



U.S. General Services Administration

August 29, 2024

**Via Electronic Filing**

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

RE: Formal Case No. 1176  
In the Matter of the Application of Potomac Electric Power Company for Authority to  
Implement a Multiyear Rate Plan for Electric Distribution Service in the District of  
Columbia  
**Post-Legislative-Style Hearing Brief of the United States General Services  
Administration**

Dear Ms. Westbrook-Sedgwick:

Enclosed please find the Post-Legislative-Style Hearing Brief of the United States General  
Services Administration in the above referenced proceeding.

If there are any questions regarding this matter, please contact me at (202) 969-7136.

Sincerely,

/s/ Kristi Singleton

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Enclosures

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

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

**POST-LEGISLATIVE-STYLE HEARING BRIEF OF  
THE UNITED STATES GENERAL SERVICES ADMINISTRATION**

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taxpayers. GSA is a party to this case and has actively participated, including sponsoring the rebuttal testimony and exhibits of Dr. Dennis W. Goins.<sup>2</sup>

This case considers Pepco's second Multi-Year Rate Plan ("MYP") proposal. While there are many issues for the Commission to decide in this case, in this brief, GSA focuses on three issues of critical importance. First, the threshold issue in the case is whether the Commission should approve a second MYP for Pepco. GSA's position is that Pepco has not demonstrated that there are material benefits from the MYP for customers, and that structure results in increased cost, risk, and rate volatility for customers. No consumer parties support the MYP proposed in this case, despite Pepco's claims that the MYP provides benefits to customers.<sup>3</sup> The Commission should reject the MYP as the Maryland Public Service Commission ("Maryland PSC") just did, set rates based on Pepco's historical test-year filing assuming the Commission determines that a rate increase for Pepco is justified, and institute a "lessons learned" proceeding that would allow interested parties and the Commission to closely examine the results of Pepco's first MYP and decide whether MYPs make sense for the District going forward.

Second, the Commission must address the massive inter-class subsidy issue in this case, regardless of whether an MYP or an historical test-year rate plan is approved. Over the years, there has been a large and growing subsidy of residential customers paid for by the commercial classes. Today, this subsidy stands at \$132 million dollars. To its credit, Pepco proposes a revenue spread methodology that recognizes the inter-class subsidy problem and makes a small

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<sup>2</sup> Rebuttal Testimony of Dennis W. Goins, Ph.D. on Behalf of the United States General Services Administration (Exhs. GSA (A) through GSA (A)-2).

<sup>3</sup> In this proceeding, District of Columbia Government witness Courtney Lane is "not opposed to [alternative forms of regulation]," but is "opposed to the design of Pepco's MYP." Surrebuttal Testimony of Courtney Lane on Behalf of the District of Columbia Government, Exh. DCG (2A) at 8.

but meaningful movement toward reducing the subsidy and moving all customer classes closer to cost of service. GSA recommends that the Commission approve Pepco's revenue spread methodology.

Finally, GSA recommends that the Commission terminate Pepco's Bill Stabilization Adjustment ("BSA") mechanism. This decoupling mechanism, initially approved years ago to encourage Pepco to adopt and implement energy efficiency programs, is no longer needed, particularly if the Commission approves an MYP. Despite its name, the BSA does not provide stable rates, but instead shifts risk to customers and results in more volatile rates. If the Commission nevertheless decides to approve the extension of the BSA, then the modifications to the BSA mechanism proposed by Pepco should be adopted.

**A. Procedural Overview**

In this proceeding, Pepco submitted an application for authority to implement a second MYP, which it referred to as its "Climate Ready Pathway" on April 13, 2023.<sup>4</sup> The MYP as filed requests approval of three separate and distinct rate increases based on forecasted data totaling \$186.5 million over three years (2024-2026).<sup>5</sup> The MYP also incorporates rate base for capital expenditures made in 2023, which was not covered by the previous pilot MYP approved by the Commission in Formal Case No. 1156.<sup>6</sup>

In Order No. 21886 issued on July 28, 2023, the Commission required Pepco to file testimony regarding the benefits of, problems identified, and lessons learned from the Modified

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<sup>4</sup> Formal Case No. 1176, Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service at 1 (April 13, 2023) ("Application").

<sup>5</sup> Rebuttal Testimony of Robert T. Leming, Exh. PEPCO (3B) at 2, Table 1.

<sup>6</sup> *Id.* at 7.

Enhanced Multiyear Rate Plan Pilot (“Modified EMRP”) and a “traditional one-year rate case for the test period Calendar Year 2023.”<sup>7</sup> On October 16, 2023, Pepco filed supplemental direct testimony with a Traditional Test Year Compliance Filing (“TTYCF”) requesting, in the alternative to Pepco’s MYP, a one-time \$108.2 million rate increase based on a test year of Calendar Year 2023.<sup>8</sup>

Several parties filed dispositive motions in this proceeding. Specifically, the Office of People’s Counsel (“OPC”), the Apartment and Office Building Association of Metropolitan Washington (“AOBA”), and the District of Columbia Government (“DCG”) filed a Motion to Dismiss or, in the Alternative, Motion for Summary Disposition alleging that the MYP Application is materially deficient and premature.<sup>9</sup> Additionally, on June 10, 2024, OPC and AOBA filed a second Motion to Dismiss or, in the Alternative, Motion for Summary Judgment alleging that Pepco’s financial reports pursuant to the Commission’s orders in Formal Case No. 1156 “demonstrate that Pepco’s current rates do not produce a revenue deficiency.”<sup>10</sup> In Order No. 22013, the Commission denied the motions because “[t]his case is part of an unprecedented paradigm shift” in the way the Commission regulates rates, and the Commission wanted to develop a “more complete record” on which to decide issues of policy and law that undergird the

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<sup>7</sup> Formal Case No. 1176, Order No. 21886 at ¶ 24 (July 28, 2023).

<sup>8</sup> Additional Supplemental Direct Testimony of Elizabeth M. D. O’Donnell, Exh. PEPCO (3A) at 2.

<sup>9</sup> Formal Case No. 1176, Motion to Dismiss or, In the Alternative, Motion for Summary Disposition of the Office of the People’s Counsel for the District of Columbia, District of Columbia Government, and the Apartment and Office Building Association of Metropolitan Washington (March 12, 2024). OPC filed an Errata to the Joint Movants’ Motion to Dismiss, or in the Alternative, Motion for Summary Disposition on April 15, 2024.

<sup>10</sup> Formal Case No. 1176, Motion to Dismiss or, In the Alternative, Motion for Summary Judgment by the Office of the People’s Counsel for the District of Columbia and the Apartment and Office Building Association of Metropolitan Washington at 2 (June 10, 2024).

motions.<sup>11</sup> The Commission also directed Pepco to supplement its financial reporting for parties to more fully develop the record in this proceeding.<sup>12</sup>

On August 30, 2024, the Commission held a legislative-style hearing on issues in this proceeding. Finally, parties, in the absence of stipulations on testimony and exhibits, filed motions to admit their evidence into the record in this proceeding which are pending before the Commission.<sup>13</sup>

## **B. Summary of GSA Positions and Recommendations**

Following is a summary of GSA's positions and recommendations:

- Multi-year Rate Plan Proposal
  - Pepco's proposed MYP demonstrates that the MYP structure has failed to provide benefits to customers. Specifically, the promised rate certainty and reduced administrative burden have not been realized under Pepco's MYP construct. Additionally, the claimed benefit of transparency in Pepco's utility planning is illusory given the large variances between Pepco's filed for programs and projects and its actual capital expenditures under the Modified EMRP as approved in Formal Case No. 1156.
  - The Commission should reject Pepco's MYP and use an historical test year approach to set rates in this case.
  - The Commission should conduct a full lessons learned proceeding outside the constraints of a rate proceeding to fully evaluate whether the MYP structure should continue in the District and, if so, what performance metrics should be put in place in order to guarantee MYPs protect customers and are in the public interest.

