Michael
 4 Engelman on behalf of the District of Columbia Water
 5 and Sewer Authority. We will not be speaking today.
 6 MS. SINGLETON: Good morning. Kristi
 7 Singleton representing General Services
 8 Administration. And we also will not be speaking
 9 today.
 10 THE CHAIRMAN: By way of background --
 11 by way of background, on April 13, 2023, Pepco
 12 submitted an application for approval to increase
 13 existing distribution service rates and charges for
 14 electric service in the District of Columbia by 190.7
 15 million dollars through the implementation of a
 16 multi-year rate plan for calendar years 2024 through
 17 2026, which is labeled as the climate ready pathway.
 18 Pepco requests authority to earn
 19 overall rates return of 7.77 percent, 7.78 percent,
 20 and 7.79 percent for the MRP years of 2024, 2025,
 21 2026, including a return on common equity of 10.5
 22 percent.

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1 If approved, as requested, the typical
 2 monthly residential distribution bill would increase
 3 by \$6.05 in the first year, an additional \$6 the
 4 second year, and an additional \$5.96 the third year
 5 for a total increase of \$18.01 over the three years.
 6 For an average customer using 614
 7 kilowatt hours a month, this represents an increase of
 8 16.4 percent over the 3 years compared to the current
 9 total bill.
 10 Pepco states that the benefits of the
 11 proposed MRP for the years 2024 through 2026 are that
 12 it is forward looking, provides transparency into the
 13 company's planned investments, allows customers to
 14 better predict rate increases that are spread over
 15 future years, and helps to ensure alignment between
 16 the District's energy vision, the commission's
 17 mission -- mission and goals in the company before
 18 investments are made.
 19 The commission directed Pepco to file
 20 supplemental testimony and exhibits along with
 21 supporting schedules to support a traditional one-year
 22 rate case for the test period calendar year 2023.

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1 Both proposals are before the
 2 commission. Interveners oppose Pepco's MRP proposal
 3 and traditional one-year rate cases for the test
 4 period calendar year 2023 for various reasons.
 5 In accordance with the directives
 6 provided in a notice of legislative style hearing
 7 issued on June 13, 2024, and order number 22013 issued
 8 on June 28, 2024, the commission has asked the parties
 9 to present oral arguments before the commissioners
 10 regarding issues that the parties believe are
 11 fundamental to the commission's decisions in this
 12 proceeding.
 13 The commission determined that each
 14 party would have 30 minutes for their presentations,
 15 proceeding first with Pepco and OPC. The other
 16 intervenor parties will proceed in alphabetical order.
 17 Pepco can reserve time in its 30-minute
 18 presentation to respond to other parties.
 19 Commissioners may ask questions during the hearing.
 20 If possible, please avoid acronyms,
 21 which may be difficult for this stenographer and
 22 others to comprehend. Please state what the word is

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1 without using an acronym. We should all know commonly
 2 used acronyms, like, DOEE, MRP, OPC, and PSC, but
 3 there may be others that are not as well known.
 4 Like I said, a stenographer is
 5 transcribing today's hearing. Please speak slowly, so
 6 the stenographer can capture your presentation for the
 7 transcript. If a speaker wishes to discuss
 8 confidential information, the party needs to advise
 9 the commission when they propose doing so.
 10 I want to ensure that only those who
 11 have signed the appropriate agreement regarding
 12 confidential information can remain in the hearing
 13 room during the discussion.
 14 While confidential information is being
 15 discussed, we will disconnect our livestream and turn
 16 off cameras until the discussion is completed. We
 17 will then continue with the livestream.
 18 Before we begin, do any of the parties
 19 have anything they wish to raise or ask?
 20 Yes, Ms. Curry?
 21 MS. CURRY: Yes. Chairman Kim Curry
 22 representing Pepco. We have one initial procedural

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1 matter, and it involves a AOBA's limited brief.
 2 Attached to their brief was an affidavit of one of
 3 their witnesses, Bruce Oliver.
 4 We think that was improper for them to
 5 attach that affidavit. The commission has said that
 6 this is not an evidentiary hearing, that witnesses
 7 will -- are -- are not to appear. So we would ask
 8 that that affidavit be stricken.
 9 THE CHAIRMAN: We'll take that matter
 10 under advisement. Thank you.
 11 MS. FRANCIS: Your Honor, is this the
 12 right time for me to respond to that?
 13 THE CHAIRMAN: Yes.
 14 MS. FRANCIS: Pepco in response to
 15 commission order -- Pepco, in response to the
 16 commission order, attached two affidavits with its
 17 supplemental filing that they filed on July 5th.
 18 We had asked to put on testimony. We
 19 had asked for Pepco to put on testimony that the --
 20 the commission declined that request, and instead
 21 allowed us to submit data requests.
 22 We had no other way to respond to Pepco

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1 substantively other than an affidavit that we attach
 2 to our limited brief in response to the affidavit,
 3 which is akin to testimony that Pepco filed on its
 4 July 5th filing. So I believe it's proper, and it
 5 should not be stricken.
 6 THE CHAIRMAN: Thank you for that.
 7 Again, we'll take this matter under advisement and
 8 rule later.
 9 Anything else? Okay. If nothing
 10 further, we will go ahead and begin with Pepco.
 11 Please head toward the podium. Restate
 12 your name again and spell your last name for the
 13 stenographer. And how much time do you wish to
 14 reserve for?
 15 MS. FRANCIS: Your Honor, we're having
 16 a little bit of trouble hearing you over here. Could
 17 you speak a little bit louder, please?
 18 THE CHAIRMAN: Okay. I'll pull a
 19 little bit closer. Is that better? Okay.
 20 MS. CURRY: Good morning, Chairman,
 21 commissioners. Kim Curry representing Pepco. My last
 22 name is spelled C-U-R-R-Y. I would like to reserve

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1 ten minutes of my oral argument for rebuttal.
 2 The commission should approve Pepco's
 3 MYP for two reasons. First, it meets the objectives
 4 announced by the commission in two orders. First, the
 5 order on alternative forms of regulation, known by the
 6 acronym AFOR, as well as the order on Pepco's last
 7 rate case in FC 1156. FC is formal case 1156.
 8 Those orders state what the benefits
 9 are to an MYP. The commission has already stated and
 10 held that there are benefits to the MYP to customers,
 11 the commission, stakeholders, shareholders, and the
 12 utility. That's precedent, and that should not be
 13 disturbed here.
 14 But although it is precedent, that does
 15 not mean we should not always look for ways to
 16 continually improve the MYP process. And indeed
 17 that's what Pepco intends to do, intends to continue
 18 to do. And in fact, in this MYP, we have announced a
 19 few enhancements that I'll talk about later in my oral
 20 argument.
 21 The second reason the commission should
 22 approve this MYP is that the company is experiencing a

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1 revenue deficiency. Rate relief is needed, and this
 2 MYP will help provide that relief.
 3 The rate adjustment that's proposed in
 4 our MYP provides -- provides for recovery of capital
 5 investments and O&M spent that helps the company
 6 provide safe, reliable, and resilient service to
 7 customers.
 8 The bill stabilization adjustment, or
 9 BSA as I will call it, should also be approved and
 10 continued, because it remains a important tool for
 11 the -- for the company to support energy efficiency
 12 programs.
 13 And recovery of the BSA deferral
 14 balance, and that represents the amounts that the
 15 company is not able to recover due to the 10 percent
 16 cap in the BSA, should also be approved to recovery,
 17 because to disallow those -- those amounts to be
 18 recovered would implicate the rules against
 19 retroactive rate making. And I'll talk about that, as
 20 well.
 21 So we engaged in a very thoughtful and
 22 deliberate process in developing our MYP, while at the

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1 same time being mindful of the impact to limited
 2 income customers. So as a result, we proposed in this
 3 filing to expand enrollment in the Residential Aid
 4 Discount, or RAD, program, as well as the Arrearage
 5 Management Program, or AMP.
 6 The customers on RAD will not
 7 experience a rate increase as a result of this MYP,
 8 and I'll also talk about that, as well.
 9 One item of -- of note as I close out
 10 my summary is this oral argument does not afford me
 11 enough time to cover all the myriad of issues that we
 12 raised in our MYP.
 13 So as a result, anything I don't cover
 14 today, I'm reserving the right to cover in
 15 post-hearing briefs. Okay. So let's take a detailed
 16 look at why the commission should approve the MYP. I
 17 mentioned there were two orders.
 18 The first is the AFOR order, and that's
 19 order number 20273. This order requires that the
 20 utility provide detailed information to meet the needs
 21 of customers, stakeholders, and the commission, and
 22 the utility, as well.

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1 The principles in the AFOR order are
 2 clear, and that framework provides very thoughtful
 3 direction and framework for the filing of an MYP.
 4 Now, OPC alleges in their brief that
 5 the company has failed to meet the commission
 6 requirements. We disagree. The testimony of -- the
 7 direct testimony of company witness O'Donnell,
 8 specifically page 43, table 3, in that -- on that
 9 page, in that table, we list all the requirements of
 10 an AFOR and how the company has addressed it in the
 11 MYP, and whose testimony we address each one of those.
 12 OPCA, AOBA and the District of Columbia
 13 government, they all argue in their briefs that the
 14 company has not shown that the MYP that we filed in
 15 formal case 1156 produced benefits to rate payers.
 16 Again, we disagree with that. The
 17 company filed supplemental direct testimony on August
 18 31st that provides information on the qualitative and
 19 quantitative benefits as a result of the MYP.
 20 Right now I'd like to focus on the
 21 order in our last rate case, FC 1156. Pepco's MYP
 22 embodies the benefits for stakeholders and customers

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1 envisioned in that order.
 2 Specifically paragraph 473 of that
 3 commission's order, the commission identifies the
 4 following benefits of an MYP.
 5 One, providing rate payers with
 6 transparency in assessing utility spending and
 7 investment decisions. So parties gain -- gain a
 8 greater understanding of the company's investments
 9 before they are made.
 10 Second, predictable rate increases
 11 spread out over years. This helps us achieve
 12 gradualism. Customers know in rate one the rate and
 13 the amounts they're going to be paying in every year
 14 of the MYP. With the historic test year, customers do
 15 not know the timing, nor the amount of a rate
 16 increase.
 17 Third, administrative efficiency due to
 18 reduced filing of rate cases. The commission has said
 19 that that's a costly undertaking. We avoid that with
 20 a three-year MYP.
 21 And then finally, reduction in
 22 regulatory lag. Now, one additional impact that was

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1 not mentioned in the commission's order, but one not
 2 to be overlooked is the impact on diverse suppliers.
 3 Diverse suppliers can grow their businesses the longer
 4 the MYP is.
 5 That's because they know what the
 6 utility's needs are three years in advance. They're
 7 able to staff up to be able to meet our -- our needs.
 8 We also included with our direct testimony an economic
 9 impact report that showed the benefits to -- excuse
 10 me -- the -- the DC market.
 11 And so outside the four corners of our
 12 MYP, we are heavily engaged with local businesses,
 13 such as through the Empowerment Academy, and we
 14 detailed all of that in the testimony of company
 15 witness McClure [ph].
 16 So not only has the company relied on
 17 the commission's guidelines in these two orders, we
 18 have also actively enhanced the MYP process by
 19 incorporating lessons learned from our prior MYP and
 20 FC 1156.
 21 A couple of examples. One, we rely on
 22 the company's long range planning process, or LRP,

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1 process to develop our revenue requirements. And
 2 that's the process where we budget looking five years
 3 out.
 4 Now, this is ideal. It's more ideal
 5 than the escalator that was approved in the last case,
 6 because we're able to match the revenue requirements
 7 to actual planned investments that we intend to make.
 8 Another enhancement is improvements in
 9 the billing determinants process. We developed a
 10 sensitivity calculator that allows parties to run
 11 different sensitivities to challenge our assumptions
 12 supporting our sales forecast.
 13 Another enhancements -- enhancement is
 14 we instituted additional controls in the billing
 15 determinants process to validate our billing
 16 determinants forecast.
 17 So that's just a couple of examples of
 18 the continuous improvement that I talked about
 19 earlier, but we remain open to feedback.
 20 Incorporating learnings from prior MYPs continues to
 21 be our goal.
 22 However, the quest for continuous

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1 improvement does not mean we have to halt the
 2 implementation of MYPs until the process is perfect.
 3 Just by way of example, in December of
 4 2023, the Maryland Public Service Commission approved
 5 an MYP of another utility, Baltimore Gas and Electric
 6 Company, while at the same time in that same order
 7 convening a statewide lessons learned process.
 8 So this shows that you can implement
 9 and approve an MYP, but at the same time conduct --
 10 conducting a lessons learned process in parallel.
 11 So it's supportive of commission
 12 policy, but also District policies, as well, to help
 13 the District realize its climate goals. The direct
 14 testimony of company witness O'Donnell at page 6 list
 15 what those DC climate goals are, including
 16 transportation electrification and GHG emissions
 17 reduction reductions.
 18 Investments from the company will be
 19 vital in supporting the increased electrification
 20 envisioned by the District. And Pepco does all of
 21 this while mitigating the impacts to limited income
 22 customers.

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1 The MYP contains proposals to increase
 2 the number of customers eligible for the residential
 3 aid discount, which provides a credit for nearly all
 4 of the distribution portion of eligible customers'
 5 bills. Again, these customers will not see an
 6 increase under the MYP.
 7 The MYP also includes a proposal to
 8 increase enrollment in the arrearage management
 9 program, which credits customers' bills who pay their
 10 bills in a timely fashion. So that's how the
 11 company's MYP comports with District policies and
 12 commission policies.
 13 So the commission should also approve
 14 the MYP, because the elements making up the MYP are
 15 appropriate and reasonable. So let's look at few at
 16 the -- the elements making up our MYP.
 17 Let's start with the bill stabilization
 18 adjustment, or BSA. That's the revenue decoupling
 19 mechanism that removed the link between customer
 20 consumption and utility distribution revenues to
 21 eliminate the disincentive for the company to promote
 22 energy efficiency.

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1 This remains a necessary component of
 2 the rate making process. So why should the BSA
 3 continue? For a few reasons.
 4 One, the BSA continues to serve its
 5 original purpose, to encourage customers to reduce
 6 their -- or encourage the company to support programs
 7 that encourage customers to reduce their energy use
 8 and support the adoption of energy efficiency.
 9 But not only energy efficiency.
 10 Renewables, solar, net energy metering, distributed
 11 energy resources, mechanisms that help customers
 12 manage and reduce their usage. This is all also
 13 supported through the implementation of the BSA.
 14 Indeed Atrium, the commission's
 15 independent auditor of the BSA mechanism, found that
 16 the structure of the BSA is well designed to meet the
 17 goals of supporting energy efficiency.
 18 A second reason to keep it, the BSA
 19 continues to provide important bill protections for
 20 customers normalizing the impact of extreme weather on
 21 customer bills and ensuring that any utility over
 22 recoveries are returned to customers.

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1 Another reason is that the DC
 2 Commission has acknowledged the benefits of the BSA to
 3 the financial health of the utility.
 4 Now, there's a strong reason to
 5 continue the BSA in the context of an MYP, the
 6 assumption being that the argument is that the company
 7 can forecast energy reductions into their sales
 8 forecast, and therefore the BSA is not necessary.
 9 It is still necessary for -- for a few
 10 reasons. One, the DC and Maryland Commission have
 11 approved a BSA in the context of an MYP. The Maryland
 12 Commission most recently did this in December for
 13 Baltimore Gas and Electric Company.
 14 Another reason to keep the BSA in the
 15 context of an MYP is that it protects customers
 16 against fluctuations in their bills due to increased
 17 energy usage caused by extreme cold or extreme heat.
 18 Another reason to keep it within the
 19 context of an MYP is that the company would have an
 20 incentive to only encourage reductions down to the
 21 amount in the forecast, and nothing more. So
 22 continuing the BSA removes that -- that incentive to

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1 do that.
 2 And the final reason to keep it within
 3 the context of the MYP is that the company would not
 4 be incentivized to promote new energy reducing
 5 programs if those programs are incremental to the
 6 reductions assumed in the forecast.
 7 So a few reasons. That's just a few
 8 reasons why the BSA should continue in the context of
 9 the MYP.
 10 Now, the company has proposed
 11 enhancements to the BSA mechanism, again, in the
 12 interest of continuous improvement. And this is --
 13 these enhancements were developed at -- looking at
 14 best practices in other jurisdictions and gaining
 15 feedback from stakeholders.
 16 A couple of examples. One enhancement
 17 is displaying the BSA surcharge on a separate line
 18 item on customers' bills to enhance transparency.
 19 And two, transitioning from a monthly
 20 reconciliation to an annual one to reduce rate
 21 volatility by flattening out over and over -- under --
 22 over and under recoveries between months. So the BSA

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1 should be retained.
 2 Now, I'd like to turn to discussion of
 3 the BSA deferral balance. It's justifiable to allow
 4 recovery of the deferral balance. There are two
 5 primary sources of that deferral balance.
 6 One is the FC 1150 normalization
 7 adjustment. That created a \$27,000,000 revenue under
 8 recovery resulting from a settlement in FC 1150.
 9 This under recovery did not result from
 10 a Pepco error. Rather, it was an agreement of the
 11 parties to design rates for a particular rate class,
 12 that was GTLV, based on forecast accounts that proved
 13 not to materialize.
 14 That \$27,000,000 deferral balance has
 15 declined to 3.4 million as of December, 2023. And now
 16 standing here, you know, almost through -- completely
 17 through seven months out of 2024, that balance has
 18 reduced even more.
 19 So this should not be a basis for
 20 denial. The outstanding balance is very small, and
 21 again, that was due to a settlement agreed to by
 22 Pepco, AOBAs, and OPC.

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1 There's equally no reason to disallow
 2 any part of the BSA deferral balance related to the
 3 company's billing determinants error.
 4 This was an issue in which the company
 5 inadvertently overstated its billing determinants used
 6 in its rate design for FC 1150, and that resulted in a
 7 \$15,000,000 under recovery of distribution revenue.
 8 This issue was corrected in the
 9 following rate case in FC 1156. This deferral has
 10 been reconciled through the BSA -- through the BSA
 11 mechanism.
 12 And as of the -- as of December 2023,
 13 only 1.1 million of that \$15,000,000 error remained in
 14 the deferral balance. And by now, again, sitting here
 15 in July, that amount has reduced even more.
 16 Both of those foregoing deferrals have
 17 been substantially collected, and that collection
 18 should not be disturbed, because it is a commission
 19 approved tariff. It was recovered through a
 20 commission approved tariff.
 21 And it would be contrary to precedent,
 22 as it relates to retroactive rate making to eliminate

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1 a balance that has been rightfully accrued and
 2 substantially collected.
 3 Finally, before I move away from the
 4 topic of the -- of the BSA, the company agrees with
 5 AOBA's and OPC's proposal to recover the uncollected
 6 deferral balance of the GTLV rate class outside of the
 7 BSA, specifically through a reg asset.
 8 The parties proposed this mechanism
 9 reasoning that the large part of the GTLV BSA deferral
 10 basis is related to the COVID-19 pandemic. And we are
 11 okay with recovering that through a reg asset.
 12 Now, I'd like to turn to the company's
 13 capital investments. These expenditures support a
 14 safe, reliable, and resilient distribution system, and
 15 they should be approved.
 16 They're the product of a rigorous
 17 project authorization process in which the company
 18 identifies the benefits of the project, and that
 19 process is vetted all the way through senior
 20 leadership.
 21 Now, AOBA has challenged our
 22 authorization process, arguing that budget's changed

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1 too much between the initial stage and the final
 2 project execution. But this refinement is due to the
 3 normal budgeting process.
 4 The company estimates the cost at the
 5 beginning of the project, and that cost estimate is
 6 further refined as the project proceeds. The company
 7 has articulated how this process works.
 8 So basically we developed a -- we
 9 develop a cost estimate, and then we develop a range
 10 around that cost estimate. So 50 percent above or 50
 11 percent below, that's the range of the cost estimate.
 12 And as the project proceeds through the
 13 scoping stage and engineering stage, that bandwidth
 14 is -- is tightened more. So the refinement of the --
 15 of the budget is not out of the ordinary. That's very
 16 normal.
 17 Also, in the interest of continuing
 18 improvement, the company has made enhancements to the
 19 information in its construction report to provide
 20 greater transparency into how projects are allocated
 21 between Maryland and DC.
 22 Specifically, in previous reports, we

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1 would only provide information related to DC
 2 distribution. In the enhanced version of the report,
 3 we include additional details for projects that are
 4 allocated between Maryland and DC, and if those
 5 projects are greater than 1,000,000.
 6 So we've included the -- or expanded
 7 the types of projects that are available for scrutiny
 8 by the parties in the context of the rate case. O&M.
 9 The development of our O&M costs are equally rigorous
 10 as to our capital process.
 11 The business develops the budget by
 12 looking at historic spend, regulatory requirements,
 13 operational goals, and then their -- that budget is
 14 revisited throughout the -- throughout the year. We
 15 manage our O&M costs below the rate of inflation,
 16 which demonstrates reasonableness.
 17 And finally, on the O&M topic, the
 18 shared services cost, which was a subject in -- in
 19 testimony, those are the costs that are allocated from
 20 our parent company to Pepco. They're transparent.
 21 And there's the accounting process that supports those
 22 allocations, and that's filed as part of the CAM,

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1 C-A-M.
 2 R-O-E -- an increase in the company's
 3 ROE is fully warranted. Calls from AOBA for a
 4 reduction in the ROE from its current level must be
 5 rejected, as it is unreasonable to believe that
 6 Pepco's ROE could have decreased from the level
 7 approved in FC 1156 when all other capital costs have
 8 increased significantly, and as well as an -- a rising
 9 inflationary environment.
 10 Now, my final point involves the ROR
 11 report. The OPC has argued on brief to dismiss the
 12 MYP due to the 2023 ROR report. That report, when we
 13 updated it, showed the company at a 9.155 ROE, which
 14 has been under what was approved in our last rate
 15 case. Thank you.
 16 THE CHAIRMAN: Thank you, Ms. Curry.
 17 I'll begin where you start. I want to go back to the
 18 lessons learned that you talked about a little bit
 19 from 1156.
 20 In order number 21886, commission
 21 directed Pepco to submit supplemental direct testimony
 22 addressing in qualitative and quantitative terms the

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1 benefits of, problems identified, and lessons learned
 2 from the MYP.
 3 I know you -- you cited the testimony
 4 from August 31st that witness O'Donnell provided. I
 5 fail to see in there any quantitative analysis. Is
 6 there something I'm missing?
 7 MS. CURRY: There is a specific
 8 question on the quantitative and qualitative analysis.
 9 So yes, there is.
 10 THE CHAIRMAN: Which question is that?
 11 MS. CURRY: There is a Q -- there is a
 12 Q&A on that, and if you give me a moment, I can grab
 13 it and direct your attention to it.
 14 THE CHAIRMAN: Okay. Please do.
 15 MS. CURRY: It is on page 3, Q3. And
 16 the question is "Can Pepco provide more specific
 17 qualitative and quantitative benefits of the FC 1156
 18 MYP?"
 19 THE CHAIRMAN: Yes. So I -- I see that
 20 answer there, but maybe I -- maybe I didn't ask --
 21 these are statements; right? And I guess one of my
 22 questions is where is the data that supports that?

