



Sandra Mattavous-Frye, Esq.
People's Counsel

March 12, 2026

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

Re: Formal Case No. 1176, Formal Case No. 1176, In the Matter 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 in the above-referenced proceeding, please find the *Office of the People's Counsel's and the Apartment and Office Building Association of Metropolitan Washington's Joint Response in Opposition to the Potomac Power Electric Company's Request for an Expedited Hearing and Continuation of Distribution Rates Set in Vacated Orders.*

If there are any questions regarding this matter, please contact me at 202.727.3071.

Sincerely,

/s/ Ankush Nayar
Ankush Nayar
Assistant People's Counsel

Enclosure

cc: Parties of record

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

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

**THE OFFICE OF THE PEOPLE’S COUNSEL’S AND
THE APARTMENT AND OFFICE BUILDING ASSOCIATION OF
METROPOLITAN WASHINGTON’S JOINT RESPONSE IN OPPOSITION
TO THE POTOMAC POWER ELECTRIC COMPANY’S REQUEST FOR AN
EXPEDITED HEARING AND CONTINUATION OF
DISTRIBUTION RATES SET IN VACATED ORDERS**

I. INTRODUCTION

Pursuant to Rule 105.8 of the Public Service Commission of the District of Columbia’s (“PSC” or “Commission”) Rules of Practice and Procedure,¹ the Office of the People’s Counsel for the District of Columbia (“Office” or “OPC”), the statutory representative for the District of Columbia (“District”) ratepayers with respect to utility matters,² and the Apartment and Office Building Association of Metropolitan Washington (“AOBA”) respectfully file this *Joint Response in Opposition to the Potomac Power Electric Company’s Request for an Expedited Hearing and Continuation of Existing Distribution Rates* (“Joint Response”). This Joint Response responds to the *Amended Motion of Potomac Electric Power Company for Expedited Evidentiary Hearing* (“Pepco Motion”),³ in which the Potomac Power Electric Company (“Pepco” or “Company”)

¹ 15 DCMR § 105.8.

² D.C. Code § 34-804.

³ The Pepco Motion was submitted on March 5, 2026. On March 10, 2026, Pepco submitted an amended version of its motion.

moves for an expedited hearing on the “existing record” in Formal Case No. 1176 and requests authorization to continue charging distribution rates that were established in orders⁴ that the District of Columbia Court of Appeals vacated in an opinion issued on March 5, 2026.⁵ As outlined below, the Commission should reject Pepco’s requests.

Granting Pepco’s request for an expedited evidentiary hearing on the “existing record” is not plausible under the circumstances. It is unclear what Pepco means by the existing record. The Court vacated the orders wherein the Commission established the evidentiary record. Further, the pre-filed testimony and exhibits addressing Pepco’s Multi-Year Rate Plan (“MRP”) application are outdated and discuss forecasts for years that were prospective at the time of filing. Pepco’s forecasts have been overtaken by the passage of time. New data on the actual expenditures, investments, and revenues for that time period are now available, which the Commission must consider. Any evidentiary hearing would require new testimony to reconcile differences between forecasts with the actuals for those years. As the forecasts and actuals have discrepancies, based on the Company’s own filings, this would likely require new forecasts, evidence, and testimony for the remaining part of CY 2026 as well. Further, the Pepco Motion introduces new issues that would have to be addressed procedurally prior to any evidentiary hearing.⁶

Further, allowing rates that were established in vacated orders to remain in effect would violate the D.C. Code, the Court’s Vacatur Decision, and the filed rate doctrine. Contrary to

⁴ *Formal Case No. 1176, In the Matter of the Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia (“Formal Case No. 1176”),* Order No. 22328, ¶¶ 6, 13 rel., Nov. 26, 2024 (“Order No. 22328”); *Formal Case No. 1176, Order No. 22358, rel.,* Jan. 28, 2025 (“Order No. 22358”).