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<sup>11</sup> Order No. 22013 at ¶ 28.

<sup>12</sup> *Id.* at ¶ 29.

<sup>13</sup> For clarity, in this brief GSA is citing to the fully conformed testimony and exhibits filed by each party in this proceeding pending Commission admission into the record.

- Cost Allocation and Rate Design
  - Pepco's 4-Step Method for allocating proposed rate increases among the customer classes is reasonable in this proceeding and should be adopted, regardless of whether an MYP or historical test year approach is used.
    - Pepco's proposal, which caps the rate increases for any customer class earning a negative rate of return at 2.3 times the system average increase, is a small but meaningful step toward addressing Pepco's persistent inter-class subsidy problem.
  - The Commission should reject OPC witness Dismukes' proposal to perpetuate the current inter-class rate subsidies as inconsistent with the principles of cost-based, just and reasonable rates.
    - OPC witness Dismukes' proposal to abandon the goal of bringing Pepco's customer classes toward cost of service is inconsistent with fundamental ratemaking principles and will produce rates that are unjust and unreasonable.
    - OPC witness Dismukes' proposal to limit rate increases to 1.25 times the system average increase is insufficient to make meaningful progress toward eliminating the inter-class subsidy.
- Bill Stabilization Adjustment
  - The Commission should discontinue Pepco's BSA. It is not needed, particularly in the context of the MYP. The persistent issues with the BSA demonstrate that it is not well suited for the needs of the District.
  - The Commission should disallow certain BSA deferral balances related to Pepco's administrative error which led to the extremely high BSA deferral balances for Schedule GT-LV.
  - The Commission should also approve the proposal to place deferral balances related to COVID-19 into a regulatory asset to be recovered over a ten-year period.
  - If the Commission decides to extend the BSA, it should approve the modifications to the mechanism proposed by Pepco.

## II. ARGUMENT

### A. Multi-Year Rate Plan

#### 1. Overview of Pepco's MYP Proposal

Pepco's proposed MYP, which it referred to as its "Climate Ready Pathway," is a three-year plan that covers forecasted capital investments, operations and maintenance costs, and billing determinants for the years 2024 through 2026 and adjusts rates in three steps.<sup>14</sup> The Application also proposes recovery for investments made during 2023 that have not been reflected in current rates because of the "gap" between the Modified EMRP and Pepco's proposed second MYP.<sup>15</sup> Pepco requests distribution revenue increases totaling \$186.5 million over the 2024-2026 period—\$116.3 million in the 2024 rate year, \$34.5 million in 2025, and \$35.8 million in 2026.<sup>16</sup> Pepco asserts that many of the investments in its MYP are needed to reach the District's clean energy goals and anticipated increase in demand on the electric system due to electrification.<sup>17</sup> Additionally, Pepco requests authority to file its next MYP before the conclusion of this second MYP so there is no gap in their MYP rate cases.<sup>18</sup> Pepco proposes to do any true-up due to final reconciliation at the conclusion of the MYP and recover or return any over- or under-recovery through a new rate rider.<sup>19</sup> Pepco also requests continuation of its deferred accounting mechanism and the reopener mechanism as included in the Modified EMRP.<sup>20</sup>

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<sup>14</sup> Application at 1.

<sup>15</sup> Direct Testimony of Elizabeth M. D. O'Donnell, Exh. PEPCO (A) at 32-33.

<sup>16</sup> Exh. PEPCO (3B) at 2, Table 1.

<sup>17</sup> Exh. PEPCO (A) at 8-10.

<sup>18</sup> Application at 5-6.

<sup>19</sup> Direct Testimony of Robert T. Leming, Exh. PEPCO (B) at 15.

<sup>20</sup> *Id.* at 16.

**2. Approving a second Pepco MYP is premature without the opportunity to evaluate lessons learned from the Modified EMRP Pilot**

The Commission approved Pepco's Modified EMRP as a Pilot program.<sup>21</sup> In Order No. 21886, the Commission reaffirmed that approach and required Pepco to file testimony to evaluate the Pilot in this proceeding, saying:

[I]t is appropriate to evaluate how the Modified EMRP Pilot functioned. The Commission did not adopt a Modified EMRP Pilot evaluation plan concurrent with the approval of the Modified EMRP Pilot, however, the Commission believes it is important to assess lessons learned in developing an evaluation framework in assessing Pepco's request to approve a second MRP filing.<sup>22</sup>

The Commission then ordered Pepco to file testimony and exhibits regarding the "lessons learned" from its Modified EMRP pilot for parties to respond to in this proceeding. The Commission also required Pepco to file a traditional one-year rate case to evaluate as part of this proceeding, which Pepco filed as the TTYCF.<sup>23</sup>

As DCG witness Lane indicates, ordering Pepco to provide a self-evaluation of its own MYP is insufficient. Specifically, "[w]ithout reporting metrics and quantitative data, it is difficult to assess whether the Modified EMRP resulted in sufficient benefits to ratepayers to outweigh the risks associated with information asymmetry and the reconciliation process and whether it incentivized cost-efficiencies compared to cost-of-service regulation."<sup>24</sup>

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<sup>21</sup> Formal Case No. 1156, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia*, Order No. 21042 at ¶¶ 92-93 (October 26, 2021) ("The Commission clarifies that the Modified EMRP is a pilot alternative form of rate regulation implementing Pepco's rate increase application. Thus, there is no presumption that the Commission will approve another multi-year rate application for Pepco. . . . [E]stablishing a pilot to consider Pepco's EMRP allows this first MRP filing to serve as an opportunity to gather valuable lessons learned for assessing future MRP proposals.").

<sup>22</sup> Order No. 21886 at ¶ 23.

<sup>23</sup> See Exh. PEPCO (3A) at 1.

<sup>24</sup> Direct Testimony of Courtney Lane on Behalf of the District of Columbia Government, Exh. DCG (A) at 58.

Because of the incomplete review process made as part of this proceeding, the Commission should proceed with “historical test year ratemaking until an evaluation framework is developed for how to track and assess the benefits of an MYP.”<sup>25</sup> As DCG witness Lane points out, “the Commission should require Pepco to track quantifiable metrics related to the purported benefits of AFOR.”<sup>26</sup>

Recently, the Maryland PSC similarly hit “pause” on MYPs until it could perform a similar full lessons learned analysis and proceeding regarding the pilot MYP in its jurisdiction. Specifically, the Maryland PSC denied Pepco’s filing of a second MYP in that jurisdiction and ordered a single year rate increase based on a future test year (because the Maryland PSC did not have the benefit of a historical test year filing as the Commission does with Pepco’s TTYCF as filed in this proceeding).<sup>27</sup> The Maryland PSC ordered Pepco and others to participate in a lessons learned proceeding, which the Commission recently initiated to perform “a complete analysis of MRP-impacts on the companies, all classes of customers, the State’s economy, and environment and energy policy goals.”<sup>28</sup> The Maryland PSC will conduct a legislative-style hearing and briefing later this year solely on this issue apart from the evidentiary findings it must make in relation to company-specific MYP proposals. The Commission should adopt a similar approach for the District. Parties should be allowed the opportunity to evaluate the lessons learned regarding the

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<sup>25</sup> *Id.* at 64.