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1 You know, I look at the -- specifically
 2 the DRs that a AOBAs asked the company, you know,
 3 "Please provide work papers, data, analysis,
 4 assumptions, and studies that Pepco relies upon to
 5 quantify each of the benefits achieved by the modified
 6 MYP."
 7 And Pepco says, "Well, there are no
 8 such work papers." They -- no work papers, no data,
 9 no analysis, assumptions. And so it's -- it's hard
 10 for me, when I'm looking at when benefits, without
 11 some actual numbers -- you know, there -- there's
 12 assertions, but where is the data to support that?
 13 MS. CURRY: You know, as it mentioned
 14 in our DR we do not have that data, but what we do
 15 have is discussing how the -- how the company's MYP
 16 meets the commission's policy goals.
 17 And that's what we have in our lessons
 18 learned testimony. And that's what we presented as
 19 the support for -- for the -- the qualitative and --
 20 and quantitative data. So just to give a -- a few
 21 examples of that is that we do have increased levels
 22 of transparency as a result of our case.

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1 We've provided the rate predictability
 2 that was anticipated in the commission's orders. We
 3 do -- we reduced the frequency of litigation as a
 4 result of the MYP by not having to come back every
 5 three years.
 6 And as we mentioned in our testimony,
 7 we were able to redeploy those resources to developing
 8 our climate solutions plan or CSP. So those are the
 9 benefits that we've identified looking at the
 10 commission's orders and how we've complied with that
 11 order.
 12 But to answer your question, as the
 13 data request states, we do not have that supporting
 14 work papers and data.
 15 THE CHAIRMAN: Has there been an
 16 analysis of cost with respect to litigation of a
 17 multiyear rate? Because I believe the last one was,
 18 what, 18 months? This one is going on about 16, 17
 19 months. Compared to the litigation that's -- that --
 20 that -- a traditional rate case -- the cost of a
 21 traditional rate case.
 22 MS. CURRY: If you're referring to a

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1 cost -- so, like, for employees and -- and those type
 2 of companies' costs, no, there has not.
 3 But, you know, as the example that I
 4 gave mentioned, you know, if we're not coming in every
 5 three years, then we are not using those resources
 6 every year towards a historic test year, and we're
 7 able to, you know, use employees to do other things.
 8 So that's where the benefit is, is
 9 being able to redeploy those employees' time and
 10 resources. But to your question, we do not have an
 11 analysis of the cost side by side for doing a historic
 12 test year and an MYP.
 13 THE CHAIRMAN: I'll turn to my fellow
 14 commissioners for more questions.
 15 COMMISSIONER BEVERLY: My question is
 16 more basic. Why did Pepco file an MRP -- I call them
 17 MRP, MYP. Why did Pepco file an m RP without waiting
 18 for the commission to evaluate the pilot?
 19 MS. CURRY: Well, the -- in the
 20 commission's order -- I believe it was 21886 -- the
 21 commission asked for testimony, and they specifically
 22 referred to it as lessons learned testimony.

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1 So the way to view that order is that
 2 the commission's intent was to consider lessons
 3 learned in the context of this case. The commission
 4 developed the procedural schedule to consider the MYP
 5 alongside the lessons learned testimony that the
 6 commission asked us to provide.
 7 And as I mentioned earlier, this is a
 8 process that was done in Maryland where an MYP was
 9 approved, but at the same time, the commission
 10 convened a lessons learned -- statewide -- statewide
 11 lessons learned analysis.
 12 So the two can coexist, and we believe
 13 it can coexist. And we also believe that's consistent
 14 with the commission's orders.
 15 COMMISSIONER BEVERLY: If I think that
 16 the pilot should have had other -- other elements in
 17 it that the MYP lacks, what should I do with the MYP
 18 rejected?
 19 You say they can be done in parallel.
 20 I'm not understanding how that happens, but if I think
 21 that your application should have something that it
 22 lacks because we didn't -- you did a self-evaluation,

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1 that's -- that's fine, but that's not a commission
 2 evaluation.
 3 So if the commission evaluates it and
 4 it thinks there's something that these programs should
 5 have that yours doesn't, then you think the MYP should
 6 be rejected, or with your parallel view of analysis,
 7 what should I do with it?
 8 MS. CURRY: What you could do is put it
 9 in your order. So in your order approving the MYP, if
 10 you approve the MYP, if there's certain changes you'd
 11 like to see, put that in the order.
 12 You can say, "Here's an element that we
 13 would like you to add to the MYP." So I don't think
 14 you are foreclosed from making those suggestions.
 15 COMMISSIONER BEVERLY: What do you mean
 16 add to it? Retroactively or going forward?
 17 MS. CURRY: It would be going forward.
 18 It would be incorporated in the MYP. So in the order,
 19 looking three years --
 20 COMMISSIONER BEVERLY: You've already
 21 filed it, so what would I -- I'm just trying to
 22 understand. You've already filed it. So what would I

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1 do with it now? I would tell you to add it to it now.
 2 And does that restart the process?
 3 MS. CURRY: Not to restart the process.
 4 If there's something, depending on what it is that you
 5 would want to add, the order is forward looking. So
 6 if there's something --
 7 COMMISSIONER BEVERLY: I'll give an
 8 example. So suppose I say that I think an MYP should
 9 have PIMs [ph] in it and yours doesn't.
 10 MS. CURRY: Well, for that specific
 11 example I would say PIMs [ph] is -- as we mentioned in
 12 our testimony, that that is under consideration by the
 13 working group, and that process hasn't completed yet.
 14 So after that process completes, then
 15 we would have to figure out a way to move those in
 16 to -- if you wanted see it in this rate case, maybe
 17 it's something that gets postponed to the next MYP.
 18 But using PIMs as an example, that's a
 19 process that's actively being considered by the
 20 commission, and we could not have included it. But if
 21 that does appear or that gets resolved --
 22 COMMISSIONER BEVERLY: -- you could've

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1 waited; right?
 2 MS. CURRY: I'm sorry?
 3 COMMISSIONER BEVERLY: You said the
 4 process hasn't concluded on the PIMs [ph], but you
 5 didn't wait for it to conclude.
 6 MS. CURRY: I'm sorry?
 7 COMMISSIONER BEVERLY: You didn't wait
 8 for the PIMs [ph] process to conclude; right?
 9 MS. CURRY: We did not wait for the
 10 PIMs [ph] process to include -- to conclude before
 11 issuing the MYP, but that was not an improper action
 12 from the company.
 13 COMMISSIONER BEVERLY: That still goes
 14 back to my question.
 15 MS. CURRY: The commission in its
 16 order, said that we can file an MYP prior to
 17 January -- I'm sorry -- the commission -- the company
 18 is not able to file an MYP prior to January 1, 2023.
 19 So we did have the ability to file an
 20 MYP after January 1, 2023, per the commission's order.
 21 So it wasn't an improper action for us to file our
 22 MYP.

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1 COMMISSIONER BEVERLY: Right. So in
 2 answer to my question with regard to PIMs [ph], I
 3 should wait until the working group concludes on that.
 4 So while I'm waiting for the working group to
 5 conclude, should your application be held in the
 6 advance?
 7 MS. CURRY: I do not think it has to
 8 be.
 9 COMMISSIONER BEVERLY: How would it
 10 include it if it's -- I -- I don't understand how your
 11 application, if I thought it should include PIMs [ph],
 12 would ever include PIMs [ph], other than in some
 13 future application. But what do I do with the current
 14 one?
 15 MS. CURRY: If it cannot be included in
 16 the existing MYP, then it's something that can be
 17 added to the next MYP.
 18 COMMISSIONER BEVERLY: All right. Let
 19 me ask you now. I'm not going to keep going along
 20 that line. I understand your answer.
 21 With regard to your investments, it
 22 seems like Pepco has large investments with little

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1 expectation of customer growth and kilowatt growth to
 2 match it. So can you explain that a little bit more
 3 for me?
 4 MS. CURRY: Low expectation or --
 5 COMMISSIONER BEVERLY: Well, low
 6 expectation -- I guess what I'm trying to say here is
 7 that your investments in the system appear to be
 8 larger than your expectations of customer growth. Do
 9 you agree with that or you think it matches?
 10 MS. CURRY: I -- I wouldn't necessarily
 11 agree with that for this reason. The -- the MYP is
 12 also intended to accomplish or meet District climate
 13 goals.
 14 That means looking at reliability.
 15 That means preparing our system for increased
 16 electrification. That might not always be necessarily
 17 tied to a particular customer or -- but it's more
 18 trying to meet larger District goals.
 19 COMMISSIONER BEVERLY: Do you have a
 20 plan of some sort that shows? 'Cause I'm not -- maybe
 21 you do. I'm just not seeing it.
 22 But do you have some kind of a plan of

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1 how whatever it is you're talking about doing with
 2 regard to the investments in your system match what
 3 the District is trying to reach climate wise?
 4 So for me, I would need an integrated
 5 resource plan to sort of understand how this all fits
 6 together. This appears to be operating without any
 7 sort of a plan that I can discern that shows how
 8 anything matches any particular goal.
 9 So as the chairman pointed out, there
 10 aren't -- there's not data to quantify what Pepco is
 11 talking about in terms of benefits to rate payers.
 12 I don't see how it's hinged into any
 13 kind of a plan that shows long range what you're
 14 trying to do, so I can measure the -- measure ability
 15 to achieve what you think you're trying to accomplish.
 16 MS. CURRY: Where I would say that plan
 17 resides is in our annual consolidated report or ACR.
 18 That does contain some level of strategy for future
 19 and planned investments.
 20 So that's one place that one could look
 21 if -- to see kind of that, you know, projection of
 22 what we intend to do. For specific District goals,

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1 attachment 4 to the Kantler [ph] rebuttal testimony
 2 does list the number of items within our MYP that are
 3 intended to meet the commission goals.
 4 And that includes fleet
 5 electrification, reduction in sulfur hexafluoride
 6 emissions from company equipment, building usage
 7 programs to reduce our GHG emissions. Those are just
 8 a few examples of, you know, very specific projects
 9 tied to a -- a climate goal.
 10 COMMISSIONER BEVERLY: I'm not going to
 11 ask any more questions. Thank you.
 12 COMMISSIONER TRABUE: Thank you,
 13 Mr. Chairman.
 14 Thank you, Commissioner Beverly.
 15 Ms. Curry, it's a pleasure to see you
 16 this morning.
 17 And -- and for those of you in the
 18 audience, thank you for participating in this
 19 important hearing.
 20 Let me maybe follow up where my
 21 colleague left off in talking about your planning for
 22 future and -- and planned investments.

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1 You stated a few minutes ago in
 2 response to Commissioner Beverly's question that these
 3 investments were to enhance reliability and to help
 4 the District meet its climate goals.
 5 Would you agree that the company is
 6 already in the top percentile of companies that are
 7 evaluated nationally in terms of reliability?
 8 MS. CURRY: We do have good
 9 reliability, yes.
 10 COMMISSIONER TRABUE: Would you also
 11 agree that NFC 1167, it's the company's position that
 12 the grid as it currently stands can support the
 13 increased load that might potentially result from
 14 electrification?
 15 MS. CURRY: I'm sorry. Commissioner
 16 Trabue, could you repeat that?
 17 COMMISSIONER TRABUE: Sure. Would you
 18 agree that in FC 1167, it was the company's position
 19 that the grid as it currently stands can support
 20 increased load from electrification?
 21 MS. CURRY: I would have to review FC
 22 1167, but assuming that is -- is true -- let's --

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1 let's assume it's true for the -- for the purpose of
 2 the question.
 3 COMMISSIONER TRABUE: Right. So -- so
 4 let me understand further than or better why you need
 5 these -- these funds that are being requested for
 6 these -- these investments for additional reliability
 7 and -- and for -- to help the District meet its
 8 climate goals when it seems like the distribution
 9 grade currently is in very good shape.
 10 MS. CURRY: Currently, but one part of
 11 the MYP is looking forward. It's looking at what's
 12 going to be required for the increased electrification
 13 demands that are going to be put on our system as a
 14 result of climate initiatives for the District.
 15 So one can't just look backwards at our
 16 historical reliability. We want to maintain that
 17 reliability, you know, as we are - as more is expected
 18 out of our system.
 19 So I would say that looking backwards
 20 to the historic reliability is -- is not the best
 21 measure. It's what can the system sustain going
 22 forward?

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1 COMMISSIONER TRABUE: Can you comment
 2 on the load growth in the city over the last three
 3 years? Seeing an upper trend, downward trend, flat?
 4 MS. CURRY: I cannot, standing before
 5 you today, comment on that, if it's going upwards or
 6 downwards. Perhaps if you can cite something for me,
 7 that would be helpful.
 8 COMMISSIONER TRABUE: All right.
 9 Let -- let me switch topics for a minute. Let's go
 10 back to the BSA. You spent a -- a good bit of time in
 11 your opening testimony discussing this matter.
 12 In your testimony, you said that the
 13 BSA was initially created probably, what, around 2009
 14 or so, to help incentivize the company to support some
 15 of the initiatives that the city was launching in
 16 terms of energy efficiency programs.
 17 MS. CURRY: That's correct.
 18 COMMISSIONER TRABUE: So that -- okay.
 19 I think you further said that the BSA was enhanced to
 20 help the company make sure that -- that it -- it was
 21 not harmed by -- how did you put it?
 22 The -- there -- there are -- I -- I

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1 don't want to say the economic -- weather -- weather.
 2 You know, weather -- the weather normalization piece.
 3 And then the third piece it seems that
 4 I -- I'm -- I'm wondering about is the economic
 5 downturn that has clearly impacted not only the city,
 6 but nationally.
 7 There are fewer people coming into
 8 work. Some buildings now completely vacant. Clearly
 9 that's had an impact on -- on revenues to the company.
 10 Is -- is the BSA designed to also help the company
 11 offset some of those losses?
 12 MS. CURRY: The BSA -- and I'm going to
 13 say this from a -- a lawyer standpoint. The billing
 14 determinants we developed by projecting sales
 15 forecasts, and to the extent we update our billing
 16 determinants, we would, you know, update our sales
 17 forecasts.
 18 So it would be captured in there. And
 19 if I'm wrong, I'll come back and -- and -- on my
 20 rebuttal time and let you know. So I -- I believe it
 21 would be captured through that process of the update
 22 of the billing determinants.

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1 COMMISSIONER TRABUE: Okay. All right.
 2 What metrics does the company examine to determine
 3 what sort of impact the city's energy efficiency
 4 programs have had on -- on your revenues?
 5 MS. CURRY: I am not aware of any
 6 specific metrics, but that does not mean they do not
 7 exist. I can say that I'm not aware of any particular
 8 metrics.
 9 COMMISSIONER TRABUE: Would -- would it
 10 be possible at some point later on to -- obviously
 11 that's one of the key factors in -- in the -- the BSA.
 12 You have to be looking at something to say that these
 13 are the impacts of -- of the city's energy efficiency
 14 programs.
 15 MS. CURRY: And -- and specifically
 16 you're looking for capturing load reductions, energy
 17 reductions.
 18 COMMISSIONER TRABUE: Yeah. Right.
 19 MS. CURRY: Yes. I can -- I can find
 20 that out if -- if we do do something like that. But
 21 the issue is we do not have our own energy efficiency
 22 programs.

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1 Those are where you would kind of do a
 2 lot of the metrics. And -- and, you know, looking
 3 into load reductions when you kind of own and operate
 4 and implement the program, here we would have to be
 5 capturing it from another entity, the DCSEU.
 6 So that's my only hesitation in saying
 7 whether or not we have metrics to measure that.
 8 COMMISSIONER TRABUE: Okay. All right.
 9 Mr. Chairman, those conclude my
 10 questions. Thank you.
 11 THE CHAIRMAN: Thank you.
 12 I do have a few brief, brief questions
 13 for you, because you brought them up, and I want to
 14 make sure I hit on them.
 15 You talked about some of the -- how
 16 this climate ready pathway plan supports the
 17 District's climate goals. As you're aware, in 1169,
 18 the Washington Gas -- most recent Washington Gas rate
 19 case, Washington Gas proposed a number of climate
 20 programs to support the District's climate goals.
 21 In that case, we rejected those and
 22 said that the proper place for those programs to be

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1 approved were in formal case 1167. Do you feel that
 2 we should treat you guys differently?
 3 MS. CURRY: So we do have pending
 4 programs in 1167, and so we are awaiting a decision
 5 on -- on that. So we do have programs already in that
 6 docket.
 7 THE CHAIRMAN: Right.
 8 MS. CURRY: Is your question to move
 9 these District goals to that docket --
 10 THE CHAIRMAN: Right.
 11 MS. CURRY: -- or it should be
 12 considered there? I would say no. If you're looking
 13 at the AFOR order, I believe one of the goals is to
 14 look at or incorporate commission goal -- I'm sorry --
 15 District goals into the MYP process.
 16 So I would say there is room to address
 17 those reduced electrification goals in this MYP.
 18 The second thing I would say is a lot
 19 of what needs to be done to support District goals is
 20 transportation electrification. That involves
 21 upgrades and investments in our distribution system.
 22 And that to me is rightfully a distribution cost, and

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1 should remain in the MYP.
 2 THE CHAIRMAN: My -- my second question
 3 is, we talked today about the BSA, and I -- I hadn't
 4 really been prepared to go there, but since you spoke
 5 so extensively about it, the BSA -- you gave three
 6 reasons why.
 7 You talked about EE [ph], normalizing
 8 extreme weather events, and of course financial health
 9 of the company. You also talked about the MYP, which
 10 part of the benefits to that is financial health of
 11 the company.
 12 And then part of the reason why there
 13 was a needed for an increased ROE is the financial
 14 health of the company. Where does the customer fit in
 15 with all of this?
 16 Everything seems to be the financial
 17 health of the company. Where -- where does the
 18 customer see some -- some reductions?
 19 I would note -- I think Commissioner
 20 Trabue was touching on this -- the residential
 21 customer, their usage has declined by about 20 percent
 22 over the last 10 years, but yet the bill keeps going