⁵ *Office of the People’s Counsel, et al, v. D.C. Public Service Comm’n, Nos. 25-AA-0250 &25-AA-0310* (March 5, 2026) (“Vacatur Decision”).

⁶ *See* Pepco Motion at 3 (raising new issues about “uncertainty” created by the Vacatur Decision); *see also id.* (raising a new issue involving the need for Pepco “to re-evaluate, and possibly curtail, planned investments in the District of Columbia” that were presumably part of the MRP).

Pepco's claim, judicial precedent does not support leaving the rates established in Order Nos. 22328 and 22358 in effect pending the Commission's administration of remand proceedings. As detailed below, Pepco bases its claim on: (1) a 1977 Court of Appeals opinion that was overturned on rehearing *en banc*;⁷ and (2) the Supreme Court's interpretation of provisions of the Interstate Commerce Act that govern the operation of railroads is not relevant to issues of utility regulation under the D.C. Code.⁸ Even if the 1977 Court of Appeals opinion on which Pepco relies had not been reversed, Pepco grossly misstates the circumstance underlying that opinion by claiming that "[t]he existing rates stayed in effect but were subject to adjustment once the Commission issued a decision on remand."⁹ In reality, the rates that remained in effect were from a new Commission Order, issued after the appeal was filed, approving rates based on a separate application filed by Pepco.¹⁰

OPC and AOBA request that the Commission exercise its authority to properly implement the Court's decision. This means: (1) holding an evidentiary hearing only after establishing procedures on remand that honor parties' due process rights; (2) enforcing the filed rate doctrine

⁷ *Id.* (citing *Pepco v. Pub. Serv. Comm'n*, 380 A.2d 126 (D.C. 1977), *reversed en banc*, 402 A.2d 14 (D.C. 1979)). Note that Pepco claims that the first appellate decision was issued in 1978 when, in fact, it was issued in 1977. Pepco claims that the *en banc* decision from 1979 reversed the panel's 1977 decision "on other grounds." *Id.* As demonstrated below, that claim is misleading because the 1977 panel decision does not stand for the proposition that Pepco claims. As such, any reversal would necessarily be on other grounds.

⁸ *Id.* at 2 (citing *Burlington Northern, Inc. v. United States*, 459 U.S. 131 (1982)). OPC and AOBA distinguish this case below and demonstrate that it has no relevance here.

⁹ *Id.*

¹⁰ As the subsequent Court opinion that was heard *en banc* clarifies, the rates that were subject to appeal in the 1977 opinion "expired on December 16, 1976, when a new PSC order (No.5849) authorized an additional \$29.4 million in revenues based on another Pepco application filed in December 1975." *Pepco v. Pub. Serv. Comm'n*, 402 A.2d at 17

by promptly restoring the rates that were properly “on file” prior to issuance of Order No. 22328;¹¹ and (3) protecting the District’s ratepayers, who during uncertain times are facing unprecedented energy costs and were unfairly burdened with the largest rate increase in the District’s history. These rates will continue to rise if the Pepco Motion is granted.¹²

II. STATEMENT OF FACTS

On April 13, 2023, Pepco filed its MRP Application, requesting approval to increase rates by implementing a multiyear rate plan for its electric distribution service in the District from 2024 through 2026.¹³ On November 26, 2024, a majority of the Public Service Commission of the District of Columbia approved a modified version of Pepco’s MRP Application. The Commission granted Pepco an increase of \$123.4 million over Calendar Years (“CYs”) 2025-2026 via Order No. 22328.¹⁴ OPC filed an Application for Reconsideration of Commission Order No. 22328 on December 26, 2024, as did AOBA.¹⁵ The Commission denied both applications on January 28, 2025, via Order No. 22358.¹⁶

¹¹ In addition to restoring the pre-existing rates on a prospective basis, OPC’s March 6, 2026, motion explained that Pepco should also be required to refund customers for the difference between the pre-existing rates and the rates that Pepco has already recovered under the vacated orders.

¹² Pepco’s summer rates begin on June 1, 2026, and would further increase rates illegally.

