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August 30, 2024

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

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

Dear Ms. Westbrook-Sedgwick:

Enclosed for filing, please find the Post-Hearing Brief in the above-captioned matter, submitted by the Office of the People's Counsel for the District of Columbia.

Sincerely,

/s/ Ankush Nayar

Ankush Nayar
Assistant People's Counsel

Enclosure

cc: Parties of Record

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

**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**

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Formal Case No. 1176

**POST-LEGISLATIVE HEARING BRIEF OF THE
OFFICE OF THE PEOPLE’S COUNSEL FOR THE
DISTRICT OF COLUMBIA**

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August 30, 2024

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I. INTRODUCTION

Pursuant to Order No. 22015¹, the Office of the People’s Counsel for the District of Columbia (“Office” or “OPC”), the statutory representative of District of Columbia (“District”) ratepayers with respect to utility matters,² respectfully submits this Post-Legislative Hearing Brief in the above-captioned proceeding, wherein the District of Columbia Public Service Commission (“PSC” or “Commission”) is considering the Potomac Electric Power Company’s (“Pepco” or the “Company”): (1) April 13, 2023 Application for approval of a Multi-Year Rate Plan (“MYP”), which proposed cumulative revenue requirement increases of \$190.7 million between 2024 and 2026;³ and (2) October 16, 2023 submission of a traditional test year filing (“TTYF”), which proposed a \$108.2 million increase to Pepco’s revenue requirement based on a historical test period (as adjusted by Pepco).⁴ As demonstrated herein, the Commission should reject Pepco’s proposals, without prejudice, because Pepco failed to satisfy its burden of supporting its proposals with substantial evidence.

Pepco’s MYP proposal suffers from material, fatal deficiencies. The decisional record does not support a finding that Pepco met its burden of proof on its proposal to continue the paradigm shift away from traditional ratemaking at this time. First, the MYP proposal is structurally flawed. Pepco chose to propose the MYP without the benefit of the Commission’s

¹ *Formal Case No. 1176, In the Matter of the Application of The Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia (“Formal Case No. 1176”)*, Order No. 22015, rel. July 10, 2024.

² D.C. Code § 34-804.

³ *Formal Case No. 1176, Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia*, filed April 13, 2023 (“MYP Application”).

⁴ *Formal Case No. 1176, Potomac Electric Power Company’s Testimonies and Exhibits for the Traditional Test Year Compliance filing directed by the Public Service Commission of the District of Columbia in Order No. 21886*, filed October 16, 2023 (“Pepco Supplemental Testimony -TTYCF”).

review of the pilot plan the Commission approved in Formal Case No. 1156. Pepco also chose to submit the MYP proposal without including any performance incentive mechanisms (“PIMs”), which are necessary to (i) ensure that investments made under the plan are designed to meet the District’s climate goals, and (ii) discipline Pepco’s implementation of those investments to ensure that they benefit customers. Second, the Office’s review of Pepco’s pre-filed testimony and exhibits identified multiple concerns and problems underlying Pepco’s proposed implementation and administration of the MYP. These issues involve recovery of the costs of business-as-usual investments that Pepco masquerades as investments needed to ensure a climate ready grid. Pepco’s proposal would also saddle District customers with the costs of unnecessary projects and projects that are located in Maryland. Given these fundamental defects, the only reasonable outcome is rejection of the MYP proposal.⁵

The decisional record also does not support a finding that Pepco satisfied its burden of proof to demonstrate the justness and reasonableness of the revenue requirement presented in its TTYF. OPC and intervenors have identified numerous deficiencies and concerns with Pepco’s proposal. Many of OPC’s concerns are over-arching issues with the staleness, accuracy, and completeness of data underlying the TTFY. Other concerns demonstrate the unreasonableness of proposals that are so integral to the TTYF that they undermine the TTYF as a whole. Nothing in Pepco’s pre-filed submissions resolves or meaningfully rebuts OPC’s and intervenors’ concerns and demonstrations about material deficiencies. Consequently, as it currently stands, the decisional record does not support a finding that Pepco satisfied its burden of proof regarding its TTYF proposal. As a result, the Commission should reject that proposal, without prejudice, to

⁵ Rejection could be without prejudice so that Pepco may, if it chooses, resubmit a new proposal at the appropriate time and with the evidentiary support that is necessary to satisfy Pepco’s burden of proof.

allow Pepco an opportunity to resubmit a new application to reset its revenue requirement based on accurate, updated, and complete data. If the Commission does not reject the TTYF proposal, it must establish additional procedures to provide Pepco an opportunity to cure its evidentiary failures, provide OPC and intervenors a meaningful opportunity to be heard regarding new information Pepco submits as part of its efforts to cure those failures, and ensure that a record can be developed that the Commission can rely on to fulfill its obligation to engage in reasoned decisionmaking.

In support thereof, OPC states as follows:

II. BACKGROUND

A. In Formal Case No. 1156, the Commission approved the MRP Pilot as an incremental step in its deliberative evaluation of a paradigm shift from traditional ratemaking.

In Formal Case No. 1156, the Commission approved a modified version of a multiyear rate plan proposal submitted by Pepco as an 18-month pilot (“MRP Pilot”), which would span from July 1, 2021, until December 31, 2022.⁶ It approved an ROE of 9.275%, an overall ROR of 7.17%, and a cumulative rate increase of \$108.6 million.⁷ The approved revenue requirement was a 33% reduction from Pepco’s initial \$162 million proposal.⁸ The Commission recognized that “any changes to traditional ratemaking” must be “deliberative,” with focus given to the “structure and framework” in evaluating alternative forms of ratemaking (“AFORs”) so as to mitigate

⁶ *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 (“Formal Case No. 1156”), Order No. 20755, ¶ 473, rel. June 8, 2021.* Pepco proposed its multi-year plan on May 30, 2019. It proposed the enhanced multi-year rate plan on June 1, 2019, which the Commission subsequently adopted with modifications.

⁷ *Id.* ¶ 142.

⁸ *Id.*

unintended operational or financial outcomes.⁹ It recognized that any permanent shift away from traditional ratemaking may require “multiple rate proceedings to fully implement AFORs.”¹⁰

In approving the MRP Pilot, the Commission required Pepco to submit financial reports, including annual information and reconciliation filings for 2021 and 2022, which would allow for comparisons between Pepco’s projections and the actual results for each of those years.¹¹ The Commission contemplated that this review process would also include a prudency review, which would allow for a rate reduction should Pepco be found to be “over-earning” as well as an opportunity to recover under-earnings.¹²

The Commission also ordered a stay-out provision until January 2, 2023.¹³ Furthermore, Pepco was required to file quarterly financial reports through Calendar Year 2023 (CY 2023), *i.e.*, the twelve months ending December 31, 2023.¹⁴ These quarterly earnings filings were to help “recognize any potential over-earning or under-earning” occurring during the Pilot and CY 2023.¹⁵ Evaluation of the filings for the MRP Pilot would be part of the pilot’s reconciliation process. Evaluation of CY 2023 would take place as part of the next base rate case.¹⁶

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* ¶ 160.

¹² *Id.* ¶ 161.

¹³ *Id.* ¶ 160.

¹⁴ *Id.* ¶ 162.

¹⁵ *Id.*

¹⁶ *Formal Case No. 1156*, Order 21042, ¶ 217, rel. October 26, 2021.

B. Pepco choose to seek approval of its second MYP devoid of any PIMs and before the Commission evaluated the reasonableness and effectiveness of the MRP Pilot.

On April 13, 2023, Pepco filed an application for approval of its second MYP Application. The MYP Application proposed a \$190.7 million cumulative rate increase in base distribution revenue over three years, from 2024-2026, based on an ROE of 10.50%.¹⁷ Included in the MYP is recovery of capital investments made in 2023.¹⁸

OPC and other parties raised concerns over the MYP Application, including whether it was ripe for consideration, as no review of the MRP Pilot had occurred, which would be necessary before adopting a multiyear rate plan on a permanent basis.¹⁹ After no consensus was reached on a procedural schedule, OPC along with the District of Columbia Government (“DCG”) and the Apartment and Office Building Association of Metropolitan Washington (“AOBA”) proposed a procedural schedule, which provided for a sequential review that began with the MRP Pilot.²⁰ Consideration of the MYP would depend on the results of this review.²¹

While the Commission declined to adopt this schedule, it did order Pepco to submit two sets of supplemental filings: (1) a TTYF with supporting workpapers, testimony, and exhibits, based on Calendar Year 2023 serving as the test period; and (2) a self-review of the MRP Pilot

¹⁷ MYP Application at 6.

¹⁸ *Id.* at 6-7.

¹⁹ *Formal Case No. 1176*, The Office of the People’s Counsel for the District of Columbia’s Comments Regarding a Procedural Schedule, pp. 9-10, filed June 23, 2023 (“OPC Comments”); *Formal Case No. 1176*, Comments of the Apartment and Office Building Association of Metropolitan Washington in Support of the Procedural Schedule Proffered by the Office of People’s Counsel, the District of Columbia Government and AOBA, p. 2, filed June 23, 2023 (“AOBA Comments”); *Formal Case No. 1176*, The District of Columbia Government’s Comments in Support of its Proposed Procedural Schedule, p.3, filed June 23, 2023 (“DCG Comments”).

²⁰ *Formal Case No. 1176*, OPC Comments at 4, 5-6.

²¹ *Id.*

with supporting testimony, highlighting “problems identified and lessons learned” from the Pilot.²² Additionally, the Commission directed Pepco to include in its submission, in “quantitative and qualitative terms,” an assessment of the benefits of the MRP Pilot.²³ The review of the MYP, the TTYF, and the MRP Pilot were to occur simultaneously in the same proceeding.²⁴

C. Though Pepco’s supplemental filings and TTYF contained additional information, nothing in Pepco’s pre-filed submissions support a finding that Pepco satisfied its burden of proof on the MYP or TTYF.

By August 31, 2023, Pepco had filed its supplemental review of the MRP Pilot.²⁵ On October 16, 2023, it filed its TTYF.²⁶ In its TTYF, Pepco claimed that without a rate increase, it would face a revenue deficiency of \$108.2 million.²⁷ In addition to the TTYF, Pepco included in its MYP, projected data for CY 2023 that purported to show under-earnings for 2023, which Pepco attributed to regulatory lag associated with the stay-out provision.²⁸ Specifically, Pepco projected a \$29 million revenue deficiency for 2023 in the MYP, which it sought to recover from customers through new rates to be in effect in 2024.²⁹

²² *Formal Case No. 1176*, Order No. 21886, ¶¶ 1, 23-24, rel. July 28, 2023.

²³ *Id.* ¶ 29.

²⁴ *See id.* at Attachment A.

²⁵ *Formal Case No. 1176*, Potomac Electric Power Company’s Supplemental Direct Testimony, filed August 31, 2023.

²⁶ *Formal Case No. 1176*, Potomac Electric Power Company’s Testimonies and Exhibits for the Traditional Test Year Compliance filing directed by the Public Service Commission of the District of Columbia in Order No. 21886, filed October 16, 2023 (“Pepco Supplemental Testimony-TTYCF”).

²⁷ Exhibit PEPCO (2B) (Leming) at 5:13-14.

²⁸ Exhibit PEPCO (A) (O’Donnell) at 32:14 – 33:4.

²⁹ *Id.*

On March 12, 2024, OPC, AOBA, and the DCG filed a limited Motion to Dismiss, or in the Alternative, Motion for Summary Disposition, seeking to strike the MYP from this case.³⁰ The basis for that motion focused on, among other areas, the structural deficiencies facing the MYP application.

On May 3, 2024, the Company filed its final Quarterly ROR Report for 2023.³¹ The Report indicated that the Company had earned an ROE of 9.511% and a ROR of 7.17%.³² The ROE was 24 basis points higher than the 9.275% authorized by the Commission in Order No. 20755. This resulted in extra earnings of \$4.275 million for CY 2023.³³

Notable drivers for the deviation in the actuals from the projections in both the TTYF and MYP were the actual rate base and the operating income for CY 2023. The actual D.C. adjusted rate base for CY 2023 was \$2,653,203,000, and the actual operating income was \$189,884,000.³⁴ By comparison, for the TTYF, Pepco projected the rate base to be \$3,023,435,000 and the operating income to be \$153,172,000.³⁵ In the MYP, the projected rate base was \$2,757,779,000, and the projected operating income was \$173,582,000.³⁶

On June 12, 2024, OPC and AOBA jointly filed a *Motion to Dismiss, or in the Alternative, Motion for Summary Judgment*, (“Second Dispositive Motion”) seeking dismissal of the MYP and

³⁰ *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, rel. March 12, 2024.

³¹ *Formal Case No. 1156*, Pepco Quarterly ROR Report for the 12 Months Ended December 31, 2023, filed May 3, 2024 (“Pepco Quarterly ROR Report”).

³² *Id.* at 1, Attachment A, p. 1.

³³ The \$4.275 million is delineated by Pepco as the downward adjustment necessary for the Company to meet the authorized ROE of 9.275%. *See id.* at Attachment A, p. 1.

³⁴ *Id.*

³⁵ Exhibit PEPCO (2B)-1 at 1.

³⁶ Exhibit PEPCO (B)-1 at 1.

the TTYF, or, in the alternative, requesting the Commission to grant summary judgment denying both of Pepco’s applications.³⁷

D. Arguments provided at the Legislative Style Hearing did not cure Pepco’s failures to satisfy its burden of proof on the MYP or TTYF.