Page 50	<p>1 higher.</p> <p>2 How -- how are they incentivized to use</p> <p>3 less energy when their bill continues to go up?</p> <p>4 MS. CURRY: I'll -- I'll answer that</p> <p>5 in -- in a couple of ways. First, I will say that the</p> <p>6 commission and the AFOR order did indicate that the</p> <p>7 financial health of the utility is one of the things</p> <p>8 to consider. So there should be no shame in</p> <p>9 considering that as a component of our MYP.</p> <p>10 Secondly, customers benefit from a</p> <p>11 financial health of the utility. Why? Because we can</p> <p>12 borrow at more favorable rates and pass those -- pass</p> <p>13 those savings onto customers. So it's important to</p> <p>14 have a financially healthy utility.</p> <p>15 Third thing I would say is we have, as</p> <p>16 I mentioned, expanded plans for our RAD program,</p> <p>17 Residential Aid Discount, AMP, Arrearage Management</p> <p>18 Program, to help bring more limited income customers</p> <p>19 under the umbrella of RAD.</p> <p>20 And that could help them completely</p> <p>21 avoid the rate increase, because they're going to</p> <p>22 receive a credit on their distribution portion of the</p>	Page 52	<p>1 THE CHAIRMAN: No further questions, at</p> <p>2 least for me. I'm sorry.</p> <p>3 COMMISSIONER BEVERLY: I'm fine,</p> <p>4 Mr. Chairman. Thank you.</p> <p>5 THE CHAIRMAN: Thank you first.</p> <p>6 COMMISSIONER TRABUE: Maybe one last</p> <p>7 question. I'm sorry, Ms. Curry. Did I hear you state</p> <p>8 that some of the -- the balance that's in the -- the</p> <p>9 BSA deferral balance, you would -- you would be okay</p> <p>10 with that being put into a regulatory asset?</p> <p>11 MS. CURRY: That is correct, but that</p> <p>12 is a very specific part of it. It has to do with the</p> <p>13 GTLV rate class. That portion could go into a reg</p> <p>14 asset, and that was something that we agreed with. I</p> <p>15 believe it was both OPC --</p> <p>16 COMMISSIONER TRABUE: Yeah. I think it</p> <p>17 was AOBA's position that that should happen. Okay.</p> <p>18 Yeah. Okay. But -- and -- and you -- you did -- I</p> <p>19 just want to make sure I heard you.</p> <p>20 MS. CURRY: That's correct. The GTLV</p> <p>21 portion, though.</p> <p>22 COMMISSIONER TRABUE: Okay. Thank you.</p>
Page 51	<p>1 bill.</p> <p>2 THE CHAIRMAN: Seriously, last question</p> <p>3 now. Hypothetically -- and I know I'm putting you on</p> <p>4 the spot -- out of those three things that make the</p> <p>5 company financially healthy, which one is least</p> <p>6 important?</p> <p>7 MS. CURRY: They're -- they're equally</p> <p>8 important.</p> <p>9 THE CHAIRMAN: If you had to pick one.</p> <p>10 MS. CURRY: I don't think we have to --</p> <p>11 I -- well, I do not think we have to choose. I really</p> <p>12 do not think we have to choose, nor do I think the</p> <p>13 AFOR order required that we choose between that.</p> <p>14 There is a balancing impact; right?</p> <p>15 There is not -- it's not good for customers if your</p> <p>16 utility goes bankrupt. It is not good for customers</p> <p>17 if you do not have a financially healthy utility.</p> <p>18 So I don't think we should be put in</p> <p>19 the position of having to choose that, nor have I seen</p> <p>20 that in any of the commission's orders. I've always</p> <p>21 understood it as a balancing of those interests,</p> <p>22 customers, utilities, stakeholders.</p>	Page 53	<p>1 MR. NAYAR: I just had one question</p> <p>2 before I start. Is it my understanding that you'll</p> <p>3 wait till questions --</p> <p>4 THE CHAIRMAN: Sorry. Can you please</p> <p>5 identify yourself for the record?</p> <p>6 MR. NAYAR: Sure. Sure. Ankush Nayar,</p> <p>7 assistant people's counsel for the Office of People's</p> <p>8 Counsel.</p> <p>9 THE CHAIRMAN: And your last name just</p> <p>10 one more time. I couldn't hear you.</p> <p>11 MR. NAYAR: Nayar, N-A-Y-A-R. And I</p> <p>12 just had a question about the format. You may have</p> <p>13 mentioned it at the beginning, but will I be afforded</p> <p>14 30 minutes, and then there will be questions at the</p> <p>15 end?</p> <p>16 THE CHAIRMAN: Correct.</p> <p>17 MR. NAYAR: Okay. May it please the</p> <p>18 commission?</p> <p>19 COMMISSIONER TRABUE: Mr. Chairman, he</p> <p>20 might want to reserve some of that 30 minutes for</p> <p>21 rebuttal. Oh, he does? Okay. See, I'm new to this.</p> <p>22 Sorry.</p>

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1 MR. NAYAR: Good morning, Chairman
 2 Thompson, Commissioners. I already introduced myself,
 3 but I'll do it once more.
 4 Ankush Nayar, assistant people's
 5 counsel. And I got -- I have to be honest, preparing
 6 for today has been a bit of a challenge. I'm not
 7 really sure what the weight of this legislative style
 8 hearing really is.
 9 I'm not sure it's been used -- has been
 10 coined a legislative style hearing. It's been coined
 11 an oral argument.
 12 I'm not 100 percent sure whether OPC
 13 will have an opportunity to litigate this case, or
 14 appear before you at a later juncture, or whether the
 15 commission will decide this case positively, or
 16 proceed to rule on the merits of the case.
 17 So there's a -- a little bit of, you
 18 know, question mark surrounding why we're here. But
 19 what's clear is that this case concerns a petition by
 20 Pepco for a rate increase.
 21 And equally, if not more importantly,
 22 it involves fundamental questions regarding the

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1 integrity of the process by which rate increases may
 2 be granted and how paradigm shifts in rate making are
 3 considered.
 4 And yet, when approaching these
 5 decisions, the central issue remains the same, whether
 6 Pepco has met its burden of proof and whether there's
 7 a reliable record to support the rate request that the
 8 company has asked for, and whether the commission
 9 should grant it through an alternative form of
 10 ratemaking.
 11 The simple answer to whether the
 12 company has met its burden is no. And due to the lack
 13 of a reliable record in this case, there remain a
 14 number of unanswered questions surrounding the MRP
 15 pilot, the MYP, the traditional test year filing, and
 16 the implementation of any multiyear rate plan, as well
 17 as other considerations involving structure and the
 18 comparisons between the different applications.
 19 Therefore, the appropriate course of
 20 action in this proceeding is to dismiss the case or
 21 alternatively award summary judgment in favor of the
 22 joint movements.

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1 Now, OPC is not opposed to alternative
 2 forms of regulation per se, but for that form of
 3 regulation to work, the process has to be clear. In
 4 fact, the commission's own words have been that the
 5 process needs to be deliberative.
 6 And that is not the case here. A
 7 denial does not mean no forever. It just means that
 8 this particular application doesn't meet muster.
 9 And I would argue that the worst thing
 10 that could happen if you are a fan or interested in
 11 alternative forms of rate regulation is to champion
 12 something before it's been thoroughly vetted and
 13 before the implementation of that plan is clear,
 14 because that's only going to create more confusion,
 15 and that'll lead to bad results, which will more than
 16 anything else have a chilling effect on future
 17 approaches to the alternative forms of rate making.
 18 And confusion has been a part of this
 19 process right from the beginning. And I want to take
 20 a moment to look back last year at order 21886.
 21 And I have a lot of thoughts, but I
 22 think the individual that perhaps summed up how I

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1 felt, how OPC felt, and really summed up the issues in
 2 a very powerful way was none other than -- none other
 3 than Commissioner Beverly.
 4 And he noted that at the very
 5 beginning, that Pepco's multiyear rate petition
 6 presented too -- and I use the quotes -- too jumbled a
 7 process with too little time for meaningful review
 8 while acknowledging multiple concerns that were raised
 9 by intervening parties.
 10 And Commissioner Beverly further opined
 11 that the party responsible for what would amount to a
 12 "waste of resources" was Pepco for electing to file a
 13 multiyear rate plan prematurely prior to an evaluation
 14 of whether the proceeding multiyear rate plan pilot
 15 was even beneficial.
 16 And Commissioner Beverly stated then
 17 that the commission should act on its own to dismiss
 18 the MYP proposal, even though no party had filed a
 19 motion to dismiss the matter at that time.
 20 OPC and other parties shared
 21 Commissioner Beverly's concern and have subsequently
 22 filed two motions to do just that. And 16 months

<p style="text-align: right;">Page 58</p> <p>1 later, the assessments, as well as the concerns shared 2 by OPC and other parties have held true, if anything, 3 the jumbled process is only more muddled. 4 Added to the mix now is the question of 5 whether rate payers are entitled to a refund based on 6 the company's 2023 financial returns, which remain 7 subject to evaluation and have to be reconciled with 8 an amended filing or errata that Pepco filed only a 9 few weeks ago. 10 There were also supplemental filings 11 that were subsequently filed, and we're still 12 evaluating those filings. In fact, discovery 13 responses were coming in this very morning. 14 So OPC has made its position clear, 15 and -- and if this case is not determined by the two 16 dispositive motions, that further proceedings must 17 take place, specifically evidentiary hearings. 18 We also highlighted that there's a lack 19 of a real evidentiary record in this proceeding, and 20 certainly there would need to be additional 21 proceedings of some kind, even if there were not 22 evidentiary proceedings.</p>	<p style="text-align: right;">Page 60</p> <p>1 witnesses have not had an opportunity to testify to 2 those matters. 3 Third, we have had an ineffective and 4 unclear reconciliation process, which has carried over 5 from formal case 1156. There has been no formal 6 finding as to the prudence of those investments in the 7 pilot and whether the investments were used and 8 useful. 9 And there are significant deviations 10 from what was promised and approved in the MRP pilot 11 versus what the company actually proceeded to invest 12 in. 13 As our second dispositive motion points 14 out, the company neglected to spend close to 15 \$97,000,000 on investments that were part of its 16 multiyear rate plan. 17 Moreover, Pepco also incurred 18 \$155,000,000 of capital costs for projects for which 19 it had only budgeted \$52.8 million dollars. Now, the 20 company has stated that no party requested a hearing 21 following the submission of the final reconciliation 22 in 1156.</p>
<p style="text-align: right;">Page 59</p> <p>1 One thing I would say is that -- and it 2 was highlighted earlier today -- that I think 3 intervening parties should have an opportunity to 4 submit additional testimony if we're going to continue 5 to proceed forward with this case and decide it on 6 the -- on its merits. 7 But I want to really focus on the 8 record and what a problem this would be for any 9 commission or agency to base a decision off of. 10 For starters, the projections in this 11 case are inaccurate, and new evidence indicates that 12 the old projections in both applications inflated the 13 rate base and any revenue deficiency for calendar year 14 2023. 15 Secondly, there's been no formal 16 finding by the commission regarding the prudence of 17 investments made in calendar year 2023, in the actuals 18 themselves, suggesting that even the more conservative 19 numbers in the actuals themselves may actually be 20 inflated. 21 And, like I mentioned earlier, we're 22 still assessing the supplemental filings, and our</p>	<p style="text-align: right;">Page 61</p> <p>1 But only with additional time have the 2 parties become aware of the level of deviation in 3 spending between what was promised versus and what 4 was -- versus what was planned versus what actually 5 occurred. 6 And for the record, OPC did submit 7 comments expressing concerns during the reconciliation 8 process, as it was permitted to do so under orders 9 20755 and 21042. Yet we received no response at that 10 time from the commission, and we even got pushback 11 from the company. 12 So the company likes to emphasize that 13 there's a lot of transparency, and that looks good on 14 paper, but when it comes to actual application, the 15 process has not been transparent, and there continues 16 to be problems that remain unresolved with the 17 reconciliation filings. 18 But the result, I think, perhaps has 19 come to really, I think, effect and hurt Pepco, 20 because the MYP contains projections that were based 21 on investments that were made during the MRP pilot 22 that deviated from what was planned, and for which</p>

<p style="text-align: right;">Page 62</p> <p>1 there's been no real examination as to the prudence of 2 those investments. 3 And even if we just look at the numbers 4 at face value -- and we stated this earlier, but the 5 rate base was inflated in the MYP by a \$100,000,000, 6 and the rate base was -- was inflated in the 7 traditional test year by over \$300,000,000 when you 8 look at the actuals. 9 In the MYP also, there was a revenue 10 deficiency that was inaccurate of \$29,000,000. And 11 the actuals suggest that at best there's a 2.2 million 12 dollar deficiency. 13 And for the MYP, that's particularly 14 problematic, because as you know, everything compounds 15 off of that first year. So we're already starting 16 with something that's incorrect, inaccurate, and then 17 it builds from there every successive year. 18 Now, this leads to a fourth issue. 19 There will be no -- at least on OPC's part -- 20 admission to stipulate a testimony in this case. I 21 know there's a deadline of August 21st. 22 But we cannot stipulate to the exhibits</p>	<p style="text-align: right;">Page 64</p> <p>1 Economics provided a -- a study and -- and they 2 thought it would be a good idea for our credit 3 rating." 4 But that's not the basis -- or at least 5 certainly not the sole basis as to why something 6 should go into rate base. 7 And it has nothing to do between the 8 two distinguishing features of an MYP or a traditional 9 test year. So again, you're starting off with 10 something where there's inflated costs or an inflated 11 rate base with additional expenditures in one and not 12 in the other for that beginning year. 13 Also, if you look at 2023 in -- in both 14 applications, there are -- the rate base is higher, 15 \$200,000,000 more in one. 16 And there's also adjustments, for 17 example, in electric plant and service, that are much 18 higher in the traditional test year filing than in the 19 bridge year for the 2023 year in the multiyear rate 20 plan. 21 So I think that also has really 22 affected how we can examine these -- these two</p>
<p style="text-align: right;">Page 63</p> <p>1 and to the testimony that Pepco's experts have 2 testified to, because we feel that it's based on data 3 that is erroneous. 4 And so that creates a lot of 5 challenges, and that's one reason why we would feel 6 that were you to proceed forward with this case, not 7 dismiss it, not award summary judgment, you would have 8 a very difficult time establishing a record from which 9 you could base a decision without an evidentiary 10 hearing, as was the case in -- in 1169. 11 I also want to take a moment to also 12 look at some of the problems between the applications 13 themselves. And you heard Pepco talk extensively 14 about the BSA. 15 I'm not going to get too into the weeds 16 with the BSA, but what I can tell you is that for 17 whatever reason, they decided that for their 18 traditional test year, they want to put deferrals of 19 the BSA into the rate base and earn a rate of return. 20 And they didn't do that in the 21 multiyear rate plan. There's no explanation for this. 22 The only explanation they gave was, "Well, Atrium</p>	<p style="text-align: right;">Page 65</p> <p>1 applications. But OPC understands that really the -- 2 the heart of what Pepco is trying to achieve is trying 3 to get a MYP approved. 4 And I want to focus on that application 5 briefly. The company has certainly not met its burden 6 with respect to the MYP, and the application remains 7 deficient. 8 For starters, there are no performance 9 incentive mechanisms that are in place in this 10 multiyear rate plan proposal. And there is numerous 11 orders, order 20273, 18846, and order -- and order 12 20755 that discuss how critical performance incentive 13 mechanisms are to any multiyear rate plan. 14 And the company has had months to come 15 up with a proposal or offer something, and it has not. 16 And it knew very well that there was a separate 17 working group and that working group was working on 18 developing some PIMs [ph]. 19 That working group is -- seems to be at 20 a standstill, and yet it proceeded to file an 21 application knowing that this central component is not 22 there.</p>

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<p>1 So I just don't know materially how you</p> <p>2 can approve an MYP without any kind of performance</p> <p>3 incentive mechanisms that would help control and reign</p> <p>4 in this particular plan.</p> <p>5 Additionally, while Pepco claims that</p> <p>6 this MYP would help the District achieve its climate</p> <p>7 goals, OPC has found that most of the investments,</p> <p>8 about 90 percent, are just business as usual. They're</p> <p>9 replacing like for like. They're not modernizing the</p> <p>10 grid.</p> <p>11 And when asked about whether any of</p> <p>12 these programs can be tied to specific District goals,</p> <p>13 in our discovery responses, the company said it could</p> <p>14 not correlate any of its investments to specific DC</p> <p>15 climate related goals. That analysis had not been</p> <p>16 performed.</p> <p>17 And additionally, there remain a number</p> <p>18 of programs that are still under review in 1167. So</p> <p>19 for those reasons, the MYP and approving such a plan</p> <p>20 faces a lot of challenges.</p> <p>21 I also want to talk briefly about</p> <p>22 the -- the simultaneous review. OPC has always</p>	<p>1 economic challenges and changing conditions, as well.</p> <p>2 I believe Chairman Thompson pointed to</p> <p>3 the fact that we see a lot of information and a lot of</p> <p>4 talk about the company, the company, and what's good</p> <p>5 for the company, but what's good for the consumer?</p> <p>6 What's good for the rate payer?</p> <p>7 I want to share just a -- a general --</p> <p>8 a couple of general thoughts about that. From 2000</p> <p>9 until 2019, there's been a 78 percent increase in the</p> <p>10 bill for a resident. Over the last 20 years, food and</p> <p>11 housing has increased by 59 and 70 percent</p> <p>12 respectively.</p> <p>13 The District of Columbia has a -- a</p> <p>14 great degree of income inequality, among the highest</p> <p>15 in the nation. And what's worse is that in addition</p> <p>16 to trying to increase capital expenditures, the</p> <p>17 company seeks to put an additional burden on</p> <p>18 residential rate payers to shoulder those costs.</p> <p>19 Denying this rate petition acknowledges</p> <p>20 that there are legal standards, however that must be</p> <p>21 met before this happens. And it does not mean that</p> <p>22 Pepco cannot obtain a rate increase at some point.</p>
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<p>1 objected to the simultaneous review of the MRP pilot</p> <p>2 with the MYP, but from what little ability we did have</p> <p>3 to perform a review, we found that the MRP pilot did</p> <p>4 not lead to any specific benefits that -- and</p> <p>5 certainly not any benefits that would have -- not</p> <p>6 arisen had a traditional test year plan been in place.</p> <p>7 In fact, our witness, David Dismukes,</p> <p>8 explains that during the MRP pilot, there's evidence</p> <p>9 that affordability did not improve, that greenhouse</p> <p>10 gas emissions did not improve -- improve, and that</p> <p>11 there was a lack of efficiencies in operating in</p> <p>12 capital costs.</p> <p>13 The MYP proposes an unprecedented 186</p> <p>14 1/2 million dollar rate increase over three years, and</p> <p>15 the traditional test year case asks for 108.1 million</p> <p>16 dollars.</p> <p>17 If the MYP is approved, it would mean</p> <p>18 rate payers would pay an additional \$452,000,000 over</p> <p>19 the next three years over and above what they're</p> <p>20 paying right now.</p> <p>21 And residential rate payers and the</p> <p>22 residents in this District have to deal with real</p>	<p>1 It simply acknowledges the obvious,</p> <p>2 that there's insufficient and unreliable evidence</p> <p>3 supporting their application right now. Accordingly,</p> <p>4 this case should be dismissed or denied dispositively.</p> <p>5 Thank you.</p> <p>6 THE CHAIRMAN: Thank you, Mr. Nayar.</p> <p>7 Did I say it right?</p> <p>8 MR. NAYAR: Yup. You said it</p> <p>9 correctly.</p> <p>10 THE CHAIRMAN: Okay. You do have more</p> <p>11 time if you want more time to speak, but you can --</p> <p>12 MR. NAYAR: No. I think brevity is the</p> <p>13 soul of wit, and so.</p> <p>14 THE CHAIRMAN: I like it. I like it.</p> <p>15 Okay. My first question is going back to a number of</p> <p>16 your -- the filings that you guys made in your motions</p> <p>17 to dismiss. Repeatedly it was stated that there were</p> <p>18 no issues of material fact.</p> <p>19 Is that OPC's position or was that --</p> <p>20 I'm trying to reconcile that with then the request for</p> <p>21 an evidentiary hearing. So there are no issues of</p> <p>22 fact or the material issues of fact -- I just --</p>

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1 MR. NAYAR: Sure. Yeah. And actually
 2 if I do have some time, I may try to address some of
 3 the points raised by Pepco, but I'm going to first try
 4 to answer these questions as best I can.
 5 So as we point out, if you -- if the
 6 commission decides or determines that these motions
 7 should be denied, there's a summary judgment motion
 8 that is -- that are a part -- that's a part of both of
 9 our dispositive motions.
 10 And so you -- by denying that, that
 11 would be the -- a sign that there are issues of
 12 material fact that are in play.
 13 It's difficult to assess -- I know
 14 there's been some disagreement over what the
 15 commission believes is -- is an issue of material fact
 16 and might be policy considerations versus what we
 17 believe.
 18 But I think from our standpoint, the
 19 threshold questions, you know, would warrant
 20 dismissing the case, because they've not met their
 21 burden. But if we were to proceed forward, there's
 22 certain issues that could be up for discussion, for

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1 example, the ROE or the rate of depreciation.
 2 THE CHAIRMAN: Okay. Thank you for
 3 that. So okay. And then with respect to the PIMs
 4 [ph], you cited that as one of the reasons as to
 5 why -- the absence of PIMs [ph] is a reason why this
 6 is materially deficient.
 7 Is -- you know, you cited relevant
 8 orders 20755, 20273. Do they require an -- an MRP to
 9 have PIMs [ph] or they -- or does it say it should
 10 have PIMs [ph]?
 11 MR. NAYAR: I think that they say -- I
 12 believe one order says, "Shall," and I think another
 13 order says, you know, "Should."
 14 I have to go back and check, but I
 15 believe that we stated in our initial motion that the
 16 language was quite strong, recommending that PIMs [ph]
 17 are -- and there's a lot of language suggesting that
 18 PIMs are an essential part of any multiyear rate plan.
 19 In fact, we would argue that without
 20 the PIMs [ph], it's not really a multiyear rate plan.
 21 It's just a multiyear rate.
 22 THE CHAIRMAN: And then you gave an

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1 interesting stat about the cost of the increase of --
 2 of consumer bills. You talked about 78 percent. I'm
 3 just curious. Is that for the distribution portion of
 4 the bill or is that the entirety of the bill?
 5 MR. NAYAR: I think that may be the
 6 entirety of the bill, but I'd have to check.
 7 THE CHAIRMAN: Okay. Those are my
 8 initial questions for now.
 9 COMMISSIONER BEVERLY: With regard to a
 10 multiyear plan, what elements do you think a plan
 11 should contain? So you said PIMs [ph] is -- would be
 12 one.
 13 Should it address things like hosting
 14 capacity, DER? I'm just trying to get an idea of some
 15 of the things you think a plan should contain, or do
 16 you think that before you do a plan, there should be
 17 integrated resource planning? I'm just trying to get
 18 an idea what OPC's position is in a little more
 19 detail --
 20 MR. NAYAR: Yes. I mean, there should
 21 be an integrated plan from personal experience, I
 22 think there has to be clarity as to the reconciliation

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1 about how that's going to work and some way of
 2 allowing the parties to understand that -- and this
 3 could be perhaps created through a PIM [ph], that what
 4 the company promises to spend and what's approved, the
 5 company actually spends on, and that we have an
 6 ability to actually look at that in an earnest manner.
 7 COMMISSIONER BEVERLY: Was there any
 8 attempt -- and -- and I just don't remember this off
 9 the top of my head, but was there an attempt by the
 10 parties to decide what a multiyear plan should have in
 11 it in terms of reaching a consensus?
 12 MR. NAYAR: I would -- when? In 1156?
 13 COMMISSIONER BEVERLY: At any point,
 14 was there a meeting between the parties as to what --
 15 anywhere, in this case or any other one, as to what
 16 the elements of an MYP should be?
 17 MR. NAYAR: There were prior
 18 proceedings before. I don't think there was anything
 19 in this case, other than we did ask for a sequential
 20 review at the onset of the case when we were setting
 21 the procedural schedule. But no, nothing --
 22 COMMISSIONER BEVERLY: Right. And I

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1 just wanted to make one comment before I turn it over
 2 to the Commissioner Trabue.
 3 But with a motion for summary judgment,
 4 it's a two-prong test. So I just want to make sure
 5 that we're clear. It's a two-pronged test that you
 6 don't believe that there are issues of material fact
 7 and that you believe that you're entitled to judgment
 8 as a matter of law.
 9 If the motion is denied, that doesn't
 10 automatically throw back on the table that there are
 11 issues of fact, because it can be denied, because you
 12 don't think -- the commission doesn't think you're
 13 entitled to judge them as a matter of law.
 14 It doesn't create issues unless
 15 somebody had some issues. It's -- to my knowledge, it
 16 doesn't work that way.
 17 MR. NAYAR: Well, I wouldn't --
 18 COMMISSIONER BEVERLY: I've never seen
 19 it work that way, so I'm just trying to make that
 20 clear. I'm not following that line of reasoning. So
 21 if you think there are issues of fact, then you'll
 22 have to identify them.