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

¹⁴ *Formal Case No. 1176*, Order No. 22328.

¹⁵ *Formal Case No. 1176*, Office of the People’s Counsel for the District of Columbia’s Application for Reconsideration and Request for Clarification, filed Dec. 26, 2024; *Formal Case No. 1176*, Apartment and Office Building Association of Metropolitan Washington’s Application for Reconsideration of Order No. 22328, filed December 26, 2024.

¹⁶ *Formal Case No. 1176*, Order No. 22358.

OPC and AOBA appealed the Commission’s orders to the D.C. Court of Appeals and argued the case on October 28, 2025. On March 5, 2026, the District of Columbia Court of Appeals issued its Vacatur Decision, vacating Order No. 22328 and Order No. 22358.

On March 5, 2026, Pepco filed its original request for an expedited evidentiary hearing on the existing record and the continuation of rates approved under the vacated orders. The Company subsequently filed an amended version of its Motion on March 10, 2026, acknowledging that the earlier motion relied on an appellate decision that had been reversed *en banc* in support of its request to maintain the vacated rates.¹⁷ Perhaps recognizing the extent to which reliance on a reversed decision undercut its claims, Pepco’s also added caselaw, referencing a Supreme Court opinion addressing vacatur under the Interstate Commerce Act. However, substantively, the request for relief remains unchanged.¹⁸

Prior to Pepco filing its amended motion, on March 6, 2026, OPC moved to suspend the current rates and restore Pepco’s electric distribution rates in place prior to the issuance of Order No. 22328. OPC also requested that ratepayers be refunded the rates charged under the vacated orders. AOBA submitted a motion requesting similar relief on March 9, 2026.

III. DISCUSSION

The Pepco Motion requests (1) that “the Commission expeditiously schedule and hold an evidentiary hearing on the existing record in accordance with the Court’s decision,” and (2) that “current rates should stay in effect pending the outcome of formal evidentiary hearings.” OPC and

¹⁷ Pepco Motion at 2 n.5.

¹⁸ *See id.* at 3 (“The Company therefore requests that the Commission expeditiously schedule and hold an evidentiary hearing on the existing record in accordance with the Court’s decision.”); *see also id.* at 2 (claiming that, despite the reversal *en banc*, the panel’s “reasoning continues to be persuasive and should be followed by the Commission in this matter”). As demonstrated below, there is no basis for Pepco’s arguments about the effect of the 1977 decision that was reversed *en banc*.

AOBA oppose an expedited evidentiary hearing on remand and vehemently oppose maintaining rates that were established in orders that were subsequently vacated.

A. It is not feasible to hold an expedited evidentiary hearing.

Pepco’s request for an expedited evidentiary hearing on the “existing record” suffers from two fatal flaws: (1) there is a lack of any clear record upon which to hold a hearing; and (2) it is not possible to hold an evidentiary hearing on a record based solely on forecasts for prospective years that have since been superseded by the passage of time. .

The existing record that Pepco refers to remains unclear at best. There is no evidentiary record: The Court of Appeals vacated the orders in which the Commission established the purported evidentiary record.¹⁹ Furthermore, the Court plainly stated that based on the record before it, the Commission orders are unsustainable.²⁰

Second, expedited procedures are not warranted given the complicated circumstances of this case. It is impossible to award a rate increase based on an application for a forward-looking multiyear rate plan where the majority of the forecasted years are already complete. As the Court of Appeals noted, the multiyear rate plan at issue refers to one that the Commission “approves for multiple years to come.”²¹ Pepco’s MRP Application, with its supporting testimony and exhibits were for the prospective years of 2024-2026. As those years have passed, and the pre-filed testimony and exhibits pertained to entirely forecasted data, it is nonsensical to have an expedited

¹⁹ OPC argued both in its Motion for Reconsideration and on appeal that the Commission’s failure to properly establish a record at an evidentiary hearing and provide the parties with notice of what the evidentiary record was prior to issuing Order No. 22328, was a basis for relief. Thus, the failure to establish an evidentiary record at an actual evidentiary hearing prior to issuing Order No. 22328 exacerbates the problem with Pepco’s request.