On June 13, 2024, the Commission notified the parties that it would convene a Legislative Style Hearing on July 30, 2024, if the Commission did not grant either dispositive motion.³⁸ Additionally, the Commission directed parties desiring to participate in the oral argument to submit a pre-hearing brief that identified the issues they planned to address.³⁹

On June 24, 2024, Pepco filed an “errata” to the ROR Report for CY 2023 (Errata ROR Report). The report indicated that both Pepco’s Sale of Electricity and Bill Stabilization Adjustment (“BSA”) Revenue Reserve decreased to \$16,833,000 from \$23,318,000, which represented a \$6.485 million change. A revised ROE was cited at 9.155%, and there was now a slight revenue deficiency of \$2,209,000 reported.⁴⁰

OPC filed a motion requesting that the Commission suspend the hearing and pre-hearing brief and first issue a decision on the two pending dispositive motions, while also requesting clarification on the structure of the Legislative Style Hearing in the event it took place. On June 28, 2024, the Commission issued Order No. 22013, declining to suspend the schedule.⁴¹ The Commission also temporarily denied the two dispositive motions, but noted that the denial did not

³⁷ *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, filed June 10, 2024 (“Second Dispositive Motion”).

³⁸ *Formal Case No. 1176*, Notice ¶ 1.

³⁹ *Id.* ¶ 2.

⁴⁰ *Formal Case No. 1156*, Pepco’s Errata to the Quarterly ROR Report filed on May 3, 2024, filed June 24, 2024 (“Errata ROR Report”).

⁴¹ *Formal Case No. 1176*, Order 22013, ¶ 1, rel. June 28, 2024 (“Order 22013”).

decide any “issue of policy or law that undergird the Motions,” nor did it decide either motions on the merits.⁴² The Order directed Pepco to file supplemental filings further explaining the Errata ROR Report and opened a short window for discovery and responses to discovery on the filing.⁴³

The supplemental filing required Pepco to provide a detailed explanation and support of all adjustments, including RMA12 – GAAP BSA Revenue Recognition Reserve, and a detailed description of the misstatement that required the Company to file an errata; Pepco was to provide detailed documentation and explanation of the development of each of the jurisdictional allocation factors employed in the Jurisdictional Cost of Service Studies and their calculations; and it was to provide a detailed demonstration of the prudence of Pepco’s Calendar Year 2023 capital and operating expenditures.⁴⁴

On July 30, 2024, the Commission convened its Legislative Style Hearing, hearing oral argument from Pepco, OPC, AOBA, and DC Government. In Order No. 22015, the Commission directed parties to submit post-Legislative Style Hearing briefs by August 30, 2024. OPC submits the instant brief pursuant to and in satisfaction of that directive.

III. ARGUMENT

A. Pepco failed to meet the burden of proof, which requires it to support the MYP Proposal and TTYF with substantial evidence.

Proper assignment and analysis of the burden of proof are fundamental to resolution of this, and every, Commission rate proceeding.⁴⁵ Commission precedent assigning the burden of

⁴² *Id.*

⁴³ *Id.* ¶ 30.

⁴⁴ *Id.* ¶ 29.

⁴⁵ *Formal Case No. 1016, In the Matter of Application of Wash. Gas Light Co., Dist. of Columbia Div., for Auth. to Increase Existing Rates & Charges for Gas Serv.*, Order No. 13063, ¶ 9, rel. Feb. 6, 2004.

proof is clear: Pepco, as the proponent of the rate change or increase, bears the burden of proof to justify such change.⁴⁶ To meet this burden, it is not enough for Pepco to “get the better of a limited evidentiary exchange or show a lack of substantial evidence to support a position contrary to its own.”⁴⁷ Bare assertions that its methods and forecasts are reasonable or the best available is insufficient to carry the burden of proof.⁴⁸ Instead, the proponent has the burden “to affirmatively convince the Commission that its proposed rate increase [is] just, reasonable, and in the public interest.”⁴⁹ Included in this burden “is a responsibility to develop a record sufficiently complete to support a Commission order in their favor”⁵⁰ These burdens exist on all components of the rate increase or change.⁵¹ In contrast, opponents of the rate orders “have no formal burdens.”⁵²

The Commission has made clear that reliance on previous practice is insufficient to justify continued practice of that policy. In the Order on Reconsideration in Washington Gas Light Company’s 2013 rate proceeding the Commission stated:

While WGL’s historic [] practices are entitled to some weight in our considerations, when other parties raise “serious doubts” about a particular aspect of [a proposal], WGL has the burden of dispelling those doubts and convincingly justifying the specific challenged part of the Company’s proposal. WGL cannot immunize its submission from examination simply by invoking general conclusory

⁴⁶ *Id.*

⁴⁷ *Formal Case No. 1093, In the Matter of the Investigation into the Reasonableness of Wash. Gas Light Co.’s Existing Rates & Charges for Gas Serv.*, Order No. 17204, ¶ 40, rel. July 31, 2013.

⁴⁸ *Id.* at ¶ 28 n.89 (quoting *Village of Chatham & Riverton v. FERC*, 662 F.2d 23, 33 (D.C. Cir. 1981)).

⁴⁹ *Formal Case No. 1016*, Order No. 13063, ¶ 9, rel. Feb 6, 2004.

⁵⁰ *Wash. Pub. Interest Org. v. Pub. Serv. Comm’n*, 393 A.2d 71, 77 (D.C. 1978).

⁵¹ *See, e.g., Formal Case No. 1093*, Order No. 17204, rel. July 31, 2013 (determining whether WGL has met its burden of proof on eight separate components of its proposed rate); *Formal Case No. 989, In the Matter of the Office of the People’s Counsel’s Complaint for a Comm’n-Ordered Investigation into the Reasonableness of Wash. Gas Light Co.’s Existing Rates; and in the Matter of the Application of Wash. Gas Light Co., Dist. of Columbia Div., for Auth. to Increase Existing Rates and Charges for Gas Serv.*, Order No. 12589, rel. Oct. 29, 2002 (determining whether WGL has met its burden of proof on each aspect of its proposed rate).

⁵² *Wash. Pub. Interest Org.*, 393 A.2d at 77.

statements that it relied on past practices. Nor does WGL satisfy its burden of persuasion simply by submitting scattered evidence and asking the Commission to “determine how the puzzle fits together.” Instead, it is WGL’s burden to dispel any “serious doubts” that have been raised and to explain convincingly why its position is correct.”⁵³

As discussed in further detail below, OPC and other parties, have raised serious doubts about numerous aspects of Pepco’s proposal. It is Pepco’s burden to present evidence and build the record to demonstrate that use of alternative forms of ratemaking have provided benefits to the District’s ratepayers. It is Pepco’s burden to quantify the specific benefits District ratepayers have, and will continue to receive, through use of an MRP. Pepco has the burden to create a record which supports their assertion that its proposals are necessary and reasonable to meet the District’s climate and decarbonization goals. Pepco also has the burden to resolve material questions of fact that seem to undermine its projections and estimates. To this point, Pepco has failed to carry its burden in any respect. For the reasons discussed in Sections IV.B and IV.C, *infra*, the Commission should reject the MYP Application and the TTYF.

B. The Commission should Reject Pepco’s proposed MYP, without prejudice, as unsupported, deficient, and premature.

As demonstrated in the following sub-sections, Pepco’s proposed MYP is materially deficient in multiple respects and woefully premature in other respects. Individually, each of these flaws with the MYP proposal supports rejection. When viewed collectively, these flaws demonstrate that the only reasonable outcome is for the Commission to reject the proposed MYP, without prejudice.

⁵³ *Formal Case No. 1093*, Order No. 17204, ¶ 28, rel. July 31, 2013.

1. Pepco's MYP is materially deficient without fully functioning PIMs.

PIMs are a necessary component of an MYP. Indeed, the Commission has recognized that PIMs “represent an important tool to align utility incentives with public policy goals, such as the District’s aggressive clean energy and environmental goals.”⁵⁴ The Commission has yet to approve and the Company has yet to deploy any fully functioning PIMs. Despite the Commission’s directive that “any MRP adopted should be accompanied by PIMs”⁵⁵ the Commission is contemplating approving an MRP *without* usable PIMs for a second time.

Prior to approving the MRP Pilot, the Commission took care to review lessons learned from other states that have adopted MRPs.⁵⁶ Based on this review, the Commission determined that “most multi-year plans feature a performance metric system that include some PIMs that provide awards or penalties, or both, for performance in targeted areas.”⁵⁷ Paying special attention to the experiences of Minnesota and Rhode Island, the Commission believed adoption of tracking PIMs was most appropriate during the pilot period.⁵⁸ The Commission found that tracking PIMs were most appropriate at that stage because “tracking PIMs would be more useful in aiding the Commission and stakeholders in identifying what elements are appropriate to measure PIMs and how to structure financial rewards or penalties for implementing fully functional PIMs.”⁵⁹ But the tracking PIMs were intended to be temporary and “readily converted to fully functioning PIMs

⁵⁴ *Formal Case No. 1156*, Order No. 20273, ¶ 5.

⁵⁵ *Formal Case No. 1156*, Order No. 20755, ¶ 165 (citing *Formal Case 1156*, Order No. 20273, ¶ 104).

⁵⁶ *See Formal Case No. 1156*, Order No. 20273, ¶¶ 57 – 77.

⁵⁷ *Id.* at ¶ 83.

⁵⁸ *Formal Case No. 1156*, Order No. 20755, ¶ 168.

⁵⁹ *Id.*

with incentive and penalty mechanisms – subject to Commission approval during 2022 and beyond.”⁶⁰ However, this conversion has still not occurred.

PIMs are a necessary element to any MRP as they identify desired performance, set cost parameters and incentivize performance that meets policy goals while discouraging action contrary to these policy goals. At best, Pepco’s proposal is premature without fully functional PIMs. More appropriately, Pepco’s proposal is fundamentally deficient.

An MYP without fully functional PIMs is incompatible with the Commission’s AFOR principles. PIMs are a mechanism for testing prudence because prudence is about decisions, not costs. Prudent investments aren’t simply the cheapest investments; prudent investments are the most cost-effective solution that meets a desired objective. Fully functional PIMs would identify the desired objectives, identify the investments needed to meet those objectives, and identify a reasonable range of costs Pepco could be expected to incur to meet the desired objectives. In this way, PIMs are the backbone of any MYP because they discipline the utility’s capital expenditures and performance by tying cost recovery to the effective implementation of solutions that have been deemed necessary to meet pre-established objectives. Without PIMs, an MYP lacks the “P” in “MYP”—i.e., there is no plan for meeting any established objectives, but rather the MYP is simply a cost recovery mechanism similar to a multi-year rate cap. In short, without PIMs that are tied to specific objectives and investments, the Commission and District ratepayers have no ability to determine the prudence of Pepco’s investments.

In this proceeding, Pepco has attempted to sidestep this fundamental flaw by claiming that the MYP is supportive of the District’s climate goals by enhancing reliability and resiliency to support decarbonization, decrease reliance on fossil fuels, enable expanded use of DERs, and

⁶⁰ *Id.* at ¶ 172.

increase electrification.⁶¹ Without PIMs, the Commission and parties cannot test the veracity of that claim. Moreover, closer examination of pre-filed submissions supports a finding that Pepco’s claim is erroneous. In particular, OPC has demonstrated that over 90% of Pepco’s proposed investments are “business-as-usual” investments directed toward the replacement of poles, cables, transformers, and substations with similar poles, cables, transformers and substations. These investments consist of “like for like” replacements instead of “modernizing” the grid. Ultimately, nearly 95% of the budgeted costs for the MYP’s capital projects are part of “core utility functions,” representing standard investments that any utility would make, independent of any effort to modernize the grid or reach statutory climate targets.⁶²

Without fully functioning PIMs, the MYP lacks a stated purpose. Without a stated purpose, the Commission cannot verify that investments under the MYP “advance[] . . . the District’s public commitments[, . . .] align with the District’s public policy goals[,]” or “provide[] benefits that are measurable, quantitative and qualitative to customers[.]”⁶³ At most, the lack of this integral, disciplining element reduces the Commission’s oversight to comparing the actual costs of investments that may or may not be desired against the budgeted costs of those investments. District customers and stakeholders deserve more if the Commission is to continue evaluating a proposed paradigm shift away from the traditional regulatory approach and the protections it provides. Consequently, without fully functioning PIMs, the Commission should reject Pepco’s MYP proposal as materially deficient.

⁶¹ *Formal Case No. 1176*, Pepco’s Limited Brief at p. 4 (July 24, 2024).

⁶² *Formal Case No. 1176*, OPC’s Motion for Enlargement of Time at pp. 9, 19-20 (Mar. 12, 2024).

⁶³ *Formal Case No. 1156*, Order No. 20273, ¶ 94.

2. The Commission should reject Pepco's MYP Proposal as premature.

In addition to the fundamental failure to include PIMs, the Commission should also reject Pepco's MYP Proposal as premature.

a. The Commission has not conducted a review of the MRP Pilot to establish and refine quantifiable metrics against which to evaluate Pepco's performance.