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1 MR. NAYAR: I'll say one thing. There
 2 has to be a genuine issue of material fact, so it has
 3 to be material to the case.
 4 COMMISSIONER BEVERLY: But you'd have
 5 to identify them. They don't just pop back on the
 6 table because the motion is denied unless, it was
 7 denied because the commission says, "We think they are
 8 genuine issues of material fact."
 9 We don't say that, and we say that we
 10 think that you're not entitled to judgment as a matter
 11 of law, then you miss the second part of a two-pronged
 12 test.
 13 But it doesn't create issues of fact
 14 unless somebody says that there were genuine issues of
 15 material fact -- unless we said we thought there were
 16 genuine issues of material fact. We didn't say that.
 17 MR. NAYAR: Well, I would -- are there
 18 legal grounds to dismiss the motion for summary
 19 judgment?
 20 COMMISSIONER BEVERLY: I'm sorry?
 21 MR. NAYAR: I don't know if there are
 22 legal grounds to dismiss --

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1 COMMISSIONER BEVERLY: I -- I wasn't
 2 suggesting that your motion for summary judgment
 3 should be --
 4 MR. NAYAR: Dismissed.
 5 COMMISSIONER BEVERLY: -- not
 6 considered. I think it was considered, and it was
 7 denied to my recollection, not because we thought
 8 there were material -- genuine issues of material
 9 fact, but because didn't think the parties were
 10 entitled to judgment as a matter of law.
 11 So just missed the second part of the
 12 test. Just because you denied the motion for summary
 13 judgment does not mean that there are genuine issues
 14 of material fact. They just pop into existence. It
 15 doesn't work that way to my knowledge.
 16 That's all I wanted to clarify. I'm
 17 not trying to put you on the spot or have an argument,
 18 but I just wanted to make clear that's not my
 19 understanding of how this works.
 20 MR. NAYAR: I'll say one -- make one
 21 point, which is that if a decision is -- that the
 22 commission makes is going to be most likely deemed

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1 arbitrary and capricious if it doesn't address all the
 2 arguments that have been raised in and during the
 3 proceedings.
 4 And my understanding was based off of
 5 how the commission ruled on this last -- on both the
 6 dispositive motions was we don't deny this right now;
 7 we're not considering the motion on the merits as a
 8 matter of policy; we're going to wait until after the
 9 legislative hearings. So at some point --
 10 COMMISSIONER BEVERLY: I don't think
 11 that's exactly what happened. I think the commission
 12 denied the motion for summary judgment and said the --
 13 there was the issues that undergird the motion, for
 14 instance, an argument that there should be PIMs [ph]
 15 or something like that.
 16 You can still say that. You can say
 17 that at any point. And if you were to get judgment on
 18 that, it's not summary judgment. It's just judgment
 19 that you think that there should be a ruling in your
 20 favor. I'm not trying to --
 21 MR. NAYAR: Sure. Sure. I understand.
 22 COMMISSIONER BEVERLY: I'm not trying

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1 to belabor this point. I just wanted to put out there
 2 that I don't think the way you were articulating it is
 3 quite right, at least not based on my understanding of
 4 how this works.
 5 That doesn't mean that you can't argue
 6 the -- and you are -- argue the underlying elements
 7 that OPC wants to assert, that there should be PIMs
 8 [ph] or whatever it is that you think there should be.
 9 You still can do that, and that's what that order
 10 preserved.
 11 MR. NAYAR: Yes. And I think I'll just
 12 echo off of that, you know, and this is what I spent a
 13 considerable amount of time talking about, is just the
 14 record in the cases is quite problematic.
 15 COMMISSIONER BEVERLY: Can I get a
 16 better understanding of what else it is that -- I know
 17 that you think there should be an additional
 18 proceeding, but an additional proceeding to establish
 19 what?
 20 So if you think that -- and I
 21 understand your position. You think Pepco's
 22 submission is deficient. Do you want an additional

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1 proceeding to establish -- further establish the
 2 deficiency or are you trying to establish something
 3 else?
 4 MR. NAYAR: No. If it's deficient,
 5 we'll take the dismissal and we'll be on our way. No.
 6 If we're going to look at the merits of
 7 the case, look at what the ROEs, what capital
 8 expenditures were actually worthwhile, what weren't,
 9 then we would want our -- an ability to submit
 10 testimony and actually litigate the substantive issues
 11 of the case.
 12 In terms of, and we mentioned this in
 13 the pre-hearing brief, the structure and the amount of
 14 a potential rate increase.
 15 You know, a lot of our arguments are
 16 based off of statements or lack thereof from the
 17 company itself. For example, there was no economic
 18 analysis done. There was no real quantitative
 19 economic analysis done.
 20 Even the idea of lessons learned, you
 21 know, sort of, I think, undermined the whole -- one of
 22 the principles of an AFOR, which is -- or sorry --

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1 alternative forms of regulation, which is that we have
 2 to look at what are the benefits to the consumers?
 3 If you're looking at lessons learned
 4 from the perspective of a company, you're not getting
 5 the perspective of the consumers or the rate payers
 6 from that perspective.
 7 So there's a lot of issues that, you
 8 know, basically Pepco has not met. And I think those
 9 are grounds to dismiss the case.
 10 COMMISSIONER BEVERLY: Okay. Thank you
 11 for that. I just want to get some clarity, and I'm
 12 not disagreeing with me in -- in terms of what you
 13 said I had said in earlier -- in earlier orders or
 14 just said, so concurrences. So thank you.
 15 MR. NAYAR: Thank you.
 16 COMMISSIONER TRABUE: Thank you,
 17 Mr. Chairman.
 18 Thank you, Commissioner Beverly.
 19 Mr. Nayar, good morning.
 20 MR. NAYAR: Good morning.
 21 COMMISSIONER TRABUE: In your
 22 testimony, I think you said that -- that the company's

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1 investments in -- in your office's view were not
 2 related to the city's climate goals.
 3 Ad I think Ms. Curry said that some of
 4 the investments were related to the anticipation of
 5 transportation electrification, electrification of
 6 homes and multifamily buildings, the increased
 7 deployment of DERs.
 8 I -- I'm trying to square the -- the
 9 two statements that the two of you have just made
 10 within the last hour.
 11 Do you believe that the company doesn't
 12 need to make investments in order to -- or -- or that
 13 the -- the investments, I think you said, were just --
 14 it seemed like they were replacing like for like or
 15 business as usual.
 16 MR. NAYAR: Ninety percent of the
 17 investments are business as usual, so there's a very
 18 small sliver of investments that, you know, could be
 19 helpful for some sort of, you know, path forward.
 20 But again, when we ask what are those
 21 investments tied to, what specific objective, and the
 22 company had the opportunity, they could not tie those

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<p>1 to specific investments then.</p> <p>2 I can't speak to what Pepco says today</p> <p>3 at the legislative hearing, but what -- when we had</p> <p>4 over the past months and we issued discovery, we</p> <p>5 didn't get a specific answer correlating the</p> <p>6 investments to specific climate goals.</p> <p>7 But more importantly, the question also</p> <p>8 is can that 10 percent be accomplished through a</p> <p>9 traditional form of rate making where you're not going</p> <p>10 to have all the problems that are going to be coming</p> <p>11 forward with this multiyear rate plan? And I would</p> <p>12 say that that, I think, would be a better approach.</p> <p>13 COMMISSIONER TRABUE: Has your office</p> <p>14 taken a position -- if we looked at a traditional form</p> <p>15 of rate making -- looked at a one-year case of a --</p> <p>16 of -- has your office taken a position in terms of how</p> <p>17 much you think Pepco should be awarded in a -- in a</p> <p>18 one-year case?</p> <p>19 MR. NAYAR: No. We have not. Not at</p> <p>20 this time.</p> <p>21 COMMISSIONER TRABUE: I think -- okay.</p> <p>22 I'll -- I'll accept that. Thank you.</p>	<p>1 which their petition for a multiyear rate plan was</p> <p>2 denied on similar facts as -- that present here. So</p> <p>3 thank you.</p> <p>4 THE CHAIRMAN: Thank you, Mr. Nayar.</p> <p>5 If you could just please identify</p> <p>6 yourself and --</p> <p>7 MS. FRANCIS: I'm sorry?</p> <p>8 THE CHAIRMAN: No. When -- when you</p> <p>9 come to the podium, just make sure you identify</p> <p>10 yourself and spell your last name for the record,</p> <p>11 please. Ms. Francis, would you prefer to sit?</p> <p>12 MS. FRANCIS: I -- I would.</p> <p>13 THE CHAIRMAN: Oh, then that's more</p> <p>14 than --</p> <p>15 MS. FRANCIS: Thank you.</p> <p>16 THE CHAIRMAN: That's fine. Sorry.</p> <p>17 MS. FRANCIS: Good morning, Chairman</p> <p>18 Thompson, Commissioner Beverly, Commissioner Trabue.</p> <p>19 Pepco's second year rate plan proposal</p> <p>20 must be rejected. The pilot multiyear rate plan did</p> <p>21 not yield the anticipated benefits. Rather, it has</p> <p>22 primarily served the interest of Pepco and its</p>
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<p>1 MR. NAYAR: I just wanted to take one</p> <p>2 brief opportunity to address administrative efficiency</p> <p>3 and regulatory lag.</p> <p>4 Basically, the company stated that</p> <p>5 there was going to be \$29,000,000 of regulatory lag,</p> <p>6 and when the actuals came in, we found out that that</p> <p>7 wasn't true.</p> <p>8 And in terms of administrative</p> <p>9 efficiency, I mean, this case has been going on for</p> <p>10 near 16 months. I don't see how it's administratively</p> <p>11 efficient.</p> <p>12 And even when we tried to participate</p> <p>13 in the reconciliation filings, it creates more work</p> <p>14 for the commission to then have to sort out the</p> <p>15 comments and -- and give direction. And there were a</p> <p>16 whole host of problems.</p> <p>17 So in terms of administrative</p> <p>18 efficiency, I -- I don't see that argument carrying</p> <p>19 the day at all.</p> <p>20 And Counsel did mention Maryland quite</p> <p>21 frequent -- a few times, but they didn't -- they</p> <p>22 neglected to mention 9702 and order 91181 -- 91181, in</p>	<p>1 shareholders at the expense of DC rate payers.</p> <p>2 Pepco's actual expenditures since this</p> <p>3 commission's adoption of the pilot MYP have departed</p> <p>4 substantially from its budgeted O&M cost by account</p> <p>5 and its budgeted capital cost by project.</p> <p>6 In essence, this commission is being</p> <p>7 asked to set rates on the basis of budgeted cost for a</p> <p>8 utility that has demonstrated its inability to</p> <p>9 forecast its future expenditures with reasonable</p> <p>10 accuracy.</p> <p>11 AOBA recognizes the concept of emergent</p> <p>12 costs; however, where emerging costs become major</p> <p>13 drivers of a utility's actual expenditures, setting</p> <p>14 rates on the basis of highly unreliable forecasts is</p> <p>15 not well advised.</p> <p>16 The MYP process to date has required no</p> <p>17 accountability by Pepco for either its actual</p> <p>18 expenditures or the net benefits that those</p> <p>19 expenditures provide District rate payers.</p> <p>20 Moreover, as discussed in AOBA's</p> <p>21 limited brief, the level of capital spending built</p> <p>22 into Pepco's MYP proposals in this proceeding is</p>

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1 excessive and not sustainable.

2 Pepco's forecasted budgets represent a

3 direct challenge to efforts to maintain the

4 affordability of electric service for all District

5 rate payers, not just low income customers.

6 The affordability of electric service

7 in the District is a particular concern to commercial

8 buildings that are struggling with record high vacancy

9 rates and increased risk of foreclosures.

10 Pepco's proposed MYP in this proceeding

11 would create an economic drag on the District and

12 impede efforts to revitalize the District's economy.

13 Witnesses for OPC, AOBA, and the DC

14 government all agree that Pepco's request for another

15 multiyear rate plan should be rejected. We must learn

16 from the pilot MYP and avoid repeating past mistakes

17 on a going forward basis.

18 In order number 20755 in formal case

19 1156, this commission stated, I quote, "Through this

20 pilot, the commission will benefit from lessons

21 learned to facilitate the adoption of regulations for

22 MRP and other AFOR applications."

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1 However, Pepco's initial application

2 and supporting testimony in this proceeding failed to

3 address lessons learned from the pilot MYP.

4 In order number 21886, the commission

5 directed Pepco to file supplemental testimony to

6 address lessons learned from the pilot.

7 However, the company responded with a

8 recitation of platitudes regarding the alleged

9 advantage -- advantages of an MYP the company

10 presented in formal case 1156.

11 Pepco presented little in terms of

12 well-structured quantitative analysis of the impacts

13 of the pilot MYP. Pepco offered no quantitative

14 retrospective examination of actual experience under

15 the pilot.

16 Furthermore, Pepco has failed to

17 provide necessary and appropriate documentation of the

18 mathematics of its determinations of actual and

19 planned capital expenditures by project for its

20 completed and projected MYP years.

21 Although the company provides

22 discussion of factors it considered in the planning

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1 process, Pepco does not document either the data or

2 calculations relied upon to estimate its future

3 expenditures or determine the portions of

4 multi-jurisdictional projects attributed to the

5 District.

6 AOBA notes that Pepco witness Kantler

7 [ph] presents purported actual cost for a number of

8 capital projects that are identical to the amounts

9 Pepco has claimed for the same projects in Maryland.

10 A key benefit of the multiyear rate

11 making process was purported to be increased

12 transparency into the company's budgeting and

13 long-term capital planning process.

14 However, Pepco's claims of transparency

15 have proven illusory. In this proceeding, AOBA has

16 documented dramatic differences between the

17 composition of Pepco's budgeted costs and the

18 composition of the company's actual expenditures by

19 O&M account and by capital project.

20 For the one full calendar year

21 addressed by the pilot MYP, calendar year 2022, AOBA

22 has shown that Pepco had 217.1 million dollars of

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1 budgeted cost for capital projects on which it only

2 spent 66.1 million dollars.

3 Moreover, Pepco's actual capital

4 expenditures in 2022 include over \$102.1 million

5 dollars that were spent on projects which were not

6 included in the budgeted capital costs that Pepco

7 presented in formal case 1156.

8 Although Pepco represents that it

9 underspent its overall capital budget for 2022, the

10 company offers no quantitative assessment of the

11 impact that these dramatic changes in the composition

12 of its budgeted expenditures had on the benefits that

13 were provided to District rate payers.

14 AOBA submits that the cost

15 effectiveness and the prudence of Pepco's actual

16 capital expenditures cannot be determined in the

17 absence of such analytics.

18 Unfortunately, the multiyear rate plan

19 process has failed to hold Pepco accountable for

20 deviations from its budgeted cost and the impacts of

21 such deviations of rate payer benefits.

22 The mix of expenditures included in the

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1 company's budget must be perceived as having a direct
 2 influence on the value of rate payer benefits
 3 provided, yet Pepco has not provided the level of
 4 analytics necessary to assess changes in rate payer
 5 values from its pilot MYP.
 6 A multiyear rate plan paradigm, which
 7 establishes rates on the basis of forecast of future
 8 expenditures, relies heavily on the utility's ability
 9 to forecast its future expenditures with reasonable --
 10 reasonable accuracy.
 11 Where utility forecasts of future
 12 expenditures prove unreliable, evidence-based prudence
 13 proceedings become a necessity. Common processes are
 14 not sufficient to support prudence determination.
 15 In fact, the parties in Pepco's
 16 Maryland rate proceeding have recently agreed to a
 17 procedural schedule for the review of Pepco final
 18 reconciliation filing, Pepco's rate year 3 AIF in case
 19 number 9655, that was filed yesterday for its initial
 20 MYP that provides for the filing of direct testimony,
 21 rebuttal testimony, surrebuttal testimony, as well as
 22 hearings and briefing.

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1 This illustrates the necessity of
 2 evidence-based prudence proceedings for an MYP and the
 3 fact that MYPs do not eliminate or necessarily reduce
 4 regulatory burdens.
 5 Multiyear rate plans do not reduce
 6 regulatory burdens. Such MYPs simply change the
 7 nature of the activities that the regulators must
 8 focus on, as well as the parties.
 9 In this proceeding, Pepco has also
 10 provided forecasted budget expenditures for its
 11 designated bridge year calendar year 2023.
 12 However, neither Pepco quarterly ROR
 13 filings, nor the supplemental information the company
 14 provided on July 5, 2024, offer direct comparisons of
 15 the cost Pepco incurred during calendar year 2023 and
 16 the cost Pepco presented as budgeted 2023 expenditures
 17 in its rate application and its supporting testimony.
 18 The affidavit of AOBA witness Bruce
 19 Oliver provided with our limited brief again
 20 identifies substantial departures from Pepco's
 21 budgeted cost that are not adequately explained and
 22 not justified.

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1 Pepco likewise has provided no
 2 assessment of the impacts of such changes on rate
 3 payer benefits.
 4 Further, there has been no documented
 5 collaboration with other parties in Pepco's
 6 development and implementation of changes to its
 7 budgeted cost, and there is no transparency in
 8 decision making related to those changes.
 9 The pilot MYP may have reduced the
 10 frequency of rate case filings, but it has not reduced
 11 the level of regulatory activity or regulatory burdens
 12 placed on AOBA, OPC, DCG, and the other rate case
 13 interveners.
 14 Moreover, the records of this case, and
 15 as well as formal case 1156, highlight the increased
 16 complexity of multiyear rate plan proceedings.
 17 Effectively, the parties have been
 18 required to litigate one, lessons learned from the
 19 initial MYP, two, forecasted expenditures for multiple
 20 years of proposed -- of a proposed second MYP, three,
 21 a traditional test year filing with partially
 22 projected costs and the prudence of Pepco's actual

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1 expenditures in one proceeding.
 2 AOBA submits that the MYP process that
 3 has been employed only serves to benefit the company
 4 and its shareholders while eroding necessary rate
 5 payer protections.
 6 The filings to date in this proceeding
 7 are clear that Pepco's recent experience, as well as
 8 its forecast projections reflect negative growth in
 9 kWh deliveries and kW demands, as well as only minimal
 10 customer growth, about 0.6 percent per year, mostly
 11 among residential and small commercial customers.
 12 Yet in the context of comparatively
 13 static or declining units of service, Pepco has set
 14 forth a capital spending plan that reflects rate-based
 15 growth far in excess of its projected growth in
 16 customers, sales, and demands.
 17 That uncommon combination of robust
 18 capital spending and declining kWh deliveries and kW
 19 demands necessarily challenges the affordability of
 20 Pepco's electric service in the District.
 21 The costs of electric service represent
 22 one of the largest components of operating expenses

