



August 30, 2024

By Electronic Filing

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

Re: Formal Case No. 1176

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

Dear Ms. Westbrook-Sedgwick:

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

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

Sincerely,

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

Frann G. Francis, Esq.

cc: All parties of record



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**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)	FORMAL CASE NO. 1176
MULTIYEAR RATE PLAN FOR ELECTRIC)	
DISTRIBUTION SERVICE IN THE DISTRICT)	
OF COLUMBIA)	

**POST-LEGISLATIVE-STYLE HEARING BRIEF
OF THE APARTMENT AND OFFICE BUILDING
ASSOCIATION OF METROPOLITAN WASHINGTON**

I. INTRODUCTION

The Apartment and Office Building Association of Metropolitan Washington (“AOBA”), pursuant to the Commission’s Notice of Legislative-Style Hearing – July 30, 2024 hereby files AOBA’s Post-Legislative-Style Hearing Brief regarding the Application of the Potomac Electric Power Company (hereinafter "Pepco" or "the Company") to implement a multiyear rate plan for electric distribution service in the District of Columbia. This Post-Legislative-Style Hearing Brief addresses matters fundamental to AOBA’s concerns regarding Pepco’s pursuit of approval of a second multi-year rate plan. This Brief reflects AOBA’s understanding of the materials that have been submitted to the Commission in this proceeding in the form of testimony and exhibits sponsored by Witnesses for the parties, noting: (1) that the parties have been provided no opportunity to cross-examine any of Pepco’s Witnesses to test the accuracy and credibility of their testimony and exhibits; and (2) there has been no stipulation to the admission of testimony

and exhibits offered by the Company in this proceeding or any data request responses not attached to the testimony of a Witness for a non-Pepco party.¹ Thus, the briefing processes established for this proceeding represent a marked departure from this Commission's past ratemaking practices and generally accepted utility regulatory practices within the United States.

II. OVERVIEW

As AOBA emphasized in the Limited Brief it submitted on July 24, 2024, and in the arguments it presented by its Counsel during the Legislative-Style Hearing on July 30, 2024, this is a critical time for the commercial building industry in the District of Columbia. Changes in employee work practices (e.g., expanded acceptance of remote work) have significantly reduced demand for office space in the District of Columbia, and building owners are struggling to stem losses of tenants. The number of commercial buildings that have fallen into bankruptcy and/or been placed on credit watch is historically high, and there appears to be little hope of a near-term revival.

With the eroded financial position of the District's Commercial office buildings, the assessed value of Commercial real estate in the District has fallen sharply. That, in turn, has led to a significant drop in the District's real estate tax revenues and a substantial

¹ This Brief includes citations to documents that have been submitted by the parties in the form of testimony and exhibits in this proceeding. However, there is no established record that can be relied upon in this proceeding. AOBA also notes that, although there is a transcript of the Commission's July 30, 2024, Legislative Style Hearing, none of the statements during that hearing provide any evidence that can be relied upon to resolve the numerous and often complex issues before the Commission with respect to Pepco's request for approval of a new multi-year rate plan.

tightening of budgets for the District government.² Nevertheless, in the context of these challenges faced by the District government, as well as the District's Commercial real estate industry, Pepco, in this proceeding, seeks its largest-ever rate increase, as well as virtual guarantees that it will be able to recover all dollars it chooses to spend over the course of a three-year Multi-Year Rate Plan ("MRP").³

The facts are that Pepco's kWh deliveries and kW demands have declined significantly in recent years, and it has seen only minimal customer growth (mostly in its residential and small commercial rate classes). Moreover, Pepco's forecasts foresee a continuation of those trends.⁴ Yet, despite the Company's projections of minimal customer growth (mostly among smaller customers) and declining kWh and kW service requirements, Pepco's rate requests in this proceeding are premised on increases in its capital spending that far exceed its forecasted growth in service requirements.

Increases in capital spending that exceed growth rates for kWh deliveries and kW demands for the District might be somewhat understandable if Pepco's operations in the District of Columbia had notable deficiencies. However, that is **NOT** the case. The reliability and resilience statistics for Pepco's District of Columbia operations are among

² AOBA Exhibit (A), Attachment D, Government of the District of Columbia Comprehensive Annual Financing Report, Year Ended September 30, 2022, Exhibit S-2A, Released January 24, 2023.

³ Pepco has used the acronym "MYP" to reference its proposed "Multi-year Rate Plan." There are also numerous uses of the acronym "MRP" to reference either the Company's proposed "Multi-year Rate Plan," the Multi-year Rate Plan addressed by the Commission in Formal Case No. 1156, and/or Multi-year Rate Plans generally. In this brief AOBA uses the acronym "MRP" to refer to both the Company's proposed Multi-year Rate Plan in this proceeding, as well as multi-year rate plans generally. The acronym "EMRP" is used to reference the "Pilot" Enhanced Multi-year Rate Plan approved by the Commission in Order No. 20755.

⁴ The Company's support can be found in Exhibit Pepco (K), Tables 2 (kWh growth forecast), Table 3 (customer growth forecast), and Table 4 (kW demand growth forecast). Note that the data Pepco presents as "Billed Sales" actually represents kWh deliveries that include both sales and delivery volumes. Despite over two decades of providing unbundled service options, Pepco still often labels the data it presents in a manner that inappropriately conflates "sales service" and "delivery service" volumes.

the best in the industry.⁵ Growth in rate base additions that far exceed growth in the Company's units of service necessarily magnifies the rate increases that District ratepayers will face if Pepco's rate requests are approved as filed.

A. APPROVAL OF A SECOND MRP FOR PEPSCO IS NOT APPROPRIATE

The Pilot EMRP adopted by this Commission in Formal Case No. 1156, Order No. 20755, has highlighted the shortcomings of multi-year ratemaking for Pepco based on the Company projections of future expenditures. Pepco was asked by this Commission to address "**lessons learned**" from its Pilot EMRP experience in Supplemental Testimony. Although Pepco filed the requested testimony, the content of that testimony reads more as a reiteration of the benefits the Company claimed in Formal Case No. 1156 that an MRP ratemaking process could provide than an objective review of the impacts of the Pilot EMRP. By contrast, AOBA filings in this proceeding present a number of salient observations regarding the operation of Pepco's Pilot EMRP and lessons that must be learned from the Pilot.

Importantly, AOBA submits that Pepco has demonstrated a substantial inability to forecast its future expenditures by account and by capital project with reasonable accuracy. In that context, AOBA finds **no legitimacy** in claims that the multi-year ratemaking process Pepco seeks to continue is transparent and serves the interest of either the District of Columbia in general or the Company's ratepayers. Furthermore, Pepco has failed to demonstrate the prudence of the costs it has actually incurred since

⁵ See CEMI-3 data in Pepco Quarterly Performance Tracking Reports filed in FC 1156, as well as Pepco SAIDI and SAIFI data for D.C.

the start of the Pilot EMRP. The observable variances between Pepco's forecasted expenditures by operating account and by capital project are significant, and the cryptic explanations of cost variances provided in Pepco's annual information filings since the start of the Pilot EMRP fall well short of meeting the Company's burden of proof for the prudence of its actual expenditures. Additionally, the substantial changes in the composition of Pepco's expenditures between Pepco's forecasted budgets that Pepco presented in Formal Case No. 1156 and Pepco's actual expenditures, there can be no claim that the parties have been provided a reasonable opportunity to examine the costs and benefits of the programs Pepco has chosen to pursue. For these reasons, AOBA strongly urges the Commission to reject Pepco's MRP ratemaking proposals in this proceeding.

Additionally, in the absence of Pepco's demonstration of the prudence of the actual expenditures the Company has incurred since the start of the Pilot EMRP, the Company's representations of its actual earnings for periods completed to date (as reflected in Pepco's Quarterly ROR filings and Annual Reconciliation filings) are rendered meaningless. There can be no findings regarding the adequacy of Pepco's reported earnings without a determination of the prudence of the costs Pepco has actually incurred for each period since the rates approved in Order No. 20755 became effective. The limited information contained in Pepco's Rate Year 1 and Rate Year 2 reconciliation filings essentially attempt to shift the burden of proof for Pepco's actual expenditures to OPC and intervenors, such as AOBA, who typically have limited funding for activities outside of base rate proceedings. Any claim of regulatory cost savings as a result of multi-year ratemaking does not extend to rate case participants other than Pepco. Furthermore,

such claims would not apply to Pepco if requirements for demonstrating the prudence of the Company's actual expenditures are actually borne by Pepco.

B. PEPSCO ACCEPTANCE OF SPECIFIC AOBA RECOMMENDATIONS

AOBA appreciates that Pepco's Rebuttal testimony adopts several of the recommendations of AOBA Witness Bruce Oliver, namely:

- Revision of the Company's revenue increase allocation to address more fully the extreme rates of return of the GS-3A and T.N. rate classes, as well as somewhat greater movement in the relative rates of return for other rate classes;
- Revision of the Company's allocation of costs for Customer Installations between the GT-LV and MGT-LV rate classes;
- Substantial adjustment of the Company's proposed monthly Customer Charge for Rate Schedule GT-LV to reflect the Company's revised allocation of costs for Customer Installations between the GT-LV and MGT-LV rate classes;
- Removal of BSA deferred revenue balances associated with the period directly impacted by governmentally imposed restrictions during the COVID-19 pandemic through a separate regulatory asset.

On the other hand, AOBA does not accept the Company's rebuttal claims regarding:

- (1) Pepco is responsible for ratemaking errors in developing compliance rates for Formal Case Nos. 1139 and 1150 that have led to significant BSA revenue under-recoveries for the GT-LV rate class;
- (2) Pepco's allegation that AOBA **inappropriately** conflates issues associated with: (a) Pepco's claimed need for a return on its BSA deferred revenue balance; and (b) non-cost-based increases in authorized revenues that Pepco believes it is entitled to recover from its GT-LV rate class despite the fact that those claimed increases in authorized BSA revenues are the direct result of Pepco's significant understatement of the Company's actual numbers of GT-LV customers;
- (3) Pepco's suggestion that the MRP⁶ creates incentives for Pepco to forecast and manage costs accurately;
- (4) Pepco's position that its Lead-Lag Study based on 2021 data reasonably reflects the Company's **expected** revenue lags and Cash Working Capital for each of its proposed MRP rate years;
- (5) Pepco's claims of transparency in its presentation of forecasted budgets, actual and planned capital expenditures, and cost reconciliations.

C. AOBA'S FRAMING OF THE CASE

At the Commission's Scheduling Conference on June 17, 2023, Counsel for AOBA capsulized AOBA concerns in this proceeding based on its initial review of Pepco's Application. At the time of this Brief, the concerns presented by Counsel for AOBA in that

⁶ In this case, Pepco references its multi-year rate plan as an "MYP." In Formal Case No. 1156 and Order No. 20755 in that proceeding, Pepco's multi-year rate plan proposals were presented in the context of an MRP and/or EMRP. This testimony considers the acronyms MYP and MRP to be synonymous.

June 2023 Scheduling Conference remain unaltered. Nothing in the subsequent filings by the Company since that date has materially changed AOBA's view of this proceeding.

As expressed by AOBA's Counsel, the problem faced by the Commission and the parties with this MRP is that the process is founded on the need for after the fact prudence review of Pepco's actual expenditures.⁷ With rates set on the basis of forecasts and estimates, the cost actually incurred by the Company must be examined on an after-the-fact basis if the District is to have meaningful regulation of Pepco's costs.

Pepco's Application discusses transparency into the Company's planned investments over the next several years.⁸ Those are words that we all heard in Formal Case No. 1156. But if we don't look back into the prudence of Pepco's actual expenditures, we don't know if the planned investments that Pepco presented in Formal Case 1156 were, in fact, undertaken, and are they used and useful for the provision of services to Pepco's District of Columbia ratepayers.

Transparency has two components. What was planned, and what actually occurred. Pepco's filing simply assumes that all the costs that it incurs are prudent if they're within or not highly deviant from the Company's overall budget costs. Thus, from the Company's perspective, prudence reviews are not important or can be handled in a cursory manner. However, in the context of rates set on the basis of cost projections, there can be no justification for a presumption that all plant for which costs are included in rate base are, in fact, used and useful or reflect cost-effective expenditures of funds.

⁷ In Case No. 9655 before the Maryland Public Service Commission ("MDPSC"), that Commission has now docketed a full evidentiary review of Pepco's final reconciliation filing for its initial MRP in that jurisdiction. The established schedule for that proceeding, as set forth in MDPSC Order No. 91292 provides for discovery; direct, rebuttal, and surrebuttal testimony; evidentiary hearings; and briefing. Moreover, it is important to note that in a separate proceeding, MDPSC Case No. 9702, the Commission has denied Pepco's request for approval of a second MRP in that jurisdiction.

⁸ Pepco's Application, page 6.

Under traditional ratemaking practices, revenue requirements were based on historic test year costs. The only exceptions are for “known and measurable” costs that will impact the Company’s expenditures during the rate effective period. In this case, however, Pepco seeks inclusion in rate base of costs for **projected** capital investments for which neither prudence nor used and useful criteria can be effectively applied.

Thus, the importance of after-the-fact prudence reviews is emphasized. This Commission needs to examine all of the Company’s capital expenditures on an after-the-fact basis to verify that those investments were, in fact, prudently incurred and that additions to rate base for ratemaking purposes do ultimately yield used and useful additions to plant in-service. AOBA submits that the entire credibility of the regulatory process is undermined if the Commission does not undertake a meaningful review of the prudence of the Company's actual expenditures.

Meaningful reviews of the prudence of actual expenditures requires detailed and time consuming proceedings. Moreover, such proceedings effectively increase, rather than reduce, the regulatory burdens faced by all parties. That's the reality of the situation. Any shortcuts to that process only further reduce the risk for the Company’s investors while eroding necessary rate payer protections. The reality of the situation is that, without rigorous prudence reviews, MRPs only serve to help the utility avoid necessary scrutiny of its actual expenditures and the management’s accountability for those expenditures.

Thus, in the absence of meaningful prudence reviews, MRPs help no one other than the utility and allow the utility to avoid necessary scrutiny of its projected and actual costs. There can be no assurance that plant additions are used, useful, and cost-effective. There can also be no assurance that expected ratepayer benefits have been realized.

Prudence is not a matter of policy. Prudence determinations must be factually driven and based on quantitative analyses with complete documentation, explanation, and justification of costs actually incurred. Moreover, the Company, as the repository of essentially all information regarding its actual expenditures and the management decisions supporting those expenditures, must be held responsible for demonstrating their prudence. The Commission and the parties need numerical support for the Company's capital and O&M spending, as well as reasonable context in which to evaluate the Company's spending decisions. Pepco has failed to provide such information in either this proceeding or its EMRP annual reconciliation filings.

AOBA observes, for example, the discussion in Witness Barnett's Direct Testimony⁹ that addresses common reasons for variances between actual and budgeted costs. Witness Barnett explains that such reasons include timing, unplanned or emergent events, and differences between the accounts or projects for which costs were budgeted and the accounts or project numbers to which actual costs are ultimately charged. The problem is that the Company looks at its overall projected capital and operating budgets as pots of money that the Commission approved in Formal Case 1156. As long as Pepco's total spend remains in reasonable proximity of the accepted budget amounts, the Company appears to believe "all is good."

What the Commission did in its rate order in Formal Case No. 1156¹⁰ was accept the Company's representations that cost projections would be subjected to subsequent reviews of the prudence of Pepco's actual expenditures. However, cursory, non-

⁹ Exhibit Pepco (G), page 14.

¹⁰ Formal Case No. 1156, Order No. 20755.

evidentiary reviews of annual reconciliation filings do not constitute reasonable or appropriate substitutes for necessary prudence review proceedings.