In Formal Case No. 1156, the Commission recognized that a “paradigm shift” away from its longstanding policy in favor of traditional ratemaking toward alternative forms of ratemaking could result in harm and unintended consequences to District ratepayers.⁶⁴ The Commission's decision took care to protect against these unintended and harmful consequences by rejecting Pepco's Enhanced Multi-Year Rate Plan (“EMRP”) proposal and instead adopting a MRP Pilot as a “pilot” program.⁶⁵ It also established a deliberative process whereby the Pilot's effectiveness and performance would be reviewed before the Commission would consider subsequent AFOR proposals.⁶⁶ As the Commission recognized at the time, “[a]dopting the MRP Pilot as a pilot program provides the Commission, the Parties, and other stakeholders with an opportunity to improve the MRP process and *prudently evaluate the overall performance and effectiveness of the MRP Pilot.*”⁶⁷

In Order No. 20755, the Commission explained that two sets of evaluation criteria were crucial to assessing the MRP Pilot: PIMs and Alternative Forms of Rate Making (“AFOR”) principles.⁶⁸ PIMs were intended to evaluate whether the MRP Pilot was advancing the District's

⁶⁴ *Formal Case No. 1156*, Order No. 20273, ¶ 86, rel. Dec. 20, 2019.

⁶⁵ *Formal Case No. 1156*, Order No. 20755, ¶ 1, rel. June 8, 2021.

⁶⁶ *Formal Case No. 1156*, Order No. 20273, ¶ 86; *Formal Case No. 1156*, Order No. 20755, ¶ 474.

⁶⁷ *Formal Case No. 1156*, Order No. 20755, ¶ 474 (emphasis added).

⁶⁸ *Id.* at ¶¶ 6, 9, 108.

public policy goals and PowerPath DC objectives.⁶⁹ As discussed in further detail in the previous section, the Commission has yet to formalize any PIMs to measure whether Pepco’s MRP Pilot has advanced the District’s climate goals.

In Order No. 20273, the Commission stated that “the purpose of this Order is to set forth a framework for evaluating AFOR proposals and to establish a foundation for assessing Pepco’s MRP/PIMs proposal”⁷⁰ The Commission recognized that “AFOR implementation requires the Commission to first set clear goals and principles for the AFOR framework that advance or otherwise align with the District’s public policy goals and helps facilitate modernization of the energy delivery system.”⁷¹ In support of this objective, the Commission adopted ten AFOR principles and required the Company’s MYP Application to provide information as to how:

- (1) The AFOR: (A) protects consumers; (B) ensures the quality, availability, and reliability of regulated utility services; and (C) is in the interest of the public, including shareholders of the utility;
- (2) The AFOR advances the public safety, the economy of the District, the conservation of natural resources, and the preservation of environmental quality, including effects on global climate change and the District’s public climate commitments;
- (3) The AFOR’s ratemaking mechanisms advance or otherwise align with the District’s public policy goals;
- (4) The AFOR identifies baseline revenue and cost information, and clearly explains what process or mechanism the utility used to project revenues and expenses;
- (5) The AFOR provides benefits that are measurable, quantitative, and qualitative to customers, as opposed to solely focusing on the AFORs benefits to the utility;
- (6) The AFOR impacts the operational incentives of the utility with respect to maintaining a high level of customer service, while fostering productivity and cost control; maintains the financial strength, credit ratings, and financial flexibility of the

⁶⁹ *Formal Case No. 1156*, Order No. 20273, ¶¶ 103, 108; *Formal Case No. 1156*, Order No. 20755, ¶ 168.

⁷⁰ *Formal Case No. 1156*, Order No. 20273, ¶ 94.

⁷¹ *Id.*

utility; and helps ensure a consistently high level of energy delivery system reliability, while promoting safe and reliable operations over time;

- (7) The revenue requirements will be allocated across customer classes over time, and how rate design issues within customer classes will be handled over time, in a just and reasonable manner;
- (8) The risk of over-earning a utility's authorized return will be mitigated during the duration of AFOR for the benefit of the customers, while also preserving the Commission's ability to conduct cost prudence reviews as needed;
- (9) The AFOR provides an appropriate level of transparency and reporting into the utility's operational and capital plans ensuring that the plans will be maintained during the duration of the AFOR; and
- (10) The AFOR avoids any unreasonable shifting of risk to utility customers.⁷²

These principles were intended to establish “the Commission’s starting point for an evolving evolution process to be reviewed in the future”⁷³ Performance of the MRP Pilot would allow the Commission to refine the AFOR principles and “facilitate the development of AFOR regulations.”⁷⁴ However, the Commission has not evaluated the AFOR principles or proposed AFOR regulations.⁷⁵ It is inappropriate to continue to move forward with the MYP without first evaluating the AFOR principles or promulgating AFOR regulations to guide performance.

b. The decisional record contains nothing to support a finding that the MRP Pilot or MYP Proposal provides quantifiable benefits to customers or are necessary to meet District goals.

Without strict guidance from the Commission, Pepco has not developed quantifiable metrics to demonstrate to the Commission and District ratepayers that the MRP Pilot has improved service or reduced costs to ratepayers. In Formal Case 1156, Company Witness McGowan identified ten “quantitative and qualitative incremental benefits the Company’s [MRP Pilot] would

⁷² *Id.*

⁷³ *Id.* at ¶ 6.

⁷⁴ *Formal Case No. 1156*, Order No. 20755, ¶ 143.

⁷⁵ *See Formal Case No. 1176*, Order No. 21886 (Comm’nr Beverly, dissenting).

provide.”⁷⁶ Pepco alleges that the MRP Pilot “has generally achieved the qualitative and quantitative benefits identified” in FC 1156.⁷⁷ However, Pepco provides no evidence to support this conclusion. For example, for benefit one, Pepco states that:

Because the structure of the MYP adopted in FC 1156 allowed for more timely recovery of investments over the term of the MYP than a traditional, historic test year rate case would, it allowed Pepco to invest at the pace required to meet the District of Columbia’s and the Commission’s decarbonization and clean energy goals. It also allowed investments that are foundational to a climate ready grid, such as those that maintain the reliability and resiliency of the distribution system.⁷⁸

But Pepco makes no attempt to show this is true. Pepco provides no analysis to show what Pepco’s investments would have been under a traditional rate case and how those investments compared to the investments made under the MRP Pilot.

At the July 30, 2024, Legislative Style Hearing before the Commission, Pepco confirmed there is no supporting data or workpapers to support the assertion that the MRP Pilot has met the goals Pepco set in FC 1156.⁷⁹ Pepco is even unable to perform the straightforward task of providing e-data comparing the Company’s cost for preparing and receiving approval of a traditional rate case versus an MYP, despite preparing both in this proceeding.⁸⁰

Pepco’s discussion of the anticipated benefits resulting from continuation of the MYP provide little reassurance this will change over the course of the MYP if approved. Although Pepco has reduced the number of benefits from ten to six, little else has changed. Again Pepco relies on

⁷⁶ *Formal Case No. 1176*, Exhibit PEPCO (2A): Conformed Supplemental Direct Testimony of Elizabeth M. D. O’Donnell at pp. 3:2-4:4 (Aug. 31, 2023).

⁷⁷ *Id.* at 4:7-10.

⁷⁸ *Id.* at 4:13-18.

⁷⁹ *Formal Case 1176*, Transcript of the Legislative Style Hearing (“Tr.”), 29:16 – 33:12.

⁸⁰ *Id.*, at 32:15-33:12.

generalized statements of benefits without associated quantifiable goals. As a result, Pepco provides no data or workpapers showing how the MYP will meet these goals.

The Commission should not mistake Pepco's conclusory statements that a MYP has or will provide benefits to the District's ratepayers for evidence. It is Pepco's "responsibility to develop a record sufficiently complete to support a Commission order in their favor"⁸¹ and currently the record, by Pepco's own admission, contains nothing to support Pepco's assertions. Until Pepco develops quantifiable metrics to measure benefits, the MYP Application is deficient and the Commission should reject the MYP Application as filed.

3. In addition to its structural defects, Pepco's MYP proposal suffers from material defects regarding its proposed implementation.

The Commission should reject the MYP proposal based on the structural defects identified above. However, there is another, independent basis for rejection. Setting aside Pepco's rush to file the MYP proposal without any Commission review of the MRP Pilot and devoid of PIMs, Pepco has failed to demonstrate that its proposed implementation of the MYP is reasonable. The following subsections detail discrete problems and errors OPC discovered when reviewing and analyzing Pepco's pre-filed submissions. Because these problems and errors have not been corrected or resolved, the decisional record does not support a finding that Pepco satisfied its burden of proof.

a. Pepco failed to show that the proposed capital investments require adoption of an MYP.

Pepco claims that the MYP is necessary to recover a series of investments that are designed to foster what Pepco calls a "Climate Ready Grid." Specifically, Pepco asserts their proposed MYP expenditures constitute a series of new investments that are needed prepare the distribution

⁸¹ *Wash. Pub. Interest Org.*, 393 A.2d at 77.

system for the coming energy transition and to meet the District’s climate goals.⁸² This claim is not supported by the record evidence in this proceeding. As discussed herein, the Company: (i) has failed to identify the projects in the MYP that are designed to modernize the grid and advance Pepco’s purported objectives; and (ii) fails to explain how it will measure the success of its investments against those goals so that the Commission, and the public, can evaluate whether these substantial expenditures are cost-effective and prudent. In fact, the evidence in this proceeding demonstrates that, far from modernizing the Pepco distribution system, the vast majority of the spending proposed by the Company is nothing more than traditional utility investment that the Company is obligated by statute to make in order to provide safe, reliable and just and reasonable electric utility service. These investments have been recovered under traditional test year ratemaking policies for decades. Pepco has therefore failed to meet its burden to demonstrate the need for an alternate form of regulation to recover these types of investments from engineering perspective.

To justify its proposed paradigm shift from the safeguards of traditional ratemaking , Pepco contends that its MYP spending reflects a capital investment strategy designed “to advance and support various Company objectives such as driving solutions to address climate change, enhancing grid performance, improving social equity and affordability, and looking for new opportunities to enhance the customer experience.”⁸³ When pressed to explain how the MYP advances these goals, however, the Company was not able to identify which capital projects are designed to meet Pepco’s stated goals.⁸⁴ Pepco Witness Cantler cites the Company’s Paper-

⁸² See Exhibit PEPCO (H) (Cantler) at 3:7-10; 6:14-19.

⁸³ Exhibit PEPCO (H) (Cantler) at 5:21-23.

⁸⁴ Exhibit OPC (E)-2 at page 1-2 (*Formal Case No. 1176*, Pepco Response to OPC Data Request 4-1(b)).

Insulated Lead Covered (“PILC”) Cable Replacement Program as a project that modernizes the distribution system.⁸⁵ But as OPC Witness Mara explains, that program that has been in place in one form or another since 2013,⁸⁶ and merely replaces old PILC cable with new ethylene propylene rubber cable.⁸⁷ Another example cited by Pepco as a modernization project is the Company’s 4kV conversion project.⁸⁸ But again, this is a long-running Company initiative that has been ongoing for over a decade⁸⁹ and simply replaces equipment that has reached the end of its useful life.⁹⁰ While it is important that the Company replace this equipment in order to avoid degradation of reliability in the District, it is not new or novel spending, is not modernizing the grid in any meaningful way,⁹¹ and certainly does not justify a departure from traditional ratemaking.

In order to assess Pepco’s claims, OPC witness Mara conducted an independent review of the Company’s proposed MYP capital budget and found that that nearly 95% of the expenditures constituted business as usual for a distribution utility like Pepco.⁹² As Mr. Mara explains:

The vast majority of the MYP projects are similar to the projects I have seen in at least the last four Pepco rate cases. These types of projects include replacement of aging infrastructure, reliability improvement projects, voltage conversion projects,

⁸⁵ Exhibit PEPCO (H) (Cantler) at 37:15-21.

⁸⁶ Exhibit OPC (E) (Mara) at 8:5-6 *citing Formal Case No. 766-ACR-12, In the Matter of the Commission’s Fuel Adjustment Clause Audit and Review Program – Annual Consolidated Report, Order No. 16975 at ¶ 76, rel. November 29, 2012 (“Order No. 16975”)*.

⁸⁷ Exhibit OPC (E) (Mara) at 8:6-7.

⁸⁸ *See* Exhibit PEPCO (4H)-4 at page 1.

⁸⁹ *See FC 766-ACR-12, In the Matter of the Comm’n’s Fuel Adjustment Clause Audit and Review Program – Annual Consolidated Report, Order No. 16975 at ¶ 21, rel. Nov. 29, 2012.*

⁹⁰ *See e.g.* Exhibit OPC (E)-3, *PEPACR 2015-01, 2015 Annual Consolidated Report (“2015 ACR”)*, at 97.

⁹¹ *See* Exhibit OPC (E) (Mara) at 8:10-12.

⁹² Exhibit OPC (E) (Mara) at 9:8-10.

capacity upgrades to meet projected load forecasts, and upgrades to maintain N-1 contingencies and maintain voltage levels to customers.^[93]

Mr. Mara further broke out his analysis of core utility spending by Pepco Executive Category as shown in the following table:⁹⁴

Executive Category	% of Budget that are Core Utility Functions		
	2023	2024	2025
Capacity Expansion - Distribution	93%	93%	84%
Corrective Maintenance - Distribution	100%	100%	100%
Corrective Maintenance - Substation	100%	100%	100%
Facilities Relocation - PEPCO	100%	100%	100%
System Performance - Distribution	95%	96%	96%
System Performance - Substation	100%	98%	99%

When faced with this evidence, Pepco Witness Cantler effectively conceded in rebuttal testimony that the MYP spending was not modernization spending, but rather a “pathway” to a Climate Ready Grid, which will require “essential core investments be in place to support the principles of adequate electric distribution service, system reliability and resiliency.”⁹⁵ But these run of the mill, predictable, “core investment” spending projects provide no justification for a wholesale departure from the traditional ratemaking construct in the District. The Commission should therefore conclude that the spending in the MYP is no different than the types of spending

⁹³ Exhibit OPC (E) (Mara) at 7:10-14.