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<p>1 for commercial buildings, yet Pepco's proposals would</p> <p>2 further amplify the cost of operating commercial</p> <p>3 buildings in the District.</p> <p>4 Commercial building owners as well as</p> <p>5 their tenants are well aware that markedly lower costs</p> <p>6 are available in neighboring Virginia.</p> <p>7 Last week on July 23rd, the Wall Street</p> <p>8 Journal published an article titled "DC Office Market</p> <p>9 Struggles Persist."</p> <p>10 And that article began with the</p> <p>11 following: "The Washington DC office market is</p> <p>12 struggling with rising foreclosures, plunging values,</p> <p>13 and its highest vacancy rate ever. The outlook looks</p> <p>14 grim."</p> <p>15 The Wall Street Journal article reports</p> <p>16 that as of the first quarter of 2024, 39 percent of</p> <p>17 loans for office buildings in DC that were</p> <p>18 securitized -- securitized were either in default or</p> <p>19 at risk of default.</p> <p>20 "The Washington -- Washington Journal</p> <p>21 also reports that creditors foreclosed on 12 District</p> <p>22 office buildings so far this year."</p>	<p>1 forecasted cost, the detail of the company's</p> <p>2 forecasted budgets must be more closely scrutinized</p> <p>3 and this commission must require Pepco's actual</p> <p>4 expenditures to closely conform with budgeted costs.</p> <p>5 The commission must also act to</p> <p>6 require -- to require Pepco's accountability for the</p> <p>7 cost effectiveness and prudence of its actual</p> <p>8 expenditures. Pepco must bear the burden of</p> <p>9 demonstrating the prudence of its expenditures.</p> <p>10 The burden must not be shifted to</p> <p>11 interveners who may not have the resources to engage</p> <p>12 in detailed examination of Pepco's spending and the</p> <p>13 operations outside of a rate case.</p> <p>14 The problems associated with the</p> <p>15 magnitude of Pepco's revenue request under its</p> <p>16 proposed MYP are magnified by the dramatic increase</p> <p>17 that the company seeks in its authorized ROE.</p> <p>18 Pepco's currently authorized ROE is</p> <p>19 9.275. However, Pepco asked this commission to</p> <p>20 increase its authorized ROE to 10.50. That's an</p> <p>21 extraordinarily large and unjustified increase.</p> <p>22 As interest rates declined over the</p>
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<p>1 Additionally, the article asserts that</p> <p>2 federal agencies are expected to give up close to</p> <p>3 600,000 square feet of presently leased office space</p> <p>4 in the District.</p> <p>5 In addition, the article observes that</p> <p>6 the weakened state of the commercial real estate</p> <p>7 market in DC has contributed to a substantial drop in</p> <p>8 real estate tax collection, as well as a 500,000,000</p> <p>9 budget gap for the District government.</p> <p>10 Finally, the Wall Street Journal</p> <p>11 concludes the District's office is poised to get</p> <p>12 worse. The Wall Street Journal reporting on the</p> <p>13 status of the District's office market, that's not</p> <p>14 very common.</p> <p>15 And the fact that such a financially</p> <p>16 focused and respected newspaper would find cause to</p> <p>17 attribute an entire article to the plight of our DC</p> <p>18 office market gives emphasis to the seriousness of the</p> <p>19 problems that the District currently faces.</p> <p>20 In this environment, Pepco's</p> <p>21 expenditures must be more significantly constrained.</p> <p>22 If rates are to be established on the basis of</p>	<p>1 past decade, reductions in Pepco ROE only reflected a</p> <p>2 portion of the change in interest rates.</p> <p>3 Yet now in the context of interest rate</p> <p>4 increases, Pepco seeks a dramatic upward adjustment to</p> <p>5 its authorized equity return that AOPA submits is</p> <p>6 unnecessary and unjustified.</p> <p>7 I believe earlier this morning,</p> <p>8 Ms. Curry on behalf of Pepco made mention that its ROE</p> <p>9 should not be reduced. Just to note, the Maryland</p> <p>10 Commission in its June 10th order on Pepco's multiyear</p> <p>11 rate plan, which was denied, also reduced Pepco's ROE.</p> <p>12 That order number is 91181.</p> <p>13 In that order, the Maryland Commission</p> <p>14 rejected Pepco's request in that proceeding for an MYP</p> <p>15 and for their authorized -- and to increase their ROE</p> <p>16 to 10.5. They lowered their requested ROE from 9.55</p> <p>17 to 9.5.</p> <p>18 The Maryland Commission found that</p> <p>19 Pepco's requested 10.5, did not reflect current market</p> <p>20 conditions, did not conform to the commission's</p> <p>21 gradualism precedent, and was unsupported by the</p> <p>22 record of that proceeding.</p>

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<p>1 Given the record with respect to</p> <p>2 Pepco's ROE request in this proceeding, it's in many</p> <p>3 ways very similar to their filing in Maryland case</p> <p>4 9702. It's difficult to perceive that Pepco's 10.50</p> <p>5 request in this case should be found just and</p> <p>6 reasonable.</p> <p>7 AO believes this commission should</p> <p>8 approve an ROE for Pepco in this proceeding that's no</p> <p>9 greater than the company's currently authorized ROE of</p> <p>10 9.275.</p> <p>11 The traditional test year filing</p> <p>12 provided by Pepco in this proceeding in response to</p> <p>13 the commission's directive in order number 21886 was</p> <p>14 designed by the company to make a traditional test</p> <p>15 year approach to setting revenue requirements appear</p> <p>16 less attractive than its MYP proposals.</p> <p>17 The company's traditional test year</p> <p>18 revenue requirement, as presented by Pepco in its</p> <p>19 October 16, 2003, supplemental testimony, is</p> <p>20 purportedly based on six months of actual and six</p> <p>21 months of projected expenditures for calendar year</p> <p>22 2023.</p>	<p>1 dollars.</p> <p>2 In other words, Pepco's traditional</p> <p>3 test year filing overstates its 2023 actual rate base</p> <p>4 by roughly \$270,000,000 or more than 10 percent.</p> <p>5 Pepco's October 16th traditional test year filing</p> <p>6 reflected 2023 operating expenses on a DC adjusted</p> <p>7 basis of five hundred and twenty-nine point million</p> <p>8 dollars.</p> <p>9 However, it's revised Q4 2023 ROR</p> <p>10 filing shows 2023 operating expenses of only</p> <p>11 \$503,000,000, suggesting the company's 2023 operating</p> <p>12 expenses in its TTY filing were overstated by more</p> <p>13 than \$26,000,000, about 5 percent.</p> <p>14 Such inflated representations of</p> <p>15 traditional test year costs totally undermine the</p> <p>16 value of Pepco's TTY filing and the concept of</p> <p>17 traditional test year rate making. In fact, Pepco has</p> <p>18 failed to demonstrate a pressing need for additional</p> <p>19 revenue in this proceeding at this time.</p> <p>20 Although Pepco's most recently</p> <p>21 quarterly ROR filing for the first quarter 2024</p> <p>22 suggests a limited need for additional revenue, the</p>
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<p>1 However, an examination of the</p> <p>2 supporting detail for Pep Ghost's traditional test</p> <p>3 year cost reveals that Pepco's projected cost for the</p> <p>4 last six months of its traditional test year are</p> <p>5 heavily loaded with cost increases beyond the level of</p> <p>6 cost actually experienced by the company in either the</p> <p>7 first six months of calendar year 2023 or the months</p> <p>8 of the prior calendar year 2022.</p> <p>9 It's important to recognize that</p> <p>10 nowhere in this proceeding to date has Pepco updated</p> <p>11 its traditional test year revenue requirement to</p> <p>12 reflect actuals for the second half of calendar year</p> <p>13 2023.</p> <p>14 In addition, the projected capital</p> <p>15 additions that Pepco presented in its traditional test</p> <p>16 year filing far exceeded the actual capital additions</p> <p>17 for 2023 that Pepco now reports.</p> <p>18 In fact, Pepco's reported actual rate</p> <p>19 base for 2023 in its June 24, 2024, revised Q4 2023</p> <p>20 ROR filing was only 2.653 billion dollars, where the</p> <p>21 company's October 16, 2023, traditional test year</p> <p>22 filing reflected a 2023 rate base of 3.023 billion</p>	<p>1 ROR calculations Pepco presents in its ROR</p> <p>2 inappropriately presume that all of the company's</p> <p>3 costs have been prudently incurred and that claimed</p> <p>4 gap related reserves for rate schedule GTLV BSA</p> <p>5 revenue deferrals are reasonably and appropriately</p> <p>6 computed, a presumption that we specifically dispute.</p> <p>7 AOBA also asks this commission to</p> <p>8 observe that Pepco's claimed revenue deficiency for</p> <p>9 calendar years 2021, as set forth in Pepco's March 31,</p> <p>10 2022, reconciliation filing, is premised on the</p> <p>11 company's assessment of a revenue deficiency for the</p> <p>12 entire calendar year.</p> <p>13 Pepco's representations regarding 2021</p> <p>14 revenue deficiency, that completely ignores the fact</p> <p>15 that new rates did not become effective until July 1,</p> <p>16 2021.</p> <p>17 District rate payers have no</p> <p>18 responsibility for claimed revenue deficiencies</p> <p>19 associated with the company's operations prior to the</p> <p>20 effective dates of the new rates approved by the</p> <p>21 commission in FC 1156.</p> <p>22 In order number 22013, the commission</p>

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<p>1 directed Pepco to demonstrate the prudence of its 2 calendar year 2023 capital and operating expenditures. 3 However, Pepco's July 5, 2024, 4 supplemental information filing falls well short of 5 providing that demonstration. 6 The composition of Pepco's actual 2023 7 expenditures has deviated substantially from the 8 partially forecasted dollar amounts presented in its 9 October 16th traditional test year filing. 10 Pepco's 2023 expenditures also deviates 11 substantially from the fully forecasted dollar amounts 12 presented with its application and in its rebuttal 13 testimony in its 2023 MYP bridge year. 14 As recently as order number 22013, this 15 commission directed Pepco to demonstrate the prudence 16 of its actual expenditures, Pepco has totally failed 17 to provide that demonstration. 18 The need for detailed reconciliations 19 and demonstrating of prudence of actual expenditures 20 continues as long as rates are set on the basis of 21 forecasted costs. 22 Still, there's been no demonstration of</p>	<p>1 difficulties associated with reconciliation of the 2 company's actual 2023 expenditures with its 3 traditional test year rate filing. 4 Without further support for and 5 verification of that information, Pepco's ROR filings 6 should not bias the commission's rulings with respect 7 to the pending dispositive motions. 8 For these reasons, AOBA reiterates that 9 Pepco's quarterly ROR filings in formal case 1156 10 cannot be relied upon without further scrutiny and 11 warrant no weight in this commission's determination 12 regarding the motions. 13 AOBA submits that the elongated nature 14 of this proceeding is primarily attributable to errors 15 and deficiencies in Pepco's own filings, and this 16 commission should feel no obligation to assist the 17 company's efforts to obtain revenue increases when the 18 company itself has been the greatest obstacle to 19 timely litigation of this proceeding. 20 Rather, the support for this 21 commission's rejection of both Pepco's MYP application 22 and its traditional test year is compelling.</p>
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<p>1 the prudence of any or all of Pepco's actual 2023 2 expenditures with either formal case 1176 or formal 3 case 1156. 4 There is no basis for this commission 5 to accept Pepco's quarterly ROR filings for either 6 2023 or the first quarter of 2024 as reasonable, 7 accurate, and appropriate assessments of the company's 8 earned returned and revenue deficiencies for those 9 periods. 10 Pepco's traditional test year filing is 11 also highly problematic. At this point in the 12 proceeding, there is at best substantial uncertainty 13 regarding the traditional test year costs on which a 14 traditional test year revenue requirement would be 15 established. 16 Pepco has filed new earning statements 17 for 2023, the traditional test year, based on data 18 calculations that the parties are -- we are unable to 19 identify them. 20 Moreover, Pepco's responses to data 21 requests regarding its July 5th supplemental 22 information filing only further highlight the</p>	<p>1 Finally, if this commission elects not 2 to grant the March 12th and the June 10th motions to 3 dismiss and/or the company's traditional test year, 4 AOBA submits that this commission must schedule 5 evidentiary proceedings to establish a record on which 6 a multitude of contested issues of material fact can 7 be resolved. 8 This is a particularly critical period 9 for DC and its regulation of District utility 10 services. 11 AOBA asks this commission to reinforce 12 its protection of rate payer interest in the rate 13 making process and deny Pepco's efforts to establish 14 on the basis of demonstrably unreliable forecasts and 15 excessive rate of return request. 16 AOBA submits that the commission's only 17 option at this point to protect rate payers is to 18 reject both the company's MYP and traditional test 19 year filings. 20 And in my minute and a half left, I 21 would like to address something that Ms. Curry said 22 earlier today. Ms. Curry spoke about the calculated</p>

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<p>1 BSA revenue deferrals for the GTLV rate class.</p> <p>2 Our limited brief states that Pepco's</p> <p>3 calculated BSA revenue deferrals for the GTLV rate</p> <p>4 class, they are overstated. We submit that Pepco's</p> <p>5 BSA revenue deferrals for rate schedule GTLV reflect a</p> <p>6 flawed methodology.</p> <p>7 The methods used by the companies to --</p> <p>8 to employ revenue per customer amounts that are the</p> <p>9 product of Pepco's use of incorrect billing</p> <p>10 determinants in its design of rates and yields</p> <p>11 non-cost-based assessments of allowed revenue by class</p> <p>12 when the numbers of customers in the GTLV class</p> <p>13 deviate from the numbers assumed by the company in its</p> <p>14 rate design computations.</p> <p>15 Lastly, Ms. Curry made mention that the</p> <p>16 Maryland Commission approved BG&E's MYP, even though</p> <p>17 lessons learned hadn't been completed. That was one</p> <p>18 of the reasons the commission rejected Pepco's MYP in</p> <p>19 case 9702 last month, because lessons learned had not</p> <p>20 been completed.</p> <p>21 Further, the commission in that order</p> <p>22 directed Pepco with its next rate case, which could be</p>	<p>1 material fact, what are the O&M expenses? That's</p> <p>2 another issue of material fact that I alluded to</p> <p>3 throughout my argument.</p> <p>4 So in filing those motions, I never</p> <p>5 meant to -- it was not AOBA's intent to foreclose</p> <p>6 further evidentiary proceedings where all of those</p> <p>7 issues could be laid out.</p> <p>8 I am at a little bit of an advantage</p> <p>9 from others in this room, other than Pepco, because we</p> <p>10 just finished litigating Pepco's MYP proceeding in</p> <p>11 that jurisdiction, and there were multiple, multiple</p> <p>12 witnesses. There were many questions. Many, many</p> <p>13 facts needed to be flushed out.</p> <p>14 And we -- there was a six-day hearing</p> <p>15 in that proceeding. There are five commissioners.</p> <p>16 All of them ask a lot of questions. There's also a</p> <p>17 staff that puts on testimony.</p> <p>18 Proceedings are a little bit different</p> <p>19 there than they are here. But what came out on the</p> <p>20 witness stand I believe was truly helpful to the</p> <p>21 commission in issuing its -- the decision that it did.</p> <p>22 THE CHAIRMAN: Thank you. Very</p>
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<p>1 any type of its choosing, a multiyear rate plan or a</p> <p>2 historical test year rate case to make sure they filed</p> <p>3 along with that filing data that the commission could</p> <p>4 compute a traditional test year. And I think I'm out</p> <p>5 of time.</p> <p>6 THE CHAIRMAN: Thank you, Ms. Francis.</p> <p>7 I'm going to begin close to where you end -- where you</p> <p>8 ended, basically where you stated that if the motions</p> <p>9 to dismiss weren't -- were denied, that an evidentiary</p> <p>10 hearing had to be held to discuss material issues of</p> <p>11 fact.</p> <p>12 And so my question is, what -- what</p> <p>13 would be AOBA's material issues of fact that give rise</p> <p>14 to an evidentiary? Not -- not just facts that are</p> <p>15 contested, but material issues.</p> <p>16 MS. FRANCIS: Okay. Listen, I -- I</p> <p>17 hate to devise something on the spot, and I haven't</p> <p>18 drafted that letter, but just clearly from what I</p> <p>19 discussed today, what is the rate base of Pepco?</p> <p>20 That's a material issue of fact.</p> <p>21 Without knowing what the rate base is, how do we</p> <p>22 compute anything? We would -- another issue of</p>	<p>1 quickly, one of the things -- one of the statements</p> <p>2 that undergirded the majority of your testimony, as</p> <p>3 well as some of the other intervenors, as well as OPC,</p> <p>4 is this idea -- the lack of transparency as you guys</p> <p>5 say in the MRP.</p> <p>6 Do you have any recommendations as to</p> <p>7 what can be done to improve transparency in MYPs?</p> <p>8 MS. FRANCIS: Again, I don't want to</p> <p>9 devise something on the spot. However, what I have</p> <p>10 seen so far from Pepco in formal case 1156 and formal</p> <p>11 case 1176, the MYPs that they have filed should be not</p> <p>12 continued, because they have shown an inability to</p> <p>13 forecast accurately.</p> <p>14 So one thing -- the first thing you</p> <p>15 need is a utility that can forecast accurately both</p> <p>16 its capital spending and its O&M spending. Another</p> <p>17 thing -- what we really need also are some guidance</p> <p>18 from the commission in what should be in a prudence</p> <p>19 determination.</p> <p>20 Because if we're going -- if Pepco is</p> <p>21 going to move projects in and out of what they're</p> <p>22 doing in a -- in a different year, replace them with</p>

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1 projects we haven't seen, just move things around at
 2 will that the rate payers haven't seen, that the
 3 parties or the commission hasn't seen, we need a
 4 standard for a prudence review.
 5 And as well as a standard, we need a
 6 prudence review proceeding, just like we've
 7 established in Maryland. The way the Maryland
 8 Commission worked, the first two prudence reviews were
 9 part of a base rate case -- were part of the rate case
 10 we just litigated.
 11 And the final reconciliation is part of
 12 a whole new rate reconciliation proceeding, just
 13 normal evidentiary proceeding that we do. So you
 14 would definitely need prudence standards. And once
 15 you start with mini rate cases over prudence and
 16 reconciliation filings, that's a mini rate case, which
 17 does certainly not reduce regulatory burdens.
 18 So I -- you know, I heard, you know,
 19 Ms. Curry say this morning they have not done the
 20 analysis of the cost of -- of a MYP and the costs of a
 21 traditional rate case, but I haven't seen any reduced
 22 regulatory burdens.

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1 And, you know, one other thing. I
 2 think the commission has requested the PIMs [ph].
 3 There were PIMs [ph] working group. And AOBA had a
 4 consultant, and along with OPC, we were directed by
 5 staff to write that working group report.
 6 That working group report, I believe,
 7 was submitted to the commission last November. So I
 8 haven't seen any work group proceedings regarding the
 9 PIMs [ph] on an ongoing basis, since we filed that
 10 final report.
 11 But again, if we're going do another
 12 MYP, got to have some PIMs [ph], as that's what the
 13 commission originally decided.
 14 But basically you need those prudence
 15 reviewed and you need hearings on the reconciliations,
 16 because how do you know with what Pepco is moving
 17 around -- how do you know that it's prudent?
 18 And how do you know the cost -- if it's
 19 going to cost the rate payer X amount to do project
 20 one, two, three, four, how much is the rate payer
 21 going to save by the company doing five, six --
 22 project five, six, seven, and eight? We have no

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1 information of that.
 2 Pepco has just moved projects in and
 3 out of its multiyear plan. And what we have is a
 4 spending plan for Pepco. There's -- that's all it is.
 5 And there's no prudence at this moment.
 6 THE CHAIRMAN: Thank you. My -- my
 7 last question is going back to the BSA, 'cause we
 8 certainly heard the company talk about the financial
 9 health of the company.
 10 And then you did a -- a -- gave a
 11 recitation of the commercial District in -- in the
 12 District. And to me that's just as important; right?
 13 The commercial District is a huge tax base.
 14 And really just want to hear your
 15 impressions of the BSA and how it's -- how it's worked
 16 for the commercial class, especially coming out of
 17 COVID.
 18 MS. FRANCIS: Terribly. It works
 19 terribly, and it hasn't worked -- and I don't mean to
 20 be flip. It hasn't worked for several years.
 21 Just -- just an example, we did a
 22 review -- my consultant did a review of a comparison

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1 of the BSA for the GTLV class. And under the actual
 2 under recoveries for the BSA class was 12.9 million
 3 dollars.
 4 Pepco shows an under recovery for GTLV
 5 of allowed revenue of over \$64,000,000. There is
 6 substantial -- we believe Pepco's methodology is
 7 flawed.
 8 So they've used wrong billing
 9 determinants. Their methodology is formed, and then
 10 we get a disparaging -- a -- a major difference
 11 between \$12.9 million dollars, which we believe are
 12 the actual under recoveries, and what Pepco claims are
 13 the under recoveries of \$64,000,000.
 14 I can't reconcile those numbers. It's
 15 Pepco's flawed methodology. And of course, how the
 16 BSA works would be subject to review in an evidentiary
 17 proceeding.
 18 THE CHAIRMAN: Thank you.
 19 COMMISSIONER BEVERLY: With regard to
 20 an inaccurate forecasting, do you believe that that
 21 issue is more significant in an MYP than it is in
 22 traditional rate making, or you think it's the same?

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1 MS. FRANCIS: Inaccurate forecasts --
 2 without an accurate forecast, there should be no MYP.
 3 This company has shown it is incapable of doing an
 4 accurate forecast.
 5 So without that, I can't think --
 6 that's where you have to start. That's the whole
 7 basis of an MYP, are based on accurate forecasts.
 8 And as OPC said this morning, the
 9 forecast -- the data for 2023, you can't reconcile it
 10 with their projected costs. So without -- without
 11 accurate data, you're nowhere in terms of an MYP.
 12 COMMISSIONER BEVERLY: Okay. With
 13 regard to cost containment, have you seen in another
 14 jurisdiction anywhere where --
 15 MS. FRANCIS: I'm sorry. I can't hear
 16 you. A little bit louder.
 17 COMMISSIONER BEVERLY: With -- with
 18 regard to cost containment, have you seen something in
 19 other jurisdictions that include an element in an MYP
 20 that specifically addresses that, so that there's some
 21 mechanism within the plan itself to handle cost
 22 containment?

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1 MS. FRANCIS: I think Pepco's feet
 2 should be held to the fire. I don't think they've
 3 come close to justifying \$190,000,000 worth of rate
 4 increases over the next three years. So I think -- or
 5 the \$108,000,000 for a traditional test year.
 6 I think that considering the economy of
 7 the District of Columbia and the affordability of
 8 rates are important considerations for this
 9 commission.
 10 And I feel that when you have declining
 11 kW and kWh deliveries in the face of 0.6 percent
 12 customer growth, I think Pepco's capital spending and
 13 a trajectory of O&M costs needs to be reined in --
 14 needs to be reined in by this commission.
 15 COMMISSIONER TRABUE: Good morning,
 16 Ms. Francis. Thank you very much for your -- for your
 17 testimony today. What is AOBA's view on looking more
 18 towards a traditional sort of a rate case, a one-year
 19 case, versus a -- versus a multiyear case?
 20 MS. FRANCIS: What is AOBA's view on?
 21 COMMISSIONER TRABUE: Looking at a -- a
 22 one-year case, a traditional case versus a multiyear

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1 case for the matter that is before us today.
 2 MS. FRANCIS: AOBA is -- from what we
 3 have seen to date, we have a strong preference for a
 4 traditional test year because of what we -- because of
 5 our past experience with Pepco in the past two MYP
 6 proceedings, and also in the Pepco Maryland
 7 proceeding, as well.
 8 So we would have a strong preference
 9 for a historical test year. However, we don't believe
 10 that Pepco has shown a need for a revenue increase in
 11 this case. So in this case, I'm not in favor of
 12 granting a traditional test year, because the data
 13 doesn't support an increase.
 14 That doesn't mean Pepco can't turn
 15 around and file another request for a traditional rate
 16 case, you know, upon the conclusion of this case. But
 17 I don't think the record supports that here.
 18 COMMISSIONER TRABUE: Okay. Many of
 19 the parties here have -- have discussed the -- the
 20 need for a -- a good lessons learned scenario. Your
 21 organization operates in a number of states throughout
 22 the country. Does it not?