<sup>26</sup> *Id.* at 65.

<sup>27</sup> Public Service Commission of Maryland, Case No. 9702, *Potomac Electric Power Company’s Application for Adjustments to its Retail Rates for the Distribution of Electric Energy*, Order No. 91181, Order on Application for a Multi-Year Rate Plan at 1-2 (June 10, 2024).

<sup>28</sup> Public Service Commission of Maryland, Case No. 9618, *In the Matter of Alternate Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company* and Case No. 9645, *Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan*, Notice at 5 (August 15, 2024). The Commission issued an Errata Notice on August 20, 2024.

pilot Modified EMRP apart from factual issues presented in this case regarding Pepco's proposed second MYP and TTYCF, which necessarily involve complicated issues of fact, law, and policy which the Commission must decide.

**3. The MYP increases risks and does not provide promised benefits to ratepayers**

D.C. Code § 34-1504(d)(2) provides that the Commission may adopt an alternative form of regulation if it "(A) Protects consumers; (B) ensures the quality, availability, and reliability of regulated electric services; and (C) is in the interest of the public, including shareholders of the electric company." In Order No. 20273, the Commission determined that there are several potential benefits of MYPs, including "shortening the cost recovery period, providing more predictable revenues for utilities and more predicable rates for consumers, spreading changes in rates over multiple years, and decreasing administrative burdens on regulators by staggering filings over several years."<sup>29</sup> Additionally, the Commission required that "any utility submitting a MRP will need to demonstrate that . . . the plan . . . does not shift risks to customers and reflect shareholder risk reductions in a lower ROE."<sup>30</sup> It is evident from the results in this case that Pepco's MYP has not provided the benefits to consumers ordered by the Commission or the consumer protections required under District of Columbia law. In fact, despite Pepco's claims that the MYP provides benefits to customers, no consumer representatives in this case support the MYP.

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<sup>29</sup> Formal Case No. 1156, Order No. 20273 at ¶ 92 (December 20, 2019).

<sup>30</sup> *Id.* at ¶ 93.

**a. The MYP does not provide transparency into the Company's investments**

Pepco asserts that “an MYP improves collaboration and transparency with the Commission, stakeholders and customers” relative to a traditional test year filing.<sup>31</sup> While the MYP process does require utilities to project future expenditures, there has been little to no evidence that Pepco was bound to those projections in making actual rate year expenditures. Instead, Pepco has substituted new projects for the projects approved as part of the first MYP with little or no oversight. According to AOBA witness Oliver, “the transparency of Pepco’s capital plans is severely eroded by actual expenditures that reflect dramatic differences from the composition of the Company’s planned expenditures.”<sup>32</sup> Indeed, AOBA witness Oliver points out that “roughly *one-third* of Pepco’s actual capital expenditures in 2022 *represented costs that were not included in its 2022 capital budget.*”<sup>33</sup> While Pepco’s O&M costs hewed more closely to Pepco’s as-filed budget,<sup>34</sup> the large deviations between Pepco’s as-filed expenditures and its actual expenditures in the Pilot Modified EMRP raise serious questions about the validity of Pepco’s claims regarding the value of transparency in an MYP.

Without assurance that Pepco will spend money allocated for certain projects on those actual projects, or at least that there is oversight of Pepco’s plans to shift the use of funds to another purpose, the MYP allows Pepco to spend more or less freely without regard for the approved capital plan. Additionally, where the costs vary so greatly, the large burden falls on

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<sup>31</sup> Exh. PEPCO (3A) at 5.

<sup>32</sup> Surrebuttal Testimony of AOBA Witness Bruce R. Oliver, Exh. AOBA (2A) at 6.

<sup>33</sup> Direct Testimony of AOBA Witness Bruce R. Oliver, Exh. AOBA (A) at 32 (emphasis in original).

<sup>34</sup> *Id.* at 33-34.

intervenors and the Commission during the reconciliation process to evaluate Pepco's spending and assess prudence of Pepco's alterations to the composition of its budgeted costs.<sup>35</sup>

Additionally, the limited annual information filings provide insufficient insight into any differences between proposed and actual capital expenditures. As AOBA witness Oliver says:

If Pepco was truly concerned with facilitating the review of its reconciliation filings by other parties, it would have provided greater affirmative support for its actual expenditures. The explanations of variances found in Pepco's Reconciliation Filings to date may suggest reasons for actual costs deviating from budgeted amounts, but they do not justify the dollar amounts actually incurred for any given activity or project.<sup>36</sup>

The claim that MYPs give the Commission and other stakeholders insight into utility planning processes going forward is also suspect. Pepco has not demonstrated that a multi-year rate plan is the only or best way to give stakeholders visibility into its planning process and the ability to participate in that process. Alternative methods, such as proceedings to evaluate Pepco's construction plans, would also provide an opportunity for stakeholders to evaluate Pepco's plans and provide input. DCG witness Lane proposes that the Commission require Pepco to file a grid modernization plan in conjunction with an Integrated Distribution Plan in order to provide transparency and a full cost-benefit analysis supporting Pepco's grid modernization plans.<sup>37</sup> Such a proceeding would provide similar or even improved insight into Pepco's planning compared to the MYP structure without the ratepayer-unfriendly aspects of the MYP.

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<sup>35</sup> *Id.* at 34.

<sup>36</sup> Exh. AOBA (2A) at 11.

<sup>37</sup> Exh. DCG (A) at 45.

**b. The MYP has not decreased the administrative burden on parties and the Commission**

Although Pepco claims that the MYP's reduction in administrative burden and costs associated with annual rate case filings is "quantitative and measurable," Pepco has failed to provide any measurement of such benefits in this proceeding.<sup>38</sup>

Under historic test year ratemaking, the utility requests a rate increase, which the Commission and parties evaluate. These may happen as often as annually, but for many reasons (including ratepayer impacts, economic conditions, political considerations, etc.) often occur less frequently. Even if a utility determines that a rate case is warranted, there may be many reasons why the utility might decide not to file one, or at least to delay the filing of the case to a later time. For this reason, utility warnings of indefinite consecutive annual rate cases in the absence of an MYP should be taken with a healthy degree of skepticism.

The time between historic test year rate cases provides customers with a period of base rate stability. Under the MYP process, however, there is guaranteed to be at least one annual proceeding that addresses base rates. Additionally, the MYP expands rate case proceedings beyond considerations of the historic test year like under traditional ratemaking. Instead, the Commission must consider not only the reconciliation of the previous MYP's rate years but also the projected rate years using data that is less certain than the data provided under traditional historic test year ratemaking. By contrast, under traditional ratemaking, all base rate issues are open for consideration, and the procedural schedules allow ample time for discovery, testimony,

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<sup>38</sup> Exh. PEPCO (2A) at 7.

a hearing, and briefs. In other words, the traditional ratemaking approach provides for more due process than the piecemeal approach provided for under the MYP.

The increased frequency of smaller proceedings may in fact stretch thin intervenors' resources and make them less likely to participate in all the cases. As AOBA witness Oliver says, "[r]equirements for the parties' review of Pepco's reporting and reconciliation filings between MYP proceedings does not reduce the regulatory burdens placed on other parties. Pepco is funded through rates for its required regulatory activity. Intervenors . . . have no such funding source."<sup>39</sup> The frequency of the annual reconciliation filings means that intervenors effectively must have experts capable of digesting complex ratemaking information "on call," rather than procuring expert witnesses' services on a case-by-case basis.