III. BACKGROUND (*Procedural History*)

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

Pursuant to Order No. 21886, on August 31, 2023, Pepco filed Supplemental Direct Testimony, presenting the "*lessons learned*" from the Modified Enhanced Multiyear Plan Pilot ("Modified EMRP Pilot").¹¹ That same Order directed the Company to elucidate and quantify ratepayer benefits. In that Order, the Commission required Pepco to "*explain in quantitative and qualitative terms the benefits of the Modified EMRP Pilot.*" Order No. 21886 additionally required Pepco to provide testimony addressing "*the problems identified and lessons learned from the Modified EMRP Pilot.*"¹²

Order No. 21886, further required the Company to file a Traditional Test Year revenue requirement.¹³ Pepco was specifically directed to file testimony "*supporting a*

¹¹ Formal Case No. 1176, Order No. 21886, paragraphs 1, 23, and 24 (July 28, 2023).

¹² *Id.*

¹³ Formal Case No. 1176, Order No. 21886, page 15, paragraph 30, (July 28, 2023).

traditional one-year rate case for the test period Calendar Year 2023."¹⁴ On October 16, 2023, Pepco filed Supplemental Direct Testimony, presenting a Traditional Test Year ("TTY") revenue requirement based on six months of actual data and six months of projected costs.¹⁵

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

In addition, on **March 12, 2024**, OPC, AOBA, and the District of Columbia Government ("DCG") jointly filed a Motion to Dismiss or, in the alternative, a Motion for Summary Disposition ("Joint Movants Motion to Dismiss"). Moreover, on **June 10, 2024**, OPC and AOBA filed a second Motion to Dismiss or, in the alternative, a Motion for Summary Judgment Disposition of both Pepco's Multi-Year Rate Plan ("MRP") and its Traditional Test Year Filing, i.e., the dismissal of Pepco's Application.

On June 28, 2024, the Commission issued Order No. 22013 denying the Joint Motions, stating that *"the Commission's denial of the Motions is not a decision on the merits"* of Pepco's Application.¹⁶ Notably, the Commission required Pepco to supplement its ROR filings with additional information, including: 1) a detailed explanation of all adjustments, including RMA 12 – GAAP BSA Revenue Recognition Reserve and detailed support for those adjustments; 2) detailed documentation and explanation of the development of each of the jurisdictional allocation factors used in the JCROSS; and 3)

¹⁴ Id.

¹⁵ Formal Case No. 1176, Order No. 21886, paragraphs 1, 23, and 24 (July 28, 2023).

¹⁶ Formal Case No. 1176, Order No. 22013, paragraph 1 (June 28, 2024).

detailed demonstration of the prudence of Pepco's Calendar year 2023 capital and operating expenditures.¹⁷

Pepco provided the Supplemental Information Filing required by the Commission in Order No. 22013 on July 5, 2024. Subsequently, the Company has also responded to a considerable number of data requests regarding that Supplemental Information Filing that AOBA, OPC, and the Commission Staff have proffered. Some of those responses were provided prior to the filing of Limited Briefs by the parties on July 24, 2024. However, other responses have been provided subsequent to the parties filing of Limited Briefs and/or subsequent to the parties presentation of Oral Arguments on July 30, 2024. None of that information has been subject to public scrutiny by the parties, and therefore, it is inappropriate for the Commission to place any reliance on such data request responses.

IV. LEGAL ARGUMENT

A. AN EVIDENTIARY HEARING IS REQUIRED IF THE PSC DENIES THE TWO DISPOSITIVE MOTIONS.

Pursuant to Order No. 22015, issued July 10, 2024, the Commission scheduled the submission of the Post-Legislative Style Hearing Briefs for August 30, 2024. As explained below, because the Commission has yet to determine whether an *evidentiary* hearing (and therefore evidentiary briefs) is warranted in this proceeding, the decision to

¹⁷ Formal Case No. 1176, Order No. 22013, paragraph 29, June 28, 2024.

schedule the submission of Post-Legislative Style Hearing Briefs¹⁸ is, at best, premature and is not a substitute for an evidentiary hearing.

In its Application submitted on April 13, 2023, the Potomac Electric Power Company (“Pepco” or “Company”) requested Commission authorization to increase rates through the adoption and implementation of a Multiyear Rate Plan (the “MRP”). As proposed by Pepco and if adopted by the Commission, the proposal would increase rates charged to District of Columbia customers through 2026.¹⁹

On March 12, 2024, the Office of the People’s Counsel for the District of Columbia (“OPC”), the District of Columbia Government (“DCG”), and AOBA filed a “Motion to Dismiss or, in the Alternative, Motion for Summary Disposition,” (“March 12 Motion”). On June 10, 2024, OPC and AOBA submitted a Motion to Dismiss or, in the Alternative, Motion for Summary Disposition (“June 10 Motion”).²⁰

By “Notice of Legislative-Style Hearing – July 30, 2024,” dated June 13, 2024 (the “June 13 Notice”), the Commission informed the Parties that the Commission has two pending dispositive motions. For the first time, the PSC further notified AOBA and the Parties of adopting a “*legislative-style*” hearing on matters germane to this proceeding if the dispositive motions are not granted. According to the Commission, the purpose of the legislative-style hearing is to “*allow the Parties to present oral arguments before the Commissioners regarding the issues that the Parties believe are fundamental to the*

¹⁸ Order No. 22015, paragraph 9, issued July 10, 2024. See also, Order No. 22013, Attachment A, (June 28, 2024).

¹⁹ Pursuant to Commission Order No. 21886, paragraphs 1, 24 (July 28, 2023), Pepco also filed a traditional test year application (“TTY”), in conjunction with workpapers, testimony, and exhibits based on a CY 2023 test year.

²⁰ See “Motion to Dismiss or, in the Alternative, Motion for Summary Disposition,” submitted by the Office of the People’s Counsel for the District of Columbia (“OPC”), the District of Columbia Government (“DCG”) and AOBA on March 12, 2024 (“March 12 Motion”); Motion to Dismiss or, in the Alternative, Motion for Summary Disposition,” submitted by OPC and AOBA on June 10, 2024 (“June 10 Motion”).

Commission’s decisions in this proceeding.” The June 13 Notice also required the parties to file a *“limited brief identifying the issues to be discussed”* at the *“legislative-style”* hearing, adding that Witnesses need not appear since the hearing will not be an evidentiary hearing.²¹

After extensive discovery and the submission of voluminous testimony, the Commission denied the two requests seeking summary dismissal of the Pepco Application.²² Specifically, by Order No. 22013, the Commission ruled that because *“[t]his case is part of an unprecedented paradigm shift in the way we regulate rates”* and because *“any dispositive motion necessarily raises issues of first impression,”* the dispositive motions *“are more appropriately decided after [the Commission has] a more complete record.”*²³ *“Although the motions are denied,”* the Commission continued, *“we have not decided any issue of policy or law that undergird the motions.”*²⁴ The Commission also reiterated that *“[w]itnesses,”* need not appear because *“this will not be an evidentiary hearing.”*²⁵

The Commission then scheduled²⁶ and rescheduled²⁷ the submission of Post-Legislative Style Hearing Briefs. The current filing date for the briefs is August 30, 2024.²⁸ AOBA respectfully submits that the scheduling of the Post-Legislative Style Hearing Briefs is, at best, premature. Further, it is AOBA’s position that such briefs are no substitute for

²¹ June 13 Notice, paragraphs 1-2 (June 13, 2024). AOBA submitted a “Limited Brief” on July 24, 2024 and hereby incorporates all AOBA positions, references to testimony and arguments made in that brief in this Post-Legislative Style Hearing Brief.

²² Order No. 22013, paragraph 1 (June 28, 2024).

²³ Order No. 22013, paragraph 28 (June 28, 2024).

²⁴ Order No. 22013, paragraph 28 (June 28, 2024).

²⁵ Order No. 22013, paragraph 30 (June 28, 2024), see also Notice of Legislative-Style Hearing-July 30, 2024, paragraph 2, (June 13, 2024).

²⁶ See Order No. 22013, paragraph 30 (June 28, 2024).

²⁷ See Order No. 22015, paragraph 9 (July 10, 2024).

²⁸ AOBA submitted its Post-Hearing Brief on August 30, 2024.

briefs filed *after* an evidentiary hearing has concluded. As acknowledged by the Commission, an MRP proceeding represents an “*unprecedented paradigm shift in the way [the Commission] regulate[s] rates.*”²⁹ Compounding this unprecedented paradigm shift is the fact that the review of the Pepco MRP Application was docketed and is assessed as a rate case, which is, by its very nature, a contested case³⁰ proceeding requiring the full panoply of due process guarantees specified by D.C. Code Section 2-509 and the United States Constitution.³¹ By District of Columbia statute, the due process guarantees attached to a contested case proceeding are explicit:

Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.³²

The due process guarantees attached to a final Commission decision are equally explicit:

Every decision and order adverse to a party to the case, rendered by ... an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with reliable, probative, and substantial evidence.³³

Thus, because the review of the Pepco MRP is a contested case, AOBA and any other interested party are entitled to each procedural guarantee explicitly provided by D.C.

²⁹ Order No. 22013, paragraph 28 (June 28, 2024).

³⁰ “*Formal Case No. 1176 is a rate case proceeding,*” Order No. 21618, paragraph 3, (May 12, 2023).

³¹ In its June 17, 2024, Response to OPC and AOBA’s June 10 Motion to Dismiss, Pepco states “*The Commission noted that under the DCAPA, rate proceedings are contested cases in which the parties had a right to a hearing on the merits. Order No. 7849 at 2 (citing then DC Code Section 1-1509(b), which is now codified as DC Official Code Section 2-509.*” Response of Pepco in Opposition to Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, page 5 footnote 11.

³² D.C. Code Section 2-509(b).

³³ D.C. Code Section 2-509(e).

Code Section 2-509(b), including the right “to conduct such cross-examination as may be required for a full and true disclosure of the facts.”³⁴ Further, because the review of the Pepco MRP is a contested case, specific obligations attach to each finding issued by the Commission are required.³⁵

A legislative-style hearing, AOBA respectfully submits, does not provide the procedural due process guarantees that the parties to this proceeding must be afforded. Further, the legislative-style hearing, at which AOBA’s attorney and other parties’ attorneys presented oral arguments and at which no Witnesses appeared, was not a substitute for the due process requirements of D.C. Code Section 2-509(b).

As stated above in Order No. 22013, the Commission ruled that because “There being no majority consensus to dispose of this matter summarily,” the Commission denies the March 12, 2024, and the June 10, 2024 Motions to Dismiss.³⁶ The Commission continued by stating that although the Motions were denied, this was “*not a decision on the merits*” of Pepco’s Application. The Commission added we have not decided “*any issue of policy or law that undergird the motions.*”³⁷ The Commission also ruled that “[w]itnesses,” need not appear because “*this will not be an evidentiary hearing.*”³⁸

In order to afford the parties their due process rights, AOBA submits that if this Commission does not grant either of the dispositive Motions to Dismiss, this Commission must order evidentiary hearings and allow the parties the time necessary to prepare for

³⁴ D.C. Code Section 2-509(b).

³⁵ D.C. Code Section 2-509(e).

³⁶ Order No. 22013, paragraph 1, issued June 28, 2024.

³⁷ Order No. 22013, paragraph 28, issued June 28, 2024.

³⁸ Order No. 22013, paragraph 30, issued June 28, 2024. See also the Commission’s July 30, 2024, Notice of Legislative-Style Hearing, paragraph 2.

such evidentiary hearings in order to satisfy the due process requirements of D.C. Code Section 2-509(b).

The legal requirement for a hearing is also set forth in D.C. Code Section 34-901(c), which requires that “*any public utility desiring to advance or discontinue any such rate or rates may make application to the Commission in writing, ... giving the reasons for such advance or discontinuance.*”³⁹ The Commission must, upon receiving the application, “fix a time and place for hearing” and give reasonable notice to interested parties. And, “*if after such hearing and investigation, the Commission shall find that the change or discontinuance applied for is reasonable, fair and just, it shall grant the application, either in whole or in part.*”⁴⁰

In its response to OPC and AOBA’s June 10, Motion to Dismiss,⁴¹ Pepco referenced Formal Case No. 798, Order No. 7849 (July 22, 1983)⁴² in support of its position that the June 12 Motion should be denied. However, the Chesapeake & Potomac Telephone Company (“C&P”) proceeding that is the subject of Order No. 7849 is clearly distinguishable from the Pepco MRP case currently before the Commission.

The C&P filed an application for a rate increase on March 15, 1983. A prehearing conference was held, discovery was pursued, and written testimony was filed. Thereafter, hearings were held. At the close of C&P’s case, OPC made an oral motion to dismiss the Company’s application, which was followed the next day by a written motion to dismiss, which C&P responded to.⁴³

³⁹ D.C. Code Section 34-901 (c).

⁴⁰ D.C. Code Section 34-901(d).

⁴¹ Pepco Response in Opposition to Motion to Dismiss or, in the Alternative, Motion for Summary Judgment (June 17, 2024).

⁴² Formal Case No. 798, In the Matter of the Application of the Chesapeake and Potomac Telephone Company for Authority to Increase and Restructure its Schedule of Rates and Tariffs, (the “C&P” case).

⁴³ Order No. 7849, page 1 (July 22, 1983).

The Commission denied the OPC request to dismiss reasoning that the case was a matter of first impression in the District and that the Commission has not considered its authority to grant a motion to dismiss at the close of a proceeding.⁴⁴ However, in the C&P case, the Commission did not determine its authority to grant a motion to dismiss during the pendency of a rate hearing, because the Commission did not believe, in that case that summary dismissal would be appropriate, even if the Commission had that authority.

As OPC argued in C&P, the two relevant statutory provisions (i.e., D.C. Code Sections 43-601(d) and 1-1509(b)⁴⁵ permit dismissal of a rate proceeding *before* hearings have been concluded.⁴⁶ In the instant case under consideration, no evidentiary hearings have been held nor has the Commission determined, and notified the parties, that evidentiary hearings will be held. Further, in C&P, the Commission recognized that “*we may one day have to face and determine,*” whether the two relevant statutory provisions permit dismissal of rate proceedings during the pendency of a rate proceeding.⁴⁷ Finally, Order No. 7849 recognizes that Federal Administrative practice allows dismissal in two situations before hearings have begun.⁴⁸ AOBA submits that the instant case requires that the Commission determine that it does have the authority to dismiss a rate proceeding *before* hearings have been concluded⁴⁹ and decide the March 12 and June 10 Motions on the merits of those Motions and dismiss Pepco’s Application in Formal Case No. 1176.

⁴⁴ Order No. 7849, page 2, issued July 22, 1983.

⁴⁵ Now codified as D.C. Code Sections 34-901(d) and 2-509(b).

⁴⁶ Order No. 7849, page 3, issued July 22, 1983.

⁴⁷ Order No. 7849, page 3, issued July 22, 1983.

⁴⁸ Order No. 7849, page 4, footnote 6, issued July 22, 1983.

⁴⁹ Order No. 7849, page 3, issued July 22, 1983.

B. A LEGISLATIVE-STYLE HEARING IS NOT A SUBSTITUTE FOR AN EVIDENTIARY HEARING AND DOES NOT SATISFY DUE PROCESS REQUIREMENTS

Order No. 22013 noted that “[s]hould the Commission determine after the legislative-style hearing that an evidentiary hearing is necessary, the Commission will advise the parties.”⁵⁰ The “basic difference” between a legislative-style hearing and an evidentiary hearing was delineated long ago in *Chevy Chase Citizens Asso. v. District of Columbia Council*, 327 A.2d 310 (DC App. 1974). There, the Court defined what is meant by a legislative hearing. The Court ruled in *Chevy Chase Citizens* that the proceeding was not a contested case under the Street Readjustment Act, the Court explained:

A legislative hearing relates to ‘the making is a rule for the future.’ As distinguished from a judicial inquiry, it 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. In such hearings, ‘it is not necessary that the panoply of judicial procedures be used.’ While fact finding may to some extent be involved in the process, the due process requirements of confrontation and cross-examination, the hallmarks of judicial inquiry, are not necessarily present. Rather the quasi-legislative inquiry tends to consult broad relevant data available from surveys, studies and published experience, free from the limitations of confrontation and cross-examination.⁵¹

The Court went on to note that it is sometimes difficult to draw the line between legislative and adjudicative facts, which is compounded by the phrase “*after a hearing*” in defining a “contested case.” Ultimately, the Court stated we interpret the phrase “‘*after a hearing*’ in the definition of ‘contested case’ to mean after a trial-type hearing where such is implicitly required by either the organic act of constitutional right.”⁵²

⁵⁰ Order No. 22013, paragraph 30, issued June 28, 2024.