⁹⁴ Exhibit OPC (E) (Mara) at 9.

⁹⁵ Exhibit PEPCO (4H) (Cantler) at 6:15-19.

that the Company has recovered through traditional rate cases⁹⁶ and does not justify an alternative form of regulation.

b. As proposed, customers would be responsible for the costs of investments despite no objective measures to determine the reasonableness of Pepco's expenditures or the success of any specific MYP project.

In essence, Pepco's MYP proposal asks the Commission to require customers to write a blank check. When asked how it intends to measure its MYP investment performance against the purported objectives of the MYP (*i.e.*, driving solutions to address climate change, enhancing grid performance, improving social equity and affordability, and looking for new opportunities to enhance customer experience) the Company confirmed that it "does not have internal metrics in place for measuring the status of the identified objective."⁹⁷ Nor could the Company produce any meaningful analysis comparing the costs of the MYP investments against these purported benefits to ratepayers.⁹⁸ The Company's answer is not surprising in light of the demonstration that the

⁹⁶ See Exhibit OPC (E) (Mara) at 7:10-16 (explaining that types of projects in the MYP have consistently been included in Pepco construction budgets since at least *Formal Case No. 1103* in 2013).

⁹⁷ Exhibit OPC (E)-2 at 1 (Pepco Response to OPC Data Request 4-1(a)).

⁹⁸ When asked by the Office to provide a cost-benefit analysis of the MYP period projects, the Company stated that "[t]he Company has conducted cost-benefit analysis in a few areas including: evaluating technologies or initiatives that have not previously been proposed, an initiative that has a societal benefit, or when required by the Commission or regulatory body," but did not provide any analysis of specific MYP projects in response to OPC's data request. Exhibit OPC (E)-2 at 1 (Pepco Response to OPC Data Request 4-1(c)). Instead, the Company pointed the Office to its response to Response to AOBAs DR 7-25. *Id.* In that response, however, [BEGIN CONFIDENTIAL] the Company stated that "[Benefit Cost Analyses] are typically performed for projects that require an analysis of a societal benefit and which are beyond the scope of Pepco's normal business, such as for advanced metering infrastructure (AMI) or as directed specifically by the Commission." Exhibit PEPSCO 4(H)-3 (Pepco Confidential Response to AOBAs Data Request 7-25). The Company's written response provides no discussion of an assessment of any specific MYP project costs relative to benefits related to climate change, enhancing grid performance, improving social equity and affordability, or enhancing customer experience. [END CONFIDENTIAL] And as AOBAs notes, "several of the presentations offered as supporting documentation date back five years or more and have no discernable linkage to the dollar amounts for the forecasted capital budgets for specific projects that are presented in Exhibit PEPSCO (H)-2." Exhibit AOBAs (A) (Oliver) at 73:17-19.

Company's spending (regardless of how it is characterized) is nothing more than traditional core utility reliability investment.

The Commission has found that any alternative form of regulation must provide "an appropriate level of transparency and reporting into the utility's operational and capital plans ensuring that the plans will be maintained during the duration of the AFOR"⁹⁹ Pepco's failure to provide any performance metrics against which to measure its MYP spending patently fails this requirement. District ratepayers and the Commission are being asked to support and fund a build-more strategy without any way to ensure accountability and tangible benefits to the District or any means of assessing whether the proposed projects meet the District's policy aims in a cost-effective manner.

During the legislative-style hearing in this proceeding, Commissioner Beverly questioned the Company regarding these issues and, in particular, the sizable capital investment in the MYP relative to the Company's expectations of customer growth.¹⁰⁰ In response, the Company repeated its claim that the MYP budget is also intended to "accomplish or meet District climate goals."¹⁰¹ When pressed by Commissioner Beverly about the lack of evidence to support this claim,¹⁰² the Company pointed, without any specificity, to its Annual Consolidated Reports (which are not part of the Company's evidentiary presentation in this proceeding)¹⁰³ and to Attachment 4 to Pepco

⁹⁹ Order No. 20273 at ¶ 6.

¹⁰⁰ Tr. at 39:5-9.

¹⁰¹ Tr. at 39:11-13.

¹⁰² Tr. at 39:19-40:3.

¹⁰³ The Office notes that it has submitted the 2021 ACR and 2022 ACR as exhibits to Mr. Mara's testimony in connection with his discussion on the Company's load forecasting which no longer justifies certain capacity expansion projects included in the MYP budget. The Office also submitted an excerpt from the 2023 ACR in connection with Mr. Mara's discussion of the Company's significant increase in reliability spending.

Witness Cantler's Rebuttal Testimony.¹⁰⁴ The referenced Attachment 4, however, merely evidences a lack of a comprehensive list of investments to support the District's greenhouse gas emission reduction goals¹⁰⁵ and further confirms that the Company "has not quantified the estimated greenhouse gas emissions reductions"¹⁰⁶ attributable to the Company's MYP spending.

The referenced exhibit further confirms that the MYP projects are not designed to meet any specific modernization goals and are part of the Company's "normal course of business."¹⁰⁷ Moreover, as explained herein, the cited modernization examples from the MYP budget have either been shown to be unnecessary (battery energy storage), typical replacement activity (4k conversion project), or an insignificant and untested portion of the MYP budget (distribution automation).

In pushing for approval of the MYP-based undefined system modernization and climate goals, Pepco ignores the fact that the Commission has already established goals for adequate service in the District using the Electricity Quality of Service Standards ("EQSS"). In establishing the EQSS standards, the Commission noted that top-decile performance, which Pepco has consistently achieved in recent years, is critical in helping the District achieve its climate, clean energy, and resiliency goals.¹⁰⁸ And the record evidence in this proceeding shows that the

¹⁰⁴ Tr. at 39:22-41:3.

¹⁰⁵ Exhibit PEPCO (4H)-4 at 1 (Pepco Response to DCG Data Request 3, Question 4(B)).

¹⁰⁶ Exhibit PEPCO (4H)-4 at 2 (Pepco Response to DCG Data Request 3, Question 4(E)). In its response, the Company claims that its MYP investments "were designed to meet the needs of its customers and facilitate the achievement of the District's climate and clean energy goals which include reducing GHG emissions by 60% by 2030 and reaching carbon neutrality by 2045." This blanket assertion, however, is baseless. Pepco **admits that it has no analysis quantifying the GHG emissions reductions attributable to its MYP investment.**

¹⁰⁷ Exhibit PEPCO (4H)-4 at 1 (Pepco Response to DCG Data Request 3, Question 4(A)).

¹⁰⁸ RM36-2020-02-E, *Electricity Quality of Service Standards*, Order No. 21135, ¶ 8 rel. March 24, 2022 ("Order No. 21135").

Company believes that its current SAIFI and SAIDI performance is already sufficient to support a climate ready grid.¹⁰⁹ Accordingly, there is no reason to depart from the ratemaking approach that has produced a highly-reliable distribution system that Pepco states is already conducive to meeting the District’s climate objectives.

The record evidence in this proceeding demonstrates that the MYP spending is simply repackaged reliability spending and should be evaluated as such, *i.e.*, on the basis of its cost relative to its expected reliability benefits. As Mr. Mara has demonstrated, Pepco’s spending continues to grow despite achieving top-decile for reliability since 2017 with the exception of one year.¹¹⁰ In fact, as shown below, the Company’s reliability spending has grown by 223% from 2017 to the 2026 budget proposed in the MYP.¹¹¹

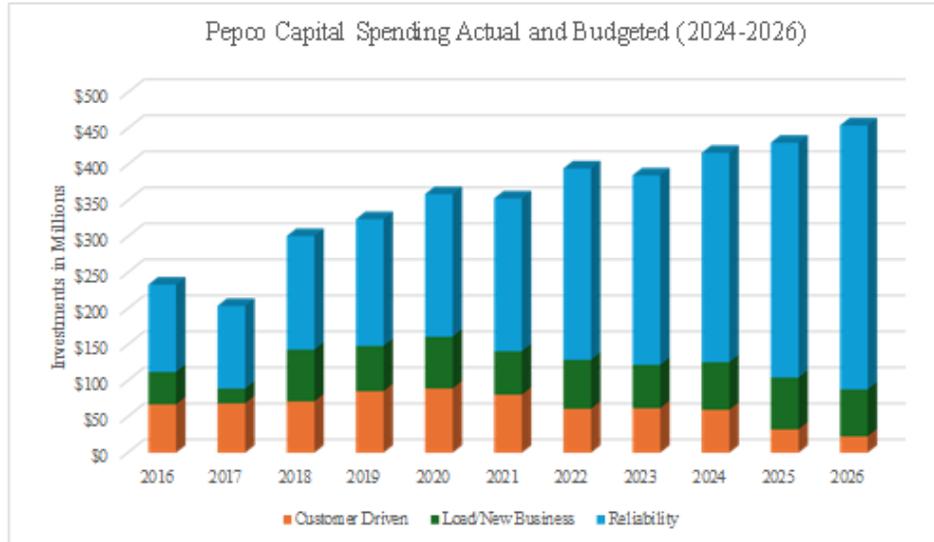
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¹⁰⁹ Exhibit OPC (2E)-4 (Pepco Response to OPC Data Request 17-3).

¹¹⁰ Exhibit OPC (2E) at 8:1-2; Exhibit OPC (2E)-2 (RM36-2020-02, PSC Staff Presentation at EQSS Technical Conference, Attachment A (Sept. 23, 2021)).

¹¹¹ Exhibit OPC (2E) at 8:5-9:1; Exhibit OPC (2E)-3 at Table 6 & 7 (PEPACR 2023-01, 2023 Annual Consolidated Report (“2023 ACR”).

	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
Customer Driven	67.2	68.7	71.3	85.4	89.3	80.7	61.1	61.8	59.7	32.4	22.8
Load/New Business	45	20.4	71.9	62.9	71.9	60.3	68	60.3	66.1	72	65.2
Reliability	121.2	114.8	157.6	176	197.8	212.1	265.5	262.9	290.5	326	366.4
TOTAL	233.4	203.9	300.8	324.3	359	353.1	394.6	385	416.3	430.4	454.4



Under the circumstances more, not less, oversight of the Company’s capital investments is warranted. There is a tradeoff between the level of reliability desired by ratepayers and their ability or desire to pay for that level of reliability. In Order No. 21135, the Commission established the current SAIDI and SAIFI reliability targets. In doing so, the Commission noted that the goals set were to achieve a balanced approach between high reliability and affordability.¹¹² Any capital investment spending should be evaluated on the basis of its cost relative to its expected reliability benefits, as opposed to a set of undefined criteria that the Company, the Commission, and District stakeholders cannot measure. The Commission should therefore reject the MYP as an unnecessary and unjustified departure from the traditional ratemaking approach in the District.

¹¹² Order No. 21135 at ¶ 7.

While OPC conclusively established that the vast majority of proposed spending in the MYP budget is traditional utility spending (i.e., business-as-usual investments that are not directly tied to any specific District objectives regarding climate, electrification, or decarbonization), OPC recognizes that Pepco also included expenses related to investments that have a closer relationship with efforts to modernize the grid. Specifically, Pepco proposes sophisticated control schemes such as the Advanced Distribution Management System (“ADMS”) Convergence – Stage 2.0 programs that will replace Pepco’s outage management system and other specific distribution control systems, placing them on a common platform have not been vetted by the Commission.¹¹³

Mr. Mara explains in OPC’s pre-filed submission that this spending lays the groundwork for the proposed Distributed Energy Resource Management System (“DERMS”) but is a future phase of the ADMS implementation with deployment not projected until 2029.¹¹⁴ The details, functionality, and capabilities of the DERMS have yet to be fully scoped or defined.¹¹⁵

While a small portion of the overall MYP budget, these programs are a concrete example of the premature nature of the MYP proposal that OPC identified above. By proposing a forward-looking capital budget without the elements that instill discipline in the implementation of a multi-year rate plan (e.g., PIMs, specific projects targeted to specific objectives, etc.), Pepco asks the Commission to bless a level of spending that will lay the groundwork for future modernization projects that have not been vetted by the Commission or fully developed by the Company. Whether such investments are a reasonable and cost-effective means of achieving the District’s climate goals is ultimately a decision for the Commission. Further, Pepco asks for the

¹¹³ Exhibit OPC (E)-27 (Pepco Response to OPC Data Request 6-24).

¹¹⁴ Exhibit OPC (E) (Mara) at 12:15:16.

¹¹⁵ Exhibit OPC (E) (Mara) at 13:16-17; Exhibit OPC (E)-29, Pepco Response of OPC Data Request 6-20.