In addition to the sheer number of cases increasing parties' administrative burden, the drawn-out and convoluted procedural schedule in this case as well as in Formal Case No. 1156 demonstrate that regulatory burden is not decreased under the MYP structure. This case was initiated in April of 2023 and has involved multiple rounds of substantive motions regarding the scope and timing of this proceeding as well as multiple rounds of testimony on Pepco's actual proposed MYP, lessons learned, and the TTYCF. Pepco's MYP in Formal Case No. 1156 similarly was filed on May 30, 2019, and was not decided until two years later.<sup>40</sup> That case involved multiple rounds of comments and substantive motions, two separate MYPs and a historic test year rate case, as well as several rounds of testimony filed by parties. The regulatory burden on

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<sup>39</sup> Exh. AOBA (2A) at 10.

<sup>40</sup> Formal Case No. 1156, Order No. 20755 at ¶¶ 12-29 (June 8, 2021).

parties in the District has increased both in the sheer number of proceedings as well as the complexity of the rate case filings themselves.

**c. The MYP has not provided predictable rate increases**

Pepco touts rate predictability as one of the primary benefits to customers from the MYP.<sup>41</sup> However, any appearance of “rate certainty” is illusory, as Pepco’s rate structure guarantees that customers will see large variances in the non-energy portion of their bills. In addition to the annual base rate increases under the MYP, Pepco’s many rate riders (including D.C. PLUG and the BSA), which are themselves alternative forms of regulation, as discussed in Order No. 20273,<sup>42</sup> are proposed to continue under Pepco’s MYP. Not only will customers face increased rates in each year of the MYP, they will experience unpredictable rates as well.

Additional rate modifications could result attributable to the final reconciliation and prudence review after the conclusion of the MYP. Because Pepco proposes to be able to file another MYP before the conclusion of this MYP, the proposed final reconciliation and prudence review process would occur in an abbreviated process in addition to the next MYP rate case.<sup>43</sup> Additionally, Pepco proposes yet another rider mechanism to either collect or refund any over- or under-recoveries pursuant to the second MYP.<sup>44</sup> This will create even less rate certainty than under the current paradigm, undermining the alleged rate certainty benefits of the MYP even further.

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<sup>41</sup> Exh. PEPCO (3A) at 6-7.

<sup>42</sup> Order No. 20273 at ¶¶ 30-32.

<sup>43</sup> Exh. PEPCO (B) at 10-15.

<sup>44</sup> *Id.* at 15.

Finally, as DCG witness Lane points out, rate predictability alone is insufficient to outweigh the risks to ratepayers of approving a second MYP.<sup>45</sup> Even if one assumes for the sake of argument that the MYP does make rates more predictable, therefore, the increased costs and risks associated with the MYP would still make the MYP a less attractive option to customers than traditional historical test-year ratemaking.

**4. The Commission should reject Pepco's proposed MYP and implement a single rate increase using Pepco's traditional test year compliance filing**

In Order No. 21886, the Commission required Pepco to file a traditional test year compliance filing.<sup>46</sup> On October 16, 2023, Pepco filed supplemental direct testimony with a TTYCF requesting, in the alternative to Pepco's MYP, a one-time \$108.2 million rate increase based on a test year of Calendar Year 2023.<sup>47</sup> The Commission should utilize that filing, with adjustments as proposed by witnesses on behalf of OPC (except for OPC's recommendations as to revenue spread, as discussed below) and AOBA, as the basis for any rate increase the Commission approves in this proceeding.<sup>48</sup> As stated above, the purported benefits of Pepco's Modified EMRP have not been realized, and Pepco's proposed MYP cannot be said to protect customers in a way that is supported under District of Columbia law. To the extent that the Commission may want to evaluate MYPs in the future, the Commission should institute a

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<sup>45</sup> Exh. DCG (A) at 63-64.

<sup>46</sup> Order No. 21886 at ¶ 24.

<sup>47</sup> Exh. PEPCO (3A) at 2.

<sup>48</sup> See, e.g., Direct Testimony of AOBA Witness Timothy B. Oliver, Exh. AOBA (B) at 33-34 (recommending a \$66.7 million revenue requirement under the traditional rate case filing); Direct Testimony and Supporting Exhibits of Michael P. Gorman, Exh. OPC (B), (B)-3 (recommending a \$47.8 million revenue requirement under the traditional test year case).

separate “lessons learned” proceeding in which to evaluate the MYP structure more fully and create metrics against which any future MYP would be evaluated.

## **B. Revenue Spread**

Regardless of whether the Commission approves an MYP or an historical test year approach for Pepco, the Commission must make meaningful progress in this proceeding to address the \$132 million dollar per year inter-class subsidy of residential customers paid for by Pepco’s commercial customers.<sup>49</sup> As the Commission is well aware, Pepco has a persistent inter-class subsidization problem where the residential class has a negative rate of return and non-residential ratepayers significantly subsidize residential customers. As GSA witness Goins explains, “[a] negative class [rate of return] indicates that rates for the class neither provide a return on Pepco’s distribution investment, nor cover the class’s assigned responsibility for Pepco’s operating costs.”<sup>50</sup> As discussed below, this subsidy, if allowed to continue, will produce rates that are unjust, unreasonable and discriminatory, and inconsistent with long-standing Commission policy to move toward eliminating inter-class subsidies and negative rates of return. Continuation of the subsidy also will hammer commercial class customers at a time when businesses and other commercial customers in the District and their employees continue to deal with the economic fallout to businesses in the District due to COVID-19.

It is undisputed that there is an ongoing subsidization of residential customers by Pepco’s non-residential customers. Pepco witness Bonikowski states it plainly: “the simple fact is that the residential class currently provides substantially less revenue than is required to cover the

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<sup>49</sup> See Direct Testimony of Matthew J. Bonikowski, Exh. PEPCO (E) at 10, Table 2.

<sup>50</sup> Exh. GSA (A) at 7.

cost that the Company incurs to serve those customers.”<sup>51</sup> Additionally, as GSA witness Goins testifies, “[i]t is fundamentally unfair for one class of customers to pay rates so low that they do not cover operating costs, let alone a reasonable share of the capital cost of Pepco’s system, while other customers pick up the slack by paying rates far in excess of costs they actually cause.”<sup>52</sup> In order to make progress toward reducing this massive subsidy, the Commission should adopt Pepco’s proposed 4-Step revenue allocation methodology in this proceeding.

**1. The Commission should adopt Pepco’s proposed revenue requirement allocation as a small but meaningful step toward moving rate classes toward cost of service in this case**

In this case for both the MYP and TTYCF, Pepco has proposed using the same 4-Step Allocation Method that it used in Formal Case No. 1156 to allocate its proposed revenue requirement increase among its customers. Pepco’s 4-Step Method “spreads Pepco’s proposed revenue increases in a way that moves rates for classes closer to cost of service without subjecting any class to rate shock from an unacceptably high increase.”<sup>53</sup> Under the 4-Step Method, rate classes are apportioned percentages of the system average rate increase based on their relative rate of return such that significantly over-earning classes are not allocated any rate increase, rate classes within a certain tolerance band are allocated the system average increase, and significantly under-earning rate classes are allocated some multiple of the system average rate increase, with any shortfall between the multiple and the total to get the under-earning class to rate parity allocated among the other classes.<sup>54</sup> The result of this process demonstrates that

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<sup>51</sup> Rebuttal Testimony of Matthew J. Bonikowski, Exh. PEPCO (3E) at 40.