²⁰ Vacatur Decision at 3. The Court also never states or even suggests that the Commission should hold a hearing on the “existing record” as Pepco intimates. Rather, the Court noted that based on the record before it, the Commission orders are “unsustainable.”

²¹ *Id.*

hearing based on that application. Rather, before the Commission can hold an evidentiary hearing, it should require Pepco to submit testimony explaining the Company's performance over the elapsed period of time. The Pepco Motion also identifies two new issues that were not addressed in pre-filed testimony and exhibits.²² Pepco should also submit testimony to support its new claims. At a minimum, OPC and intervenors should be afforded an opportunity to conduct discovery on Pepco's submissions and formally respond through answering testimony. Parties would be back before the Court of Appeals if the Commission ignores or impedes parties' due process rights, administering procedures on remand in an expedited or haphazard basis.

Accordingly, Pepco's Motion should be denied as it is impossible to have an expedited evidentiary hearing on an application for a prospective multiyear rate plan that is no longer prospective, with moot testimony and exhibits. Such a step finds no support in the Vacatur Decision.

B. It would be unreasonable for the Commission to make findings on remand that are based on outdated forecasts instead of the actual data that is now available.

The forecasts at the heart of Pepco's original application are stale, and it would be unreasonable, arbitrary, and capricious for the Commission to move toward an expedited hearing and ignore actual data that now exists due to the passage of time. Making such findings on remand based on stale forecasts that Pepco submitted years ago would result in an order that is not supported by substantial evidence.

In prior opinions, the Court has "admonished" the Commission for failing to look at the most recent and relevant data, stating the need for the Commission to consider and "weigh" the

²² See Pepco Motion at 3 (raising new issues about "uncertainty" created by the Vacatur Decision); *see also id.* (raising a new issue involving the need for Pepco "to re-evaluate, and possibly curtail, planned investments in the District of Columbia" that were presumably part of the MRP).

most recent “available material” in reaching a decision on ratemaking.²³ The “essence” of ratemaking for a utility requires making a forecast of “future financial needs” based on its “*known* performance during a span of time in the immediate past.”²⁴ Where actual information is readily available, the prudent course would be to consider the most accurate and recent information regarding a utility’s financials instead of relying on forecasts that have been superseded by the passage of time.²⁵ To ensure that ratepayers are paying reasonable rates for service, the Commission should therefore look at the *known* performance by Pepco, which has since become available, for CYs 2023-2025. And any projection for 2026 must be based on the actual and known performance during this span of time.

Since the Commission issued Order Nos. 22328 and 22358, additional information from Pepco’s own Reconciliation Report, its quarterly financial filings, as well as comments and data requests filed by OPC and other parties in Formal Case No. 1176 is now available, presenting new financial information that must be reviewed if the public is to have confidence in the robustness of the Commission’s ratemaking reviews.

The data, information, and testimony in Pepco’s MRP Application is simply stale and outdated. The Company’s Reconciliation Report confirms this, with Company noting that O&M spending was significantly higher than forecasts and potential changes in IRS accounting rules

²³ *Pepco v. Pub. Serv. Comm’n.*, 402 A.2d at 18-19 (“[W]e have admonished the Commission in *Telephone Users Association v. Public Service Commission*, *supra*, wherein the Commission failed to take into consideration the most recent data submitted by the utility, that the most recent available material must be considered and weighed by the Commission in reaching decisions on ratemaking. This is consistent with effective ratemaking policy.”); *Tel. Users Asso. v. Pub. Serv. Com.*, 304 A.2d 293, 302 (D.C. 1973) (holding Commission order invalid where Commission failed to consider recently available data known to the parties regarding changes in wages for the company).

²⁴ *Tel. Users Asso. v. Pub. Serv. Comm’n.*, 304 A.2d at 297 (emphasis added).