⁵¹ *Chevy Chase*, 327 A.2d at 314.

⁵² *Chevy Chase*, 327 A.2d at 314.

This Commission has effectively adopted the delineation set out in *Chevy Chase*, noting, for example:

When the Commission resolves disputed questions of adjudicative fact to determine the rights and liabilities of parties, the proceeding is clearly quasi-judicial. When the inquiry involves the Commission's rulemaking authority, the proceeding is quasi-legislative. However, there is no precise line of demarcation between these two functions and quasi-judicial and quasi-legislative functions can be, and often are, blended depending on the nature of the proceeding.⁵³

"An agency," the Commission continued, "has the discretion to exercise these respective functions as it deems appropriate, even though the final action may be quasi-judicial or quasi-legislative in character."⁵⁴ The Commission continued and noted that "*When these two functions are blended due process issues may arise as has happened in the case before us.*"⁵⁵ AOBA respectfully urges the Commission to schedule an evidentiary hearing so that the due process guarantees of its members are protected.

While the legislative-style hearing held on July 30, 2024, may have provided the Commission with some additional insight of the Parties regarding the relevant legal and policy issues that are fundamental to the Commission's decisions, AOBA respectfully submits that such a hearing is not sufficient to support a Commission Order for this contested rate case proceeding. Because legislative-style hearings do not receive and admit evidence, there is no cross-examination, and no Party has stipulated to the admission of Pepco's pre-filed testimony, any findings issued as a result of such a hearing will not support a final decision issued by the Commission in this proceeding. And, as

⁵³ *Re the Investigation into the Reliability of Version Washington, DC's Telecommunications Infrastructure*, Formal Case No. 1090, Order No. 17143, paragraph 19 (2013).

⁵⁴ *Id.*

⁵⁵ *Id.*

noted, legislative-style hearings are primarily attached to non-adversary, rulemaking proceedings docketed to address broad policy initiatives.

Importantly, a legislative-style hearing is no substitute for the evidentiary hearing necessary for findings of fact and conclusions of law in a contested case – like the instant proceeding. Pursuant to D.C. Code Section 2-509(e), all findings of fact and conclusions of law must be “*supported by and in accordance with the reliable, probative, and substantial evidence*” – evidence which cannot be adduced at a legislative-style hearing. AOBA, accordingly, respectfully submits that the legislative-style hearing on July 30, 2024, must be followed by an evidentiary hearing if this Commission does not grant either of the two dispositive motions.

C. NO PARTY CONSENTED TO THE STIPULATION OF PEPSCO’S EVIDENCE, AND THEREFORE, AN EVIDENTIARY HEARING IS REQUIRED.

If this Commission does not decide the two dispositive motions on the merits and dismiss Pepco’s Application, then AOBA submits that the Commission must schedule evidentiary hearings and give the parties the appropriate time to prepare for such evidentiary hearings.

Order No. 22013, Attachment A, for the first time, established a date for the “*Admission of Stipulated Testimony, Exhibits, Data Requests, and Data Responses.*” While Order No. 22015, paragraph 9, changed the date set forth in Order No. 22013, it also set a date for “*Admission of Stipulated Testimony, Exhibits, Data Requests, and Data Responses.*” On August 21, 2024, AOBA and all parties filed their required admission of

stipulated testimony, and all parties specifically declined to stipulate to Pepco's pre-filed testimony.⁵⁶

In its filing, AOBA stated, "*AOBA cannot stipulate to the admission of any of Pepco's filed testimony, exhibit, data requests, and responses in the absence of opportunity to cross-examine Pepco Witnesses regarding the content of those documents. To do so would deprive AOBA members denial of their due process rights to an evidentiary hearing. AOBA is unable to agree to admit testimony and data requests that it has found to be inaccurate, inconsistent, and unreliable.*"⁵⁷ AOBA also requested that the conformed testimony of its Witnesses and Attachment A of its Limited Brief (i.e., the Affidavit of Bruce R. Oliver) be included in the record.⁵⁸

⁵⁶ In its August 21, 2024 filing at pages 1-2, OPC stated "OPC cannot stipulate to the testimony and corresponding exhibits of Pepco's Witnesses included in the Multi-year Rate application, the Traditional Test Year Filing, additional supplemental testimony and rebuttal testimony. These filings contain unexplained and contradictory data that is stale and conflict with subsequent filings submitted by the Company." Both GSA and the DCG each only stipulated to their own sponsored Witnesses testimony. See DCG and GSA submissions on August 21, 2024.

⁵⁷ AOBA Response to Commission Order Nos. 22013 and 22015.

⁵⁸ AOBA Response to Commission Order Nos. 22013 and 22015, page 2.

V. SUBSTANTIVE ARGUMENT

This Brief addresses multiple areas of concern for AOBA and its District of Columbia members. Those areas of concern are generally outlined below:

1. The merits of Pepco's request for approval of a second multi-year rate plan, including ***Lessons learned*** from the "pilot" EMRP;
 - a. The Unreliability of Pepco's projected budgets associated with estimates of ratepayer benefits
 - b. Lack of Transparency
 - c. Reduced incentives for utility cost control
 - d. Absence of reduced regulatory burdens
 - e. A need for greater commitment to meaningful after-the-fact prudence reviews of Pepco's actual expenditures, in which the Company clearly bears the burden of proof for the prudence of costs actually incurred.
2. Pepco's Substantially Inflated MRP and TTY Revenue Requirements
 - a. Excessive capital spending (rapidly growing IT component)
 - b. Pepco's excessive ROE request
 - c. Inflated estimates of Cash Working Capital requirements
 - d. Unverifiable O&M cost increases.
3. The Prudence of Pepco's Actual Expenditures
 - a. Insufficient support for deviations from budgeted costs
 - b. Absence of assessments of ratepayer costs and benefits associated with actual expenditures
 - c. Comparisons of Pepco's capital and operating expenditures with those of other heavily urban utilities are absent.

4. Pepco's BSA Mechanism and Its Ratemaking Impacts
 - a. Pepco's use of Effective Rate Adjustments
 - b. Pepco's BSA Regulatory Asset Proposal
 - c. Needed Adjustments to Pepco's BSA Revenue Deferral Balances
 - d. Pepco's proposed changes to its BSA Mechanism

5. Class Cost of Service and Rate Structure proposals.
 - a. Revision of revenue increase distribution to address extreme rates of return for the Company's GT-3A and TN rate classes.
 - b. Revision of the Company's allocation of costs for Customer Installations between the GT-LV and MGT-LV rate classes;
 - c. Substantial adjustment of the Company's proposed monthly Customer Charge for Rate Schedule GT-LV to reflect the Company's revised allocation of costs for Customer Installations between the GT-LV and MGT-LV rate classes under its MRP proposals, but the Company's failure to make similar adjustments to its Traditional Test Year rate design proposals;

A. PEPCO'S REQUESTED APPROVAL OF A SECOND MRP

AOBA submits that the Pilot EMRP approved by this Commission in Formal Case No. 1156 has failed to provide anticipated benefits and has not served the interests of District of Columbia ratepayers. Moreover, large differences between Pepco's projected and actual costs during the period since the Commission's approval of the Pilot EMRP renders ratemaking based on projections of future expenditures unsound and inappropriate.

1. Lessons Learned from the Pilot EMRP

Despite the Commission's request for an examination of "*lessons learned*" from the "Pilot" EMRP approved in Formal Case No. 1156, Pepco offers only a recitation of the reasons for its preference for an MRP. The Company presents no retrospective examination of experience under the "Pilot" EMRP. AOBA identifies major problems in the MRP process and procedures adopted in Formal Case No. 1156 that outweigh Pepco's speculative claims of MRP benefits. A particular concern is that the current MRP process provides no effective incentives for Pepco to manage its expenditures in a manner that benefits District ratepayers. To the extent that the Pilot EMRP provides cost management incentives for the Company, those incentives only benefited Pepco and its investors. Experience under the Pilot EMRP reveals no cost management action by Pepco that was designed to benefit the Company's District of Columbia ratepayers.⁵⁹

AOBA submits that Pepco's management must be held accountable for improving the cost-effectiveness of the Company's operations and plant additions. Management must not be allowed to simply spend to the levels of its forecasted overall budgets without regard to the mix of programs and projects for which costs are incurred. Although the Company's Annual Information Filings reveal substantial variations between Pepco's Budgeted costs and the costs it has actually incurred, Pepco provides no evidence that the value it expected to provide to District ratepayers has been maintained or enhanced as the composition of its actual expenditures deviated from the composition of the forecasted costs the Company presented in support of its requested revenue

⁵⁹ Exhibit AOBA (A), page 44.

requirements in Formal Case No. 1156. Management must not be given such broad discretion to amend the composition of costs by project and operating account on which this Commission relied to set rates without responsibility to justify those changes with more than just cryptic comments, one or two-sentence "explanations variances."

Furthermore, total dollar amounts for Pepco's Budgeted O&M costs and Capital expenditures must not be the only benchmarks for evaluating the reasonableness and prudence of Pepco's actual expenditures under an MRP.

- A well-functioning MRP process requires the Commission's commitment of greater time and resources to evaluate the reasonableness and prudence of Pepco's **actual** MRP period capital and O&M expenditures.
- The Pilot EMRP has reduced, if not eliminated, incentives for Pepco to control its costs and/or use its budgeted costs in a manner that reduces ratepayer cost burdens. As a result, the Pilot EMRP has failed to provide a reasonable alignment of shareholder and ratepayer interests.
- The practice of setting rates based on fully forecasted costs provides no basis for assessing the appropriateness of the Company's budgets. However, it does provide incentives for the Company to forecast its future expenditure levels aggressively.
- There is no evidence that the "Pilot" MRP improved ratemaking transparency. On the contrary, the transparency suggested by Pepco's presentation of detailed budgets for future MRP rate years has been lost when the Company is provided broad discretion to alter the composition of its budgeted costs.
- Claims that MRPs produce reduced regulatory burdens and lower regulatory costs are illusory, and such savings are only achieved for the Company and/or the Commission when ratepayer protections are significantly diluted.
- The prudency review process for Pepco's actual expenditures under the Pilot EMRP is inadequate and ineffective.

- Pepco's Multi-Year Rate Plan ("MRP") proposal in this proceeding fails to achieve one of the most basic objectives for such a plan: reducing the regulatory costs that must be borne by Pepco ratepayers in the District of Columbia.

2. Lack of Transparency

In the context of a multi-year rate plan proposal, the concept of "transparency" has two primary components. Those are: (1) transparency in the Company's development of costs to support its rate proposals prior to the Commission's approval of new rates; and (2) transparency in the documentation and explanation of variances between the Company's budgeted expenditures and its actual costs by capital project and O&M account. Pepco's presentations of its explanations of its forecasted budgets in Formal Case No. 1156 and its actual expenditures for its completed MRP rate years fail to provide the necessary documentation of: (a) the details of its actual expenditures by capital project and operating account; (b) quantification of support for factors contributing to the Company's deviations from its forecasted budgets; and (c) the Company's assessments of the impacts of changes in the Company's budgeted costs on ratepayer value.

Confidential Exhibit AOBA (A)-5 shows cost comparisons for a number of capital projects included in Pepco's budgeted MRP capital costs in this proceeding (as presented in Exhibit Pepco (H)-2) and cost for the same projects (by ITN Number) that were provided as support for the Company's budgeted capital costs in response to AOBA Data Request 7-25. Those cost comparisons show little correlation between those two sets of costs. In rebuttal testimony, Pepco Witness Cantler testified that the data was provided in the Company's response to AOBA Data Request 7-25:

“... reflect preliminary and early project cost estimates initiated at the onset of project scoping and like all budgets become more refined as the project escalates through project authorization toward eventual project execution.”⁶⁰

3. Unreliability of Pepco’s Projected Budgets

For this proceeding, AOBA has endeavored to assess Pepco’s performance under the “Pilot” EMRP authorized by the Commission in Order No. 20755 and identify lessons learned from that process. As part of that effort, AOBA’s consultants engaged in a detailed examination of the relationships between the budgeted costs Pepco presented for its projected rate years in Formal Case No. 1156 and the actual costs that Pepco has subsequently reported for those periods. Those comparisons focused on the calendar year 2022 (i.e., EMRP Rate Year 2), the only full year for which “Pilot” EMRP rates were in effect.

AOBA Exhibit (A)-1 finds that Pepco’s actual expenditures during its “Pilot EMRP Rate Year 2 deviate dramatically from the forecasted budgets the Company proffered in Formal Case No. 1156. Pepco’s projected budget for capital projects for Rate Year 2 was \$308,303,000.⁶¹ The Company’s reported actual expenditure on capital projects for Rate Year 2 totaled only \$266,695,000. Thus, Pepco underspent its projected budget for capital projects by \$41.3 million, or 13.4%.⁶²

⁶⁰ Exhibit Pepco (4H), page 11, lines 13-17.

⁶¹ Pepco’s March 31, 2023, Final Reconciliation Filing for its Modified or “Pilot” EMRP, Appendix 1, Schedule 4.

⁶² Exhibit AOBA (A), page 33, lines 1-3.

However, further examination of the details of the Company's 2022 AIF report finds that Pepco had **\$217.1 million** of budgeted costs for projects, but it actually spent only **\$66.1 million**.⁶³ That means **nearly half** (i.e., **\$150.9 million**) of Pepco's overall budget **was not spent** on forecasted projects in 2022. Additionally, Pepco's March 31, 2023, Final Reconciliation Filing 2022 identifies **\$102.1 million** of **unbudgeted** actual expenditures. In other words, roughly **one-third** of Pepco's actual capital expenditures in 2022 represent expenditures that were **not included** in Pepco's 2022 capital budget.⁶⁴ Further, among the capital projects included in Pepco's forecasted capital budget in Formal Case No. 1156, AOBA finds 25 projects (identified by ITN Numbers) for which Pepco's actual expenditures equal more than 240% of the Company's projected budgeted costs. In other words, those projects were **overspent by** an average of more than **120%**.⁶⁵

The foregoing analysis highlights the limited value of the pre-rate approval budgets that Pepco has presented. However, AOBA also submits that the composition of budgets is as important as the magnitude of the Company's overall budgeted expenditures Pepco proposes. As the composition of Pepco's budgeted costs changes, the ratepayer value attributable to Pepco's expenditures must also be expected to change. With changes in budgeted costs as dramatic as those identified above, there can be no confidence that the benefits and costs associated with Pepco's actual expenditures have any relationship

⁶³ Exhibit AOBA (A)-1, page 2 of 4.

⁶⁴ Exhibit AOBA (A)-1, page 4 of 4.

⁶⁵ Exhibit AOBA (A)-1, page 4 of 4, lists 25 capital projects for which Pepco budgeted \$52,836,000 but reported actual expenditures of \$116,374,000.

to the ratepayer benefits and costs that might have been associated with Pepco's projected expenditures.