<sup>52</sup> Exh. GSA (A) at 16.

<sup>53</sup> *Id.* at 7.

<sup>54</sup> Exh. PEPCO (E) at 11-13.

Pepco's residential customers currently earn a negative rate of return. Meanwhile, other non-residential customers are earning rates of return well above the system average, meaning they not only cover their costs, but also provide multiples of the margin required by Pepco to attract capital to adequately serve them.

To correct this inequity, Pepco proposes to allocate approximately 2.3 times the system average increase to the residential rate customers, or approximately 43% of Pepco's proposed revenue requirement.<sup>55</sup> In setting these rates, Pepco "relied on the ratemaking principles of cost causation and gradualism that the Commission has recognized in its recent previous decisions."<sup>56</sup> It is important to recognize that Pepco's proposed revenue spread would not eliminate the negative rate of return for residential customers, meaning residential customers will still not cover even the ongoing operating costs to serve them and will provide no contribution toward margin for Pepco's stockholders. In other words, Pepco's revenue spread proposal is consistent with gradualism because residential customers would continue to enjoy rates well below the residential classes' cost of service while other customer classes continue to make up the difference.

GSA supports Pepco's proposal as a reasonable movement in this case toward eliminating the drastic inter-class subsidies present on Pepco's system. GSA witness Goins states it well: "[T]he Commission must balance and protect the interests of *all* ratepayers and should do

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<sup>55</sup> See Exhs. PEPCO (E)-2, (E)-3, 3(E)-2, and 3(E)-3.

<sup>56</sup> Exh. PEPCO (E) at 4.

everything possible to ensure that [Pepco's] embarrassingly huge subsidy does not grow larger."<sup>57</sup> Additionally, as AOBA witness Oliver states:

The notion that a major class of customers, such as Pepco's Residential class in the District of Columbia, can be allowed to make *no positive contribution* to the Company's required return on investment *over a period of nearly two decades* conflicts with all concepts of cost-based ratemaking and reflects a distinct lack of fairness and equity in rate determinations.<sup>58</sup>

The Commission should adopt Pepco's proposed revenue allocation in order to ensure that rates are just and reasonable.

**2. The inter-class subsidy issue is a persistent and worsening problem in the District that produces rates that are unjust, unreasonable, and unduly discriminatory in violation of District of Columbia law and Commission precedent**

Over the last twenty years, the inter-class subsidy has become so extreme that the rates reflecting that subsidy can no longer be considered "reasonable, just, and nondiscriminatory," as required by the District's Home Rule Act.<sup>59</sup> While the Commission has "broad discretion" in setting rates, those rates must fall within a "zone of reasonableness."<sup>60</sup> The reasonableness requirement applies to cost allocation as well.<sup>61</sup> In *Washington Gas Light Co. v. Public Service Commission*, the District of Columbia Court of Appeals recognized the basic principle of cost causation: "By attributing to each customer the expenses for which he is responsible, the

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<sup>57</sup> Exh. GSA (A) at 15-16 (emphasis in original).

<sup>58</sup> Exh. AOBA (A) at 106 (emphasis in original).

<sup>59</sup> D.C. Code § 1-204.93, Home Rule Act 93 P.L. 198 § 493 ("The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminating charge for such facility or service is prohibited and is hereby declared unlawful.").

<sup>60</sup> *Potomac Elec. Power Co. v. Pub. Serv. Comm'n*, 457 A.2d 776, 787-788 (D.C. Ct. App. 1983); *Washington Gas Light Co. v. Baker*, 188 F.2d 11, 14-15 (D.C. Cir. 1950) ("[T]here is a zone of reasonableness within which rates may properly fall.").

<sup>61</sup> *Metro. Washington Bd. Of Trade v. Pub. Serv. Comm'n*, 432 A.2d 343, 350-51 (D.C. Ct. App. 1981).

consumer has before him the correct price indicators upon which to base his purchase and resource consumption decision.”<sup>62</sup>

The Commission has also repeatedly recognized the relationship between cost causation and rate design. For example, in Formal Case No. 1087, the Commission stated that “[t]raditionally, in setting class revenue requirements, we have considered the class cost of service of each class, as well as a broad range of other factors.”<sup>63</sup> Most recently, in Formal Case No. 1156, the Commission recognized that it must “remain cognizant of all of the cost factors that impact rates and ensure that in every instance rates remain just and reasonable.”<sup>64</sup> While the Commission may take non-cost factors into account, those non-cost factors still should not be permitted to result in rates which are unduly discriminatory.<sup>65</sup> The District of Columbia Court of Appeals has recognized the importance of non-cost factors where appropriate:

It is not necessary that differences in rate of return be specifically and quantitatively supported by customer class-cost considerations. . . . Differences can be based not only on quantity, but also on the nature, time, and pattern of use so as to achieve reasonable efficiency and economic operation.<sup>66</sup>

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<sup>62</sup> *Washington Gas Light Co. v. Pub. Serv. Comm’n*, 450 A.2d 1187, 1201 (D.C. Ct. App. 1982).

<sup>63</sup> Formal Case No. 1087, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 17027 at ¶ 32 (December 26, 2012).

<sup>64</sup> Order No. 20755 at ¶ 393.

<sup>65</sup> *Washington Gas Light Co. v. Pub. Serv. Comm’n*, 450 A.2d 1187, 1205 (D.C. Ct. App. 1982) (“While the choice of a rate design—within wide bounds—is for the Commission to make, the standards for judging where the bounds lie, i.e., what is “discriminatory”, are for the court to establish. Finally, even if one hypothesizes the impossible—a single, objective, agreed upon method for allocating costs—differences in the resulting class rate of return estimates would not satisfy petitioners’ burden of proving illegally discriminatory rates. If, as here, the asserted differences flow from a reasonable application of legitimate cost and non-cost policies, they are permissible. Indeed, if the non-cost factors are given weight at all, differences in class rates of return are virtually inevitable.”).

<sup>66</sup> *Apartment House Council, Inc. v. Pub. Serv. Comm’n*, 332 A.2d 53, 57 (D.C. Ct. App. 1975). Importantly, the rate of return differential at issue in this case was small—5.63% for residential customers, 7.78% for GS customers, and 8.27% for HT (High Tension) customers. *Id.* at 55. The non-cost factors in that case justified a very small differential; the court did not have to consider a differential as large as the current one.

Any particular non-cost factor also should not be given exclusive priority to the exclusion of all other factors in setting rates. For example, the Commission, affirmed by the Court of Appeals, has said that “gradualism is but one of many factors to be considered and weighed by the Commission in determining rate designs, and that principles of gradualism cannot be allowed to trump all other valid ratemaking concerns.”<sup>67</sup>

For years, Pepco’s residential rates have not adequately covered Pepco’s cost of serving residential customers. The current inter-class subsidy bears no relationship to cost causation, and the differences in cost allocation are not based on any reasoned basis to achieve “reasonable efficiency” or “economic operation.”<sup>68</sup> Because of the lack of justification, the rates produced by Pepco’s proposed revenue spreads cannot be considered reasonable, just, and non-discriminatory and are therefore unlawful.