²⁵ *Potomac Elec. Power Co. v. Pub. Serv. Comm’n.*, 402 A.2d at 19.

impacted the Company's rate of return.²⁶ The Reconciliation Report included numerous variances in actual expenditure versus forecasts, with the Company refusing to provide any testimony explaining such discrepancies. In one instance, for example, Pepco simply refused to answer an OPC data request seeking clarity on why the actual expenditure on a project was *twice* that of its forecasted costs.²⁷ Pepco's own quarterly financial filings further indicate that the Company did not meet its projected rate base for the end of CY 2024.²⁸

The recent independent Atrium Audit Report of Pepco for the years 2023-2024 further confirms the discrepancies between Pepco's forecasts, contained in the MRP Application, versus the actuals.²⁹ The Audit Report notes that there were "significant year-over-year financial variances for 2023 and 2024...related to overforecasts or underspend in Electric Plant in Service."³⁰ The variances included \$91.4 million and \$130 million for 2023 and 2024 respectively.³¹ OPC identified that there are over \$25.6 million in new capital additions that were not part of the MRP Application, which Pepco included in calculating its rate base in the Reconciliation Report covering CYs 2023-2024.³²

²⁶ *Formal Case No. 1176*, Potomac Electric Power Company's Reconciliation Filing, pp. 4-5, filed March 31, 2025 ("Reconciliation Report").

²⁷ *Formal Case No. 1176*, The Office of the People's Counsel for the District of Columbia's Comments on the Reconciliation and Prudency Review for Calendar Years 2023 and 2024, p. 14 n.47, filed August 29, 2025 ("OPC Reconciliation Comments"). Note the forecasted cost of the project was \$648,000.00 but the actual cost was \$1,235,000.00.

²⁸ *Formal Case No. 1176*, Potomac Electric Power Company's Rate of Return Report for the 12 Months Ending December 31, 2024, filed March 31, 2025 ("Q4 ROR Report"). Order No. 22328 indicated that Pepco's rate base would be \$2.991 billion by December 31, 2024. However, the Q4 ROR Report indicates the rate base as of the end of December 2024 was noticeably less at \$2.974 billion. Q4 ROR Report, Attachment A, p. 1.

²⁹ *Formal Case No. 1176*, Atrium Economics Management Audit Report for Potomac Electric Power Company, filed December 31, 2025 ("Audit Report").

³⁰ *Id.* at 25.

³¹ *Id.*

³² *Formal Case No. 1176*, OPC Reconciliation Comments at 11.

Pepco needs to provide supporting evidence, in the form of updated testimony that explains the Company’s actual investments and financial performance from CY 2023 through CY 2025 to show it is entitled to a rate increase. Because exhibits and testimony provided by the parties were in response to Pepco’s outdated MRP application, the need for further proceedings, including a new procedural schedule and the opportunity for OPC’s witnesses to provide new testimony is necessary as well.

C. There is no legal basis for maintaining rates established in the vacated orders during the pendency of remand proceedings.

1. D.C. Code establishes that vacatur removes any legal effect of the Commission’s orders and legal basis for the rates currently in place.

There is no legal basis to keep the current rates in place. Per § 34-607 of the D.C. Code all Commission orders are to remain in full-effect “unless and until they are suspended, superseded, or rescinded by the Commission or are vacated by lawful order of the District of Columbia Court of Appeals.”³³ There is no question here that the Court has vacated Commission Order Nos. 22328 and 22358. Thus, there is no lawful basis for continuing the rates in place. To do so would contravene D.C. Code § 34-607, violate the Court’s Vacatur Decision, and violate the filed rate doctrine.³⁴

The Court of Appeals has noted that this case required a “trial-type evidentiary hearing” and that the Commission’s failure to do so renders “its orders unsustainable.” As the orders are unsustainable and the Court vacated Order Nos. 22328 and 22358, there is no lawful basis for

³³ D.C. Code § 34-607 (2026).