4. Insufficient Support for Pepco's Cost Projections

AOBA has assessed Pepco's forecasted budgets for capital projects and operating accounts and found that the Company's support for its cost projections is substantially lacking. Pepco provides no data for the unit costs of materials and equipment the Company expects to incur or the number of units of various types and sizes of equipment the Company plans to purchase. No market-based data has been provided to verify the reasonableness of unit cost projections. Pepco offers no comparisons of its actual or projected costs to those incurred by other utilities. Additionally, Pepco provides no basis for the evaluation of the reasonableness of its contractor costs, which appear to be escalating well in excess of recent high rates of inflation. Although Pepco suggests that many of its planned expenditures reflect "*mandated work*" and are non-discretionary expenditures, the mandated activities do not justify uncontrolled spending. Quantitative support of planned expenditure levels is generally lacking and, in some cases, is non-existent.

Significant elements of Pepco's budgeted expenditures capital are for new customer connections, which the Company represents are based on customer requests. Yet, Pepco provides no data on the numbers of either historical or anticipated future customer requests for new service connections it has received in past periods or the numbers it expects to receive in future periods. Likewise, Pepco provides no data to support its expectations for the costs for various sizes and types of new service connections it expects to incur for either new Residential or new Commercial services

connections. For a Company that projects only about **0.6%** per year of customer growth⁶⁶ (mostly among residential and small commercial customers). Moreover, with essentially zero growth in its number of large commercial customers, Pepco's capital budgets, which project expenditures of over **\$65 million** per year for new service connections, are not well explained or justified.

Likewise, despite Pepco's projections of declining kWh deliveries and customer kW demands, Pepco proposes substantial expenditures to enhance its system's capacity to address the growth in system requirements. Understandably, the forecasts Pepco develops to support its system planning do not necessarily examine the same measures of demand that are used to estimate future billing determinants. However, Pepco has failed to adequately explain how the demands it estimates for system planning purposes are growing when the metered demands it bills to customers are shrinking year over year.

Additionally, Pepco indicates in multiple instances that capital costs have been moved between projects (ITN Numbers), and operation costs have been budgeted in one account. At the same time, actual expenditures were reported in a different account. However, the Company does not quantify the dollar amounts that are shifted from one capital project to another, nor does it enable other parties to trace the dollar amounts of operating costs that are booked to different FERC accounts than the accounts in which they were initially budgeted. This makes reconciliation of the Company's budgets with its actual spending virtually impossible.

⁶⁶ Efimova Direct, Exhibit Pepco (M), Table 2.

5. Absence of Incentives for Cost Control

When the Company is allowed to simply work within broadly scoped cost budgets (e.g., its total budgeted capital expenditures or its total projected operating expenses) without the need to document movements of costs between capital projects and accounts and the impacts of those changes on ratepayer benefits, there are no incentives for the Company to operate more efficiently and reduce ratepayer costs, rather, the Company's incentives are to spend its full budgeted costs. This is even reflected in Pepco's performance evaluations, where one performance evaluation criterion is whether the individual or activity spent its full budgeted costs.

AOBA appreciates that unexpected work requirements can arise from time to time, and the Company may require flexibility to adjust its budgets to meet such requirements. However, unanticipated work (i.e., emergent requirements) that become significant drivers of the Company's overall expenditures are incompatible with a ratemaking paradigm that relies on forecasted costs. Major variations in the composition of Pepco's expenditures based on "emergent" work requirements should be the exception, not the expectation. Moreover, when such exceptions occur, the Company should be prepared to more fully document their cost impacts and specific cost reprioritizations that are necessitated. Yet, under the Pilot EMRP, Pepco has been allowed to operate without accountability for how it spends the dollars it has budgeted.

6. Inability to Assess Ratepayer Benefits

Assessments of the reasonableness of planned expenditures should focus on the **ratepayer value** such expenditures are expected to generate, where ratepayer value is measured in terms of quantifiable ratepayer benefits less the costs of pursuing a project. Nothing in the information that Pepco has provided in this proceeding or in its reconciliation filings offers an after-the-fact evaluation of the impacts of changes in the composition of the Company's costs (between its forecasted budgets and its actual expenditures) on the net benefits the Company has provided to its District of Columbia ratepayers. No conclusions regarding the prudence of the Company's actual expenditures are warranted without such assessments. Moreover, if projects that did not generate positive net benefits for ratepayers were pursued, the prudence of such projects must be challenged.

The planning and execution of projects, as well as allocations of funds between projects or activities, are the responsibility of Pepco management. However, the vast majority of the information necessary to perform after-the-fact evaluations of ratepayer value generated is controlled by the Company. Thus, it is appropriate for the burden of demonstrating the cost-effectiveness and prudence of Pepco's actual expenditures to be borne by the Company.

7. No Relief from Regulatory Burdens

A primary appeal of the Company in its presentations, both in this case and in Formal Case No. 1156, has been that a multi-year ratemaking paradigm reduces regulatory burdens. Yet, the Pilot EMRP has taught us that reduced regulatory burdens under a multi-year ratemaking paradigm are only achievable if efforts to evaluate the prudence of Pepco's actual expenditures are limited and activities between base rate proceedings are not expanded. However, Pepco's Pilot EMRP demonstrates that, given Pepco's inability to forecast its actual expenditures in future periods with reasonable accuracy, limited reviews of the prudence of Pepco's actual expenditures are not adequate or appropriate. AOBA submits that, even without more rigorous reviews of the prudence of Pepco's actual expenditures, there was no lessening of regulatory activity for intervenors. The requirements for the reviews of documents and the filing of comments, participation in technical conferences, and the preparation and filing of motions, coupled with the increased complexity of this proceeding, more than offset potential savings from less frequent base rate proceedings. Moreover, when the need for evidentiary reviews of the prudence of Pepco's actual expenditures is recognized, the level of required regulatory activity exceeds the requirements of traditional ratemaking procedures.

However, limitations imposed on examinations of the prudence of costs outside of base rate proceedings cannot be relied upon to ensure that the Company's actual expenditures were either prudent or cost-effective from a ratepayer perspective. Pepco's submission of filings that purport to reconcile its actual and budgeted costs with only cryptic and generally unquantified descriptions of major drivers of such variances are not

adequate in the context of actual expenditures that reflect large deviations from the budgets on which the Commission relied to set rates. AOBA does not intend to suggest that exact matching of actual expenditures and budgeted costs is necessary. However, where deviations between actual and budgeted costs are as large as those AOBA has documented in this proceeding,⁶⁷ evidentiary reviews of the prudence of Pepco's actual expenditures are necessary to uphold the credibility of the District's utility ratemaking process.

8. Misleading "Climate Ready Pathway" Representations

Pepco's representation of its MRP as a "Climate Ready Pathway" is more rhetoric than substance. Pepco has not identified any parameters of its perception of what constitutes a "*Climate Ready Grid*." Likewise, Pepco's forecasts of future service requirements include no assessment of the expected impacts of the District's efforts to move toward greater electrification of energy use. Pepco's SAIFI, SAIDI, and CEMI metrics are already among the best in the industry, and Pepco has demonstrated no significant ratepayer benefits from further improvement of those metrics. In the context of declining kWh and kW billing units, as well as only modest increases in the numbers of customers served, maintenance of the affordability of electric service in the District necessitates more rigorous efforts to assess the actual incremental requirements that Climate Readiness can be expected to impose and the extent to which reductions in electricity use by existing customers will offset needs for further investment. In any case,

⁶⁷ See AOBA Exhibits (A)-1 and (A)-2.

this Commission must seek to trim Pepco's planned rate base growth to reflect only **essential** expenditures and exclude spending on speculative future needs for which no quantification of actual requirements is presently available.⁶⁸

B. PEPKO'S TTY REVENUE REQUIREMENTS

Pepco's Initial Application in this proceeding does not include an assessment of its revenue requirements under a Traditional Test Year ("TTY") ratemaking alternative. Pepco's TTY revenue requirements can be found in the Supplemental Testimony, which was filed on October 16, 2023, directed by the Commission. That filing is premised on six months of actual cost data (i.e., for the first six months of calendar year 2023) and six months of projected expenditures (for the last six months of 2023). However, the projected portion of Pepco's Traditional Test Year costs⁶⁹ is heavily inflated by estimates of expenditures that did not ultimately materialize. Pepco argues that its TTY revenue requirements are not inflated; rather, they reflect anticipated expenditures during the rate-effective period.⁷⁰ AOBA does not accept that explanation. The difference between the rate base Pepco budgeted in its TTY Filing and the dollar amount of the rate base plant shown in its 2023 actual data is large relative to the rate base changes that Pepco projects for its projected MRP rate years. Over the years 2024 through 2026, Pepco projects rate base additions that average \$212 million per year, with the largest single-year rate base addition being \$251.2 million for 2024. Thus, Pepco's overstatement of its actual TTY

⁶⁸ Exhibit AOBA (A), page 46.

⁶⁹ Pepco's October 16, 2023, Traditional Test Year filing was submitted based on six months of actual cost data and six months of projected expenditures.

⁷⁰ Exhibit Pepco(2B), page 3.

(2023) rate base by \$370 million represents substantially more than one year of expected future increases in the rate base on which the Company requires a return on investment. In addition, this Commission has not previously accepted the inclusion in rate base of post-test year additions to plant in-service.⁷¹ Such plant is not demonstrated to be used and useful and the costs of such plant additions are not known with precision.

Although we are now nearly eight months beyond the end of the calendar year 2023, Pepco has not updated the projected portion of this TTY costs to reflect a full year of actual expenditures. However, the Company's fourth Quarter 2023 ROR filing does provide 12 months of actual expenditures for 2023, and the data in that filing indicates Pepco's TTY rate base was overstated. Pepco bases its TTY revenue requirement on a D.C. Adjusted Rate Base of \$3,023,435 million. By contrast, Pepco's June 24, 2024, Revised Fourth Quarter 2024, ROR filing reports an actual Adjusted 2023 Rate Base of only \$2,653.203 million. In other words, Pepco's actual 2023 rate base is approximately \$370 million. Pepco's TTY filing overstated the Company's actual 2023 rate base by more than \$370 million or 14%.

As demonstrated by the Fourth Quarter 2023 Rate of Return (“ROR”) Filing,⁷² the Company premised its TTY revenue requirements on projected rate base additions that far exceeded Pepco's subsequently reported actual rate base additions for 2023. Proper assessment of Pepco's quarterly ROR filings must recognize that the Company's reported

⁷¹ Order 18846, pages 34 and 35, paragraph 94.” The Commission has established a standard in previous orders that allows projects completed outside the test year to be included in the rate base on a case-by-case basis if they pass the following “three prong test”: (a) their in- service date is not too remote in time from the test period; (b) their related costs are known and certain and can be calculated with precision; and (c) their needed, reasonable, and beneficial to the ratepayers. The Commission has previously allowed projects meeting this test within eight months beyond the end of the test year to be included when the project was placed in service and the actual (known and certain) costs were provided.”

⁷² See Pepco's May 3, 2024, Fourth Quarter 2023 ROR Filing in Formal Case No. 1156.

ROR results and computed revenue deficiencies wholly depend on the Company's self-serving assumption that all of the costs Pepco reports as actual expenditures were prudently incurred. AOBA strongly contests the reasonableness and appropriateness of such an assumption.

Contrary to Pepco's representations, the development of the Company's forecasted costs is not well-documented and lacks transparency. Moreover, the experience under Pepco's Pilot EMRP clearly demonstrates that the actual costs Pepco has incurred since the conclusion of Formal Case No. 1156 show little relationship to the costs the Company presented in Formal Case No. 1156 as the basis for its current MRP rates. For these reasons, the Company has failed to demonstrate that its forecasted costs establish a sound basis for setting rates for the next three years. Thus, rates are more appropriately set in this proceeding on the basis of actual historic test year costs adjusted for only known and measurable changes.

Finally, as noted at the beginning of this Brief, this is a critical period for both the District of Columbia Government and the Commercial Office Building industry within the District. AOBA submits that Pepco has not met its burden of proof for Commission approval of any revenue increase in this proceeding. However, suppose this Commission considers allowing a revenue increase for Pepco based on the filings in this proceeding. In that case, extraordinary efforts must be made to ensure any approved increase is limited to the funding of essential expenditures and that any increase granted does not unnecessarily exacerbate rate burdens for Pepco's customers in the District or further amplify the budgetary challenges that the District Government currently faces.

C. PEPSCO'S ANNUAL RECONCILIATIONS AND RATE ADJUSTMENTS

Pepco has submitted two Annual Reconciliation filings under Formal Case No. 1156. As directed by the Commission,⁷³ the first of those filings, addressing CY 2021, was submitted on March 31, 2022. Pepco submitted its second reconciliation filing to the Commission on March 31, 2023, addressing the Company's CY 2022 costs. As discussed previously in this Brief, both of those filings depict large variations from the costs by account and by capital project that Pepco presented in Formal Case No. 1156 to support its rate request in that proceeding. However, neither of those filings is adequate to support a Commission determination regarding the prudence of Pepco's actual expenditures and cannot be portrayed as the Company's demonstration of the prudence of any of the costs Pepco actually incurred for CY 2021 and CY 2022. Without the Company's clear demonstration of the prudence of its actual expenditures for those two periods, no conclusions regarding the Company's under- or over-recovery of its authorized revenue requirements can be justified. Therefore, no recovery of claimed revenue and earnings deficiencies is warranted for either period.

AOBA also submits that the Company's claimed "significant" under-recover for CY 2021 is driven by the fact that the rate increase approved by the Commission in Formal Case No. 1156 did not become effective until July 1, 2021 (i.e., halfway through CY 2021). AOBA also submits that the July 1, 2021, effective date for the rates approved based on Order No. 20755 should only be compared to the Company's costs for the portion of CY 2021 for which new rates were in effect. Blending revenue deficiencies for the first six

⁷³ Formal Case No. 1156, Order No. 20755, page 68, paragraph 161.

months of CY 2021 before the issuance of Order No. 20755 with financial results for a period before new rates were approved and implemented is inappropriate. It is AOBA's position that any attempt to compensate Pepco for claimed revenue deficiencies associated with the **first six months of CY 2021** would constitute prohibited **retroactive ratemaking**. Thus, Pepco must not be provided recovery of any claimed revenue deficiency associated with periods prior to July 1, 2021.

D. COST OF CAPITAL AND REVENUE REQUIREMENT ISSUES

Pepco's cost of capital for its proposed MRP is a function of the risks faced by the Company as influenced by ratemaking policies, the Company's proposed Capital Structure, its requested Return on Equity ("ROE"), and its costs of Long-Term Debt ("LTD"). The Company's capital structure request at 50.50% Equity and 49.50% Long-Term Debt does not appear to be an issue. However, Pepco's requested ROE and its claimed cost of Long-Term Debt are significantly overstated.

AOBA has significant concerns regarding Pepco's MRP proposals' impacts on shifting risk between the Company and its ratepayers. There is a clear risk trade-off when the options of an MRP and traditional test year ratemaking approaches are considered. With Pepco's MRP proposal in this proceeding, that trade-off has become even more stark. AOBA does not support the approval of a second MRP.

The Company's ability to alter the composition of its capital projects without review in litigated proceedings may be necessary to meet unanticipated changes in investment and/or operating requirements. However, except in very extreme circumstances, such

unanticipated changes should not constitute the predominant drivers of the utility's actual expenditures when compared to its forecasted budgets. The record of this proceeding clearly highlights the limits of Pepco's ability to forecast its project costs with reasonable accuracy.

A traditional rate case requires the Company to make expenditure decisions with the understanding that such expenditures must be justified in a future rate proceeding, not based on forecasted budgets with a reconciliation. Pepco has demonstrated not just an inability to forecast accurately but also an unsustainable appetite for growth at the expense of ratepayers. Pepco's presentations in this proceeding have the potential to erode, if not eliminate, Pepco's responsibilities to demonstrate the prudence of its spending decisions in a public and transparent forum. This represents a significant risk reduction and should be reflected in this Commission's rate of return, return on equity, and weighted cost of capital determinations.