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1 MS. FRANCIS: We operate -- we try
 2 cases in Pepco Maryland. We try cases in the
 3 District, as well as Virginia Power and Washington Gas
 4 in -- in Virginia.
 5 COMMISSIONER TRABUE: Do you have --
 6 MS. FRANCIS: I don't see BG&E cases.
 7 COMMISSIONER TRABUE: Do you have some
 8 best practices that you might be able to share with us
 9 from those experiences elsewhere in the --
 10 MS. FRANCIS: We have not seen MYPs in
 11 Virginia. We have not seen MYPs with Washington Gas.
 12 So I do know about them in BG&E. You know, the
 13 utilities that have them in Maryland are all Exelon
 14 utilities. So I personally have not appeared in
 15 another MYP case other than Pepco DC and Maryland.
 16 COMMISSIONER TRABUE: All right. In
 17 your filing, did you -- was there a discussion of the
 18 increase to residential rates in the distribution
 19 charges?
 20 MS. FRANCIS: I think Pepco's rate
 21 increase and their requested ROE is excessive, so I
 22 think that needs to be substantially lowered.

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1 However, as this commission knows, and
 2 it is in our direct testimony that there is an
 3 enormous subsidization between the commercial class
 4 and the residential class -- I believe it's over
 5 \$100,000,000. I don't have the number on the top of
 6 my head.
 7 So I do believe that while we -- we
 8 don't challenge the -- the benefits that the low
 9 income, and elderly, and disabled, and senior citizens
 10 get in terms of that portion of the residential class,
 11 we do think the -- the other portion of the
 12 residential class that's not low income should bear a
 13 lot more of its responsibility than it does, and that
 14 those gaps need to be narrowed.
 15 COMMISSIONER TRABUE: Right. I -- I
 16 think an increase by \$1 a month in the initial year
 17 was suggested -- not by you, but -- but maybe by -- by
 18 the company.
 19 But has your organization taken a
 20 position as to how much that increase on the
 21 non-low-income customers -- how much of an increase
 22 might be suitable?

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1 MS. FRANCIS: We have -- we haven't
 2 filed testimony on that. What -- once the commission
 3 lowers Pepco's revenue request, if they decide to
 4 grant any revenue request, then I think the numbers
 5 should be looked at carefully for each class.
 6 But I do think there should be a -- a
 7 narrowing of the class rate of return differentials.
 8 Keep in mind, right now, whenever the company gets a
 9 new residential customer, whether it's an
 10 individual -- individually metered apartment house or
 11 a new residential homeowner, the company loses money.
 12 They are providing a negative rate of
 13 return. So I know, you know, the people hear there's
 14 going to be a push for whatever commercial office
 15 buildings can possibly convert to a mass -- to a -- to
 16 an apartment building -- I know people would like to
 17 see that happen. I know, 'cause the mayor said so.
 18 A little bit more difficult than I
 19 think people realize, but every time you sign a new
 20 residential customer in an individually metered
 21 apartment, the company is losing money.
 22 And as the declining kWh and kW for

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1 office buildings, you know, who's going to pay for
 2 that? Who's going to pay for it?
 3 COMMISSIONER TRABUE: Thank you very
 4 much.
 5 THE CHAIRMAN: I'm sorry. I do have
 6 one question I want to follow back up on Commissioner
 7 Beverly's question, because he asked you about cost
 8 containment models. And I think your answer really
 9 spoke to overall cost; right?
 10 MS. FRANCIS: Correct. Correct.
 11 THE CHAIRMAN: I believe -- please
 12 correct me if I'm wrong. I -- I think -- well, let me
 13 say this.
 14 What I'm interested in is if there is a
 15 rate increase, and for sake of argument it's an MRP,
 16 what type of cost containment should be imposed on the
 17 company to make sure that their forecasted or their
 18 budgeted expenses are as close to the whatever we
 19 approve on that budget? You know, what kind of
 20 guardrails can we put around that?
 21 MS. FRANCIS: I think the commission
 22 needs to sharpen its pencil. I think that you ought

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1 to look at the capital budgets. You ought to look at
 2 the capital budgets along with what you see in growth
 3 in numbers of customers and the decline in usage.
 4 And as someone made mention to, Pepco
 5 is top quartile in their Sadie [ph] and Sathey [ph],
 6 and determine what level of spending is really, really
 7 necessary right now.
 8 THE CHAIRMAN: So let me ask the
 9 question a different way, because I --
 10 MS. FRANCIS: And I can't give you a
 11 number. I mean, I could get my consultant to say
 12 something, but.
 13 THE CHAIRMAN: So -- so let me give you
 14 a -- I think a hypothetical. I believe Ms. Curry came
 15 up earlier and she said, "Oh, well, part of the reason
 16 why there's so much variance in our -- in our
 17 construction costs are because we have a 50 percent
 18 band."
 19 And then as it goes along, they narrow
 20 it. To me, I -- that's -- that's a very wide band.
 21 If I was going to have some construction done in my
 22 house, I would need a tighter number than a 50 percent

<p style="text-align: right;">Page 122</p> <p>1 band.</p> <p>2 So -- is -- is there an industry</p> <p>3 practice, perhaps -- and again, maybe -- maybe that's</p> <p>4 a question for an expert. But is there an industry</p> <p>5 practice around what an acceptable variance should be</p> <p>6 versus forecasted versus actuals?</p> <p>7 MS. FRANCIS: I'm not sure I -- what is</p> <p>8 the -- I didn't hear the last part.</p> <p>9 THE CHAIRMAN: Is there -- is there an</p> <p>10 industry standard around forecasted versus actual</p> <p>11 spend, the variances? Yeah.</p> <p>12 MS. FRANCIS: An industry standard in</p> <p>13 the -- in the commercial building industry?</p> <p>14 THE CHAIRMAN: Not necessarily</p> <p>15 commercial building, but in construction projects with</p> <p>16 utilities, did you --</p> <p>17 MS. FRANCIS: Oh, construction</p> <p>18 progress -- projects of my members, that's beyond</p> <p>19 my -- my expertise. I can't answer that.</p> <p>20 THE CHAIRMAN: Okay. Thank you. All</p> <p>21 right. Thank you, Ms. Francis.</p> <p>22 MS. FRANCIS: I want to thank the</p>	<p style="text-align: right;">Page 124</p> <p>1 fundamental was that the MRP should be denied, because</p> <p>2 no comprehensive review of the modified EMRP pilot was</p> <p>3 ever conducted.</p> <p>4 To the extent the EMRP pilot, EMRP</p> <p>5 being enhanced multiyear rate plan -- excuse me --</p> <p>6 pilot was -- to the extent the EMRP pilot was</p> <p>7 addressed in this proceeding, there is no basis to</p> <p>8 find that the EMRP provided any benefit to District</p> <p>9 customers or advanced the District's climate or clean</p> <p>10 energy goals.</p> <p>11 In order number 20273 issued in formal</p> <p>12 case 1156, the commission established a framework for</p> <p>13 alternative forms of regulation or AFORs. The</p> <p>14 commission determined that any proposed AFOR must have</p> <p>15 measures in place to protect consumers, ensure</p> <p>16 quality, availability, and reliability of regulated</p> <p>17 services, and ensure that -- ensure that the AFOR is</p> <p>18 in the public interest.</p> <p>19 Importantly, the commission found that</p> <p>20 a properly designed AFOR could provide a new tool to</p> <p>21 further the District's ambitious clean energy goals</p> <p>22 and the commission's power path DC objectives, while</p>
<p style="text-align: right;">Page 123</p> <p>1 commission and thank you for your questions.</p> <p>2 MR. CALDWELL: Can you hear me?</p> <p>3 THE CHAIRMAN: Good afternoon.</p> <p>4 MR. CALDWELL: Good afternoon,</p> <p>5 Commissioners Beverly and Trabue, and Chairman</p> <p>6 Thompson.</p> <p>7 I'm Senior Assistant Attorney General</p> <p>8 Brian Caldwell with the office of the Attorney General</p> <p>9 representing the District of Columbia Government in</p> <p>10 this proceeding.</p> <p>11 The District generally echoes the</p> <p>12 comments from councils for OPC and AOBA. I'm here</p> <p>13 today to discuss in greater detail the two issues</p> <p>14 identified in the District's pre-hearing brief as</p> <p>15 being fundamental as to whether or not Pepco's MRP</p> <p>16 should be approved.</p> <p>17 I start with the standard caveat that</p> <p>18 these are two issues. Do not encompass all the issues</p> <p>19 that are important or even fundamental from the</p> <p>20 District's perspective. The District intends to</p> <p>21 address those issues fully in its post-hearing brief.</p> <p>22 The first issue that we raised as being</p>	<p style="text-align: right;">Page 125</p> <p>1 also preserving a high standard of energy delivery</p> <p>2 system reliability and fostering grid modernization.</p> <p>3 Pepco's modified EMRP was eventually</p> <p>4 approved by this commission on a pilot program basis.</p> <p>5 However, the commission did not adopt a formal</p> <p>6 evaluation plan or establish AFOR regulations after</p> <p>7 approving the modified EMRP on a pilot basis.</p> <p>8 It was not until after Pepco filed its</p> <p>9 second multiyear rate plan in the instant proceeding</p> <p>10 and in response to comments from the District and</p> <p>11 other parties urging the PSC to adopt a procedural</p> <p>12 schedule that would facilitate a comprehensive review</p> <p>13 of the pilot that the commission directed Pepco to</p> <p>14 file supplemental testimony with the company exhibits</p> <p>15 that explain in quantitative and qualitative terms the</p> <p>16 benefits of problems identified and lessons learned</p> <p>17 from the pilot program.</p> <p>18 In its order, it approved the modified</p> <p>19 EMRP as a pilot, which is "An activity undertaken as</p> <p>20 an experiment to determine if something should be</p> <p>21 pursued more broadly."</p> <p>22 The commission stated the information</p>

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1 contained in the supplemental testimony will support
 2 an assessment of lessons learned from the modified
 3 EMRP and develop an evaluation framework in assessing
 4 Pepco's second MRP as proposed in this case.
 5 Respectfully, the approach taken by the
 6 commission to assess the modified EMRP was
 7 problematic.
 8 Relying on Pepco to provide a
 9 self-evaluation of its modified EMRP without the
 10 directives from a formal evaluation framework does not
 11 provide sufficient information to assess whether the
 12 modified EMRP successfully achieved the goals of
 13 alternative forms of regulation.
 14 Instead, Pepco's self-evaluation was
 15 merely a litany of self-serving claims that cannot be
 16 verified. In formal case 1156, in response to the
 17 commission's order on alternative forms of regulation,
 18 the company identified ten incremental benefits or
 19 goals that the modified EMRP would provide, but none
 20 of these benefits actually materialized.
 21 The first benefit allegedly that would
 22 come from the EMRP was it would facilitate investments

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1 that support the District's energy policies.
 2 However, Pepco does not track these
 3 investments in its EMRP and does not demonstrate that
 4 the investments were made would not have occurred
 5 under cost of service regulation.
 6 Second, the modified EMRP would provide
 7 customers, the commission, and interested parties a
 8 longer term view of future capital investment in O&M
 9 plans before -- that's operation and maintenance
 10 plans -- before the utility makes those investments.
 11 But information asymmetry and the
 12 opaqueness of Pepco's capital investment strategy
 13 limits the usefulness of these plans.
 14 Further, as we'll be discussed later in
 15 my presentation, the list of investments is not tied
 16 to an integrated distribution plan or a grid
 17 modernization plan.
 18 Had the proposed investments been tied
 19 to such plans, the parties would've been provided with
 20 a full analysis of alternatives and important context
 21 for the investments.
 22 Third, the modified EMRP was to provide

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1 customers with rate predictability over the MRP's
 2 term. Rate predictability is achieved through
 3 guaranteed increases to Pepco's revenue requirement,
 4 which primarily benefits Pepco by shortening the cost
 5 recovery period of its investments in reducing the
 6 likelihood of cost disallowance.
 7 A fourth purported benefit of the
 8 modified EMRP was to provide a decrease in the
 9 administrative burden and cost for the commission and
 10 stakeholders by reducing the frequency of annual rate
 11 case filings.
 12 Pepco did not provide any specific
 13 measurement of this purported benefit. Fifth, the
 14 modified EMRP would protect customers and provide
 15 incentives to the company to reduce costs and improve
 16 operational efficiency through the proposed annual
 17 reconciliation filings.
 18 But as DCG witness Courtney Lane
 19 discusses in depth in her testimony, reconciliation of
 20 overspending shifts risk to rate payers compared to
 21 cost of service regulation.
 22 And reconciliation of underspending, in

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1 other words, returning cost savings to rate payers,
 2 severely erodes Pepco's incentive to reduce costs.
 3 Sixth, the modified EMRP was to better
 4 align customer rates and reflect the current cost of
 5 providing service to customers through annual
 6 reconciliation process.
 7 But again, as DCG witness Lane
 8 testified, the reconciliation process does not
 9 guarantee that the cost embedded in rates are optimal.
 10 Further, it reduces the incentive to
 11 Pepco to control costs and find alternative low cost
 12 solutions, like, non-wires alternatives. Perhaps that
 13 is why no other jurisdiction in the country besides DC
 14 currently has a multiyear rate plan in effect with
 15 annual downward and upward reconciliations.
 16 The seventh purported benefit of the
 17 modified EMRP was to increase the level of
 18 transparency and reporting to customers, the
 19 commission, and stakeholders.
 20 But as I discussed in my brief and
 21 we'll address later on, the data provided is of
 22 relatively little value in the absence of a integrated

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1 distribution plan and grid modernization plan.
 2 Eight, the modified EMRP would enhance
 3 commission oversight through advanced review of the
 4 company's total capital investment plan and proposed
 5 performance levels with annual reporting and reviews
 6 of certain variances to those approved plans over the
 7 term of the MYP.
 8 And again, at its conclusion, for
 9 similar reasons as purported benefit number seven, the
 10 company's total capital investment plan with annual
 11 reporting and reviews of certain variances to approve
 12 plans provide little additional meaningful improvement
 13 to transparency.
 14 Ninth, the modified EMRP would provide
 15 for significant automatic financial penalties if the
 16 company did not meet commission approved performance
 17 criteria, but PIMs [ph] with financial penalties were
 18 not adopted in conjunction with the modified EMRP.
 19 And finally, tenth, the modified EMRP
 20 would enhance certainty of spending for the plan's
 21 term leading to improved investment planning that
 22 would create jobs and promote economic development,

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1 but there's nothing special about spending pursuant to
 2 the modified EMRP that creates jobs and promotes
 3 economic development.
 4 These outcomes could just as easily be
 5 achieved through investments resulting from
 6 traditional cost of service regulation.
 7 Moreover, this benefit could also be
 8 achieved through limited cost riders or trackers for
 9 specific types of investments, like grid modernization
 10 investments.
 11 A particular interest to the District
 12 was the company's representation that the structure of
 13 the modified EMRP allowed for the company to invest at
 14 the pace required to meet the District's and the
 15 commission's decarbonization and clean energy goals,
 16 and support investments that are foundational to a
 17 climate ready grid, such as those that maintain
 18 reliability and resiliency.
 19 But the company did not provide or
 20 identify any investments that specifically support the
 21 District's energy policy goals. The company states
 22 that it does not track investments by whether they

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1 meet a specific decarbonization or clean energy goal.
 2 So when asked to list the reliability
 3 and resiliency investments made during the modified
 4 EMRP pilot period that directly support the District's
 5 energy goals, the company was unable to do so.
 6 This is problematic, because one of the
 7 primary justifications for implementing alternative
 8 forms of regulation is to facilitate investments that
 9 support the District's climate and clean energy policy
 10 goals.
 11 The primary driver of a multiyear rate
 12 plan is to support these policy goals. The company
 13 would be transparent about them in this regard. In
 14 fact, the company cannot identify any such investment
 15 reveals the empty self-serving nature of these
 16 statements.
 17 In short, the purported benefits that
 18 would flow from approval of the modified EMRP either
 19 did not materialize or could have been achieved just
 20 as easily through traditional cost of service
 21 regulation.
 22 And although the company states that

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1 the modified EMRP "Generally achieve the qualitative
 2 and quantitative benefits," there's insufficient data
 3 to assess the merits of Pepco's self-evaluation.
 4 When asked to provide the work papers,
 5 data, analysis, assumptions, and studies, as was
 6 discussed earlier, that Pepco relied upon to quantify
 7 each of the benefits achieved by the modified EMRP,
 8 Pepco indicates it did not quantify the dollar value
 9 of each of these incremental benefits, nor could Pepco
 10 provide any quantitative data to demonstrate that the
 11 modified EMRP provided benefits to customers or
 12 achieve public policy goals.
 13 The company, again, indicated that it
 14 did not perform this analysis. Without reporting
 15 metrics and quantitative data to back up Pepco's claim
 16 benefits of the modified EMRP, there is no factual
 17 basis to find that the alleged benefits of the
 18 modified EMRP were not outweighed by the harm caused
 19 from information asymmetry combined with the erosion
 20 of incentives to contain costs inherent in traditional
 21 cost of service regulation.
 22 The commission should find that the

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1 EMRP pilot was a failure and should not be continued
 2 through the instant MRP application that Pepco has
 3 filed in this case.

4 The commission should return to
 5 traditional cost of service regulation of Pepco's
 6 rates until such time as the company can submit a
 7 multiyear rate plan application that can demonstrate
 8 in concrete quantifiable terms how that plan will
 9 achieve the goals set forth in the commission's
 10 alternative form of regulation order.

11 The second issue that was fundamental
 12 to the District in the brief that we submitted was
 13 that Pepco's MRP should be denied for the additional
 14 reason that Pepco has no integrated distribution plan
 15 in place with a grid modernization component to put
 16 the MRP's proposed capital investments into context.

17 Without a non-wires alternative PIM
 18 [ph] in place, Pepco has little financial incentives
 19 to consider low cost, climate friendly alternatives to
 20 traditional capital investments.

21 A non-wires alternative PIM should also
 22 be developed in conjunction with a integrated

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1 distribution plan and grid modernization plan.
 2 Pepco's distribution planning process
 3 remains opaque, facing the commission and stakeholders
 4 to rely on unverified assertions by Pepco of its
 5 capital investment needs.

6 One assertion that is demonstrably
 7 false, however, is that the MRP will help the District
 8 achieve its climate and clean energy goals.

9 Pepco refers to its MRP as a "Climate
 10 ready pathway." However, Pepco's MRP is not a climate
 11 ready pathway, and instead uses the guise of
 12 supporting the District's climate goals as a means to
 13 increase business as usual investments that do not
 14 adequately advance the District's energy and climate
 15 goals.

16 Indeed, the company does not identify
 17 specific investments as being part of the climate
 18 ready grid. When asked to identify projects in
 19 Pepco's distribution construction program report,
 20 included as Exhibit Pepco H-1, the company did not
 21 provide a list.

22 Instead, Pepco states that its capital

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1 investment strategy during the MRP will "Focus on
 2 supporting a pathway to a climate ready grid through,
 3 amongst other things, improving grid resiliency."
 4 But it is unclear how the company
 5 proposes to improve grid resiliency. Pepco states
 6 that "Witness Kantler's [ph] testimony and attachments
 7 primarily cover reliability investments to maintain
 8 Pepco's distribution grid or the platform for the
 9 climate ready grid."

10 The company's plan to improve
 11 resiliency to address the impacts of climate realities
 12 includes the replacing of aging and obsolete
 13 infrastructure and routinely and timely performing
 14 corrective maintenance work where necessary.

15 But these are activities that are core
 16 to the traditional duties of an electric distribution
 17 company. Pepco has not adequately explained why
 18 undertaking these traditional goals would justify an
 19 MRP.

20 It is unclear what portion of this
 21 undefined climate ready grid is supported through MRP
 22 investments versus investments proposed in other

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1 proceedings.
 2 As the company notes, there are other
 3 proceedings that support the climate ready grid,
 4 including formal case numbers 1167, 1130, and 1160.

5 The expected benefits from investments
 6 associated with the climate ready grid appear to be
 7 the same as those that would result from traditional
 8 utility investments that have historically been
 9 sufficiently supported through cost of service
 10 regulation.

11 Specifically, Pepco states that the
 12 anticipated benefits include "Providing customers with
 13 a safe, affordable, and reliable energy system."
 14 While these are important goals, they
 15 do not differ from Pepco's historical mandate, nor has
 16 Pepco developed metrics to track the benefits or
 17 deployment of the climate ready grid.

18 Pepco has not identified which
 19 investments are part of its climate ready grid or what
 20 associated costs it would recover through the MRP, nor
 21 has it identified quantifiable metrics to measure the
 22 benefits associated with these investments.