### **3. Moving to eliminate inter-class subsidies is a long-standing goal and policy objective of the Commission**

As far back as 2008, the Commission noted that the rate of return for the residential classes is well below that of the commercial classes, “indicating that residential customers are being subsidized by commercial customers” by approximately \$50 million.<sup>69</sup> The Commission stated that it would “attempt to lessen the amount of the subsidies provided by particular classes in our rate design decisions.”<sup>70</sup> In a 2010 rate case, Formal Case No. 1076, the Commission

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<sup>67</sup> *Watergate E. v. Pub. Serv. Comm’n*, 665 A.2d 943, 950 (D.C. Ct. App. 1995) (approving a 25% increase to Watergate rates while other WGL customers only received a 2% increase to bring Watergate to “pay their fair share of utility costs”).

<sup>68</sup> *Apartment House Council, Inc. v. Pub. Serv. Comm’n*, 332 A.2d 53, 57 (D.C. Ct. App. 1975).

<sup>69</sup> Formal Case No. 1053, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 14712 at ¶ 310 (January 30, 2008).

<sup>70</sup> *Id.* at ¶ 323.

addressed a subsidy that had increased to \$61 million.<sup>71</sup> While the Commission stated that it does not have to equalize class RORs given that it can consider non-cost factors in setting rates, it also said that “the severe disparities in class RORs that now exist call for corrective action.”<sup>72</sup> Notably, the Commission attempted to make progress toward eliminating the inter-class subsidy even though that rate case was decided as the nation was slowly recovering from the Great Recession.<sup>73</sup>

In Formal Case No. 1087, faced with a \$35 million inter-class subsidy, the Commission recognized that “[t]he size of the inter-class subsidization of residential rates in Pepco’s current rate structure is severe.”<sup>74</sup> In Order No. 16930 in that same case, the Commission became concerned that the residential class was earning a negative class ROR, stating that “[o]ther customer classes are significantly burdened by the subsidy now flowing to the residential class.”<sup>75</sup> After weighing cost and non-cost factors, the Commission “decided to move in a deliberate and reasonable fashion over a series of Pepco rate cases to put an end to negative class RORs.”<sup>76</sup> In that case, the Commission directly assigned the residential rate class \$11.03 million, or

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<sup>71</sup> Formal Case No. 1076, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 15710 at ¶ 329 (March 2, 2010).

<sup>72</sup> *Id.* at ¶ 342 (In that case, the Commission allocated to the residential rate class \$7.14 million (or 36.0%) of the total \$19.833 million revenue requirement increase given to Pepco). *Id.* at ¶ 343.

<sup>73</sup> *Id.* at ¶ 345 (“The Commission is acting in a measured way to narrow the gap in customer class RORs and move all Pepco customer classes closer to UROR, as all the parties agree should be done, consistent with the constraints imposed by a recovering economy, both nationally and in the District of Columbia in particular.”).

<sup>74</sup> Order No. 17027 at ¶ 32.

<sup>75</sup> Formal Case No. 1087, Order No. 16930 at ¶ 329 (September 27, 2012).

<sup>76</sup> Order No. 17027 at ¶ 32.

approximately 45%, of the total \$24.376 million revenue requirement increase that the Commission granted to Pepco.<sup>77</sup>

In Formal Case No. 1103, the Commission addressed a subsidy which had doubled from the previous case to \$70 million.<sup>78</sup> In that case, the Commission made its strongest statement on moving toward rate equity yet:

Requiring other rate classes (primarily the commercial classes) to substantially subsidize the cost of serving residential customers over an extended period of time has raised questions of equity in a system that seeks to align rates with cost-causation. It harms the reputation of the District as a business friendly environment at a time when the District is trying to attract new businesses to improve the District's job market.<sup>79</sup>

The Commission also acknowledged that the District's residential rates are among the most subsidized in the entire nation.<sup>80</sup> The Commission again allocated a specific dollar amount, \$11.11 million (or 47%) of Pepco's \$23.448 million revenue increase to the residential class to try to reduce the inter-class subsidy.<sup>81</sup>

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

<sup>78</sup> Formal Case No. 1103, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 17424 at ¶¶ 424, 427 (March 26, 2014).

<sup>79</sup> *Id.* at ¶ 438.

<sup>80</sup> *Id.* ("Of equal import is WMATA's observation that no other jurisdiction in the United States has customer class rates as distorted as Pepco's DC rates; and nowhere is the Residential class permitted to maintain rates that produce such a negative class ROR. Even after today's decision, Residential rates in the District will still be highly subsidized by other customer classes, and Pepco's Residential customers in the District will still be providing the Company with a negative class ROR."); Formal Case No. 1103, Order No. 17539 at ¶ 95 (July 10, 2014) ("Residential distribution rates of District ratepayers have long been one of the few, as well as the most highly subsidized rates in the nation, and they continue to be subsidized even after we adjusted them in this case. As the number of District residents continue to grow, a failure to make a correcting adjustment to our present rate structure will worsen the situation, as we noted in our order.").

<sup>81</sup> Order No. 17424 at ¶ 437 ("[T]he Commission agrees that allocating a specific dollar amount of Pepco's revenue increase to the Residential class may be the best way to reduce the inter-class subsidy that now flows to the Residential class."). *Id.* at ¶ 436.

After approving increases for the residential class above the system average increase in Formal Case Nos. 1087 and 1103, unfortunately the Commission reversed course in 2017 in Formal Case No. 1139. In that case, the subsidy had grown to \$94.8 million.<sup>82</sup> The Commission recognized that “[t]here is no dispute that there are large disparities in customer class RORs and that the residential class currently has a negative class ROR.”<sup>83</sup> Nevertheless, in that case, the Commission assigned a less than system average increase to the residential class—only \$7.5 million (20.2%) of the \$36.9 million revenue increase—while non-residential customers bore 80% of the increase.<sup>84</sup>

In Formal Case No. 1156, the Commission again acknowledged the residential subsidy issue, which had grown to an annual \$112 million.<sup>85</sup> In that case, the Commission allocated only a 20% allocation to the residential classes, meaning that residential customers again got a less than system average rate increase.<sup>86</sup> The Commission cited its obligations under D.C. Code § 34-808.02, which requires the Commission to “consider the public safety, the economy of the District, conservation of natural resources, and the preservation of environmental quality” when regulating utilities as influencing its decision to “not move as aggressively towards reducing the commercial class subsidization of residential class costs.”<sup>87</sup> Specifically, the Commission cited

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<sup>82</sup> Formal Case No. 1139, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 18846 at ¶ 450 (July 25, 2017).

<sup>83</sup> *Id.* at ¶ 422.

<sup>84</sup> *Id.* at ¶ 456 (“We make this revenue requirement allocation recognizing that adopting Pepco’s 20% residential allocation marginally impacts the commercial class’ subsidization of the residential class’ costs.”).

<sup>85</sup> Formal Case No. 1156, Direct Testimony of Dennis W. Goins, Ph.D. on Behalf of the General Services Administration, Exh. GSA (A) at 35.

<sup>86</sup> Order No. 20755 at ¶ 394.

<sup>87</sup> *Id.* at ¶ 393.

the impacts of COVID-19 on the economy to justify lowering the proposed rate increase to residential customers.

As GSA witness Dr. Goins testifies, the “Commission’s oft-stated objective of eliminating negative class RORs and moving rates for all classes closer to cost of service has been, and remains, the right goal and should not be abandoned.”<sup>88</sup> Moreover, “addressing negative class RORs through disproportionate rate increases is simply a strategy that has not been fully and consistently implemented to the level necessary to achieve the ultimate goal.”<sup>89</sup>

In this case, the Commission should affirm its policy goal of moving deliberately to reduce and eliminate negative rates of return and inter-class subsidies and take meaningful steps to put that policy into effect. Indeed, the economic considerations cited in Formal Case No. 1156 in the aftermath of COVID-19 to justify a lower percentage increase for residential customers are now present in this case for the commercial class. Current economic circumstances justify a larger increase to the residential class given the District’s struggles to retain existing commercial customers.<sup>90</sup>

**4. The Commission should reject OPC witness Dismukes’ proposal to abandon efforts to address the large inter-class subsidy in this case**

In testimony in this proceeding, OPC witness Dismukes acknowledges both that there is a persistent “negative RROR problem” relative to the residential rate class in the District as well as

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<sup>88</sup> Exh. GSA (A) at 11.