Commission’s blessing of a budget that moves towards these programs without a complete understanding of what benefits the proposed expenditures will provide from an engineering perspective or a climate perspective. At best, this “is a difficult assessment to make at this time because while the systems will purportedly allow more DERs to be deployed within the District, there is no way to know at this time whether the increase in DER deployment would amount to 10 new rooftop solar installations or 100 MW of new distributed generation.”¹¹⁶ At worst, Pepco is proposing to burden the District’s consumers with substantial costs without any protections as to the prudence of the decision to incur those costs or the reasonableness of the level of the expenditures. The paradigm shift to AFORs requires more thoughtful and structured review. The Commission should not be forced to prejudge any issues now via an MYP budget that includes technology that has not been fully vetted.

c. Pepco’s proposed MYP suffers from other material defects that militate against approval.

The Commission could—and should—reject Pepco’s MYP proposal based on the defects discussed in the foregoing discussion. Nonetheless, given OPC’s uncertainty about whether the Commission will establish any additional procedures after the submission of post-legislative style hearing briefs, OPC is concerned that its decision not to identify other deficiencies could be used against it. Consequently, OPC calls the Commission’s attention to a number of discrete problems with Pepco’s MYP proposal that further support rejection.

¹¹⁶ Exhibit OPC (E) (Mara) at 13:6-9.

i. Pepco’s revised load forecasts demonstrate that several capacity expansion projects are not currently needed.

For the past several rate cases, the Office has been critical of the Company’s load forecasting approach which was producing significantly overstated projections of demand on the Pepco distribution.¹¹⁷ Beginning in 2021, Pepco began using a new load forecasting tool known as the Distribution System Planning Load Forecasting (“DSP-LF”) program.¹¹⁸ This program compares the historical weather patterns for the previous year against a thirty-year record of weather patterns. The historical loads are then adjusted to match values expected during temperature extremes projected to occur once in a ten-year period.¹¹⁹ As with the prior methodology, these historical loads are adjusted further for new business, load transfer, and impacts of load management and DERs.¹²⁰ In addition, the growth trends including the anticipated electric vehicle charging loads which are known can be included in the potential new business and fossil fuel heating system conversions.¹²¹

OPC Witness Mara conducted a review of the Company’s prior load forecasts to the new forecast produced by the DSP-LF approach. The results of Mr. Mara’s review is shown in the figure below, which compares the forecasted substation peak load for District of Columbia as a whole over the next 10 years with current 2023 DSP-LF projections and the 2021 and 2022 projections.¹²²

¹¹⁷ See Exhibit OPC (E) (Mara) at 16:5-12.

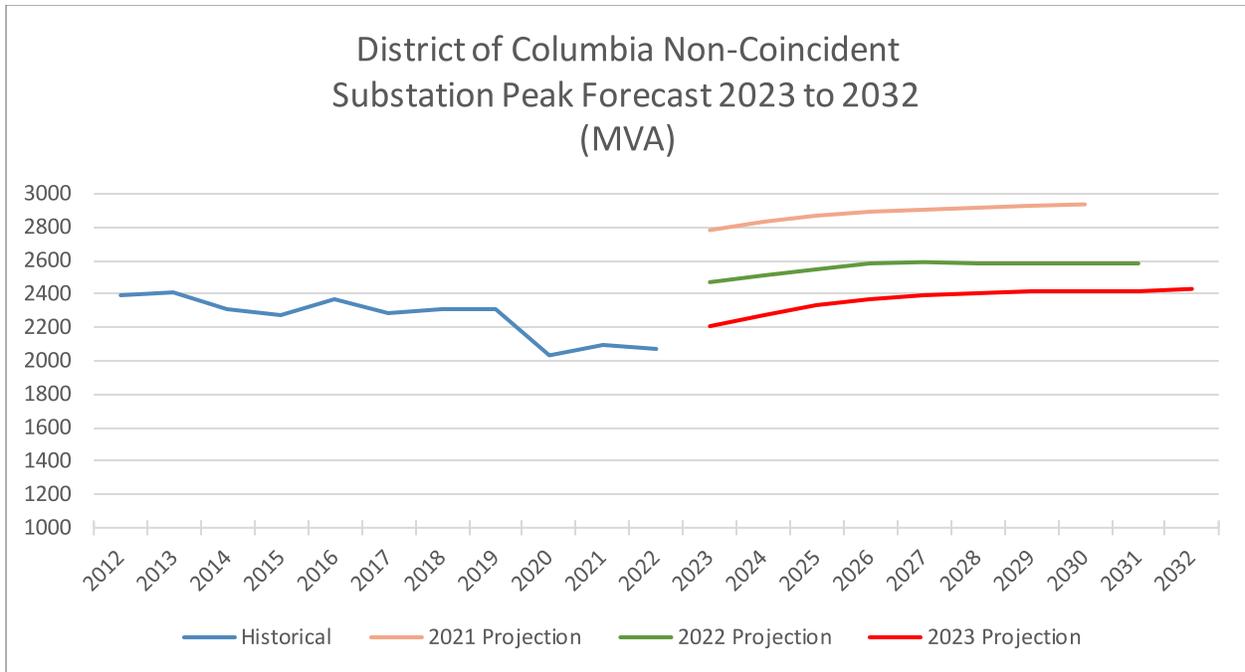
¹¹⁸ Exhibit OPC (E) (Mara) at 15:1-2; Exhibit PEPCO (H)-1 at 20.

¹¹⁹ Exhibit OPC (E) (Mara) at 15:2-5.

¹²⁰ Exhibit OPC (E) (Mara) at 15:5-7; Exhibit PEPCO (H)-1 at 20-21.

¹²¹ Exhibit OPC (E) (Mara) at 15:7-9; Exhibit OPC (E)-5 at1 (Pepco Response to OPC Data Request 4-7(c)).

¹²² Exhibit OPC (E) (Mara) at 16:1-4.



Based on his assessment, Mr. Mara concludes “that the current forecast methods yield projections more reasonable than the prior method.”¹²³ In preparing the MYP budget, however, the Company relied on the higher load forecasts produced by Pepco’s prior load forecasting methodology¹²⁴ resulting in several projects being included in the MYP capital plan that cannot be justified based on anticipated demand.

To demonstrate the problem, Mr. Mara identified two projects for consideration, the first of which is the Waterfront Substation No. 223. Pepco’s initial MYP budget included a project (ITN 74085) to install a 5th transformer at this substation in 2024.¹²⁵ The justification for the project was that the existing load on this station (180.3 MVA) would increase to 193.4 MVA by 2027,

¹²³ Exhibit OPC (E) (Mara) at 17:1-2.

¹²⁴ Exhibit OPC (E) (Mara) at 17:12-13.

¹²⁵ Exhibit PEPCO (H)-2 at 22.

nearly exceeding the 216 MVA firm capacity of the substation.¹²⁶ However, the actual peak load in 2022 was only 129.6 MVA.¹²⁷ Mr. Mara explained that the justification appears to be relying on load projections from the 2021 and 2022 Load Forecast and not Pepco's current load forecast for this substation.¹²⁸ With a peak load of only 180.4 MVA and firm capacity at the substation of 216 MVA, Mr. Mara concluded that a fifth transformer was not warranted for the Waterfront Substation.¹²⁹ In rebuttal testimony, Pepco Witness Cantler agreed that this project can be deferred beyond the MYP Period.¹³⁰

The second example relates to the Alabama Substation No. 136. Mr. Mara determined that the Alabama Substation capacity expansion projects (ITN 77270 and ITN 77272) should also be deferred based on Pepco's updated load forecast; further reducing the MYP capital budget by \$6,131,179.¹³¹ Pepco's justification for these projects was that the Alabama Substation No. 136 will be overloaded in 2028,¹³² however, Pepco's 2023 Load Forecast for this substation through 2032 does not exceed 143 MVA¹³³ and therefore does not justify a capacity expansion in 2028.¹³⁴

¹²⁶ Exhibit OPC (E) (Mara) at 18:4-7; Exhibit PEPCO (H)-2 at 22.

¹²⁷ Exhibit OPC (E) (Mara) at 18:7-8; Exhibit OPC (E)-7 at 3 (Pepco Response to DCG Data Request 5-1).

¹²⁸ Exhibit OPC (E) (Mara) at 18:9-11; Exhibit OPC (E)-8 at 28 (*PEPACR 2021-01*, 2021 Annual Consolidated Report ("2021 ACR")); and Exhibit OPC (E)-9 at 25 (*PEPACR 2022-01*, 2022 Annual Consolidated Report ("2022 ACR")).

¹²⁹ Exhibit OPC (E) (Mara) at 18:14-15.

¹³⁰ Exhibit PEPCO (4H) (Cantler) at 24:17.

¹³¹ Exhibit OPC (E) (Mara) at 20:1-11.

¹³² Exhibit OPC (E) (Mara) at 20:3-4; Exhibit PEPCO (H)-2 at page 23 and 24 of 216.

¹³³ Exhibit OPC (E)-10 at page 3 (Pepco Response to DCG Data Request 5-2).

¹³⁴ Exhibit OPC (E) (Mara) at 20:13-14.

In rebuttal testimony, Pepco Witness Cantler agreed that these projects could be deferred beyond the MYP budget period and are not recoverable in this case.¹³⁵

ii. Pepco's MYP capital budget includes the costs of Capital projects located in Maryland.

During the discovery phase of this proceeding, the Office identified several projects located in Maryland that should not have been included in the MYP budget. Specifically, Mr. Mara explained that the White Flint Substation (ITN 74120) is located in Maryland and portions not chargeable to District ratepayers were inappropriately included in the Company's proposed rates in this proceeding.¹³⁶ The proposed National Harbor Sub (ITN 72730) is also located in Maryland and is not chargeable to District ratepayers and should be removed from any rates approved in this proceeding.¹³⁷ In a pre-filed submission, Pepco Witness Cantler agreed with Mr. Mara's assessment that these costs should not have been included in the MYP budget.¹³⁸ Based on Mr. Mara's calculation, the required budget reduction to remove the cost allocated to the District and associated with the White Flint to the District is \$159,303 in 2023, \$31,467 in 2024 and \$3,817 in 2025.¹³⁹ The required budget reduction to remove the allocated cost to the District associated with the National Harbor substation are \$232,395 in 2023, \$723,984 in 2024, \$1,205,273 in 2025, and \$1,941,729 in 2026.¹⁴⁰

¹³⁵ Exhibit PEPCO (4H) (Cantler) at 24:21.

¹³⁶ Exhibit OPC (E) (Mara) at 22:7-23:5; Exhibit OPC (E)-12 at page 1 (Pepco Response to OPC Data Request 4-73).

¹³⁷ Exhibit OPC (E) (Mara) at 23: 8-11; Exhibit OPC (E)-13 (Pepco Response to OPC Data Request 4-72).

¹³⁸ Exhibit PEPCO (4H) (Cantler) at 26:5-19.

¹³⁹ Exhibit OPC (E) (Mara) at 23:4-5.

¹⁴⁰ Exhibit OPC (E) (Mara) at 24:3-5.

iii. Pepco failed to establish a legitimate need for the proposed Battery Storage Projects.

Pepco proposed two battery energy storage systems (“BESS”) as part of its initial submission in this proceeding.¹⁴¹ The two BESS projects were a 1MW/3MWh unit at the Alabama Substation and a unit at the Mt. Vernon Substation.¹⁴² As discussed herein, neither project is needed under the Company’s updated load forecast.

Pepco identified the Alabama Avenue Substation BESS as a proposed means of delaying the need for capacity increases at the Alabama Avenue Substation.¹⁴³ Mr. Mara’s analysis demonstrated that the current load forecasts for the Alabama Avenue Substation do not require the capacity of these proposed batteries to defer upgrades at the substation. Specifically, while the 2021 and 2022 load forecasts projected loads beyond the current 165 MVA of firm capacity of the substation, Pepco’s new load forecasting method now projects a significant reduction in demand for this area in Ward 8.¹⁴⁴ Accordingly, Mr. Mara concluded there is no need for a BESS at the Alabama Substation¹⁴⁵ and that the \$6,269,000 in costs budgeted for the years 2024 to 2026 should be removed from the MYP budget.¹⁴⁶ In a pre-filed submission, Pepco Witness Cantler agreed with Mr. Mara’s assessment.¹⁴⁷

With respect to the BESS at the Mt. Vernon Substation, that project was approved by the Commission in Order No. 20274, under the premise that it could “defer or eliminate the need” for

¹⁴¹ Exhibit PEPCO (H) (Cantler) at 10:6-7.

¹⁴² Exhibit OPC (E) (Mara) at 24:11-13.

¹⁴³ Exhibit PEPCO (H)-2 at page 2 of 216.

¹⁴⁴ Exhibit OPC (E) (Mara) at 25:10-13; Exhibit OPC (E)-10 at 3.

¹⁴⁵ Exhibit OPC (E) (Mara) at 27:4-5.

¹⁴⁶ Exhibit OPC (E) (Mara) at 28:7-8.