³⁴ “The filed rate doctrine ‘forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate ... regulatory authority.’” *See Watergate East v. Pub. Serv. Comm’n*, 662 A. 2d 881, 888 (D.C. 1995) (quoting *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981)). In light of the Vacatur Decision, the rates authorized by Order Nos. 22328 and 22358 are not “properly filed” and, therefore, are impermissible.

continuing the rates in place and to do so would contravene the Court's decision and the relevant provisions of the D.C. Code.

2. *Pepco misstates prior Court of Appeal decisions in its motion.*

Pepco fails to offer any supporting case law from the Court of Appeals indicating that rates from a vacated order should remain in place when that entire order is found to be unsustainable, resulting in an improper rate increase, due to the Commission's failure to follow statutory due process. Pepco's reliance on *Pepco v. Public Service Commission*, 380 A.2d 126 (1977) is not only misplaced for this reason, but both Pepco's original and amended motion gloss over factual distinctions and procedural history distinguishing that case from the case here. While Pepco argues that the 1977 case supports the proposition that rates from a vacated order should remain in effect on remand, it neglects to note that (1) the case was subsequently never remanded; and (2) that the rates that were in place by the time the opinion was issued stemmed from an entirely new rate order.

In *Pepco v. Public Service Commission*, 380 A.2d 126, Pepco appealed a Commission order granting it a rate increase. Pepco's objection was that the awarded rate increase was not sufficient, and no other party filed any objections to the approved rate increase. The Court agreed that the Commission should have considered updated financial information, which warranted a greater rate increase. The issue before the Court was limited in nature – there was no procedural due process violation, no failure to hold an evidentiary hearing, and thus no lack of an evidentiary record. The Court in *Pepco v. Public Service Commission* remanded the case to the Commission for the limited purpose of calculating additional sums owed to Pepco, addressing only two components of the Commission's orders.³⁵ Before the panel's opinion was reversed *en banc*, it provided narrow

³⁵ See *Pepco v. Pub. Serv. Comm'n*, 380 A.2d at 131 (“On appeal, Pepco accepts the 9.1% rate of return determined by the Commission, but charges that the Commission (1) arbitrarily refused to make use

instructions for the Commission to follow on remand to address the discrete issues challenged on appeal.³⁶

The circumstances here are starkly distinguishable. The appellants included both OPC and AOBA and the parties disputed the validity of any rate increase. The Court agreed, holding that the orders were unsustainable because the Commission failed to hold an evidentiary hearing in violation of statutory due process. Here the Court has not remanded the case to redress a narrow issue – it vacated the entire order. The aggrieved and injured parties are the ratepayers who were unlawfully charged rates established by a severely deficient procedural process – not a utility company alleging it failed to receive a sufficient enough rate increase. To be clear, Pepco never challenged the sufficiency of the rate increase in the MRP on appeal.

It follows that Pepco’s subsequent attempts to draw parallels between the facts here and those in the 1977 appeal also fail. Pepco argues that all parties agreed, over two years ago, that some rate increase was warranted in this case and such agreement was also found in the *Pepco v. Public Service Commission*. However, this misrepresents the facts in the 1977 case. As mentioned above, in that case no party disputed the validity of the rate increase on appeal – at least as a floor to charge customers. Pepco argued only that it did not go far enough. In this case, the basis of the appeal challenged the very foundation for *any* rate increase on procedural grounds. Pepco’s assertion ignores that OPC and AOBA also filed two motions seeking to dismiss the MRP

of the company’s most recent actual operating data of record for the test period (*i. e.*, data for the 12-month period ended June 30, 1975) or, (2) in the alternative, failed to make adjustments to the calendar 1974 test period data for continuing attrition and for certain known changes of record which occurred during the first six months of 1975.”).

³⁶ Holding all else equal, the panel’s decision directed the Commission to: (1) “first should calculate modified rates according to the Staff’s own ratemaking formula based upon the data submitted for the test year ended June 30, 1975[;]” (2) “then calculate the revenue losses improperly experienced by Pepco during the period that Order No. 5739 was in effect[;]” and (3) finally “devise a means for restoring to Pepco the revenues which it improperly has been denied[.]”