Pepco has attempted to leverage the MRP process to replace its responsibility to affirmatively demonstrate the prudence of its actions with a presumption of prudence until another party or parties demonstrate that the Company's actions are imprudent. That shift in the burden of proof from utility management to other parties seriously degrades ratepayer protections. It also imposes substantial additional burdens on rate case participants when one of the precepts of the MRP process is to reduce regulatory burdens for all rate case participants. Moreover, the magnitude of the tasks faced by other parties to pursue claims of imprudence is particularly onerous when the utility is the holder of all relevant detail regarding its expenditure decisions and the Commission has provided no guidance as to what constitutes prudence in a utility's capital spending and operating

decisions. AOBA appreciates the difficulties associated with the development of standards for prudence, given the diverse nature of expenditures that may be incurred and the broad array of circumstances that may be encountered. However, in the absence of more substantial guidance with respect to prudence determinations, the Commission's clearly stated intent in Order No. 20755 that Pepco should be prepared to thoroughly demonstrate the prudence of its decisions is effectively muted.⁷⁴ As a result, the Company is positioned to leverage the MRP process to shift substantial risk from shareholders to ratepayers.

With a currently undefined process to evaluate the prudence of the Company's expenditures, an asymmetrical shifting of risk from the utility (i.e., shareholders) to those representing District ratepayers is inevitable. It is asymmetrical for two reasons: (1) the burden of retroactively assessing the Company's activities and performance is totally dependent on Pepco's role as the repository of such information, and (2) instead of the paradigm of justifying costs that Pepco has incurred, it is left to the parties and the Commission to disprove the prudence of the Company's decisions. The Commission, on behalf of Pepco's District ratepayers, needs to address this problem explicitly. If the Commission elects to go forward with the approval of a second MRP for Pepco, a much more substantial downward adjustment to the Company's authorized rate of return is necessary to protect Pepco's District ratepayers and better balance the interests of ratepayers and shareholders. Without effective prudence review procedures that hold the utility responsible for demonstrations of the prudence of its spending decisions, the incentives provided by the MRP process are for the utility to over-forecast future costs

⁷⁴ Order No. 20755, page 67, paragraph 160 (June 8, 2021).

and to spend to unverifiable forecasted levels of future costs. Moreover, without substantive prudence reviews, annual cost reconciliations provide Pepco near certainty that the Company will achieve full recovery of its actual expenditures **regardless of their prudence**. Thus, without effective requirements for utility demonstrations of prudence, the incentives of the MRP process directly conflict with the basic purposes of utility rate regulation, which is to ensure that a monopoly provider of a public service is not permitted to extract economic rents from captive customers.

Pepco has asked this Commission to authorize a return on equity ("ROE") of 10.50%. That recommendation reflects a 122.5 basis point increase over the Company's currently authorized return on equity. It would constitute by far the largest adjustment to Pepco's authorized ROE (either upward or downward) in decades. Although AOBA recognizes the arguments of Pepco Witness McKenzie that the Federal Reserve's efforts to fight inflation have led to increases in interest rates and increases in the "risk-free" cost of debt (as suggested by yields on 30-year U.S. Treasury Bonds), AOBA submits that Witness McKenzie has failed to establish direct ties between interest rate changes and Pepco's equity return requirements. Furthermore, Witness McKenzie's analyses and the premises of his arguments regarding raising interest rates are outdated and stale. This Commission should give no weight to McKenzie's arguments regarding interest rates.

By contrast, AOBA Witness T. Oliver's analyses, performed nearly a year after the Company's, clearly support the downward adjustment to Pepco's currently authorized ROE of 9.275%. AOBA is aware of and supports this Commission's policy of applying

gradualism in adjusting utility ROEs. In addition to gradualism, AOBA proposes to apply a 25-basis point MRP Risk Reduction adjustment if this Commission approves an MRP.⁷⁵

AOBA Witness T. Oliver's downward adjustment to the Company's currently authorized ROE reflects the significant reduction in risk that the Company enjoys presently under the Pilot EMRP. If the Commission rejects the Company's MRP proposal and elects to utilize a historic test year revenue requirement, the gradual adjustment to the Company's currently authorized ROE would need to be revised. An appropriate gradualism adjustment would be a 15.75-basis points downward adjustment as presented by AOBA Witness T. Oliver.

AOBA also believes that Pepco's arguments regarding its cost of equity and its cost of long term-debt have a linkage to AOBA's perspective on this matter, as explained through the written testimony of Witness T. Oliver, that the linkage between interest rates and Pepco's cost of equity is far more complex and **less straightforward** than Pepco Witness McKenzie suggests. In past proceedings, when interest rates were observed to have declined sharply, the Commission's adjustments to Pepco's authorized ROE were much less substantial. Applying similar considerations to recent interest rate increases (and generally corresponding increases in the "risk-free" debt costs), the Commission should reaffirm its prior determination that adjustments to utility ROEs should be gradual.

In 2008, near the start of the Great Recession, Pepco issued significant debt at rates in excess of 8% (i.e., rates well in excess of the Company's weighted average cost of debt at the time). Those issuances have burdened Pepco's customers for the last two decades and will continue to do so until their maturity. It is imperative that the Company

⁷⁵ Exhibit AOBA (B), page 22.

manage its debt issuances during periods of comparatively high interest rates to limit the amount of new debt that it issues. That, in turn, may require a reassessment of the cost-effectiveness and priority of capital-intensive projects. AOBA recommends that the Commission utilize a 5.04% cost of long-term debt. AOBA recommends the average of Pepco's proposed long-term debt costs for the MRP period.⁷⁶

While AOBA's analyses clearly support the downward adjustment to Pepco's currently authorized ROE of 9.275%, AOBA is aware of and sensitive to this Commission's application of gradualism in the adjustment of a utility's ROE. For that reason, AOBA has taken the midpoint between the Company's currently authorized ROE and AOBA Witness T. Oliver's analytical result. This results in AOBA's recommendation of 9.10%.⁷⁷

AOBA's rate of return recommendation presented herein would lower the Company's overall requested return for the Traditional Test Year ("TTY") from \$108.2 million to \$86.5 million and a cumulative reduction of \$27.5 by the end of the MRP period. That lowers Pepco's requested overall rate of return by **58 basis points to 7.08%**.⁷⁸

The computations presented in **Exhibit AOBA (B)-3, page 1**, indicate that the Commission should **limit** Pepco's requested revenue requirement to no more than **\$66.7 million** for the traditional rate case. The computations presented in **Exhibit AOBA (B)-3, page 2**, indicate that the Commission should **limit** Pepco's cumulative revenue requirement to no more than **\$138.6 million** for a multi-year rate plan or **\$46.2 million** for each year of the MRP. This adjusted revenue requirement reflects a combination of

⁷⁶ Exhibit AOBA (B), page 24.

⁷⁷ Exhibit AOBA (B)-1.

⁷⁸ Exhibit AOBA (B)-2.

(1) AOBA’s recommended return on equity, (2) adjustments to Pepco’s test year costs and RMA’s discussed above, and (3) AOBA’s proposed adjustments also discussed above. The following table compares the Company’s requested revenue requirements and AOBA’s proposals; the table excludes the Company’s proposed smoothing adjustments.

Revenue Requirement Comparison

(Thousands of Dollars)

Traditional Rate Case

Exhibit Pepco (2B)-1	\$ 108.2
Exhibit AOBA (B)-3	\$ 66.7

	2024	2025	2026
Multi-Year Rate Plan	Year 1	Year 2	Year 3
Exhibit Pepco (B) Table 1	\$ 116.4	\$ 36.9	\$ 37.3
Exhibit AOBA (B)-3	\$ 46.2	\$ 46.2	\$ 46.2

These adjustments to Pepco’s revenue requirements should be viewed as a ceiling and do not represent AOBA’s revenue requirement; again, AOBA reiterates that Pepco’s application should be dismissed.⁷⁹

As discussed at length in the Direct Testimony of AOBA Witness Bruce Oliver, Pepco’s proposed recovery of costs associated with its BSA Deferred Revenue Balance

⁷⁹ Exhibit AOBA (B)-5.

is unnecessary and reflects inappropriate and unsound ratemaking practice. Moreover, AOBA questions the accuracy and appropriateness of the dollar amount for which Pepco seeks to earn a return under that proposal. Further, there are substantial elements of Pepco's June 30, 2023, BSA Deferred Revenue Balance that AOBA specifically challenges in this proceeding. Therefore, Pepco's proposed regulatory asset should be denied and excluded from the Commission rate determinations in this proceeding. This would remove approximately \$113.8 million of rate base and corresponds to a \$12.0 million reduction in the TTY revenue requirement.

As demonstrated by AOBA's testimonies in Formal Case No. 1156, a non-labor O&M inflation adjustment is inappropriate and was eliminated from the Commission's ratemaking considerations in that proceeding. Pepco's RMA 34 in this proceeding should be treated in a similar manner and eliminated from the Company's TTY revenue requirement. Elimination of Pepco's RMA 34 would increase the TTY operating income by \$2.3 million while reducing the TTY revenue requirement by \$3.2 million.

The Company's proposed significant increase in its Cash Working Capital allowance is premised on a Lead-Lag Study that is highly influenced by the impacts of the COVID-19 pandemic. As explained by AOBA Witness Bruce Oliver, Pepco has not properly removed the influence of COVID-19 policies regarding restrictions on the Company's assessment of Late Payment Fee and Service Disconnects that were in place during the pandemic. Without accounting for the influence of those policies on payment lags, Pepco's assessment of its revenue lags and Cash Working Capital requirements cannot be relied upon to reflect the conditions that are expected to prevail during the rate effective periods for either the TTY or the Company's proposed MRP. For these reasons,

AOBA submits that continued reliance on the 2017 Lead-Lag study provides a more appropriate reflection of expected revenue lags during the periods rates will be in effect. The impacts of eliminating TTY RMA 36 and continuing to rely on the Company's 2017 Lead-Lag Study would reduce Pepco's rate base by \$13.6 million and reduce the TTY revenue requirement by \$1.4 million.

For the same reasons, AOBA recommends that the TTY RMA 36 be eliminated, and AOBA proposes that MRP RMA 26 also be eliminated for the whole MRP period. The impacts of the elimination of Pepco's proposed MRP RMA 26 would reduce the Company's cumulative rate base by \$78.4 million, resulting in an MRP cumulative revenue requirement reduction of \$7.7 million.

AOBA Witness Bruce Oliver, in his Direct Testimony, has identified numerous capital projects for which the Company has not provided more substantial support for the budgeted dollar amounts Pepco presents for those projects. The Commission and the parties to this proceeding lack the necessary information to assess the reasonableness of the capital expenditures Pepco has budgeted for the identified projects. Although the projects identified constitute only a subset of the projects for which Pepco's support for its budgeted expenditures is found lacking, the list of projects identified by AOBA Witness Bruce Oliver for removal from the Commission's ratemaking determinations in this proceeding comprises only those projects with the most extreme unexplained differences between Pepco's budgeted costs presented by Pepco in this proceeding and the information contained in the purportedly supporting documents Pepco has provided to AOBA through discovery in this proceeding.

Similar in nature and concept to the TTY adjustment, AOBA proposes to remove unjustified capital projects from each year of the Company's proposed MRP. This adjustment would encompass more than a \$167 million reduction to the Company's cumulative revenue requirement, resulting in a cumulative revenue requirement decrease of \$16.3 million.

Direct Testimony of AOBA Witness Bruce Oliver regarding the costs for new customer connections identifies inconsistencies that significantly undermine the credibility of Pepco's presentation of its budgeted costs for Commercial New Business Connections. Although AOBA believes the problems identified could justify the complete elimination of Pepco's budgeted costs for Commercial New Business Connection, AOBA recognizes that there is expected to be ongoing Commercial New Business Connection activity. Therefore, AOBA recommends that the Commission eliminate from each year of the Company's budgeted costs only a dollar amount equivalent to the amount of the Company's 2022 budget that Pepco's 2022 Final Reconciliation Filing indicates was not spent in that year. With Pepco's projections of negative overall growth in its numbers of new Commercial accounts, the remaining amounts should be adequate to address emergent new customer connection requirements. AOBA, thus, recommends that the Commission reduce Pepco's budgeted costs for Commercial New Business Connections by \$9.2 million per year for each year of the proposed MRP or by an equal one-year amount for the TTY rate effective period. This results in a reduction to Pepco's TTY revenue requirement of \$0.9 million.

Again, similar to the proposed TTY adjustment for customer connection costs, AOBA proposes to reduce the amount by the overbudgeted amount of \$9.2 million for

each year of the proposed MRP. This results in a cumulative reduction to rate base of \$2.7 million, or \$900,000 for each year of the MRP.

E. BSA-RELATED ISSUES

Multiple elements of Pepco's rate proposals in this proceeding are influenced by Pepco's treatment of issues associated with the operation and accounting of BSA revenues, particularly as they relate to the GT-LV rate class. Among those issues are:

- (1) The Company's application of **Effective Rate Adjustments** to revenues by rate class that are intended to reflect differences between actual revenues and the Company's BSA "Allowed" revenues;
- (2) Pepco's proposed creation of a **BSA Regulatory Asset** on which the Company would be allowed to earn its authorized rate of return;
- (3) The need for **adjustments** to Pepco's BSA Deferred Revenue Balance for its GT-LV rate class in the District;
- (4) Continued application of Pepco's current BSA mechanism and changes to the structure of that mechanism need to be made if it is continued.

1. Effective Rate Adjustments

AOBA submits that the "*Effective Rate Adjustments*" that Pepco uses in its development of revenue requirements and rate designs by rate class are unjustified, inappropriate, and not reflective of cost-based ratemaking practices. As such, the Company's "Effective Rate Adjustments" must be eliminated before determining class revenue requirements and before calculating new charges by rate schedule. For Pepco's

medium and large commercial customer rate classes, the Company's proposed "Effective Rate Adjustments" add more **than \$46 million** to the Rate Year 1 revenue requirements of the GT-LV, GT-3A, and MGT-LV rate classes before the Company's proposed revenue increase is applied. Pepco's Rate Year 1 "**Effective Rate Adjustments**" for those rate classes as shown in Exhibit Pepco (E)-8 are:

Rate Schedule	Revenue at Present Rates	Pepco's Effective Rate Adjustment	% Increase to Present Revenue
GT-LV	\$ 91,819,761	\$31,124,709	33.9%
GT-3A	\$ 55,848,401	\$ 9,097,570	16.3%
MGT-LV	<u>\$173,951,395</u>	<u>\$ 5,966,280</u>	3.4%
Total	\$ 321,219,557	\$46,188,559	14.4%

As shown above, Pepco's proposed Effective Rate Adjustments add 33.9% to the GT-LV rate class revenue requirements before any proposed revenue increase is distributed among classes. Further, additional Effective Rate Adjustments are applied for Pepco's proposed MRP Rate Years 2 and 3. Over the Company's proposed three-year MRP, Pepco's Effective Rate Adjustments add over **\$36.3 million** of non-cost-based revenue requirements to Rate Schedule GT-LV. On the other hand, the Company's proposed distribution of its requested MRP revenue increases adds **\$29.9 million** to Rate Schedule GT-LV revenue requirements. Thus, Pepco seeks to add over **\$66.2 million** of additional revenue requirements to a class that provides **\$91.8 million** of revenue annually at present rates. In other words, the combined effect of Pepco's rate proposals

in this proceeding would increase Rate Schedule GT-LV revenue requirements by more than **72%** over the three years of the Company's proposed MRP.