¹⁴⁷ Exhibit PEPCO (4H) (Cantler) at 25:13-14.

a new transformer at the substation that was anticipated for 2028.¹⁴⁸ As Mr. Mara explained, much has changed since that project was approved by the Commission. Specifically, in 2018, Pepco believed that the Mt. Vernon Triangle, NoMa, Capitol Crossing, and Northwest One areas (currently served by Florida Avenue Substation, New Jersey Avenue Substation, Northeast Substation and Tenth Street Substation) would see new growth of approximately 126 MW over the next ten years.¹⁴⁹ The updated version of the potential new businesses for the area now shows only approximately 54 MW through 2026.¹⁵⁰ As Mr. Mara explains, “[w]ith all these revised loads accounted for in the projections, the peak load at the Mt. Vernon Substation will not exceed 84.4 MW by 2032. A fourth transformer is not required until the load approaches the firm capacity of the substation, and this will not occur prior to 2032.”¹⁵¹ Mr. Mara therefore concluded that the Mt. Vernon BESS project should be delayed indefinitely and the budgeted cost in 2024 of \$4,466,410

¹⁴⁸ *Formal Case No. 1144, In the Matter of the Potomac Electric Power Company’s Notice to Construct Two 230kV Underground Circuits From the Takoma Substation to the Rebuilt Harvard Substation, And From the Rebuilt Harvard Substation to the Rebuilt Champlain Substation (Capital Grid Project)* (“*Formal Case No. 1144*”), Order 20274 ¶ 94, rel. December 20, 2019 (“Order No. 20274”).

¹⁴⁹ Exhibit OPC (E) (Mara) at 30:2-5 (citing Exhibit OPC (E)-26 at pages 17-18 (*Formal Case No. 1130 and 1144*, Reply Comments of Potomac Electric Power Company, filed June 29 2018) (“The Mt. Vernon Triangle, NoMa, Capitol Crossing, and Northwest One areas (currently served by Florida Avenue Substation, New Jersey Avenue Substation, Northeast Substation and Tenth Street Substation) are and will be experiencing significant new growth, with approximately 126 MW of load from 132 new developments scheduled to be added over the next ten years.”).

¹⁵⁰ Exhibit OPC (E) (Mara) at 30:5-6; Exhibit OPC (E)-17 (Pepco Response to OPC Data Request 4-9).

¹⁵¹ Exhibit OPC (E) (Mara) at 30:7-31:3.

removed from the MYP budget.¹⁵² Pepco Witness Cantler agrees with Mr. Mara's assessment and Pepco agreed to defer this project.¹⁵³

iv. Pepco failed to provide substantial evidence to establish the need for its revamped Downtown Resupply Project.

Pepco's proposed MYP includes significant spending associated with a modified Downtown Resupply Project ("DRP") that has not been justified by the Company and should be rejected by the Commission. The DRP was first included in the Company's 2017 Notice of Construction as an ancillary project to the Company's Capital Grid Project submitted in *Formal Case No. 1144*. The DRP was not approved in that proceeding because, as the Commission stated in Order No. 20203, "the Downtown Resupply Project does not require approval of a [Notice of Construction] by this Commission, and the cost and prudence of that project will be considered in a future base rate case."¹⁵⁴ As discussed herein, the record in this proceeding does not provide a basis upon which the Commission can find that the revised DRP spending – which has changed significantly and grown from \$667 million to a nearly \$1.4 billion dollar project¹⁵⁵ – is reasonable. The Commission should therefore exclude the costs of the following project from any MYP budget approved in this proceeding:¹⁵⁶

¹⁵² Exhibit OPC (E) (Mara) at 32:15-17. The Mt. Vernon Substation was also justified on the theory that it would provide additional experiential value and insight into BESS operation by Pepco. Mr. Mara explained that this justification is no longer valid because Pepco is part of the larger Exelon organization which already operates battery systems on other distribution systems and Pepco is operating utility scale battery systems in Maryland including one at National Harbor and another at a Montgomery County Electric Transit Bus depot in Silver Spring. Exhibit OPC (E) (Mara) at 32:6-12.

¹⁵³ Exhibit PEPCO (4H) (Cantler) at 25:17-18.

¹⁵⁴ *Formal Case No. 1144, In the Matter of the Potomac Electric Power Company's Notice to Construct Two 230kV Underground Circuits From the Takoma Substation to the Rebuilt Harvard Substation, And From the Rebuilt Harvard Substation to the Rebuilt Champlain Substation (Capital Grid Project)* ("Formal Case No. 1144"), Order No. 20203 at ¶ 46, rel. Aug. 9, 2019.

¹⁵⁵ Exhibit OPC (E) (Mara) at 6:8-9.

¹⁵⁶ Exhibit OPC (E) (Mara) at 33:1-2.

ITN Name

68678: L. St Rebuild Distribution Work
72137: L St Sub Capacity Expansion Work
80130: Pepco DC Buzzard to F Street
80425: Pepco DC F Street to Georgetown
80427: Pepco Champlain to L Street 69kV
80740: Pepco DC Champlain to F Street
68612: Pepco DC L St T1 Replacement
68613: Pepco DC L St T2 Replacement
68614: Pepco DC L St T3 Replacement
68615: Pepco DC L St T4 Replacement
71630: F St Sub Rebuild (69kV) (UDSPLM718A)
71631: F St Sub Rebuild (UDSPLM717A)
73368: Champlain Bypass
71012: Champlain - New 69kV Sub (DSPRD8AD17)

As Mr. Mara explains, “[t]hese projects represent a fundamental change from the Downtown Resupply that Pepco first proposed as part of the Capital Grid Plan and have not been sufficiently justified for the total cost of the projects.”¹⁵⁷ The Office’s proposed cost reductions are detailed in Exhibit OPC (E)-20 which was attached to Mr. Mara’s Direct Testimony in this proceeding.

For years, the Company has reported to the Commission and District stakeholders on the DRP in its Annual Consolidated Report filings. On April 18 2023, the Company submitted its 2023 Annual Consolidated Report. That filing makes no mention of the changes to the DRP that are now included in the MYP budget which was also filed in April 2023.¹⁵⁸ And, despite the significant revamping of the DRP, Witness Cantler makes no mention of the changes in her direct testimony.¹⁵⁹ Through discovery in this proceeding, the Office was able to obtain information

¹⁵⁷ Exhibit OPC (E) (Mara) at 33:3-5 *citing* Exhibit OPC (E)-21, *Formal Case No. 1144*, Pepco’s 180-Compliance filing Pursuant to Order 20203, dated February 4, 2020.

¹⁵⁸ Exhibit OPC (E) (Mara) at 38:12-14.

¹⁵⁹ Exhibit OPC (E) (Mara) at 41:9.

about Pepco's new long-range plan for re-supplying the Georgetown, F Street, L Street, 22nd Street and 9th Street Substations. Mr. Mara describes those plans as follows:¹⁶⁰

[BEGIN CONFIDENTIAL]

There are two stages to Pepco's Long Term Downtown DC Plan that modify the DRP. Stage 1 of Pepco's Long-Term Downtown DC Plan modifies the Downtown Resupply Project by constructing two 69kV cables from the Buzzard Point Substation to the F Street Substation at a cost of \$159 million. This will also require an investment at the Buzzard Point Substation to create a 230/69kV source at a cost of \$320 million. Two of the four 69kV cables planned between Champlain Substation and F Street Substation will be eliminated. Also, the feed to L Street will be changed from 35kV to 69kV. This project will require a change in the scope of work for the design of the Champlain Substation (ITN 71012). Pepco has already spent \$1,065,320 on the design of this substation.

[...]

Stage 2 deletes the western feed from Potomac C Substation and replaces the other two 69kV cables from Potomac C with two new cables from a future source at or near Livingston, Maryland.^[161] In addition, two new 69kV cables are extended from the Champlain Substation to 9th Street Substation. These improvements are budgeted for \$233 million.

[END CONFIDENTIAL]

As noted above, despite these significant changes to both the scope and expense of the DRP, the Company failed to address the revisions in its direct testimony in this proceeding. Furthermore, the justification in the individual projects submitted with the Company's application

¹⁶⁰ Exhibit OPC (E) (Mara) at 38:19-40:7.

¹⁶¹ **[BEGIN CONFIDENTIAL]** In the interest of clarity, the Office notes that Mr. Mara's reference to "at or near Livingston, Maryland" is a reference to a future new Livingston Substation in the District that, with sources from the Champlain substation would be an additional source of supply to the 9th Street substation. See Exhibit OPC (E) at 33:3-12. **[END CONFIDENTIAL]**

in this proceeding,¹⁶² do not clearly explain the master plan and total cost envisioned by Pepco for the Stage 1 and Stage 2 modifications. For example, the description submitted for ITN 71631: F St Sub Rebuild called for 4 cables from the Champlain Substation.¹⁶³ Also, as Mr. Mara explains, these DRP projects “require that the Buzzard Point 230/69kV Substation be relocated starting in roughly 2027, however, the current budgets do not indicate or justify this relocated substation project.”¹⁶⁴ The Commission should not allow the Company to begin incurring capital expenditures on this scale until it provides a full justification for the newly designed DRP and demonstrates that the project is a cost-justified approach to the purported reliability problems it seeks to solve. As Mr. Mara concludes “[t]his scant justification is not sufficient to start down the road of the revised downtown resupply that will result in an additional \$712 million for sub-transmission and substation expenditures that will be borne by District ratepayers.”¹⁶⁵

The Office’s concerns are amplified by the fact that, to the best of the Office’s knowledge, the Company will ultimately require a Notice of Construction (NOC) for the 230 kV cables required for a relocated Buzzard Point Substation.¹⁶⁶ As Mr. Mara explains, “once the 69kV cables are installed from F Street Substation to Buzzard Point Substation, the review of the NOC will be arguably a *fait accompli* because a considerable portion of the project will already be in place and

¹⁶² See, e.g., Project ITN 80130: Buzzard to F Street 69kV cables; Project ITN 80245: Pepco DC F Street to Georgetown; ITN 80740: Pepco DC Champlain to F Street; ITN 80247: Pepco Champlain to L Street 69kV; ITN 71631: F St Sub Rebuild; and ITN 72137: L St Sub Capacity Expansion Work).

¹⁶³ Exhibit PEPCO (H)-2 at page 152 of 216.

¹⁶⁴ Exhibit OPC (E) (Mara) at 42:6-8. All of the following ITN projects reference a relocated Buzzard Point 69kV Substation: ITN 68678, ITN 70096, ITN 72137, ITN 80130, ITN 71630, and ITN 71631. See Exhibit PEPCO (H)-2 at pages 10, 11, 14, 92, 151, and 152 of 216. Specifically, the Solution Statement for these projects provides: “Resupply 22nd Street, F St and Georgetown via Champlain 69kV new 230/69kV sub and Buzzard Point 69kV relocated sub to inside the generation building.”

¹⁶⁵ Exhibit OPC (E) (Mara) at 42:10-13.

¹⁶⁶ Exhibit OPC (E) (Mara) at 42:14-15.

considerable spending will have already occurred through the MYP budget.”¹⁶⁷ The Commission should not allow this result and should require an up-front, holistic review of the Company’s DRP plans. It can do so by rejecting the projects in the MYP identified by the Office until such time as the Company presents a complete picture of the costs and benefits (including alternatives considered) to address the aging 35kV and 69kV cables.

In pre-filed rebuttal testimony, Pepco cites to the various proceedings where it reported on the DRP, attempting to show that it has been transparent about its plans for the downtown resupply.¹⁶⁸ The Office does not deny that the Company has reported on the DRP for many years, but Pepco fails to note that, in recent years, its plans have been in a perpetual state of flux with an ever-growing price tag. Mr. Mara summarized those filings on page 4 of his surrebuttal testimony, Exhibit OPC (2E).

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¹⁶⁷ Exhibit OPC (E) (Mara) at 42:16-43:2.

¹⁶⁸ Exhibit PEPCO 4(H) (Cantler) at 13-14, Table 2 (PROCEEDINGS IN WHICH THE COMPANY HAS COMMUNICATED INFORMATION REGARDING THE DOWNTOWN RESUPPLY PROJECT).

Docket No.	Filing Type	Filing Date	Downtown Resupply Design	Budget
Formal Case No. 1144	Pepco's Capital Grid Annual Project Notice of Construction	June 29, 2018	Re-feed F Street, L Street and Georgetown Substation from rebuilt Champlain Sub	Long-term budget not provided
PEPACR2017- 01-E	2017 Annual Consolidated Report of the Potomac Electric Power Company	Feb. 15, 2017	L St Sub rolled into Downtown Resupply	Long-term budget not provided
PEPACR2018- 01-E	2018 Annual Consolidated Report of the Potomac Electric Power Company	Apr. 2, 2018	No Change to Design	Long-term budget not provided
PEPACR2019- 01-E	2019 Annual Consolidated Report of the Potomac Electric Power Company	Apr. 1, 2019	L St Sub served at 35kV from Champlain	Long-term budget not provided
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	30-May-19	No Change to Design	Long-term budget not provided
PEPACR2020- 01-E	2020 Annual Consolidated Report of the Potomac Electric Power Company	Apr. 20, 2020	Per Order 20203 Information provided regarding Downtown Resupply Project. No Changes to the Plan	\$ 494,028,210
PEPACR2021- 01-E	2021 Annual Consolidated Report of the Potomac Electric Power Company	Apr. 15, 2021	Note Retirement of Buzzard Point Sta 13/34 kV Sub	\$ 494,028,210
PEPACR2022- 01-E	2022 Annual Consolidated Report of the Potomac Electric Power Company	Apr. 15, 2022	Change Voltage at L St Sub from 35kV to 69kV	\$ 494,028,210
PEPACR2023- 01-E	2023 Annual Consolidated Report of the Potomac Electric Power Company	Apr. 18, 2023	Change feed to L Street to network to Buzzard Substation	\$ 824,385,949
Formal Case No. 1176	In the Matter of the Application of the Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service In The District of Columbia	Apr. 13, 2023	Network to Livingston Substation	\$1,379,000,000

In sum, Pepco's DRP plans continually change, and the cost of this project has ballooned to nearly \$1.4 billion. The Office agrees that the aging 35kV and 69kV cables and aging

substations in the downtown area need to be replaced or upgraded. Pepco, however, bears the burden of demonstrating the cost effectiveness of the plan included in the MYP. Pepco has failed to do so on the basis of the record evidence in this proceeding. The issues and concerns about the proposed DRP projects and associated costs identified by the Office provide a further basis for rejecting the MYP at this time.

d. Due to its fundamental deficiencies, the Commission cannot simply “fix” the MYP, and undertaking such a step would undermine the public interest.