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1 This lack of transparency is counter to
 2 one of the purported goals of the commission's AFOR
 3 framework, which is "To provide an appropriate level
 4 of transparency and reporting into the utility's
 5 operational and capital plans."
 6 Similar to Pepco's exaggerated
 7 characterization of its MRP as a climate ready grid
 8 are the claims that capital investments are necessary
 9 to support impending electrification.
 10 When asked to provide the company's
 11 forecast of the anticipated growth in electrification,
 12 Pepco indicated that it does not directly include
 13 electrification in its ten-year capacity load
 14 forecast.
 15 This is problematic, because the
 16 company is asking the commission to approve a revenue
 17 requirement for the MRP term that is based on the need
 18 to create a climate ready grid to prepare for the
 19 "Significant shift to electrification" without
 20 considering actual electrification forecasts or
 21 conducting an analysis to determine whether additional
 22 distribution investments are actually needed to

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1 support forecasted increases in electrification.
 2 Pepco's planning process should be
 3 modified to address alternatives to traditional
 4 utility investments.
 5 Pepco should evaluate the cost
 6 effectiveness of alternatives to traditional
 7 distribution assets, and it should present those
 8 results as part of a detailed distribution plan that
 9 includes location specific analyses of load growth and
 10 capacity needs on the distribution system, as well as
 11 the cost and benefits of various approaches to
 12 addressing the growth is also needed.
 13 This is a critical missing piece from
 14 Pepco's MRP. The company does not base its proposed
 15 investments on a comprehensive integrated distribution
 16 plan that integrates distributed energy resources, or
 17 DERs, and adequately considers non-wire's alternatives
 18 as means to provide the least cost solution to rate
 19 payers while supporting a reliable and resilient
 20 electric system.
 21 The commission should not approve an
 22 MRP until Pepco develops an integrated distribution

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1 plan. Indeed, from the District government's
 2 perspective, an MRP just doesn't make sense in the
 3 absence of an IDP.
 4 Without this tool, it is impossible to
 5 assess the reasonableness of any individual planned
 6 investment in Pepco's MRP distribution construction
 7 plan. An IDP places individual investments into the
 8 context of an overall plan.
 9 If Pepco wants rate payer funds in
 10 advance of making its capital investments as its MRP
 11 provides, Pepco must be able to demonstrate and
 12 explain to the commission and stakeholders how each
 13 individual planned investment fits together, as well
 14 as into the overall distribution plan. Pepco's MRP
 15 does not do this.
 16 The best fix for these informational
 17 deficiencies is requiring Pepco in conjunction with an
 18 IDP to provide a grid modernization plan, including a
 19 benefit cost analysis, or BCA, of its proposed grid
 20 modernization investments.
 21 A comprehensive grid modernization plan
 22 would include a systems need assessment, technology

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1 investment roadmap timeline, and a benefit cost
 2 analysis that adheres to the framework to be developed
 3 in accordance with commission order number 21938
 4 issued on December 8, 2023, in general docket number
 5 2019-04-M.
 6 It is important that Pepco incorporates
 7 its grid modernization investments into its
 8 distribution planning. This plan should also include
 9 an account of Pepco's grid modernization actions to
 10 date, active proposals, and future plans in a detailed
 11 and transparent format.
 12 All planned investments should be
 13 included in this plan, including those investments
 14 already proposed in other proceedings.
 15 Further, Pepco should detail in this
 16 plan why its investments are the optimal ones to
 17 achieve relevant District policy objectives detailing
 18 the specific benefits that are expected to arise for
 19 each of the planned investments.
 20 While Pepco does include some grid
 21 modernization projects in its MRP, it is difficult to
 22 discern the complete set of grid modernization

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<p>1 investments proposed by Pepco. 2 While the District is generally 3 supportive of Pepco's grid modernization investments, 4 the District has concerns about Pepco's approach to 5 presenting these investments in its MRP filing. 6 Pepco's presentation of these 7 investments lacks transparency and clarity. Also, 8 Pepco has omitted key information that is critical to 9 evaluating its grid modernization plans. 10 For example, Pepco does not explain how 11 individual grid modernization components fit together, 12 nor does Pepco comprehensively evaluate alternatives 13 to its proposed plans. 14 It's important for a grid modernization 15 plan to be presented clearly, because grid 16 modernization is distinct from business as usual 17 investments. 18 Investments in grid modernization are 19 often elective, and the value proposition for grid 20 modernization investments usually rests on meeting 21 policy objectives that go beyond the provision of 22 reliable and affordable service.</p>	<p>1 interconnection of distributed energy resources, 2 there's no clear assessment of how much distributed 3 energy resource interconnection will be facilitated 4 through the company's grid modernization investments. 5 And to the extent that growth and 6 distributed energy resources are accounted for in 7 Pepco's load forecasts, it is not clear that the 8 forecast is consistent with statutory requirements for 9 solar growth. 10 A grid modernization plan will also 11 provide the commission and stakeholders with greater 12 transparency into grid modernization investments 13 occurring across multiple proceedings. 14 This is important, because the 15 complexity and cost of grid modernization investments 16 often necessitate the staggering of these investments 17 over time and across proceedings. 18 A comprehensive grid modernization plan 19 can help to provide transparency on the 20 interdependencies across investments and provide a 21 more holistic view into the overall costs and benefits 22 to the electric system and repairs.</p>
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<p>1 Moreover, grid modernization 2 technologies are complex and interdependent. Taking 3 all of this into consideration, it is clear that the 4 commission and stakeholders need a comprehensive 5 picture of Pepco's grid modernization program to 6 ensure that it is in the public interest and will 7 advance the District's climate goals. 8 In its proposed, MRP Pepco does not 9 clearly map its grid modernization investments to the 10 District's climate goals and desired outcomes. 11 For example, the local Solar Expansion 12 Amendment Act of 2022 increased the already ambitious 13 targets for distributed solar in the District of 14 Columbia, and so it is imperative that Pepco makes the 15 necessary investments to enable the required 16 interconnection of distributed solar. 17 But Pepco's distribution construction 18 plan does not indicate how much additional hosting 19 capacity for solar and other distributed energy 20 resources will be achieved. 21 Although the company reports that its 22 modernization efforts will enable deployment and</p>	<p>1 The certainty and cost recovery that 2 Pepco is seeking through the MRP must be accompanied 3 by greater prospective scrutiny of the investments 4 that would effectively be pre-approved. 5 The grid modernization plan and 6 integrated distribution plan the District recommends 7 would help to clarify the extent of Pepco's 8 modernization investments and provide needed 9 justification for the investments. 10 Again, from the District's perspective, 11 without these tools an MRP simply does not make any 12 sense. 13 In addition to help ensure the 14 investments within the MRP are aligned with and 15 advancing the District's climate and clean energy 16 goals, any MRP must include a non-wires alternative 17 PIM [ph] or NWA PIM [ph]. 18 The PIM [ph] would reward Pepco for 19 each cost-effective NWA implemented in the District of 20 Columbia service territory based on the present value 21 of the net benefits from implementing NWAs procured 22 through an open source request for proposals in which</p>

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1 the solution type has not been preselected.

2 The PIM [ph] will encourage Pepco to

3 proactively identify all NWA opportunities, seek the

4 least cost NWA solution, regardless of whether it is a

5 capital investment, and be rewarded for maximizing

6 rate payer savings.

7 Right now, Pepco has a financial

8 disincentive to invest in NWAs. Under the current

9 regulatory model, the company is incentivized to

10 prefer capital investments over operational

11 expenditures as a means to grow its rate base, and

12 thereby profits.

13 In fact, the incentive to undertake

14 more capital investments is strengthened in the MRP by

15 the reduction of regulatory lag, which allows the

16 company to recover its costs more quickly.

17 This means that Pepco has a strong

18 financial incentive to meet a distribution system need

19 with the installation of new substations,

20 transformers, feeders, or utility owned battery

21 systems on which it would earn a return, rather than a

22 third party NWA solution that would be classified as

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1 an operational expense with no return.

2 An NWA PIM [ph] is needed if the

3 commission is serious about advancing the District's

4 decarbonization goals. The financial incentives in

5 the existing regulatory framework are insufficient to

6 encourage Pepco to identify and seek out third-party

7 NWA solutions.

8 Within the MRP, Pepco only identifies

9 two battery storage projects as non-wire solutions,

10 both of which are based on utility owned capital

11 assets.

12 A utility owned battery system was

13 selected to defer the need for a new substation

14 serving the Alabama Avenue substation, and a battery

15 system was selected for Pepco's Mount Vernon Square

16 substation to address projected firm capacity load.

17 Only one RFP for a third party NWA

18 solution was issued as part of its distribution system

19 planning NWA process, and no NWA solution was

20 ultimately selected.

21 Even though Pepco has issued limited

22 RFPs for NWAs, it is clear that Pepco is undervaluing

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1 the benefits of NWAs. An NWA PIM [ph] is needed to

2 create incentives for Pepco to make investments in

3 technologies that will help the District achieve its

4 decarbonization goals.

5 And Pepco does not have a financial

6 incentive to implement NWAs. It appears to be

7 undervaluing third party NWAs.

8 For example, the company did not

9 provide details regarding why the third-party NWA

10 solution mentioned wasn't selected. It is clear a

11 screening process does not consider the full benefits

12 of NWA solutions.

13 For example, Pepco does not account for

14 the monetized value of avoided carbon emissions or

15 consider the locational value of distributed energy

16 resources on the distribution system when reviewing

17 NWAs.

18 If Pepco is not monetizing the full

19 benefits of an NWA solution, it's not surprising that

20 NWA solutions were not selected.

21 An NWA PIM [ph] does not need to be

22 developed within the context of the PIM's working

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1 group and could be developed without the need to rely

2 on historical baseline data to determine appropriate

3 targets and incentive levels. Instead, the NWA PIM

4 [ph] would function based on a shared savings

5 approach.

6 The shared savings based incentive

7 would allow Pepco to retain a portion of the

8 difference between the present value of the

9 traditional wires solution and the NWA.

10 For example, Pepco could be allowed to

11 retain 30 percent of the savings or the net benefits

12 relative to the traditional solution. This provides

13 an incentive to the company while allowing rate payers

14 to retain the majority of the savings from the NWA.

15 One important advantage of providing

16 the utility with a portion of the net benefits, the

17 difference between costs and benefits is that it

18 incentivizes the company to both reduce costs and

19 increase benefits.

20 To qualify for this incentive, Pepco

21 must demonstrate that the NWA is cost effective using

22 a benefit cost analysis that accounts for all societal

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1 costs and benefits in alignment with commission order
 2 number 21938, including but not limited to greenhouse
 3 gas emissions and air quality impacts to appropriately
 4 value the role of distributed energy resources as NWA
 5 solutions.
 6 The least cost solution to identified
 7 system needs should give equal consideration to NWAs
 8 procured through open sourced solicitations to third
 9 parties and through company specific actions,
 10 including the targeted deployment of demand response,
 11 energy, efficiency, and time varying rates.
 12 An NWA PIM [ph] would improve outcomes
 13 for customers. It would provide an incentive to the
 14 company to seek cost effective NWA solutions that are
 15 not owned and operated by the company. The PIM [ph]
 16 would help overcome the existing financial
 17 disincentive for Pepco to use third party or customer
 18 facing DER solutions to meet a utility system need.
 19 Cost-effective third party PIMs [ph]
 20 have the potential to reduce the need for new
 21 distribution expenditures, thereby significantly
 22 reducing costs to customers.

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1 An NWA should accompany an integrated
 2 distribution plan with a detailed grid modernization
 3 plan. Again, Pepco's MRP does not make sense without
 4 these tools.
 5 THE CHAIRMAN: Thank you, Mr. Caldwell.
 6 My first question, this NWA PIM [ph] that you
 7 discussed now, was this raised in 1156 or is this the
 8 first time it's being raised?
 9 MR. CALDWELL: It was -- this is the
 10 first time it's being raised.
 11 THE CHAIRMAN: Okay. Just curious.
 12 MR. CALDWELL: I mean, it was raised in
 13 the direct testimony of Witness Lane.
 14 THE CHAIRMAN: Yeah. Okay. And then a
 15 lot of what you talked about with regards to cost --
 16 in terms of MRP, you said, you know, essentially you
 17 can't have transparency without an IDP or an IRP
 18 dependent upon how you -- how you frame it. Are there
 19 any other ways to get the transparency in an MRP
 20 without an IDP?
 21 MR. CALDWELL: I mean, you could
 22 require Pepco to provide, you know, far more detail

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1 than it does currently in its distribution
 2 construction report.
 3 You know, right now it's impossible to
 4 tell really what any individual investment is doing,
 5 or the purpose of it, and what, you know, the company
 6 hopes to achieve by making the investment.
 7 And that's why we recommend an
 8 integrated distribution plan, because you can see --
 9 you would be able to tell what that investment is
 10 designed to achieve, and also over time.
 11 MS. FRANCIS: Okay. Okay. Thank you.
 12 Those are my questions I have.
 13 COMMISSIONER BEVERLY: Is a stay out
 14 provision essential to this -- to the plan that Pepco
 15 has proposed?
 16 MR. CALDWELL: Is a stay out provision
 17 essential?
 18 COMMISSIONER BEVERLY: Right. That is
 19 should we require it?
 20 MR. CALDWELL: Yes. I believe that,
 21 you know, the commission should require a stay out
 22 provision.

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1 That additional time between rate
 2 increases would provide the commission, and the
 3 stakeholders, and parties to sort of assess the
 4 relative merits of the multiyear rate plan that we
 5 just went through.
 6 COMMISSIONER BEVERLY: In answer to my
 7 question about cost containment -- I was just sort of
 8 skimming your witness Lane's testimony, and just from
 9 what I can gather from this, her opinion seems to be
 10 that this is the opposite.
 11 The -- the plan that we have is the
 12 opposite of cost containment.
 13 MR. CALDWELL: That's correct.
 14 COMMISSIONER BEVERLY: It has
 15 elements -- the plan has elements in it that prevent
 16 or -- or don't incentivize a control of cost, but
 17 actually incentivizes just the opposite.
 18 MR. CALDWELL: Correct.
 19 COMMISSIONER BEVERLY: Especially in
 20 the absence of a -- a stay out provision. So I was
 21 just trying to understand a little bit more about
 22 that.

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1 So as I can see here, the
 2 bi-directional reconciliation that you had referred
 3 to, and like that should be just downward
 4 reconciliation and some other factors that she had
 5 identified.
 6 MR. CALDWELL: Correct. So the upward
 7 reconciliation erodes Pepco's incentive to control
 8 costs in two ways.
 9 The first is that Pepco has little
 10 incentive to find cost efficiencies, because it
 11 receives no benefit from reducing its costs.
 12 And the second way is that Pepco is
 13 better off overestimating its capital costs to ensure
 14 that it will not overspend its allowed revenues and
 15 forfeit the curing costs associated with that
 16 overspend.
 17 COMMISSIONER BEVERLY: Now, if Pepco --
 18 I'm not saying they are. But if Pepco overstates
 19 costs and understates revenues, and you combine that
 20 with all these other things, and you approve a plan,
 21 is -- I can imagine what the effect is on rate payers,
 22 but is there a way to reconcile that later or is this

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1 just a done deal from one rate plan to the next?
 2 MR. CALDWELL: I mean, I think, you
 3 know, without accurate cost forecasts combined with
 4 this annual reconciliations of rates, it's always
 5 going to be problematic.
 6 The rates will never be, you know,
 7 accurate, because they have an inaccurate starting
 8 point, and then you have incentives to -- or you have
 9 disincentives to control costs.
 10 So I would say that one step the
 11 commission could take is to eliminate these annual
 12 reconciliations and make Pepco live within the budget
 13 that it's -- that's approved.
 14 COMMISSIONER BEVERLY: And with that,
 15 I -- I'm trying to go back to what you said about a
 16 PIM [ph]. Is there a PIM [ph] that would reflect
 17 that? Could there be?
 18 MR. CALDWELL: I mean, there -- I
 19 think -- I recall back before the original MRP was
 20 proposed, there were a series of meetings over at
 21 Pepco that were sort of conducted by the
 22 representative from the Brattle Group who had

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1 conducted a study on, you know, multiyear rate plans
 2 across the country.
 3 And I think there was some discussion
 4 of sort of, like, a sharing cost savings -- like,
 5 sharing between customers and the company. It's not
 6 exactly a PIM [ph], but it's a sort of -- maybe a way
 7 to share in some of the benefits of the savings.
 8 COMMISSIONER BEVERLY: Incentive to
 9 control costs or to share profits, I guess.
 10 MR. CALDWELL: Right. Right. I
 11 mean --
 12 COMMISSIONER BEVERLY: I'm just -- you
 13 know, I don't want to put you on the spot.
 14 MR. CALDWELL: I mean, and then
 15 there's -- and the ROE would be adjusted according to,
 16 you know, whether the company's over earning or
 17 underearning, you know, in the next rate case.
 18 Again, that's not exactly a PIM [ph],
 19 but it's a sort of -- incentivizes more accurate, you
 20 know, cost forecasts and cost savings.
 21 COMMISSIONER BEVERLY: Okay. Thank you
 22 for that. I -- I don't have any further questions.

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1 COMMISSIONER TRABUE: Thank you.
 2 Good afternoon, Mr. Caldwell.
 3 MR. CALDWELL: Good afternoon.
 4 COMMISSIONER TRABUE: So I -- I think
 5 as part of your testimony, you said that the
 6 investments that Pepco is making are not tied to the
 7 District's climate goals. Is -- the District is the
 8 primary driver behind a lot of the electrification and
 9 DER efforts in the city. Is it not?
 10 MR. CALDWELL: That's correct.
 11 COMMISSIONER TRABUE: To what extent
 12 does the District communicate with Pepco that these
 13 are the projects or these are the areas that we are
 14 exploring over the next year or two?
 15 MR. CALDWELL: I mean, I think there
 16 are -- that communication occurs in other dockets that
 17 the PSC has open, like, 1130 and 1155, that pertain to
 18 transportation electrification.
 19 COMMISSIONER TRABUE: But -- but you --
 20 you specifically mentioned, you know, DERs, and, you
 21 know, like, home electrification, or things that are
 22 going to make significant, you know, variations on --

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1 on the load in -- in particular areas of the city.
 2 Are -- are those sorts of
 3 communications going on back and forth between the
 4 District and the -- and the company?
 5 MR. CALDWELL: Honestly, I'm not aware
 6 of -- if they are, that would be through the
 7 Department of Energy environment, and I don't have
 8 complete knowledge --
 9 COMMISSIONER TRABUE: Is -- is there
 10 a -- an estimate given maybe on an annual basis or so
 11 of how much money is available to the District for
 12 electrification or solar efforts, therefore the
 13 company is able to plan -- you know, make some plans
 14 in advance?
 15 MR. CALDWELL: How much money is
 16 available to the District for --
 17 COMMISSIONER TRABUE: Yes. The -- the
 18 District is supporting these projects financially.
 19 I --
 20 MR. CALDWELL: I don't -- I'm sorry. I
 21 don't --
 22 COMMISSIONER TRABUE: I think there's

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1 a -- there's a communications issue, as -- as I see --
 2 challenge. As I see it, you guys keep on -- you know,
 3 and I -- I think --
 4 MR. CALDWELL: -- communication occurs,
 5 because I'm not privy to all the communications that
 6 happen between the company.
 7 THE REPORTER: One person talk at a
 8 time, so I can capture everything.
 9 COMMISSIONER TRABUE: Sorry. Yeah.
 10 No. It's -- it's a matter of Pepco has
 11 to do some planning in advance. They have to, you
 12 know, plan for electrification or -- or changes to the
 13 load, but they're not getting information, as I
 14 understand it, about what the District has in store.
 15 That's why I say there's -- there's a communications
 16 problem. I'm not putting this on you --
 17 MR. CALDWELL: I know. I'm not trying
 18 to answer your question.
 19 COMMISSIONER TRABUE: This is an
 20 observation. You know -- I don't think it's more
 21 than -- more than it is a question.
 22 MR. CALDWELL: I mean, formal case

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1 1167, DOEE filed its strategic electrification roadmap
 2 for buildings and transportation in the District -- or
 3 the electrification roadmap.
 4 And it analyzed the specific load
 5 increases in timing that additional energy efficiency
 6 and electrification measures that were needed to meet
 7 clean energy DC plan, the target of 50 percent
 8 reduction of greenhouse gas emissions by 2032.
 9 And the roadmap sort of quantified
 10 substation impacts for summer and winter peaks
 11 resulting from adding -- you know, building
 12 electrification and electric vehicle charging onto the
 13 grid. I don't -- Pepco didn't incorporate the
 14 findings of that study into its capital planning.
 15 That was through data request. We
 16 confirmed that the electrification roadmap did find
 17 the Pepco system is well equipped to handle projected
 18 electrification loads from buildings and
 19 transportation up through the year 2032, and that the
 20 combined electrification loads are not expected to
 21 exceed substation capacity in any zone in the District
 22 of Columbia during that time period, which kind of

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1 comports with the company's own findings, that system
 2 will be able to handle any additional load that would
 3 result from electrification, at least in the next ten
 4 years.
 5 I don't know if that answered your
 6 question, but, I mean, those are forms of, you know,
 7 communication that I can refer to that are publicly
 8 available.
 9 And I know there's coordination through
 10 the Sustainable Energy Trust Fund, or Sustainable
 11 Energy Utility, I should say. Not the trust fund.
 12 Between, you know, the SEU and -- as
 13 your Honor knows, the SEU and Pepco to discuss, you
 14 know, those sort of initiatives. And that SEU is
 15 overseen by the -- or the contract is overseen by the
 16 DOEE.
 17 COMMISSIONER TRABUE: Absolutely.
 18 Thank you. Is it your -- I -- I don't think I heard
 19 you opine on -- on a traditional rate case versus, you
 20 know, the -- the multi -- would you prefer a
 21 traditional rate case as well?
 22 MR. CALDWELL: That would -- in the