Considering the magnitude of these proposed increases in revenue requirements for the GT-LV rate class, the Commission should expect to find that the GT-LV rate class is currently not recovering its fully allocated costs of service. However, **that is NOT the case**. AOBA demonstrates that Rate Schedule GT-LV has consistently produced returns for the Company well in excess of the Company's system average rate of return.⁸⁰ Additionally, between the Company CCROSS for Formal Case No. 1156 and its CCROSS for this case (Formal Case No. 1176), the Rate Schedule GT-LV Unitized Rate of Return ("UROR") increased from 2.03 times the system average rate of return to **2.36 times** the system average rate of return.⁸¹ Clearly, the GT-LV class is **NOT** a class that is underperforming and being subsidized by other rate classes.

Not only are Pepco's Effective Rate Adjustments for the GT-LV rate class large compared to the Company's proposed revenue increases for that class, but those adjustments also **do not reflect cost-based ratemaking practices**. Pepco's current BSA mechanism operates on the assumption that Pepco's costs of providing service to customers in each rate class increase (or decrease) on a monthly basis in proportion to the number of customers in a given rate class. The mathematics are simple. The monthly count of customers for each class is multiplied by the average revenue per customer for the class for the designated month (as developed in Pepco's Compliance Rate filings before rates are implemented, i.e., an average Revenue per customer).⁸² The result

⁸⁰ Exhibit AOBA (A)-7.

⁸¹ Exhibit AOBA (A)-8.

⁸² See Pepco's June 28, 2021, and January 11, 2023 Compliance Rate Filings in Formal Case No. 1156.

represents an estimate of the costs that Pepco needs to recover from each rate class each month.

Pepco's use of average revenue per customer to compute BSA "Allowed" revenues on a monthly basis has generally produced reasonable results for residential and small commercial rate classifications, for which diversity in usage characteristics is generally not a major issue. However, that mechanism can produce very skewed results for rate classes, such as Rate Schedule GT-LV, which contain much greater diversity in usage characteristics and revenue per customer. This Commission recognized that problem in Order No. 18846 in Formal Case No. 1139.⁸³ In that case, AOBA demonstrated that Pepco gained approximately \$11 million of additional "Allowed" BSA revenue simply as a result of customer transfers between commercial rate classes in the District and without any demonstration of actual changes in its costs of service that resulted from those customer transfers between rate schedules.

The fact is that "**average revenue per customer**" is a **poor proxy** for the changes in revenue Pepco actually experiences when there are changes in the number of customers served in a rate class comprising large commercial customers. Even if revenue per customer calculations are accepted as a convenient means of adjusting "allowed" BSA revenues on an interim basis between rate cases, adjustments based on such proxy computations should not be simply added to class revenue requirements in subsequent rate cases without first re-examining the relationship between changes in numbers of customers by class and changes in the Company's costs of serving customers on a rate class by rate class basis. As demonstrated by AOBA(A) Witness B. Oliver, the Company's

⁸³ Formal Case No. 1139, Order No. 18846, page 98, paragraph 309 (July 25, 2017).

Class Costs of Service Studies ("CCOSS") do not support a finding that Pepco's costs of serving its GT-LV rate class increased between rate cases in proportion to the difference between the number of GT-LV customers assumed by Pepco for rate design purposes and the numbers of customers subsequently reported for that class based on Pepco's count of customers data.

This problem has been exacerbated by the fact that Pepco's compliance rates in Formal Case No. 1156, as well as the monthly revenue per customer amounts Pepco has used for that class in subsequent monthly BSA filings, are significantly **distorted** by the Company's reliance on inappropriately low estimates for its numbers of Rate Schedule GT-LV customers. The impacts of Pepco's use of significantly understated monthly numbers of Rate Schedule GT-LV customers are twofold. First, Pepco's underestimation of the number of Rate Schedule GT-LV customers leads to **an overestimation** of expected revenue per customer for the GT-LV rate class. Second, when the actual number of customers in the class is recognized in subsequent monthly BSA rate filings, the application of overstated revenue per customer amounts to the reported actual numbers of customers is clearly observable, thus causing Pepco's assessment of "Allowed" BSA revenues for the class to be verifiably inaccurate.

AOBA recognizes that Pepco's BSA revenue decoupling mechanism is intended to provide the Company compensation for revenues lost due to reduced usage. However, as AOBA documents in this proceeding, Pepco's computed "Allowed" BSA revenues based on its revenue per customer formula, has been used by Pepco to substantially increase the levels of revenue that the Commission authorized in its rate determinations in Formal Case No. 1156 as computed by Pepco in its June 28, 2021, and January 11,

2023 Compliance Filings.⁸⁴ The resultant combination of understated numbers of GT-LV customers and overstated revenue per customer expectations has greatly amplified Pepco's calculations of its BSA "Allowed" revenues for the GT-LV rate class. It has also yielded BSA Allowed Revenues far in excess of the revenues this Commission authorized for the GT-LV rate class in its acceptance of Pepco's Compliance filings in Formal Case No. 1156.

The magnitude of Pepco's under-estimates of GT-LV customer counts by month since the rate approved in Formal Case No. 1156 first became effective on July 1, 2021, and the influence of Pepco's understated numbers of GT-LV customers on its revenue per customer computations are documented in Exhibit AOBA (A)-3. For no other rate class have the Company's actual customer counts been so significantly understated. However, despite the Company's expressed concerns regarding its inability to recover its BSA revenue deferrals for the GT-LV rate class, the Commission must recognize the **substantial benefit** Pepco has claimed in terms of BSA Allowed revenues that are greatly in excess of the levels this Commission authorized for the GT-LV rate class in its acceptance of the Company's Compliance filings in Formal Case No. 1156.

2. Needed Adjustments to Pepco's BSA Deferred Revenue Balance for Rate Schedule GT-LV

Deferred Revenue Balance issues associated with Pepco's GT-LV rate class are long-enduring and complex. Proper assessment of Pepco's BSA Deferred Revenue

⁸⁴ See Pepco's June 24, 2021, Filing of Revised Rate Schedules (Compliance Filing), Attachment E, and Pepco's January 11, 2023, Updated Compliance Filing for C.Y. 2023 rates.

Balance requires a detailed assessment of the drivers of the magnitude of that balance. The Testimony of AOBA Witness B. Oliver provides essential insight into the components of the Rate Schedule GT-LV Deferred Revenue Balance and the factors that have contributed to the magnitude of that balance. The influence of Pepco's understatement of the Rate Schedule GT-LV customer counts, discussed above, and at least three other factors have contributed significantly to the size of the BASE deferred revenue balance for the GT-LV rates class. Those factors include:

- (a) Errors made by the Company in its development of rates in prior cases (i.e., Formal Case Nos. 1150 and 1139);
- (b) Inappropriate treatment of customer transfers between rate classes;
- (c) The influences of governmental restrictions on business activities during the period impacted by the COVID-19 pandemic.

These factors, which account for the vast majority of Pepco's BSA Deferred Revenue Balance for the GT-LV rate class, do not constitute the sound or reasonable foundation for Pepco's recovery of additional revenue from its GT-LV customer class. AOBA has quantified the impacts of these factors as follows:

Factors Contributing to
Pepco's BSA Deferred Revenue Balance for
Rate Schedule GT-LV

Pepco FC 1139 and FC 1150 Compliance Filing Errors	\$ 19.30 million ⁸⁵
Pepco Revenue Benefit from Customer Transfers	\$ 11.00 million ⁸⁶
COVID-19 Restrictions on Business Activities	\$ 39.74 million ⁸⁷
Pepco's Use of Substantially Inaccurate Customer Counts for Rate Schedule GT-LV	\$ <u>42.55 million</u> ⁸⁸
Total Warranted Adjustment to GT-LV BSA Deferred Revenue Balance	\$112.59 million
Current GT-LV Revenue Deferral Balance⁸⁹	<u>\$100.94 million</u>
Actual Over- (Under-) Recovery	<u>\$ 11.65 million</u>

Thus, when these necessary and appropriate adjustments of Pepco's BSA deferred revenue balance to Rate Schedule GT-LV are properly recognized, the GT-LV class is found to have a **negative** deferral balance. In other words, the GT-LV class has **over-recovered** its Commission determined revenue requirements by **\$11.65 million**.

⁸⁵ Exhibit Pepco (3E), page 19, Table 2; and Atrium Final BSA Audit Report, page 50, Table 2-12.

⁸⁶ Formal Case No. 1139, Exhibit AOBA (A), pages 75-76, and Order No. 18846, page 98.

⁸⁷ Exhibit AOBA (A), page 61, lines 5-7.

⁸⁸ Exhibit AOBA (A), page 59, line 8.

⁸⁹ Pepco's August 12, 2024, Monthly BSA Report, Attachment 2.

3. Pepco's GT-LV Compliance Rate Errors

Pepco's July 24, 2024, Limited Brief in this proceeding suggests that the Atrium BSA Audit report exonerates the Company from all responsibility for Pepco's admitted errors in its Compliance Filing rate calculations for the GT-LV rate class in Formal Case Nos. 1139 and 1150. AOBA strongly contests that representation. AOBA has explicitly addressed its concerns regarding the accuracy and objectivity of Atrium's assessment of this matter in Comments filed with the Commission.

Pepco claims that the revenue impacts of the Company's admitted ratemaking errors have already been recovered through the Company's BSA adjustments. However, AOBA's position is that, in the context of a continuously adjusting rate mechanism, Pepco's claim is of no relevance and should not impede the Commission's efforts to protect ratepayers and hold the Company accountable. Nothing should erase those impacts on Pepco's BSA deferred revenue balances or negate the need to address how these factors have inflated Pepco's perceived deferred balances.

4. Pepco's Proposed BSA Regulatory Asset

Pepco's Application and Direct Testimony seeks to include **\$113.781 million** of BSA Deferred Revenue in its TTY rate base in this proceeding.⁹⁰ Pepco's treatment of this proposed regulatory asset for Deferred BSA revenue balances is, at best, **unique** and **unprecedented**. The Commission should also recognize that AOBA proposes the

⁹⁰ Exhibit Pepco (2B), pages 14-15; and Exhibit Pepco (2B)-1, pages 2 and 15 of 45, RMA 12; Exhibit Pepco (A), page 40, lines 1-13; and Exhibit Pepco (G), page ii, and pages 55-56.

establishment of a **more traditionally structured** BSA-related regulatory asset, which is designed to provide Pepco recovery of the portion of Pepco's Rate Schedule GT-LV BSA deferred revenue balance that can be directly associated with governmental restrictions on business activities during the COVID-19 pandemic. AOBA's proposal would remove \$39.74 million from the GT-LV BSA deferred revenue balance and allow Pepco to recover that amount with carrying charges through a traditional 10-year amortization.⁹¹

By contrast, Pepco Witness Leming's rebuttal testimony explains that Pepco's BSA regulatory asset proposed in the Company's Direct Testimony would be **unlike other regulatory assets**. Witness Leming's Rebuttal Testimony states: "*that the Company is not proposing to amortize the BSA deferral balance through base rates as it does other regulatory assets.*"⁹² Rather, the Rebuttal Testimony of Pepco Witness Leming states: "*The BSA deferral balance will be amortized in accordance with the BSA Tariff....*"⁹³ Apparently, Witness Leming is trying to portray Pepco's accounting of BSA revenue over and under-recoveries as an amortization process. Yet, no language in the Company's BSA tariff provisions addresses the "**amortization**" of any element of Pepco's BSA revenue deferral balance. Since the inception of Pepco's BSA mechanism, its Deferred Revenue Balances have been adjusted monthly both **upward and downward** to reflect computed over- and under-recoveries of BSA "Allowed" revenues. **That is not an amortization**. The Company's monthly BSA filings can produce results that adjust deferred revenue balances by rate class either upward or downward. Witness Lemings' attempt to characterize the BSA mechanism as providing an amortization of those

⁹¹ Exhibit AOBA (A), page 27.

⁹² Exhibit Pepco (3B), page 31, lines 20-21 (Emphasis added).

⁹³ Ibid., page 31, line 17.

balances appears to disguise Pepco's efforts to gain authorized returns on the entirety of its BSA revenue deferral balances as they change on a month-to-month basis, regardless of how briefly a deferral balance may endure.

AOBA recognizes that Pepco has been reporting large and growing total BSA revenue deferral balances. However, those balances are driven primarily by Pepco's claimed BSA deferred revenue balance for the GT-LV rate class, as well as, to a much lesser extent, by the GT-3A and MGT-LV rate classes. The revenue deferral balance for the GT-LV rate class currently comprises over 80% of the Company's total BSA Revenue Deferral Balances.⁹⁴ Deferred revenue balances for other BSA classes are comparatively small and do not warrant regulatory asset consideration. The Commission should focus solely on the regulatory asset balance for the GT-LV rate class as properly adjusted.

Pepco, Witness Leming, suggests that the balance for its BSA Deferred Revenue Asset would be reduced as revenues in excess of the Company's monthly "Allowed" BSA revenues are collected. Also implied, but not specifically stated, is that any monthly BSA Revenue Deferrals subsequent to June 30, 2023, would add to the regulatory asset balance upon which the Company would be provided its authorized rate of return.

For the purposes of developing its proposed TTY revenue requirement, Pepco implicitly assumes that the regulatory asset for BSA Deferred Revenues would not change over the rate effective period. However, there have been significant changes in the Company's BSA Deferred Revenue balance since June 30, 2023, and recognition of ongoing monthly changes in Pepco's BSA Deferred Revenue Balances would add significant complexity to subsequent efforts to reconcile Pepco's BSA Deferred Revenue

⁹⁴ See Attachment 2, to Pepco's August 12, 2024 Monthly BSA filing in the Commission's PEPBSAR docket.

regulatory asset accounting.⁹⁵ As shown in the Direct Testimony of AOBA Witness B. Oliver, those differences total to **\$42.55 million**.⁹⁶ Nowhere does Pepco offer a cost justification for this addition to what Pepco characterizes as its BSA “Allowed” Revenue for the GT-LV rate class. As a result, a large portion of Pepco’s computed BSA revenue deferral balances for the GT-LV rate class since the effective date of new rates from Formal Case No. 1156 is simply the product of: (1) Pepco’s use of greatly understated monthly customer counts for the GT-LV rate class; and (2) revenue per customer methodology for computing “Allowed” revenues for BSA purposes that does not reasonably or accurately depict changes in Pepco’s costs and revenue requirements as its billed numbers of customer for large commercial rate classes deviated from the monthly customers counts used by Pepco to design rates.

Pepco’s computed BSA deferred revenue balances, therefore, yield a distorted and greatly overstated assessment of BSA revenue deferrals for the Rate Schedule GT-LV class. Essentially, a large portion of Pepco’s reported Rate Schedule GT-LV revenue deferrals are fictitious additions to Pepco’s revenue requirements, not the under-collection of class revenue requirements authorized as part of the Commission’s base rate determinations.

⁹⁵ Pepco Witness Leming’s Rebuttal Testimony indicates that as of December 31, 2023, and as of Pepco’s August 12, 2024, Monthly BSA Filing, the Company’s assessment of its overall BSA Deferred Revenue Balance has increased to approximately \$120 million, and Pepco’s reported Rate Schedule GT-LV BSA revenue deferral balance has increased to nearly \$101 million.

⁹⁶ Exhibit AOBA (A), page 59, lines 5-8, and Exhibit AOBA (A)-4. AOBA notes Witness B. Oliver’s computed \$42.55 million of excess “Allowed” BSA revenues for the GT-LV class is based on the period from June 2021 through August 2023. The amount of Pepco’s proposed regulatory asset (i.e., **\$113.781 million** Total BSA Deferred Revenue is based on the Company’s BSA Deferred Revenue Balances for all BSA rate classes as of June 30, 2023. As explained by AOBA’s Witness, the Company’s claimed “Allowed” BSA revenues for the GT-LV rate class in excess of the Commission’s authorized Rate Schedule GT-LV revenues as of June 30, 2023 total to \$37.77 million. In other words, revenues in excess of the levels authorized by the Commission for the GT-LV class accounted for approximately one-third (i.e., 33%) of the claimed Regulatory Asset Balance.