Based on the fundamental deficiencies identified in the preceding sub-sections, OPC submits that rejection of the MYP, without prejudice, is the only rational result. However, OPC acknowledges Commissioner Beverly’s questions at the July 30, 2024 Legislative Style Hearing about the Commission’s ability to modify the MYP to correct deficiencies.¹⁶⁹ Based on the answers that Pepco’s counsel provided in response to Commissioner Beverly’s questions, OPC anticipates that Pepco may argue on brief that modification, rather than rejection, is the appropriate result should the Commission find the proposed MYP to be deficient.¹⁷⁰ Consequently, OPC takes this opportunity to preemptively respond to such arguments.

As a threshold matter, OPC submits that it is not possible for the Commission to “fix” the proposed MYP in the course of Formal Case No. 1176. There are four principal bases for this conclusion, all of which are based on points OPC established above. First, it is imperative that the Commission evaluate the MRP Pilot before considering a subsequent MYP proposal. That review has not yet occurred.

¹⁶⁹ Tr., 34:15-35:7.

¹⁷⁰ See Tr., 35:8-36:6 (In a colloquy between Commissioner Beverly and Pepco counsel, Pepco’s counsel argued that, rather than reject the MYP as deficient, the Commission should revise the MYP in an order by adding the missing elements.).

Second, any MYP should include PIMs to (i) ensure that the proposal constitutes an actual plan to make investments the Commission has deemed necessary to meet specific District goals, and (ii) provide the parameters to discipline Pepco's implementation of approved projects to ensure that customers benefit from the investments. Pepco submitted its proposal before the PIMs Working Group completed its work, and the Commission has not issued any rulings on the PIMs that would be appropriate to include in any subsequent MYP. Until PIMs are developed, the MYP is premature and structurally deficient.

Third, Pepco contends that the MYP is necessary to recover the costs of investments necessary to ensure a climate ready grid. However, Mr. Mara's analysis demonstrates that many investments are business-as-usual investments that have simply been recast as climate-related projects to fit Pepco's narrative about the need for any MYP. Other investments remain under review in Formal Case No. 1167. Until the Commission identifies projects that meet specific District objective, it would be inappropriate to impose upon customers the costs and risks of the paradigm shift Pepco is proposing.

Fourth, OPC and other parties have raised substantial doubts about the need for and accuracy of the actual and planned expenditures in Pepco's MYP.¹⁷¹ These doubts and concerns cannot be resolved based on the decisional record as it exists today.

In order to "fix" the MYP as Pepco suggests, the Commission would need to address each of the four issues discussed above and take all related actions before issuing an order that identifies the revisions Pepco needs to make to the MYP. Specifically, the Commission would need to: (1)

¹⁷¹ See, e.g., Section III.B.3, *supra*; Tr., 87:16-92:8 (summary of arguments by AOBA counsel).

start and complete its review of the MRP Pilot;¹⁷² (2) establish PIMs through a culmination of the PIMs Working Group; (3) rule on the merits of Pepco’s climate-proposals in Formal Case No. 1167 to identify the investments that drive the need for an MYP; (4) incorporate into the decisional record in Formal Case No. 1176 the determinations from review of the MRP Pilot, the PIMs, and the investments approved in Formal Case No. 1167; and (5) establish a process for resolving legitimate criticisms about Pepco’s plans, proposed projects, and cost/budgeting process. Unless the Commission orders material extensions or modifications to the procedural schedule in Formal Case No. 1176—extensions or modifications that would make Formal Case No. 1176 unlike any other rate proceeding in Commission history—it is simply not possible to “fix” the MYP’s deficiencies as Pepco suggests.

Assuming, *arguendo*, that it is possible to “fix” this proposed MYP in Formal Case No. 1176—and as explained above, it is not—it would be bad public policy to do so. The Commission established a deliberative process for reviewing the proposed paradigm shift to AFORs. Pepco knew or should have known that the Commission intended to rely on its review the reasonableness and effectiveness of the MRP Pilot when evaluating any subsequent MYP proposal. Likewise, Pepco knew or should have known that “any MRP adopted should be accompanied by PIMs.”¹⁷³ Yet, Pepco made the affirmative decision to submit its MYP Application before the Commission started (much less completed) its review of the MRP Pilot or established any PIMs. At the Legislative Style Hearing, Pepco’s counsel claimed that there is nothing “improper” about the

¹⁷² In addition to starting and completing this review, the Commission would also need to determine as a result of that review that continued consideration of the paradigm shift toward alternative forms of ratemaking is appropriate. Given Pepco’s failure to provide any evidence to support findings that the MRP Pilot or MYP provide quantifiable benefits or otherwise benefit consumers, the current decisional record does not support such a determination.

¹⁷³ *Formal Case No. 1156*, Order No. 20755, ¶ 165 (emphasis added) (citing *Formal Case 1156*, Order No. 20273, ¶ 104).

timing of the MYP Application.¹⁷⁴ But that claim lacks merit. If the Commission is inclined to continue its evaluation of the paradigm shift toward alternative forms of ratemaking, it would be counter to the public interest to circumvent the deliberative evaluation process the Commission established simply because Pepco did not want to wait on the review of the Pilot and the establishment of PIMs to propose another MYP.¹⁷⁵

In addition, as established in Section III.A, *supra*, the D.C. Code imposes on Pepco the burden of providing substantial evidence to support approval of its MYP proposal. Pepco had multiple opportunities to satisfy its burden of proof through its pre-filed submissions. But, as established above, nothing in Pepco's pre-filed submissions supports findings that: (1) the MRP Pilot and/or MYP proposal are cost effective as compared to a rate case based on a traditional test year;¹⁷⁶ (2) the MRP Pilot produced quantitative and quantifiable benefits;¹⁷⁷ (3) a second MYP is necessary to maintain Pepco's financial health; and (4) the MYP is necessary to make the investments needed to meet the District's climate goals and policies. It would be inappropriate and bad public policy for the Commission to absolve Pepco of these fundamental failures and undertake the burden of identifying modifications needed to "fix" Pepco's deficient MYP proposal.

¹⁷⁴ At the Legislative Style Hearing, Pepco's counsel argued that it was not "improper" for Pepco to submit its MYP proposal when it did. *See generally* Tr., 37 (colloquy between Commissioner Beverly and Pepco counsel).

¹⁷⁵ In addition to constituting bad public policy, Pepco has not offered any legal rationale for departing from the practice and precedent the Commission established in articulating the AFOR Framework and approving the MRP Pilot. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (citation omitted) (agencies must recognize departures from existing practice or precedent and provide a reasoned explanation for the departures).

¹⁷⁶ *See* Tr., 33:10-12 (statement against interest by Pepco counsel that Pepco does "not have an analysis of the cost side by side for doing a historic test year and an MYP").

¹⁷⁷ *See* Tr., 30:15-32:14 (statement against interest by Pepco counsel, recognizing that Pepco has not conducted no analysis of quantitative benefits of the MRP Pilot).

In sum, rejecting the MYP without prejudice, as opposed to undertaking the burden to “fix” Pepco’s deficient proposal, is the appropriate recourse given the confines of a normal schedule governing review of applications to change rates. Even if it were possible to undertake the burden of identifying all modifications necessary to correct the fatal flaws in Pepco’s proposal, rejection without prejudice is still the appropriate result. It would be bad public policy for the Commission to undertake the burden of identifying the needed modifications and thereby absolve Pepco of its failure to satisfy its burden of proof. Further, rejecting the MYP proposal without prejudice to Pepco’s re-submission of a fully supported proposal after the conditions precedent have been satisfied is consistent with the Commission’s recognition that any permanent paradigm shift away from traditional ratemaking will be a deliberative process and will require “multiple rate proceedings to fully implement AFORs.”¹⁷⁸

C. The Commission should reject the TTYF proposal, without prejudice.

OPC and intervenors raise material doubt as to the accuracy, staleness, and propriety of Pepco’s TTYF proposal. Nothing in Pepco’s pre-filed submissions rebuts those demonstrations. Given that Pepco bears the burden of proof in this proceeding, the Commission should reject the TTYF as explained in Section III.C.1, *infra*, without prejudice to Pepco resubmitting a fully supported TTYF proposal that includes updated and accurate data. In the event the Commission is not inclined to reject the TTYF, OPC explains in Section III.C, *infra*, that Pepco’s failure to meet its burden of proof would require the Commission to establish additional process in order to develop the record necessary to rule on the merits of the TTYF.¹⁷⁹

¹⁷⁸ *Formal Case No. 1156*, Order No. 20755, ¶ 476.

¹⁷⁹ As explained below, in the event the Commission is not inclined to reject Pepco’s TTYF, the fact that the decisional record as it currently exists does not support approval Pepco’s TTYF proposal would

1. Pepco failed to support its TTYF with substantial evidence.

The procedural schedule in this proceeding has been protracted, a fact that raises several threshold concerns about the basis for Pepco's TTYF. As an initial matter, Pepco did not submit its TTYF as part of its initial application. As such, review of the TTYF and overlapping issues in the first year of the proposed MYP have been disjointed. Further, Pepco's initial TTYF appears to be based on stale data as a result of the passage of time. In addition, Pepco appears to be presenting a moving target. In particular, as late as August 19, 2024, Pepco was continuing to respond to data requests to provide additional information about its October 16, 2023 TTYF. These circumstances raise material procedural and substantive concerns about the sufficiency, accuracy, and relevancy of the "evidence" Pepco is relying on as it attempts to meet its burden of proof.

In addition to these concerns about stale and ever-changing data, subsequent filings by Pepco contain data that undermines data in Pepco's initial TTYF or casts doubt on the reliability of the evidence on which Pepco relies in attempting to meet its burden of proof. Notably, on May 3, 2024, Pepco submitted its Quarterly Rate of Return ("ROR") Report for 2023 in Formal Case No. 1156.¹⁸⁰ That report presented figures for calendar year 2023 that differed from those in the TTYF for overlapping time periods. For example, for calendar year 2023, the report showed rate base and operating income of \$2,653,203,000 and \$189,884,000, respectively. In contrast, the historical data in the TTYF showed rate base and operating income of \$3,023,435,000 and

mean that additional procedures are needed to (i) afford Pepco an opportunity to address the deficiencies and concerns identified by OPC and intervenors, (ii) provide OPC and intervenors an opportunity to respond to Pepco's renewed efforts to meet its burden of proof, and (iii) establish a decisional record on which the Commission can make a reasoned decision regarding the merits of the TTYF proposal.

¹⁸⁰ *Formal Case No. 1156*, Pepco Quarterly ROR Report for the 12 Months Ended December 31, 2023, filed May 3, 2024 ("Pepco's Quarterly ROR Report").

\$153,172,000, respectively.¹⁸¹ In addition, Pepco's quarterly report purported to show that Pepco earned in excess of the return on equity the Commission authorized in Formal Case No. 1156, which called into question the basis for the proposed increase in the TTYF. Making matters worse, Pepco further confused the decisional record by submitting an errata to the Quarterly ROR Report on June 24, 2024. According to Pepco, the May 3, 2024 version of the Quarterly ROR Report contained erroneous figures for the Sale of Electricity and BSA Revenue Reserves—the errata showed a reduction from \$23,318,000 to \$16,833,000, which is a \$6.485 million change. In addition, the errata contained a revised ROE of 9.155%, and it now indicated that Pepco had a revenue deficiency of \$2,209,000 in CY 20203, as opposed to over-earning..¹⁸² Just last month, Pepco submitted a supplement that purported to explain and address the errors and issues with the errata filing.¹⁸³ The combined effect of stale, inconsistent, and ever-changing data led OPC to seek summary disposition of Pepco's TTYF on June 24, 2024. To this date, Pepco has not supplied any information that the Commission could rely on the support a finding that OPC's concerns have been adequately addressed or rebutted.

In addition to its concerns about stale, inaccurate, and ever-changing data, OPC has identified other glaring holes in Pepco's pre-filed exhibits that prevent the Commission from approving that proposed. OPC does not provide an exhaustive list of these issues in light of the difficulty of meaningfully addressing data that is stale and inaccurate without further procedures. Further, Pepco, not OPC, bears the burden of proof in this proceeding. Nonetheless, OPC highlights several discrete issues to support its conclusion that the TTYF should be rejected.

¹⁸¹ Worse yet, the MYP projected a rate base of \$2,757,779,000 and operating income of \$173,582,000. Exhibit PEPCO (B)-1 at 1.

¹⁸² *Formal Case No. 1176*, Quarterly ROR Report at 3.

¹⁸³ *Formal Case No. 1176*, Pepco's Supplement to Quarterly ROR Report, filed July 5, 2024.