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1 context of the MRP that was filed in this case,
 2 definitely.
 3 A traditional cost of service rate
 4 making, you know, would be vastly preferable to the
 5 MRP that has been submitted in this case, because we
 6 feel that that's -- it's so flawed that it would not
 7 produce any benefits to customers would really -- or
 8 the District's energy policies.
 9 COMMISSIONER TRABUE: All right. Thank
 10 you, Mr. Caldwell.
 11 THE CHAIRMAN: We have no further
 12 questions. Thank you, Mr. Caldwell.
 13 I just want to check with DC Water and
 14 GSA. Didn't know if you felt so moved by the
 15 testimony today that you wanted to add anything to the
 16 record, but wanted to give you the opportunity just in
 17 case.
 18 MR. ENGELMAN: Thank you, Chairman, we
 19 have nothing to add.
 20 MS. SINGLETON: As inspiring as the
 21 oral arguments have been, GSA also has nothing to add.
 22 THE CHAIRMAN: Okay. Thank you. So I

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1 will now call Ms. Curry back up to the podium for her
 2 rebuttal.
 3 You have ten minutes.
 4 MS. CURRY: Thank you, Chairman.
 5 Again, Kim Curry representing Pepco.
 6 OBC, and AOBA, and DCG, I believe as
 7 well, discussed how our plans are business as usual,
 8 and that's how it appears to them.
 9 However, our investments -- for
 10 example, to harden the system, one of the benefits of
 11 that or one of the purposes of that is to harden
 12 against more severe storms that we expect as a result
 13 of climate change.
 14 So generally that is how we
 15 incorporate -- an example of how we incorporate
 16 climate goals and the impacts of climate change into
 17 our investments. That's just one example.
 18 You know, not linking it to one
 19 specific project, but the general need to harden our
 20 system for that purpose.
 21 OPC and AOBA made comparisons between
 22 the rate base in 1156 and 1176. That's not an apples

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1 to apples comparison.
 2 The -- in case FC 1156, what we
 3 presented were actual results with rate making
 4 adjustments, whereas FC 1176, the current rate case is
 5 forward looking. So there's not a -- a good sense of
 6 comparison as the parties are trying to do.
 7 Several parties talked about there
 8 being no prudency review. There is a prudency review.
 9 The commission identified one in order number 20755.
 10 They called it -- you called it a reconciliation and
 11 prudency review. One exists.
 12 That process allows for -- along with
 13 the annual information filings, allow for parties to
 14 ask data requests or DRs, as we call them, and for
 15 parties to file comments.
 16 OPC filed comments on the 2021 annual
 17 information filing or AIF, but AOBA did not. AOBA did
 18 not submit DRs. AOBA did not submit comments either.
 19 So there is a process for the parties
 20 to vet or ask questions about our investments, our
 21 variances between our budgets and our actuals.
 22 But those parties have to avail

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1 themselves of that before they can ask for a change in
 2 the -- or -- or the structure of the MYP as you've
 3 designed it.
 4 Several parties talked about filing our
 5 application with no PIMs [ph]. And someone suggested,
 6 you know, why the -- the utility may -- may -- should
 7 have waited before filing this case. It should have
 8 waited on the work of the working group before --
 9 before we filed.
 10 Delaying would hamper our ability to
 11 meet the District goals on an undefined or a process
 12 through the PIMs [ph] working group that does not
 13 currently, you know, have an end or -- or an end date.
 14 So we had to file our plan to make sure
 15 that we are making the investments that we can, again,
 16 to provide safe and reliable service, as well as meet
 17 District goals.
 18 Commissioner Beverly, I think you had
 19 asked, you know, do the parties meet on what should be
 20 in an MYP? The commission's AFOR order lists exactly
 21 what should be in an MYP.
 22 The commission's order in the company's

<p style="text-align: right;">Page 166</p> <p>1 first rate case lists what should be in an MYP. So 2 that has already been determined by the commission. 3 That framework was there, and it's -- it's a -- an 4 excellent guideline to follow for MYPs. 5 AOBA mentioned that in 9702 -- I'm 6 sorry. That is the docket in -- before the Maryland 7 Public Service Commission, Pepco Maryland's, MYP, that 8 the commission denied our MYP. 9 However, what the parties have not told 10 you is that the commission approved an MYP for 11 Baltimore Gas and Electric Company. That was the 12 pilot utility. 13 So they approved the MYP -- a second 14 MYP for the pilot utility Baltimore Gas and Electric 15 company. And then, like I mentioned, convened a 16 larger statewide lessons learned. 17 Moving to AOBA, I want to talk a little 18 bit about the reconciliation. The reconciliation is 19 there, and this also gets to the arguments about cost 20 containment. 21 The reconciliation, the annual 22 information -- annual information filings give the</p>	<p style="text-align: right;">Page 168</p> <p>1 It's 9.275. And as we've mentioned, that ROE is -- is 2 no longer supported, given the financial and market 3 forces that we see. 4 I just -- may I have your indulgence as 5 I read through my notes here? There was talk about 6 the -- the BSA and whether or not it's still needed. 7 The Atrium report -- this is the 8 commission's auditor -- found that the BSA is still 9 well designed to meet the goals of encouraging 10 reductions in -- in energy efficiency. 11 One other point of discussion, AOBA had 12 mentioned there are no -- there have been no 13 reductions in regulatory burdens. We disagree. The 14 MYP, if it's for three years, we're only going to have 15 a fully litigated rate case every three years. 16 AOBA did mention that there are annual 17 information filings and that involves some level of 18 work in between rate cases, but that level of work and 19 resources put to AIF's annual information filings, as 20 well as reconciliation, is not on the level of a fully 21 litigated rate case. 22 Turning to the District of Columbia,</p>
<p style="text-align: right;">Page 167</p> <p>1 parties and the commission the ability to look at our 2 investments, what our actuals are, what are -- against 3 our budgets, and ask questions. 4 That's the insight that all the parties 5 get to our -- our plans. And the -- the great thing 6 about the reconciliation is that customers only pay 7 the actual costs of our -- of our investments. 8 And that process, the annual 9 informational filings, as well as the reconciliation, 10 is consistent with what the Maryland Public Service 11 Commission has done for four other MYPs. So it is a 12 process, it's a structure that works. 13 AOBA cited some articles from the Wall 14 Street Journal. I'm not aware of those being in 15 evidence, but I will just note that those statements 16 in those articles have not been supported by -- by 17 testimony, and we've not been able to do data requests 18 on that. 19 AOBA also mentioned that there was a 20 reduction of the ROE in the Maryland case from nine 21 five five to nine point five. That is indeed true. 22 In this case, our ROE is much lower.</p>	<p style="text-align: right;">Page 169</p> <p>1 Counsel for DCG, District of Columbia government, 2 mentioned that we should incorporate cost benefit 3 analysis into our -- our processes. 4 Those types of analyses just simply 5 aren't reasonable or work for investments for safety 6 and reliability purposes. If they're done for safety, 7 if they're done for reliability, taking a step back 8 and doing a BCA just simply is -- is not a 9 reasonable -- reasonable request. 10 DCG also mentioned the IDP integrated 11 distribution planning. As I mentioned in my outbound, 12 our ACR, annual consolidated report, does have some 13 planned investment component to it. So something like 14 that does exist today for the parties to consult. 15 And I will also note that, again, in 16 Maryland, four MYPs have been approved without 17 something similar. I -- I'd like to talk about a stay 18 out. I -- I know that that was a point of questioning 19 between DCG and Commissioner Beverly. 20 What I will note is the implications of 21 a stay out are -- are pretty -- pretty significant. 22 In the testimony of company witness Lemming, we</p>

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<p>1 include the impact of the first stay out on the first 2 year of the -- of this rate case, 2024. 3 And that showed about a \$20,000,000 4 impact. So that contributed to the revenue deficiency 5 that we see in this -- in this current case. So the 6 impact to customers is -- is strong. 7 THE CHAIRMAN: Thank you for that. I 8 want to first make a comment, and then I will ask my 9 question. Somewhere in your rebuttal you stated that 10 you file this information, and it's incumbent upon the 11 parties to avail themselves to the process. 12 While that technically may be true, I 13 want to remind Pepco that you have the burden, and 14 it's not the party's burden to come back and double 15 check your work. It's your burden to prove the 16 prudence of your spending. 17 So I just wanted to say that, because 18 I -- I think it's a little unfair to put it all on the 19 parties when it's your burden to carry. 20 MS. CURRY: And that was not my intent. 21 We do meet our burden. We meet it when we file our 22 MYP, and we meet it when we file our annual</p>	<p>1 that we could possibly incorporate. So I would say 2 that that should be raised as a part of that. 3 THE CHAIRMAN: The working group that 4 has not concluded? 5 MS. CURRY: The working group. It has, 6 it has, I believe, filed a working group report, but 7 that would be the place I would say that should be 8 considered and vetted. 9 THE CHAIRMAN: Okay. Before we -- 10 thank you Ms. Curry. 11 Before we adjourn, does anyone have 12 anything they wish to raise or ask? 13 Yes, Mr. Nayar? 14 MR. NAYAR: Counsel for OPC. I just 15 had one question. I noticed occasionally that the -- 16 and I think Commissioner Trabue, you may have referred 17 to this, you know, where the attorney spoke as 18 testimony, but it's an oral argument. Just wanted 19 clarity on that. What we're saying is not considered 20 testimony; correct? 21 THE CHAIRMAN: No. 22 MR. NAYAR: Thank you.</p>
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<p>1 informational filings. 2 Then the parties have the opportunity 3 to ask questions on our filings. So we feel we meet 4 our burden. And my comments were not intended to 5 shift that. We know we have the burden, and we feel 6 like we need it. 7 THE CHAIRMAN: Thank you. The other 8 thing I will say is there was a lot of talk about, you 9 know, looking at non-wires alternatives. 10 And while I certainly understand that 11 certainly some infrastructure investments are needed 12 to harden the -- the infrastructure, there is a space 13 for non-wires alternatives. What are your thoughts on 14 the non-wires alternative PIM [ph]? 15 MS. CURRY: A non-wires alternative PIM 16 [ph], I think that that should be discussed in the 17 working group. We'd have to understand kind of what 18 that PIM [ph] would look like before we could say 19 that's something that we could adopt. 20 I'd like to understand a little bit 21 more about it, but I think there is a process and a -- 22 a proceeding available to talk about all the PIMs [ph]</p>	<p>1 THE CHAIRMAN: Thank you. 2 As a reminder, per order number 22015, 3 conformed testimony exhibits are due August 12, 2024. 4 In addition, any admission of stipulated testimony, 5 exhibit status requests, and data responses are due 6 August 21, 2024. 7 And finally, post legislative style 8 hearing briefs are due August 30, 2024. There being 9 nothing further, this concludes today's formal case 10 number 1176 legislative style hearing. 11 Thank you all for your attendance and 12 participation. We are adjourned. 13 Oh, Ms. Francis. 14 MS. FRANCIS: One more thing. When 15 Your Honor said, "The post legislative style briefs 16 are encouraged," is that -- is that -- did I say that 17 right? 18 THE CHAIRMAN: No. I -- I said they 19 are due. 20 MS. FRANCIS: They are due. 21 THE CHAIRMAN: Yes. 22 MS. FRANCIS: I'm not quite sure what</p>

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1 that is. Is that, like, a brief that we normally do
 2 after an evidentiary hearing?
 3 What exactly -- does that have to do
 4 with today's hearing? Does that have to do with what
 5 has been pre-filed in the 1176 docket? I'm not quite
 6 sure what that brief is.
 7 THE CHAIRMAN: So typically with our
 8 hearings we always ask for post-hearing brief or at
 9 least give parties the opportunity to file
 10 post-hearing briefs, similar to 1169. I don't know
 11 what else to -- to say other than that.
 12 Wasn't it -- was it not your request to
 13 file post-hearing briefs?
 14 MS. FRANCIS: We were -- we were
 15 requesting evidentiary hearings. And normally we do a
 16 post-hearing brief after evidentiary hearings.
 17 Right now there isn't anything that has
 18 been quote -- as OPC said, placed into the record. So
 19 I'm not sure, do I brief all the issues in the case?
 20 Do I wait to hear from the commission if they're going
 21 to be evidentiary hearings?
 22 If they're going to be evidentiary

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1 hearings, we should probably wait till after hearings
 2 to put on the brief. It just didn't make -- I don't
 3 know what to put in it.
 4 THE CHAIRMAN: Okay. My -- my
 5 suggestion would be to -- just as we ask for briefs in
 6 advance of the hearing, post-hearing briefs to follow
 7 that same format.
 8 COMMISSIONER BEVERLY: Right. There --
 9 there has been no determination to have evidentiary
 10 hearings. My understanding is the parties asked to do
 11 post-hearing briefs --
 12 MS. FRANCIS: I -- no, I recognize the
 13 no determination yet --
 14 COMMISSIONER BEVERLY: But, I mean,
 15 this -- the request to file post-hearing briefs was
 16 based on the fact that the commission -- or at least
 17 my understanding of it, the commission had scheduled
 18 this legislative hearing.
 19 So you were doing your post-hearing
 20 brief, I thought, based on that. It wasn't based on
 21 any determination by the commission, as I understood
 22 it, that we were going to do it evidentiary hearings.

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1 So as it stands now, I don't know
 2 anything about any evidentiary hearing. If the
 3 commission should decide to do that, it would be after
 4 today.
 5 We're not making a ruling on holding an
 6 evidentiary hearing today. So I don't know how we --
 7 how we would answer your question.
 8 So if your question is, do you have to
 9 do a post-hearing brief on an evidentiary hearing that
 10 no one has decided to hold, I don't know how to answer
 11 that. Nobody said there's going to be an evidentiary
 12 hearing yet.
 13 MS. FRANCIS: Oh. Maybe I didn't
 14 phrase it right. If this commission decides to hold
 15 evidentiary hearings, then I would think we would want
 16 to file the post-hearing brief after the evidentiary
 17 hearings.
 18 At this moment, nothing has been placed
 19 into the record. There is no evidence. And I believe
 20 in its limited brief, OPC has taken the position
 21 they're not going to stipulate to testimony they know
 22 is incorrect. AOBA has taken also that position. So

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1 at this moment, I'm not quite sure where to go.
 2 COMMISSIONER BEVERLY: And I'm not sure
 3 how to answer that. So no one has -- again, no one
 4 has decided that there would be an evidentiary
 5 hearing.
 6 MS. FRANCIS: Correct.
 7 COMMISSIONER BEVERLY: If you don't
 8 want to do a post-hearing brief because there's no
 9 evidentiary hearing, I guess that's up to you.
 10 MS. FRANCIS: Well, obviously if
 11 this --
 12 COMMISSIONER BEVERLY: Nobody's
 13 requiring it, but if we're -- if you want to have --
 14 if you want to be able to say something in a
 15 post-legislative hearing brief, then you have an
 16 opportunity to do that.
 17 You don't have to have evidence to make
 18 a comment. You didn't have to have the evidence to do
 19 this. You -- you presented a -- you presented a brief
 20 before the legislative style hearing based on the fact
 21 that there were no issues of fact. We still haven't
 22 determined that there are any issues of fact.

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1 So, I mean, it -- it just is what it
 2 is. You can file something after this if you choose
 3 to do so as a post-legislative-style-hearing brief.
 4 But I can't tell you that you're filing
 5 a brief on an evidentiary hearing that no one has
 6 decided to hold.
 7 MS. FRANCIS: Correct.
 8 COMMISSIONER BEVERLY: Okay. I don't
 9 know what else to tell you. I can't give you that
 10 level of clarity.
 11 MS. SINGLETON: Could we maybe get some
 12 guidance on when, if, and how such a determination
 13 will be made on whether there will be an evidentiary
 14 hearing?
 15 COMMISSIONER BEVERLY: If someone
 16 determines that there are material issues of fact, we
 17 have not yet determined that, nor have I heard one.
 18 MS. SINGLETON: So that --
 19 COMMISSIONER BEVERLY: I understand
 20 what Ms. Francis said with regard to what she thinks
 21 are issues that need to be explored, which doesn't
 22 necessarily translate in my mind automatically to a

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1 material issue of fact.
 2 MS. SINGLETON: I understand. So --
 3 but the decision definitely, it sounds like, will be
 4 made after the commission has ruled on the pending
 5 motions. Is that accurate?
 6 COMMISSIONER BEVERLY: I'm sorry.
 7 Which pending motion?
 8 MS. SINGLETON: The summary judgment
 9 motions.
 10 COMMISSIONER BEVERLY: You can't --
 11 I -- I don't know what -- I think the commissioner has
 12 already ruled on that motion and denied it, unless I'm
 13 missing something.
 14 So there isn't any summary disposition
 15 of this case when you just went to a legislative --
 16 what's the summary part of it? So what would be the
 17 summary judgment aspect of this at this juncture?
 18 What's the summary element?
 19 So if the commission went straight to
 20 decision -- not saying it would -- if it went straight
 21 to decision after this legislative style hearing, and
 22 after you got in your post-hearing brief, should you

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1 choose to file one, what is the summary nature of this
 2 proceed?
 3 What are you getting summary judgment
 4 on? That's just judgment.
 5 MS. SINGLETON: I assume that's a --
 6 that's a -- probably a better question for the parties
 7 that filed the motion for summary judgment.
 8 COMMISSIONER BEVERLY: I mean,
 9 typically when you file a motion for summary judgment,
 10 it's in lieu of going to some kind of hearing. That's
 11 the point of it. Okay. So after you have the
 12 hearing, I don't understand what the point is. You're
 13 just asking for judgment.
 14 You can ask for judgment on the same
 15 bases that if you think there should be PIMs [ph] --
 16 if you think there should be PIMs [ph] in the plan and
 17 there are no PIMs [ph], then you can make a motion for
 18 summary judgment based on that, which the parties did.
 19 And you can argue that the plan
 20 shouldn't be approved without the PIMs [ph], even if
 21 the motion for summary judgment is denied. You can
 22 still do that. That doesn't -- the argument with

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1 regard to the PIMs [ph] doesn't disappear based on the
 2 presence or absence of a motion for summary judgment.
 3 So in answer to Ms. Francis' question,
 4 I still don't understand what else I can tell you,
 5 other than there's been no decision that there are
 6 material issues of fact warranting an evidentiary
 7 hearing.
 8 So right now is legislative -- as far
 9 as I know, legislative style hearing, and then the
 10 commission could proceed to a decision after they get
 11 the post-hearing briefs, which were factored into the
 12 schedule, because you, like, asked for it.
 13 I didn't -- I didn't say that you had
 14 to have a post-hearing brief. You asked to be able to
 15 file them.
 16 MS. FRANCIS: If this commission
 17 decided to have evidentiary -- if this commission
 18 decided to have evidentiary hearings, it's AOBA's
 19 opinion, it would make more sense to have a
 20 post-hearing brief after the evidentiary hearings.
 21 If this commission is not going to hold
 22 evidentiary hearings, I'm still a little confused

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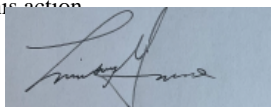
1 about what to write because there's no -- today was
 2 not evidence, so I'm not quite sure how to do a cite
 3 to quote the evidence, 'cause it hasn't been --
 4 nothing's been admitted into the record. So I'm just
 5 sort of having a procedural nightmare in my head.
 6 COMMISSIONER BEVERLY: -- anything into
 7 the record to prove a point that's not in dispute.
 8 I don't want to -- you know, I don't
 9 have an answer for you to the level of detail that
 10 you're looking for, because I think it's working
 11 contrary -- what you're asking is working contrary to
 12 the way this is currently proceeding.
 13 I can't tell you what would happen if
 14 you have an evidentiary hearing that no one has
 15 decided to hold. It may be that you have an
 16 opportunity to file a second post-hearing brief. I
 17 don't know. We're not there.
 18 MS. FRANCIS: Thank you.
 19 THE CHAIRMAN: Okay. So this concludes
 20 today's formal case number 1176 legislative style
 21 hearing.
 22 Thank you all for your attendance and

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1 participation.
 2 We are adjourned.
 3 (Whereupon, at 1:21 p.m., the
 4 proceeding was concluded.)
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CERTIFICATE

1 I, TIMOTHY GUEVARA, the officer before whom
 2 the foregoing proceedings were taken, do hereby
 3 certify that any witness(es) in the foregoing
 4 proceedings, prior to testifying, were duly sworn;
 5 that the proceedings were recorded by me and
 6 thereafter reduced to typewriting by a qualified
 7 transcriptionist; that said digital audio recording of
 8 said proceedings are a true and accurate record to the
 9 best of my knowledge, skills, and ability; that I am
 10 neither counsel for, related to, nor employed by any
 11 of the parties to the action in which this was taken;
 12 and, further, that I am not a relative or employee of
 13 any counsel or attorney employed by the parties
 14 hereto, nor financially or otherwise interested in the
 15 outcome of this action.
 16

 17
 18 TIMOTHY GUEVARA
 19 Notary Public in and for the
 20 District of Columbia
 21
 22

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CERTIFICATE OF TRANSCRIBER

1 I, CHRISTINE BROWN, do hereby certify that
 2 this transcript was prepared from the digital audio
 3 recording of the foregoing proceeding, that said
 4 transcript is a true and accurate record of the
 5 proceedings to the best of my knowledge, skills, and
 6 ability; that I am neither counsel for, related to,
 7 nor employed by any of the parties to the action in
 8 which this was taken; and, further, that I am not a
 9 relative or employee of any counsel or attorney
 10 employed by the parties hereto, nor financially or
 11 otherwise interested in the outcome of this action.
 12
 13

 14
 15 CHRISTINE BROWN
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