Pepco's claims that the Company has not been adequately compensated for carrying costs on its BSA deferred revenue balances is **unwarranted**. Pepco has provided no demonstration that computed BSA "Allowed" revenues, which it considers to be in excess of the revenue levels authorized by this Commission for the GT-LV rate class, are reflective of actual cost increases actually experienced by the Company. In fact, AOBA testimony in this proceeding demonstrates that Pepco's computed "Allowed" BSA revenues exceed the GT-LV revenues authorized by the Commission by more than **four times** greater than the approximately **\$9 million** of annual carrying charges (pre-tax) that Pepco seeks to recover by obtaining a return on its proposed BSA regulatory asset based on the Company's aggregate BSA deferred revenue balances for all of its BSA rate classes.⁹⁷

The Attachment to Pepco's response to **AOBA Data Request 10-22**⁹⁸ computes the revenues by month that Pepco included in its Compliance filings in Formal Case No. 1156 for the GT-LV rate class, as well as the "**allowed**" revenue amounts the Company has computed in its monthly BSA filings for the GT-LV class for each month from July 2021 (when approved rates in Formal Case No 1156 first became effective) through August 2023. When summed for all months from July 2021 through August 2023, the difference between those calculations equals **\$42.66 million**.

97 Pepco Exhibit (A), page 40, lines 7-8; and Exhibit Pepco (G), pages 55-56.

98 See Attachment C to Exhibit AOBA (A), Pepco's response to AOBA Data Request 10-22.

5. Recognition of COVID-19 Impacts on Pepco's Computed GT-LV Revenue Deferral Balance

AOBA Witness B. Oliver's Direct Testimony also computes that **\$39.74 million** of Pepco's BSA Deferred Revenue Balance for the GT-LV rate class reflects the impacts of governmental restrictions on business activities during the COVID-19 pandemic. Witness B. Oliver recommends that those deferred revenues for the GT-LV rate class be removed from Pepco's BSA revenue deferrals and recovered through a separate COVID-19 Regulatory Asset. The Rebuttal testimony of Pepco Witness Bonikowski also accepts a segregation of COVID-19 pandemic-related BSA revenue deferrals for the GT-LV rate class and the recovery of those segregated dollar amounts through a regulatory asset. His testimony further accepts a corresponding reduction in the GT-LV BSA deferral balance.

However, Witness Bonikowski offers a somewhat higher assessment of the COVID-19 impact on the GT-LV revenue deferral balance. As discussed above, AOBA Witness B. Oliver has quantified the impact of COVID-19 period governmental restrictions on Rate Schedule GT-LV deferred revenue balances at \$39.54 million and provides quantitative support for that number. By contrast, Witness Bonikowski offers an estimate of \$46.8 million but provides no support for his estimate.

Given that AOBA, OPC, and Pepco appear to agree that the creation of a separate COVID-19-related regulatory asset is reasonable and appropriate, AOBA strongly urges the Commission to order the establishment of such a regulatory asset. However, AOBA submits that the lower estimate of such COVID impacts offered by AOBA Witness B. Oliver is a more appropriate and more clearly documented measure of those impacts.

AOBA, therefore, recommends that the proposed COVID-19 regulatory asset be established to recover \$39.54 million of the current GT-LV rate class BSA revenue deferral balance. This step alone will eliminate a significant portion of Pepco's current BSA revenue deferral balance while providing assured cost recovery of the identified dollar amount. Moreover, by creating this more broadly supported regulatory asset, the Commission greatly reduces the Company's claimed need for a more broadly applied, non-traditional regulatory asset.

F. PEPCO'S CASH WORKING CAPITAL REQUIREMENTS

Pepco proposes to dramatically increase its Cash Working Capital ("CWC") requirements in this case. In Formal Case No. 1156 Pepco CWC requirements for DC for the years of its proposed MYP were computed to be approximately \$9.7 million dollars for each year.⁹⁹ In this case, Pepco seeks approval of CWC requirements have more than doubled. For each of the three years of its proposed MYP, Pepco seeks CWC allowances in excess of **\$23.5 million** (i.e., at least a 142% increase).

The primary driver for Pepco's claimed need for a sharply increased CWC allowance is the Company's reliance on 2021 data in its development of an "updated" Lead-Lag Study. Although many of the lead and lags computed in the updated study have changed from the levels reflected in the lead-lag study that Pepco relied upon in Formal Case No. 1156, a review of the details of Pepco's Lead-Lag Study quickly flags the key driver of the Company's claimed increase CWC requirements as noticeably

⁹⁹ Formal Case No. 1156, Exhibit Pepco (C)-3, line 47.

higher number of **Composite Revenue Lag Days**. The 2017 Lead-Lag Study Pepco relied upon in Formal Case No. 1156 produce a Composite Revenue Lag of **44.33** days. The 2021 Lead-Lag Study Pepco presents in this proceeding yields a Composite Revenue Lag of **58.33** days, reflecting a more than 30% increase. By contrast, Pepco's Composite Expense Lag only changed from 33.1 days in the 2017 study to 35.72 days or an increase of less than 8%.

The revenue lag that Pepco has computed based on calendar year 2021 data is heavily influenced by the **COVID-19 pandemic** when customers were exempted from late payment fees and from shut-offs of utility service due to non-payment. Those exemptions are no longer effective and should not be relied upon to assess payment lags by Pepco's retail customers in the District during the periods when Pepco's proposed rates in this proceeding would be in effect. It is, at best, disappointing that Pepco made no effort to remove the effects of the pandemic issues from its assessment of Cash Working Capital requirements for its projected MYP years. Exhibit Pepco (C)-1, page 14 of 21, shows Pepco's proposed Rate Base Adjustment for Cash Working Capital. That ratemaking adjustment, if accepted would increase Pepco's CWC allowance by more than \$16 million for each forecasted MYP Rate Year. The Commission should reject Pepco's ratemaking adjustment in its entirety and set Pepco's CWC requirements on the basis of results of the 2017 Lead-Lag Study on which Pepco currently relies. As a result, Pepco's Rate Base for each of its MYP years should be **reduced** by approximately **\$16 million** for each MYP year. The revenue lags Pepco experienced in 2021 are NOT reflective of its current experience and must not be allowed to substantially augment the Company's rate based Cash Working Capital requirements as we move forward in time.

G. PEPSCO'S ACCEPTANCE OF AOBA RATE STRUCTURE AND COST-OF-SERVICE ALLOCATION CHANGES

As noted in the Overview section of this Brief, Pepco, through its Rebuttal testimony, has indicated its acceptance of certain elements of AOBA rate change proposals. In addition to the creation of a COVID-19-related regulatory asset to assess pandemic impacts on Rate Schedule GT-LV deferred revenue balances, Pepco's rebuttal testimony accepts certain other elements of AOBA's cost-of-service and rate structure recommendations. The additional items Pepco has accepted include:

- Revision of the Company's revenue increase allocation to address more fully the extreme rates of return of the GS-3A and TN rate classes, as well as somewhat greater movement in the relative rates of return for other rate classes;
- Revision of the Company's allocation of costs for Customer Installations between the GT-LV and MGT-LV rate classes;
- Substantial adjustment of the Company's proposed monthly Customer Charge for Rate Schedule GT-LV to reflect the Company's revised allocation of costs for Customer Installations between the GT-LV and MGT-LV rate classes.

1. Revenue Increase Distribution

Pepco proposes a four-step revenue increase distribution methodology similar to the methodology the Company has employed in other recent proceedings. Yet, that

methodology has not performed well to date and requires revision or at least refinement.¹⁰⁰

Non-residential rate classes with extreme RORs require significant one-time downward adjustments to their revenue requirements. Pepco's presentation demonstrates that the Company's application of no increase for classes with extremely high RORs has only served to institutionalize substantially above-average rates of return for those classes. Moreover, within the classes with above system average RORs, treating a class with an ROR 2.4 times the system average ROR the same as a class with an ROR at **half** that level is not reasonable or equitable.

AOBA witness B. Oliver proposes that the revenue requirement for the GS-3A and TN rate classes be reduced in this proceeding such that the URORs for those classes are lowered to 1.5 times the system average rate of return. Witness B. Oliver notes that those two classes account for only approximately 0.025% of Pepco total distribution revenue for the District of Columbia, and AOBA's recommended lowering of the revenue requirements assigned to the GS-3A and TN class would have almost no perceptible impact on the revenue requirements of other rate classes.¹⁰¹ In rebuttal testimony Pepco witness Bonikowski states: "*The Company generally finds the increased granularity in revenue allocation for over-earning rates classes proposed by AOBA Witness B. Oliver to be reasonable.*"¹⁰² He also states: "*Pepco supports AOBA Witness B. Oliver's recommendation to apply a revenue decrease to Schedules GS 3A and TN.*"¹⁰³

¹⁰⁰ Exhibit AOBA (A), pages 102-105, and Exhibits AOBA (A)-6 and (A)-7.

¹⁰¹ Exhibit AOBA (A), pages 110-113.

¹⁰² Exhibit Pepco (3E), page 42, lines 8-9.

¹⁰³ Exhibit Pepco (3E), page 43, lines 1-2.

2. Rate Schedule GT-LV Monthly Customer Charges

AOBA has presented testimony and analyses demonstrating an error in Pepco's allocations of Customer Installation costs between its GT-LV and MGT-LV rate classes, which greatly distorts Pepco's proposed customer charges for its GT-LV customers.¹⁰⁴ The Company's failure to properly apportion its costs for Customer Installations between its GT-LV and MGT-LV rate classes¹⁰⁵ resulted in Pepco proposing to increase its Rate Schedule GT-LV Customer Charge from \$1,908.28 per month to \$3,069.76 per month by the end of Pepco's proposed Rate Year 3.¹⁰⁶ On the other hand, Pepco proposes to lower its monthly customer charge for Rate Schedule MGT-LV customers.

These proposed changes in the Company's monthly customer charges for its large and medium low voltage commercial rate classes (i.e., Rate Scheduled GT-LV and MGT-LV) are simply a product of Pepco's inappropriate assignment of all Customer Installation costs for those two classes to the GT-LV class. The Direct Testimony of AOBA Witness B. Oliver shows that when Pepco's Customer Installation costs are more appropriately apportioned between those two rate classes, the Company's customer-related costs for the GT-LV class fall dramatically. In fact, after correction of Pepco's allocation of Customer Installation costs between those two classes, the current Rate Schedule GT-LV monthly customer charge actually over-collects the Company's customer-related costs for the that class, and a noticeable customer charge reduction for that class can be justified.

¹⁰⁴ Exhibit AOBA (A), pages 89-96, and pages 114-115.

¹⁰⁵ Exhibit AOBA (A), page 93, Table 5.

¹⁰⁶ Exhibit AOBA (A), page 94, Table 6.

In Rebuttal testimony Pepco Witness Gardiner agrees with AOBA's Witness that the Company's allocation of Customer Installation costs between the GT-LV and MGT-LV rate classes needs to be corrected. Witness Gardiner also accepts AOBA's correction to that allocation (which only impacts those two commercial rate classes).¹⁰⁷ Furthermore, the Rebuttal Testimony of Pepco Witness Bonikowski updates the Company's proposed monthly customer charges for its GT-LV and MGT-LV rate classes to reflect the changes in Customer Installation costs allocations recommended by AOBA Witness B. Oliver and accepted by Pepco Witness Gardiner.¹⁰⁸ As shown in Exhibit Pepco (3E)-3, the Company indicates that its assessment of Customer Unit Costs for the GT-LV class falls from \$4,231.22 per month as shown in Witness Bonikowski's Direct testimony¹⁰⁹ to \$1,341.16 per month.¹¹⁰ As a result, Witness Bonikowski proposes to lower, rather than increase dramatically its monthly Rate Schedule GT-LV customer charges.

A comparison of Pepco's proposed customer charges for GT-LV and MGT-LV rate classes as presented in the Company's direct and rebuttal testimonies is presented in the Surrebuttal testimony of AOBA Witness B. Oliver.¹¹¹ Although AOBA appreciates the direction of the correction that Pepco's Rebuttal testimony reflects for the GT-LV rate class, AOBA submits the very gradual nature of the downward adjustment to the GT-LV customer charge that Pepco proposes is inappropriate given the magnitude of the Company's prior overstatement of its customers costs for the GT-LV rate class. Thus,

¹⁰⁷ Exhibit Pepco (2D), page 6, lines 8-9.

¹⁰⁸ Exhibit Pepco (3E), page 49, lines 3-9, and Exhibit Pepco (3E)-3, page 1 of 2.

¹⁰⁹ Exhibit Pepco (E)-4, page 1 of 3, line (2).

¹¹⁰ Exhibit Pepco (3E)-3, page 1 of 3, line (2).

¹¹¹ Exhibit AOBA (2A), page 46, Table 3.

AOBA Witness B. Oliver recommends that the Rate Schedule GT-LV Customer Charge be reduced immediately by 50% of the difference between the Company's corrected unit cost for Rate Schedule GT-LV (i.e., \$1,341.16 per month) and the Company's current customer charge (i.e., \$1,908.28 per month).¹¹² That would yield a proposed monthly customer charge for Rate Schedule GT-LV customers of \$1,624.72 (i.e., Pepco's revised Rate Year 3 charge). This would provide Rate Schedule GT-LV customers greater immediate relief from the currently excessive charge. AOBA would also suggest that in Pepco's next base rate case, the GT-LV customer charge should be established no more than its full cost-based level.

VI. CONCLUSION

AOBA does not support the Commission's approval of a second MRP for Pepco in this proceeding, and AOBA does not recommend the Commission's setting of rates in this proceeding on the basis of the Company's forecasted costs. The "Pilot" Multi-Year Rate Plan ("MRP") approved by the Commission in Formal Case No. 1156 has not served the interest of District of Columbia ratepayers. The magnitude of Pepco's proposed revenue requirements under both its MRP and Traditional Test Year filings are excessive and incompatible with efforts to maintain affordable electric service with Pepco's District of Columbia service territory. Thus, AOBA avers that Pepco's request for the Commission's approval of a new (or second) MRP in this proceeding must be rejected.

¹¹² Exhibit AOBA (2A), page 47, lines 8-16.

If, despite the record of this proceeding, the Commission allows Pepco to continue to rely on forecasted costs to support its requested revenue requirements, provision must be made for a more detailed after-the-fact assessment of the reasonableness and prudence of the Company's actual expenditures. Pepco must be placed on notice that under any ratemaking scenario that relies on projections of future costs, the Company's actual costs will be carefully scrutinized by the Commission and that the Company will bear the burden of demonstrating the prudence of its actual expenditures. Moreover, the Commission should reiterate that cost recovery will be denied for any costs for which Pepco fails to meet that burden.

Contrary to Pepco's representations, the development of the Company's forecasted costs in this case is not well-documented and lacks transparency. Moreover, Pepco's actual costs incurred since the conclusion of Formal Case No. 1156 show little relationship to the costs the Company presented in Formal Case No. 1156 as the basis for its MRP rates. AOBA understands that Pepco's forecasts cannot be expected to yield precise estimates of actual future expenditures. However, the magnitudes of observable deviations from Pepco's cost projections for its Pilot EMRP greatly undermine the credibility of continued efforts to rely on cost projections to set rates for future periods.

Large deviations between projected and actual costs also erode and undermine the credibility of the ratemaking process. Pre-rate-approval reviews of forecasted expenditures by the Commission and the Parties are of little relevance when the composition of the Company's actual expenditures differs dramatically from the mix of costs incorporated in the Company's projections. Pepco's representations that the Company's total expenditures are not highly deviant from its **total** projected costs are not

meaningful. The benefits ratepayers can be expected to derive from various types of expenditures are not equivalent. Thus, the mix of actual expenditures incurred directly impacts the value of actual ratepayer benefits. As a result, evaluations of ratepayer costs and benefits performed on Pepco's forecasted expenditures prior to a Commission rate determination cannot be relied upon to depict the benefits that result from Pepco's actual expenditures. Thus, Pepco's presentation of forecasted costs prior to rate approval does little to ensure the value of benefits District ratepayers can associate with the Company's subsequent actual expenditures. Thus, Pepco's forecasted budgets fail to establish a sound basis for either: (1) the setting rates for future periods; or (2) evaluation of the prudence of the Company's actual expenditures.