Application on the grounds that Pepco's pre-filed testimony and exhibits were not sufficient to satisfy Pepco's burden of proof. In fact, the second dispositive motion sought dismissal of the MRP because Pepco was over-earning in June of 2024. While Pepco is correct that OPC Witness Gorman did concede that some rate increase may have been warranted, the Company ignores that OPC Witness David Dismukes provided testimony opposing the multiyear rate increase in the MRP Application. In any event, Witness Gorman's testimony was based on outdated projections that have since been shown to have deviated from the actuals. The Commission should reject the idea that ratepayers should pay illegal rates because certain witnesses from other parties may have agreed to some kind of rate increase at an earlier stage of this proceeding based on their review of now-stale data. Rejection of that notion is particularly appropriate given that parties' due process rights were cut off before they had an opportunity to cross-examine Pepco's witnesses or make final recommendations in post-hearing briefs.

Finally, *Pepco v. Public Service Commission*, was subsequently vacated and reversed, via an *en banc* decision.³⁷ While Pepco neglected to appreciate this fact in its original motion, it subsequently acknowledged it in its amended motion, arguing that the 1977 case was reversed on other grounds but doubled down on the proposition that rates in a vacated order should remain in place on remand. OPC and AOBA have already addressed why the 1977 case is distinguishable from the facts here. However, it is also worth noting that Pepco's claims that the rates established in the vacated orders remained in place on remand, while the Commission determined the additional increase are untrue. Those rates had already been replaced by virtue of a subsequent rate case proceeding by the time the Court issued its opinion; in fact, the rates had been in effect

³⁷ *Pepco v. Pub. Serv. Comm'n*, 402 A.2d at 14.

only between December 13, 1975, through December 16, 1976.³⁸ The panel issued its opinion on November 9, 1977.

Because the existing rates were not in effect at the time of the Court’s ruling, it is impossible for “the existing rates [to have] stayed in effect ... subject to adjustment once the Commission issued a decision on remand” as Pepco claims. Pepco’s claim that the panel’s “reasoning continues to be persuasive and should be followed by the Commission in this matter” is also without basis.³⁹ There is no “reasoning” to apply because the panel’s 1977 decision could not have authorized the continuation of rates that were already replaced in 1976. Further undermining Pepco’s claim, there never was a remand proceeding following the issuance of the 1977 opinion. Rather, the Court reviewed the panel’s decision *en banc* and ultimately vacated and reversed the 1977 decision.⁴⁰

3. *Pepco’s reliance on a prior Supreme Court decision is misplaced.*

Pepco attempts to manufacture additional support for sustaining the rates established in the vacated orders, citing to *Burlington Northern, Inc. v. United States*, 459 U.S. 131 (1982). But *Burlington Northern* is inapplicable here. That case involved the interpretation of the Interstate Commerce Act, a federal statute that is fundamentally different from the D.C. Code provisions that apply here. Specifically, the Interstate Commerce Act expressly vests the Interstate Commerce Commission, not the courts, with authority to set rates, which includes a limited ability to suspend

³⁸ See *id.* at 17 (explaining that the rates established by the orders on appeal were only in effect between December 13, 1975, and December 16, 1976).

³⁹ Pepco Motion at 2. As alluded to above, it is misleading for Pepco to claim that the *en banc* decision reversed the panel’s decision “on other grounds.” *Id.* Any reversal *en banc* would necessarily be on other grounds because the 1977 panel opinion does not contain “the reasoning upon which the Company cites to this case here.” *Id.* n.5. The foregoing discussion demonstrates that Pepco manufactured from whole cloth its claim that “existing rates stayed in effect but were subject to adjustment once the Commission issued a decision on remand.” *Id.* at 2.