<sup>89</sup> *Id.* at 12 (“Increasing a grossly under-earning class’s rates by significantly more than the system average increase is an effective and sufficient ratemaking strategy only if the disproportionate increase is actually large enough to make significant progress toward solving the problem.”).

<sup>90</sup> Exh. AOBA (A) at 105 (citing declining commercial real estate tax base in the District in recent years).

that the Commission has had a policy set to gradually eliminate negative class RORs.<sup>91</sup> OPC witness Dismukes does not attempt to argue that Pepco's current rates (much less rates developed using OPC witness Dismukes' proposed revenue spread) reasonably reflect the costs to serve the various customer classes. Instead, OPC witness Dismukes proposes to perpetuate and exacerbate the inter-class subsidy issue in this proceeding.

Under no circumstances should the Commission adopt OPC witness Dismukes' proposed allocation, which would perpetuate and exacerbate the annual \$100-million plus inter-class subsidy issue.<sup>92</sup> Additionally, the Commission should not adopt OPC witness Dismukes' proposal to abandon moving residential rates toward cost of service because this would perpetuate rates that cannot be said to be just and reasonable in violation of District of Columbia law.

**a. OPC's revenue spread proposal would perpetuate and worsen the inter-class subsidy and would make the issue even more difficult to address in the future**

Along with recommending that the Commission abandon its policy of eliminating negative class rates of return, OPC recommends that the Commission reject Pepco's proposal to allocate 2.3 times the system average increase to customer classes currently earning a negative RROR, and instead allocate only 1.25 times the overall system average increase to these classes.<sup>93</sup> Under this proposal, residential customers would only bear 25.5% of Pepco's revenue requirement increase.<sup>94</sup> OPC's proposed revenue allocation would exacerbate rather than

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<sup>91</sup> Direct Testimony and Supporting Exhibits of David E. Dismukes, Ph.D., Exh. OPC (A) at 42-47.

<sup>92</sup> Exh. GSA (A) at 5.

<sup>93</sup> Exh. OPC (A) at 111.

<sup>94</sup> Exh. OPC (A)-7 (\$15,768,223 in proposed revenue increase for Rate "R" customers plus \$1,533,076 for Rate "MMA" customers divided by the total proposed revenue increase of \$67,893,261).

alleviate the negative RROR problem, thereby furthering unjust and unreasonable rates among the non-residential classes in the District.

**b. The Commission should affirmatively reject OPC’s proposal to abandon efforts to reduce the inter-class subsidy**

In addition to the proposed revenue spread discussed above, OPC witness Dismukes echoes arguments made in the last case and also broadly proposes that the Commission fully abandon its policy of moving rates toward cost of service in the District. Dismukes states that the Commission should “reconsider its policy of assigning relatively higher portions of any revenue increase in an attempt to eliminate negative RRORs” given the “current rate of spending” by Pepco in the District.<sup>95</sup> More specifically, OPC witness Dismukes looks through the persistent subsidy issues laid out in this brief and concludes that the Commission will never be able to reconcile its goal of eliminating negative class rates of return while supporting the large rate increases associated with Pepco’s spending plans.<sup>96</sup>

This, however, is inconsistent with ratemaking goals to reflect cost causation and a fair sharing of costs among Pepco’s customers. Indeed, as GSA witness Goins states, “[o]nly disproportionately large and consistent rate increases can effectively address the enormous rate subsidy (negative ROR) problem.”<sup>97</sup> While the Commission has approved above-average rate increases for under-earning classes in past cases, “the increases simply have not gone far enough and been consistently applied in subsequent rate cases to move rates—particularly residential rates—significantly closer to cost of service. Of course, without the Commission’s efforts in

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<sup>95</sup> Exh. OPC (A) at 48.

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

<sup>97</sup> Exh. GSA (A) at 11.

previous cases, the situation would now be far worse.”<sup>98</sup> The Commission must fully and consistently implement above-average rate increases to meaningfully move toward removing negative rates of return in this case and moving forward.

Finally, keeping residential rates at unjustifiably low levels fundamentally ignores that those low rates do not happen in a vacuum. As GSA witness Goins states, “Dr. Dismukes ignores that non-residential customers actually pay for the multi-million annual residential subsidy.”<sup>99</sup> Indeed, commercial customers have been forced to bear the brunt of the residential subsidy for more than twenty years. Continuing such unjust and unreasonable rate recovery from residential customers borne by the District’s commercial customers is no longer justifiable and should be corrected in this case and in the future.

### **C. Bill Stabilization Adjustment**

GSA supports the positions of OPC and AOBA that the Commission should discontinue the BSA because the mechanism does not provide benefits to customers and is no longer needed.<sup>100</sup> Particularly if the Commission approves the continuation of the MYP rate structure, the Commission should discontinue the BSA because it is a duplicative alternative form of regulation that is not needed. If the Commission decides to continue the BSA, the Commission should adopt Pepco’s proposed modifications to the BSA. Additionally, the Commission should disallow certain BSA deferral balances, particularly those related to Pepco’s administrative error which led to the

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<sup>98</sup> *Id.* at 11-12.

<sup>99</sup> *Id.* at 14.

<sup>100</sup> Exh. AOBA (A) at 67-68.

extremely high BSA deferral balances for Schedule GT-LV. GSA also supports creating a separate regulatory asset for deferral balances related to COVID-19 for recovery over ten years.

**1. The BSA does not provide benefits to customers**

The BSA provides benefits to Pepco by increasing the likelihood that Pepco will earn its authorized rate of return (similar to the MYP). As the Commission stated in Order No. 20755, “While the BSA protects Pepco from any difference between actual vs. forecasted sales (including demand revenue) on a per-customer basis, the BSA has an ancillary benefit in that it protects Pepco from adverse business conditions.”<sup>101</sup> But providing assurance against business risk is not in and of itself adequate justification for continuing the BSA. After all, as a regulated utility, Pepco is allowed a reasonable opportunity—but not a guarantee—to earn its allowed return.<sup>102</sup>

The Commission has recently signaled a need to reevaluate decoupling mechanisms such as the BSA. For example, the Commission has recently twice rejected a decoupling mechanism from Washington Gas Light Company (“WGL”). In the most recent WGL rate case, Formal Case No. 1169, the Commission rejected WGL’s proposed decoupling mechanism it called the Climate Progress Adjustment and raised questions regarding the ability of non-utility-led measures to impact revenues:

The Commission in Formal Case No 1156 is currently examining possible reform of Pepco’s decoupling mechanism, the BSA, to address revenue pressures unrelated to the Company’s energy efficiency efforts. Therefore, we are not convinced that we should approve WGL’s CPA at this time, given the important issues that need to be examined in the operation of a decoupling mechanism. These issues include

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<sup>101</sup> Order 20755 at ¶ 314.