AOBA favors a return to the development of rates on the basis of verifiable historical test year data. However, AOBA finds that the projected portions of Pepco's Traditional Test Year costs are also significantly overstated and do not provide a reasonable and appropriate basis for setting rates in this proceeding. Thus, AOBA submits that the only justifiable approach to establishing new rates for Pepco in this proceeding is for the Commission to base its rate determinations on actual historic test year (2023) costs adjusted for only known and measurable changes.

The poor functioning of Pepco's BSA mechanism remains a particular concern for AOBA and its members in the District of Columbia. Pepco's application of its BSA mechanism continues to display major shortcomings, and those shortcomings will not be remedied by the recommendations offered in the Atrium BSA Audit Report. The revenue per customer mechanism on which Pepco's BSA relies to compute monthly rate adjustments fails to provide reasonable and equitable results when applied to demand-

metered rate classes. Moreover, as explained herein, flaws in Pepco's development of the customer counts used in its design of Formal Case No. 1156 compliance rates for the GT-LV rate class, the Company's computed BSA "Allowed" Revenues are significantly above the levels of revenue authorized by the Commission in Formal Case No. 1156. Yet, the Company cannot demonstrate corresponding increases in its costs of service for that rate class.

Further, through the Company's purported "Effective Rate Adjustments", Pepco inappropriately attempts to reflect the results of its non-cost-based additions to BSA "allowed" revenues in the development of its proposed rate designs in this proceeding. AOBA implores this Commission to recognize the inappropriate and non-cost-based nature of Pepco's computed Effective Rate Adjustments and reject the Company's use of such adjustments in this proceeding.

Pepco has attempted to expand its authorized (or "Allowed") BSA revenues based on changes in the number of customers served in a rate class is primarily a product of the Company's use of substantially inaccurate estimates of customer numbers for forecasted months. Yet, the Company's need for such additional revenues (i.e., revenues above the levels authorized by the Commission for each rate class) to cover costs imposed by the GT-LV rate class has not been documented by the Company. Rather, AOBA shows that Pepco's costs of service its Rate Schedule GT-LV customers in the District have not increased significantly since Formal Case No. 1156, and the rate of return for the GT-LV rate class has moved further above the Company's jurisdictional average rate of return.

A. PROPOSED FINDINGS

Based on the testimony and exhibits presented in this proceeding, AOBA offers the following proposed findings:

1. Lessons Learned

- A well-functioning MRP process requires the Commission's commitment of greater time and resources for the evaluation of the reasonableness and prudence of Pepco's **actual** MRP period capital and O&M expenditures.
- The Pilot EMRP has reduced, if not eliminated, incentives for Pepco to control its costs and/or use its budgeted costs in a manner that reduces ratepayer cost burdens. As a result, the Pilot EMRP has failed to provide a reasonable alignment of shareholder and ratepayer interests.
- The practice of setting rates based on fully forecasted costs provides no basis for assessing the appropriateness of the Company's budgets and provides incentives for the Company to aggressively forecast its future expenditure levels.

- There is no evidence that the "Pilot" MRP actually improved ratemaking transparency. On the contrary, the transparency suggested by Pepco's presentation of detailed budgets for future MRP rate years is lost when the Company is provided wide discretion to alter the composition of its budgeted costs.

- Claims that MRPs produce reduced regulatory burdens and have lowered regulatory costs are illusory, and such savings are only achieved for the Company and/or the Commission when ratepayer protections are significantly diluted.

- The prudency review process for Pepco's actual expenditures under the Pilot EMRP were inadequate and ineffective.

- Pepco's Multi-Year Rate Plan ("MRP") proposal in this proceeding fails to achieve one of the most basic objectives for such a plan. That is a reduction of the regulatory costs that must be borne by Pepco ratepayers in the District of Columbia.

2. Climate Ready Pathway

- Pepco's purported pathway to a climate-ready system lacks clearly discernible ties to the achievement of specific climate-related goals.
- Pepco has failed to identify the attributes of its perception of a “*Climate-Ready Grid*” or a “*Climate-Ready Pathway*” and has not delineated specific improvements to current system design that are necessary to ensure its District of Columbia distribution system is “*climate-ready.*”
- Only a very small portion of Pepco’s substantial budget for MRP capital expenditures can be tied to projects that will directly reduce GHG emissions.
- Pepco's District of Columbia distribution system will not support the District's climate goals if unchecked capital spending programs

erode the affordability of electric service in the District or drive businesses to relocate to other jurisdictions.

3. **BSA-Related Issues**

- Pepco's request to be provided a return on its claimed BSA deferred revenue balance is poorly conceived and not appropriate for implementation as presented.
- Pepco has failed to provide a compelling case that the Company's BSA deferred revenue balance has had a significant negative impact on its earnings and credit.
- A significant portion of Pepco's current BSA deferred revenue is appropriately identified as COVID-19-related and should be recovered outside of the Company's BSA mechanism.
- The continuation of Pepco's BSA mechanism is inappropriate in the context of rates set on the basis of forecasted costs and forecasted billing determinants.

- The after-the-fact reconciliation procedures under an MRP effectively provide the Company assurance of its ability to match its revenues with its actual, prudently incurred costs, thereby negating the need for a separate revenue decoupling mechanism.

- Pepco's proposal to shift to an annual BSA rate adjustment mechanism would be an improvement over the current monthly mechanism, but under an MRP, neither annual nor monthly BSA rate adjustments are necessary or appropriate.

- A significant component of Pepco's BSA deferred revenue balance for the GT-LV rate class is the product of Pepco's use of substantially understated numbers of Rate Schedule GT-LV customers in its development of Compliance Rates in Formal Case No. 1156.

- Pepco's attempt to exonerate itself from responsibility for errors in its compliance rate design calculations in Formal Case Nos. 1139 and 1150 are based on misleading and inaccurate assessments of the facts associated with those proceedings.¹¹³

¹¹³ Pepco's July 24, 2024, Limited Brief in this proceeding.

- [put this in the ARGUMENT section] The rate design “**errors**” for which Pepco claims the OPC and other intervenors were aware at the time of the Settlement in Formal Case No. 1150 were not identified by any party Pepco’s July 2020 responses to Commission Staff data requests.

- Pepco must be held accountable for the revenue impacts of its admitted errors.

4. Budgeted Capital Additions

- Pepco’s excessive capital spending plans are the primary driver of the size of its revenue increase request in this proceeding.

- Pepco’s budgeted capital expenditures, in the context of declining kWh deliveries, declining kW demand, and minimal customer growth, are inconsistent with the maintenance of affordable electric service in the District of Columbia.

- Rapid growth in Pepco's rate base investment for a system with forecasted declines in usage and limited customer growth (mostly within classes comprised of smaller customers) will necessarily

require further significant increases in Pepco's charges for electric service in the District.

- Pepco's capital expenditures budget is generally presented without supporting workpapers and without meaningful supporting cost analyses and quantified assessments of project costs and benefits.
- Pepco's budgeting for Commercial New Business connections is inconsistent with the Company's projections of limited growth in its numbers of Commercial customers and fails to demonstrate explicit consideration of the portions of Commercial New Business costs that it can expect to be offset by CIAC payments.
- The dollar amounts Pepco has budgeted for Commercial New Business connections imply extremely high average costs per customer added.
- Pepco's Lead-Lag Study and its determinations of Cash Working Capital Requirements do not properly account for the influences of the COVID-19 pandemic.

5. **Class Costs of Service**

- Once again, Pepco's CCOSS failed to provide separate recognition of Contributions in Aid of Construction by rate class as the Commission directed in Order No. 18846.

- Pepco has the information necessary to track CIAC payments by rate class, but it does not utilize that information in the development of its class costs of service analyses.

- Pepco naively argues that separate assessments and presentation of CIAC payments are unnecessary because no CIAC is included in the rate base, ignoring the fact that CIAC is not a uniform percentage of the allocated rate base or even customer-related rate base costs for all rate classes.

- Pepco's allocation of income tax responsibilities remains inconsistent with the appropriate application of the U.S. income tax code and hides substantial additional cross-subsidization between rate classes.

- Considering the evidence that Pepco's service requirements and costs of service have not increased with relative uniformity between the time periods addressed by the Company's two most recent class cost of service studies, any presumption that class cost of service results for calendar years 2021 will be reasonably indicative of relative class cost responsibilities in 2026 (i.e., five years later) is unfounded.

6. Rate Structure Issues

- Negative rates of return for Pepco's Residential class in the District of Columbia have now been permitted to endure for nearly two decades, and greater regulatory focus needs to be placed on the elimination of these extreme levels of subsidization that the current negative rates of return represent.
- As applied in Formal Case No. 1156, Pepco's proposed Four-Step method for allocating the Company's requested revenue increase did not produce movements toward unity in the URORs for several rate classes, including most of Pepco's medium and large C&I rate classes.

- Pepco's proposed Four-Step method for allocating the Company's requested revenue increase does not adequately or equitably address the adjustment of rates of return for classes for which Pepco currently computes rates of return in excess of two times the Company's overall rate of return for its D.C. jurisdiction distribution service (i.e., classes with UROR's in excess of 2.0).

- A decision to approve a multi-year rate plan for Pepco should be viewed as an opportunity for the Commission to implement annual phased increases in Rate R revenue requirements designed to significantly narrow current differences in class rates of return.

- Pepco's proposed MRP provides an opportunity for the Company to phase in a more substantial adjustment to its residential class rate of return. Still, the Company fails to seize that opportunity.

- Pepco's use of "four Adjustments" in the design of its proposed rates inappropriately amplifies the magnitude of the revenue increases that Pepco proposes for its commercial rate classes and conflicts with the Company's efforts to address the class rate of return differentials through its Four-Step method for allocating the revenue increase among rate classes.

- Pepco's proposed increases in Customer Charges for Rate Schedule GT-LV result from Pepco's erroneous assignment of Customer Installation attributable to both the GT-LV and MGT-LV rate classes to just the GT-LV class.

- Pepco's proposed costs for marketing and enrolling greater numbers of customers in the current RAD program have not been justified in terms of the costs to be imposed on other Pepco ratepayers in the District or the impacts of the proposed RAD program expansion on effective rate subsidies between the Company's residential and commercial rate classes.

B. RECOMMENDATIONS FOR COMMISSION ACTION

On the basis of the information provided in this proceeding, AOBA urges the Commission to take the following actions:

Pilot EMRP Lessons Learned

1. The Commission should not approve any form of multi-year rate plan in the absence of a plan and procedures for a more rigorous

examination of the reasonableness and prudence of the Company's actual expenditures for each MRP rate year.

2. The Commission should substantially limit Pepco's ability to deviate from the details of the budgets on which MRP rate determinations are made and set relatively tight limitations on the extent to which the Company's actual expenditures are permitted to vary from Pepco's budgeted costs project for capital costs and by account and subaccount for O&M costs without the Company being required to seek formal Commission approval of such variances.
3. The Commission should require that any multi-year rate plan must include a plan to eliminate negative class rates of return within the period of the plan.
4. The Commission should reject Pepco's proposed MRP in this proceeding as not reflective of the public interest.
5. If the Commission elects to approve Pepco's MRP, it should couple that approval with: (a) the establishment of procedures that provide for a more rigorous review of the Company's actual expenditures; (b) establish specific performance expectations for the Company; and

(c) establish criteria for subsequent determinations regarding the prudence of Pepco's actual expenditures.

BSA-Related Issues

6. The Commission should deny Pepco's request to be permitted to earn a return on its BSA Deferred Revenue Balance.
7. The Commission should conclude that a revenue decoupling mechanism is no longer appropriate in the context of a multi-year rate plan for which both the Company's service requirements and costs are forecasted.
8. The Commission should identify the portion of Pepco's BSA Deferred Revenue Balance associated with under-recoveries during the COVID-19 pandemic, remove the identified amount from Pepco's BSA Deferred Revenue Balance, and allow the Pepco recovery of the identified amount as a COVID-19 regulatory asset amortized over ten years with a return provided to the Company on the unamortized balance.

9. The Commission should either terminate the Company's application of its BSA for GT-LV and MGT-LV customer classifications or distribute responsibilities for under-collections of authorized revenue for those classes to all District ratepayers.

10. The Commission should reject Pepco's proposal to compute compliance rates and compliance monthly authorized revenue per customer amounts at the end of this proceeding on the basis of "updated" estimates of billing determinants that have not been presented for review by the parties in this proceeding.

Budgeted Capital Additions

11. The Commission should act to significantly reduce the overall magnitude of Pepco's budgeted capital expenditures, excluding from the Company's capital budget cost for projects for which no reasonable support for the Company's forecasted budget amounts has been provided.

12. The Commission should reduce Pepco's budgeted capital expenditures for Commercial New Business Connections, finding that Pepco has failed to provide necessary and appropriate support

for its budgeted costs for Commercial New Business Connections and the amounts of CIAC payments the Company expects to receive to offset Commercial New Business Connection expenditures.

13. The Commission should direct Pepco to recompute its cash working capital requirements (“CWC”) using its pre-COVID assessment of 44.34 composite revenue lag days, as opposed to the 58.38 composite revenue lag days Pepco has presented in this proceeding.

Class Costs of Service

14. The Commission should require Pepco to provide standardized, printable, publicly available, and transparent class cost of service analyses in **all future base rate filings**. The Commission should also require that Pepco's filed CCOSS in each future rate case should be presented in a format comparable to the formats presented in prior proceedings with easily referenced detail for the costs Pepco allocates to each rate class by FERC account and the data used to construct each allocation factor.
15. The Commission should direct Pepco to revise its assignment of Customer Installation costs to the GT-LV and MGT-LV rate classes

as proposed herein and direct Pepco that each future base rate filing should include greater support for its determination of the dollar amounts assigned to each rate class.

16. The Commission should affirm its CIAC determination in Formal Case No. 1139, Order No. 18846, and require Pepco to show CIAC contributions by rate class separately (not netted from rate base elements) in CCOSS allocations in all future base rate proceedings.
17. If the Commission accepts Pepco's continued use of MRP filings, it should require Pepco to provide CCOSS analyses for each forecasted rate year.

Rate Structure Issues

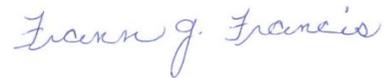
18. The Commission should direct Pepco to take immediate action to significantly reduce the extreme rates of return that Pepco reports for its GS-3A and T.N. rate classes, as those reductions can be achieved with only minor impacts on other rate classes.
19. The Commission should approve the AOBA's recommended modifications to Pepco's Four-Step revenue allocation methodology

to provide for greater movement toward unity for the rates of return for all rate classes.

20. If a multi-year rate plan is approved for Pepco, the Commission should use the years of that plan to **phase in** more substantial rate movements toward eliminating current negative rates of return for Pepco's overall residential (Rate R) customers.
21. The Commission should find that, as presented by Pepco, the proposed effort to expand RAD program participation is inconsistent with the Company's efforts to reduce the subsidies currently provided to its overall Residential (Rate R) customer class.
22. If the Commission finds further efforts to expand RAD program participation appropriate, the costs of expanding that program should be recovered fully from Pepco's Residential Non-RAD customers.

Dated: August 30, 2024

Respectfully submitted,



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CERTIFICATE OF SERVICE
Formal Case No. 1176

I hereby certify on this 30th day of August 2024, that the attached Post-Legislative-Style Hearing Brief was filed electronically on behalf of the Apartment and Office Building Association of Metropolitan Washington and copies were sent via electronic mail to the service list below:

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