One of OPC's principal concerns with the TTYF involves affordability. In its pre-filed submissions, OPC presented compelling evidence of its concerns about affordability in the District and the insufficiency of Pepco's proposal to address those concerns.¹⁸⁴ Assuming, *arguendo*, that all of the data Pepco's relies upon to support its TTYF is up-to-date and accurate, Pepco's TTYF proposal raises substantial issues about affordability that Pepco does not meaningfully address or rebut in its pre-filed submissions. The Commission could not reasonably approve the TTYF based on these unrebutted concerns. The Office's affordability concerns are compounded by several projects in the traditional test year revenue requirement that modify the Downtown Resupply Project and set about a considerable and costly revision to that project that has not been justified on the basis of the record in this proceeding.¹⁸⁵ Mr. Mara also identified certain capital investment projects in the proposed TTYF rate that will not be completed within the test year¹⁸⁶ and several projects located in Maryland that were inappropriately included in Pepco's proposed rates in this proceeding.¹⁸⁷

Another category of concerns and issues relates to the BSA. First, OPC recommends that the BSA be discontinued on the grounds that (i) it is not functioning as intended, and (ii) does not contain the appropriate incentives or accountability mechanisms to protect customers from Pepco's imprudent management and administration of the BSA.¹⁸⁸ Second, Pepco has never meaningfully

¹⁸⁴ See *Formal Case No. 1176*, Exhibit OPC A (Dismukes) at 25:16-36:17; see also Exhibit OPC (A)-2 (Presentation Entitled "Affordability Issue in Pepco Base Rate Case).

¹⁸⁵ Exhibit OPC E (Mara) at 44:14-45:1. The Office discusses its concerns about these capital investments in connection with its discussion of the proposed MYP budget.

¹⁸⁶ Exhibit OPC E (Mara) at 44:3-10.

¹⁸⁷ Exhibit OPC E (Mara) at 45:6-46:4. As noted in connection with the Office's discussion of the MYP, the Company has agreed that these cost were inappropriately included in the rates in this proceeding.

¹⁸⁸ *Formal Case No. 1176*, Exhibit OPC (A) (Dismukes) at 107:1-5.

addressed OPC's challenge to the prudence of Pepco's flawed administration of the BSA, which resulted in a substantial billing determinants error and large reserve balances.¹⁸⁹ Indeed, Pepco never even analyzed whether its operation and administration of the BSA was prudent.¹⁹⁰ Without taking any responsibility for its error and flawed implementation and administration of the BSA, Pepco's TTYF proposal simply seeks to include the deferral balances that resulted from Pepco's error in rate base.¹⁹¹ The decisional record simply does not support continuation of the BSA, and the BSA is a significant component of Pepco's TTYF. As such, the decisional record does not support approval of the TTYF.

In sum, the Commission should find that the decisional record contains a combination of material concerns about the (1) staleness and accuracy of data underlying Pepco's TTYF proposal, (2) discrete elements of the revenue requirement proposed in the TTYF, and (3) the overall affordability of the TTYF. In light of these issues, the appropriate outcome is rejection of the TTYF, without prejudice to Pepco's re-submission of a new application that contains accurate, up-to-date, and complete information.

2. If the Commission does not reject the TTYF, it must establish additional processes to create the record necessary to resolve the material deficiencies in Pepco's pre-filed submissions.

As demonstrated in Section III.C, *supra*, Pepco has, at best, based its TTYF on a muddled evidentiary presentation. More accurately, Pepco has submitted pre-filed testimony, exhibits, and other materials that undermine the accuracy of and basis for its TTYF proposal. That fact is inescapable notwithstanding that OPC and intervenors have had no meaningful opportunity to

¹⁸⁹ See generally *Formal Case No. 1176*, Exhibit OPC (A) (Dismukes) at 84:3-111:5.

¹⁹⁰ *Formal Case No. 1176*, Exhibit OPC (A) (Dismukes) at 93:8-15.

¹⁹¹ *Formal Case No. 1176*, Exhibit PEPCO (3A)-1 (O'Donnell) at 5:9-12.

conduct cross examination or submit rebuttal or sur-rebuttal testimony in response to Pepco’s recent submissions and latest responses to data requests. However, if the Commission declines to reject the TTYF outright, the Commission’s obligation to engage in reasoned decisionmaking still precludes the Commission from approving the TTYF proposal based on the decisional record as it stands today. In light of the deficiencies detailed herein, any result other than rejection would require the Commission to establish additional procedures to ensure that the parties can build an accurate, complete, and updated decisional record that the Commission can rely upon to make reasoned decisions about the elements comprising Pepco’s costs of providing electric distribution service.

It is imperative that the Commission afford the parties an opportunity to develop a complete, accurate, and updated record. But that is not the only basis for establishing additional processes should the Commission decline to reject the TTYF as this stage of the proceeding. In particular, the Commission is obligated to establish additional procedures because Formal Case No. 1176 is a “contested case” under the D.C. Code. Where disputes do not solely involve issues of policy or law, the Commission is required to hold a formal evidentiary hearing.¹⁹² As the Commission has previously held, adoption of “a legislative style hearing should be the exception, not the rule.”¹⁹³

Under District law, a “contested case” is a “proceeding before . . . any agency in which the legal rights, duties, or privileges of specific parties are required by any law . . . or by constitutional right, to be determined after a hearing . . . before an agency.”¹⁹⁴ The proceeding required for

¹⁹² *Formal Case No. 1154*, Order No. 20615, ¶ 5, rel. Aug. 20, 2020.

¹⁹³ *Id.*

¹⁹⁴ D.C. Code § 2-502(8).

contested cases is “a ‘trial-type hearing’ that is ‘adjudicatory’ and ‘is concerned basically with weighing particular information and arriving at a decision directed at the rights of the specific parties.”¹⁹⁵ Alternatively, “a legislative hearing relates to ‘the making of a rule for the future[]’ . . . [and] is a non-adversary proceeding which seeks to devise broad policy applicable to the public generally, or a substantial segment thereof, rather than to individual parties.”¹⁹⁶ The District of Columbia Court of Appeals has held that a trial-type hearing must be held where “it is ‘either statutorily or constitutionally compelled’” and the proceeding is “adjudicatory as opposed to legislative in nature.”¹⁹⁷ This proceeding meets both criteria.

First, District law requires that the Commission hold a hearing where a utility seeks to advance or change existing rates or resolve a complaint arising from utility rates.¹⁹⁸ The Commission has routinely held that utility rate making is a “contested case.”¹⁹⁹ Further, Commission regulations governing settlements establish that a rate case is a contested case. Section 15-130 of the District’s Municipal Regulations provides that “a full settlement presented in a *base rate change application or other contested case*, which would have an impact on a utility’s customers, competitors, or the public, shall only be accepted after a hearing on whether

¹⁹⁵ *Price v. D.C. Bd. of Ethics & Gov’t Accountability*, 212 A.3d 841, 844 (D.C. 2019) (quoting *Euclid St., LLC v. District of Columbia Water & Sewer Auth.*, 41 A.3d 453, 457 (D.C. 2012)).

¹⁹⁶ *Chevy Chase Citizens Assoc. v. District of Columbia Council*, 327 A.2d 310, 314 (D.C. 1974).

¹⁹⁷ *Richard Milburn Pub. Charter Alternative High Sch. v. Cafritz*, 798 A.2d 531, 539 (D.C. 2002) (quoting *Timus v. District of Columbia Dep’t of Human Rights*, 633 A.2d 751, 756 (D.C. 1993)).

¹⁹⁸ *See* D.C. Code §§ 34-901, 34-908.

¹⁹⁹ *See, e.g., Formal Case No. 1016*, Order No. 13063, ¶ 58 n.141, rel. Feb. 6, 2004 (“A utility rate case is a ‘contested case’ under the D.C. Administrative Procedure Act.”); *Formal Case No. 926*, Order No. 10353, p. 310, rel. Dec. 21, 1993 (“In a base rate case, the adversarial ‘contested case’ forum provides the parties with an opportunity to fully examine issues of interest, file testimony and cross examine witnesses. This forum also provides the Commission with the opportunity to take action based upon record evidence.”).

the settlement is in the public interest.”²⁰⁰ By following “base rate change application,” with “other contested case,” the rules of statutory construction direct that we consider base rate change applications contested cases as well.²⁰¹

Second, this proceeding is adjudicatory, not legislative. A legislative proceeding is one in which the Commission makes “a policy decision directed towards the general public.”²⁰² “Legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide *questions of law and policy and discretion*.”²⁰³ On the other hand, an adjudicative proceeding requires “weighing particular information and arriving at a decision directed at the rights of specific individuals”²⁰⁴ Adjudicative facts are “the facts about the parties and their activities, businesses and properties.”²⁰⁵

This proceeding is also unlike previous proceedings in which the Commission only held a legislative style hearing. A legislative style hearing was employed to review Pepco’s plans to obtain funds on behalf of itself, and District ratepayers, under the American Recovery and Reinvestment Act of 2009²⁰⁶ and “preserve the non-adversarial nature [of the proceeding] and

²⁰⁰ D.C. Mun. Regs. 15-130, § 130.11 (emphasis added).

²⁰¹ See, e.g., *Yates v. United States*, 574 U.S. 528, 543 – 546 (2015) (discussing the canons of *noscitur a sociis* - a word is known by the company it keeps – and *ejusdem generis* – of the same kind.).

²⁰² *Comm’n Workers of America, Local 2336 v. District of Columbia Taxicab Comm’n*, 542 A.2d 1221, 1223 (D.C. 1988) (quoting *Donnelly Assocs. v. District of Columbia Historic Preservation Review Bd.*, 520 A.2d 270, 278 (D.C. 1974)).

²⁰³ *PAL DC Storage, LLC v. D.C. Zoning Comm’n*, 229 A.3d 148, 155 (D.C. 2020) (emphasis in original) (quoting *Dupont Circle Citizens Ass’n v. District of Columbia Zoning Comm’n*, 343 A.2d 296, 300 (D.C. 1975)).

²⁰⁴ *Local 2336*, 542 A.2d at 1223.

²⁰⁵ *PAL DC Storage*, 229 A.3d at 155.

²⁰⁶ *Id.* ¶ 1.

facilitate open dialogue.”²⁰⁷ A legislative style hearing was also found appropriate for the Commission’s investigation of the District’s near- and medium-term electric reliability and electric supply adequacy.²⁰⁸ More recently, the Commission utilized a legislative style hearing to inquire into an isolated interruption of electric service.²⁰⁹ The legislative style hearing was “informational,” and was limited to discussion between senior Pepco representatives and the Commission.²¹⁰ Although the meeting was open to all interested parties, those parties could not present evidence, provide statements or question Pepco.²¹¹

If the Commission declines to reject the TTYF proposal, additional process is required. This proceeding is a contested case. By the plain terms of the statute this is a contested case as Pepco is seeking a rate change.²¹² In addition, it is evident this is an adjudicatory hearing, not a legislative hearing. This proceeding requires the Commission to weigh the information submitted by the parties and determine whether adoption of the MYP Application or TTYF is appropriate. Further, the Commission has not historically used legislative style hearings to decide these type of matters, instead receiving legislative style hearings for information gathering or to inform policy making.

²⁰⁷ *Formal Case Nos. 945, 1056*, Order No. 15223, ¶ 2, rel. Mar 17, 2009.

²⁰⁸ *Formal Case No. 1064*, Order No. 15043, ¶ 1, rel. Aug. 22, 2008.

²⁰⁹ *General Docket No. 2019-03*, Order No. 20228, ¶ 1, rel. Sept. 26, 2019.

²¹⁰ *Id.* ¶ 4.

²¹¹ *Id.*

²¹² *See, e.g., Formal Case No. 1016*, Order No. 13063, ¶ 58 n.141, rel. Feb. 6, 2004 (“A utility rate case is a ‘contested case’ under the D.C. Administrative Procedure Act.”); *Formal Case No. 926*, Order No. 10353, p. 310, rel. Dec. 21, 1993 (“In a base rate case, the adversarial ‘contested case’ forum provides the parties with an opportunity to fully examine issues of interest, file testimony and cross examine witnesses. This forum also provides the Commission with the opportunity to take action based upon record evidence.”).

If the Commission does not reject the TTYF, it must establish additional procedures to allow Pepco a renewed opportunity to meet its burden of proof. The Commission should also afford OPC and intervenors an opportunity to be meaningfully heard regarding any new or updated material Pepco may submit (e.g., discovery rights, ability to cross examine witnesses and present counterevidence to support their positions, etc.). Without this additional process, the Commission cannot approve the TTYF because the record simply does not exist to support approval.

IV. CONCLUSION

For the reasons stated herein, the Office of the People's Counsel for the District of Columbia respectfully requests the Commission reject Pepco's MYP Application and TTYF proposal given Pepco's failure to satisfy its burden of proof. If the Commission determines that rejection is not appropriate at this time, the Office of the People's Counsel for the District of Columbia respectfully requests that the Commission afford the parties additional process that is necessary to allow Pepco an opportunity to address its evidentiary failures, permit OPC and other parties to address the rate application, and build a robust record that is needed to make a reasoned decision on the merits.

Respectfully submitted,

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Dated: August 30, 2024

CERTIFICATE OF SERVICE

Formal Case No. 1176, In the Matter of Pepco’s Application for Approval to Increase Rates Through the Implementation of a Multiyear Rate Plan (“MYP”), also referred to as the “Climate Ready Pathway” for its Electric Distribution Service

I certify that on August 30, 2024, a copy of the *The Office of the People’s Counsel for the District of Columbia’s Post-Hearing Brief* was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

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