<sup>102</sup> See, e.g., *Potomac Elec. Power Co. v. Pub. Serv. Comm’n*, 380 A.2d 126, 132 (D.C. Ct. App. 1977) (“While regulation does not guarantee that a utility will achieve its projected revenues, it must provide the utility with a reasonable opportunity to earn a rate of return sufficient to maintain the company’s financial integrity, to attract necessary capital at a reasonable cost, and to compensate investors fairly for the risks they have assumed, while protecting the relevant public interests. . . This involves a delicate balancing of investor and consumer interests.”).

(1) how the mechanism will impact ratepayers, (2) whether it should insulate Company revenue from the impact of weather and economic changes as well as reducing the Company's disincentive for energy efficiency, and (3) how it will interact with electrification efforts.<sup>103</sup>

The impact of the BSA on customers shows that the Commission should be cautious in considering extending the BSA. The BSA does not provide clear benefits to customers; it shifts risk to customers and increases rate volatility for customers. As AOBA witness Oliver testifies, the BSA, which was initially presented as a tool for stabilizing the charges billed to customers, has instead increased rate volatility on a monthly basis and has done nothing to slow the pace of Pepco's base rate filings.<sup>104</sup> OPC witness Dismukes similarly states it well:

While the BSA was originally implemented as a revenue decoupling mechanism to insulate the Company from changes in revenues due to a variety of factors including weather and increased energy efficiency, the mechanism now effectively operates as an attrition adjustment to insulate the Company from declining electric use primarily by GT rate class customers.<sup>105</sup>

For the same reasons that WGL's Climate Progress Adjustment was inappropriate, Pepco's BSA should also be discontinued in this proceeding.

## **2. The BSA is not needed, particularly if Pepco's MYP structure is approved**

The BSA is another alternative form of regulation which is duplicative to the MYP. Indeed, as the Commission noted in Order No. 20273, Pepco has several forms of alternative ratemaking in place apart from the MYP, including the BSA, D.C. PLUG, and approval of post-test year rate base additions.<sup>106</sup> Specifically, the MYP utilizes forecasted billing determinants and an annual

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<sup>103</sup> Formal Case No. 1169, *In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Natural Gas Service*, Order No. 21939 at ¶ 370 (December 22, 2023).

<sup>104</sup> Exh. AOBA (A) at 67.

<sup>105</sup> Exh. OPC (A) at 87-88.

<sup>106</sup> Order No. 20273 at ¶ 12.

true-up, removing Pepco's risk of billing determinant errors that the BSA was designed to achieve.<sup>107</sup> As OPC witness Dismukes states, "the proposed MYP is based off forecasted billing determinants such as forecasted customer counts and volumetric sales, and thus is already designed to reflect forecasted changes in customer usage."<sup>108</sup> Given the other alternate forms of regulation that Pepco has in place already, including D.C. PLUG, there is nothing to justify continuation of the BSA in the context of Pepco's MYP structure.

**3. GSA supports OPC and AOBA's proposals to disallow certain portions of Pepco's BSA deferral balances and to recover certain portions of Pepco's deferral balance related to COVID-19 as a regulatory asset**

In Formal Case No. 1156, the Commission recognized that there were serious issues with Pepco's BSA and ordered Pepco to convene a technical conference regarding the billing determinant issues.<sup>109</sup> OPC witness Dismukes recommends that the Commission disallow recovery of \$42.2 million of the BSA deferral balance identified in Atrium's Final BSA Audit Report related to the Formal Case No. 1150 billing determinant error and GT-LV normalization adjustment.<sup>110</sup> AOBA witness Oliver similarly identifies \$37.8 million of BSA deferral balance attributable to Pepco's inaccurate billing determinant estimates.<sup>111</sup> Pepco opposes this proposed disallowance, stating that it applied the BSA in the manner in which it was approved.<sup>112</sup> GSA supports the disallowance of any BSA deferral balances attributable to errors made by Pepco in administering its own program. Customers should not have to shoulder the mistakes of the

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<sup>107</sup> Exh. AOBA (A) at 68.

<sup>108</sup> Exh. OPC (A) at 112.

<sup>109</sup> Order No. 20755 at ¶ 316.

<sup>110</sup> Exh. OPC (A) at 110 and OPC (A)-19.

<sup>111</sup> Exh. AOBA (A) at 59-60.

<sup>112</sup> Exh. PEPCO (3E) at 17-18.

Company. This significant issue, as well as ongoing issues with the administration of the BSA as identified by AOBA witness Oliver,<sup>113</sup> highlight the significant problems of the BSA which further warrant its discontinuance going forward.

Additionally, OPC witness Dismukes recommends the Commission approve alternative recovery of COVID-19 related BSA deferral balances.<sup>114</sup> Both AOBA witnesses similarly recommend that the Commission identify which portion of the BSA Deferred Balance is attributable to effects from COVID-19 and allow recovery of those costs through a regulatory asset amortized over ten years.<sup>115</sup> Pepco agreed with OPC witness Dismukes and AOBA witness Oliver to recover approximately \$46.8 million of the Company's BSA deferral balance related to the impacts of COVID-19 on Schedule GT-LV BSA through a regulatory asset outside of the BSA.<sup>116</sup> GSA supports the removal of costs attributable to COVID-19 from the BSA deferral balance and recovering such costs through a regulatory asset over a ten year period. As stated above, commercial customers in the District have not fully recovered from the impacts related to the pandemic, and recovering those costs over an extended period will provide needed rate relief to customers that remain in the District.

**4. If the Commission approves the BSA going forward, it should at a minimum approve the changes proposed by Pepco in this case**

If the Commission decides to continue the use of the BSA, GSA supports changes to the BSA to improve the mechanism and hopefully reduce the likelihood of future issues similar to

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<sup>113</sup> Exh. AOBA (A) at 62-63.

<sup>114</sup> Exh. OPC (A) at 111.

<sup>115</sup> Exh. AOBA (A) at 134; Exh. AOBA (B) at 27.

<sup>116</sup> Exh. PEPCO (3E) at 34.

those that prompted the Commission to conduct an audit after Formal Case No. 1156.

Specifically, Pepco proposes to:

- 1) Change the revenue basis of the BSA from revenue per customer targets to a flat revenue target per class as approved in an MYP;
- 2) Transition from a monthly reconciliation and surcharge to an annual reconciliation and surcharge;
- 3) Add a demand charge component to the BSA surcharge for demand-metered classes; and
- 4) Display the BSA surcharge as a separate line item on customer bills.<sup>117</sup>

If the Commission continues the BSA in this proceeding, GSA supports Pepco's proposed changes to the BSA which would move to a flat revenue target, do an annual rather than monthly true-up, and put the BSA as a separate line item on the bill.<sup>118</sup> It is not clear whether applying the BSA to the demand and energy portion of the bill will result in benefits to customers, and may result in intraclass rate shifting.<sup>119</sup> Before Pepco files its next MYP, the Commission should also conduct an additional audit to evaluate the impact of any changes on the BSA and to reconsider whether the BSA should continue.

### **III. CONCLUSION**

For the reasons discussed above, GSA respectfully requests that the Commission (1) reject Pepco's proposed MYP and adopt a one-time rate increase based on Pepco's TTYCF; (2) adopt Pepco's proposed 4-Step Allocation Method as a reasonable movement toward cost parity in this

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<sup>117</sup> Exh. PEPCO (E) at 61.

<sup>118</sup> See Exh. AOBA (A) at 64-66.

<sup>119</sup> *Id.* at 65-66.

proceeding; and (3) discontinue the BSA or, if the BSA is continued, adopt Pepco's recommended changes.

Respectfully submitted,

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