⁴⁰ See *Pepco v. Pub. Serv. Comm’n*, 402 A.2d at 16 (“After reargument *en banc*, we now hold, with the former majority dissenting, that there was no reversible error in the orders of the PSC, and affirm the two orders of the Commission.”).

rates for seven months.⁴¹ That specific provision of the Interstate Commerce Act played an important role in the Supreme Court’s decision because the lower court imposed an injunction that prohibited rate changes.⁴² As the Supreme Court explained, “court-ordered injunctive relief would interfere with the careful way in which the [Interstate Commerce] Commission’s suspension power takes into account the need of the carrier to receive a reasonable rate of return, and the desire of the shipper to pay only what is lawful.”⁴³ The “careful way” the Interstate Commerce Act established the Interstate Commerce Commission’s authority also included a reparation provision, which was important to the Supreme Court’s rationale because customers “are fully protected by the reparation provision which requires carriers to reimburse shippers if the Commission later determines that the filed tariff was unreasonable.”⁴⁴ The Supreme Court expressly relied on these provisions when it held that statute required existing rates for rail movements of coal to remain in place pending a decision by the Interstate Commerce Commission on remand from a reviewing court.⁴⁵ There are no parallels between these provisions of the Interstate Commerce Act and the statutory provisions that apply here.

In addition to the fact that this case does not involve the Interstate Commerce Act, railroads, nor the shipment of coal, OPC demonstrated above that D.C. Code § 34-607 expressly states that Commission orders are valid “unless and until they ... are vacated by lawful order of the District

⁴¹ See *Burlington Northern*, 459 U.S. at 138 (“Congress, in the Interstate Commerce Act, meant to ‘vest in the Commission the sole and exclusive power to suspend’ the rates.”) (citation omitted).

⁴² *Id.* at 139.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 141-42.

of Columbia Court of Appeals.”⁴⁶ Further, there is no “reparations” provision in the statutes that are applicable here.⁴⁷ The Court of Appeals has also explained that, “[i]n the District of Columbia, the filed rate doctrine is statutorily mandated.”⁴⁸ “[i]n the District of Columbia, the filed rate doctrine is statutorily mandated.”⁴⁹ This is a material distinction because, in *Burlington Northern*, the Supreme Court made clear that it was not addressing the applicability of the filed rate doctrine to the statutory regime under review in that case.⁵⁰ In sum, the relevant statutes here do not authorize continuation of the vacated rates, and a Supreme Court decision that analyzed a different statutory regime does not prove otherwise.

D. Policy considerations and testimony by the parties do not provide any basis for continuing to charge rates set aside by the Vacatur Decision.

Pepco’s remaining arguments rely on policy considerations, which are simply insufficient for continuing illegal rates.⁵¹ Though no further rebuttal is required, OPC and AOBA also note that the reasons Pepco provided are peculiar. For example, Pepco argues that rates should not be returned to their pre-Order No. 22328 levels because ratepayers may suffer whiplash.⁵² This presupposes that the Company is entitled to a rate increase and ignores that those ratepayers

⁴⁶ Cf. D.C. Code § 34-603 (“All rates, tolls, charges, time and condition of payment thereof, schedules, and joint rates fixed by the Commission shall be in force and shall be *prima facie* reasonable until finally found otherwise in an action brought for that purpose.”) (emphasis added).

⁴⁷ See *Dist. of Columbia v. Pub. Serv. Comm’n*, 905 A.2d 249, 256 (D.C. 2006) (explaining that the Commission “may not order reparations”) (citing *Ark. La. Gas Co. v. Hall*, 453 U.S. at 578 n.8).

⁴⁸ *Id.* at 256.

⁴⁹ *Dist. of Columbia v. Pub. Serv. Comm’n*, 905 A.2d 249, 256 (D.C. 2006).

⁵⁰ *Burlington Northern*, 459 U.S. at 144 n.10.

⁵¹ See *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1231 (D.C. Cir. 2018), *cert. denied*, 139 S.Ct. 794 (2019) (“The filed rate doctrine and the rule against retroactive ratemaking leave [agencies] no discretion to waive the operation a filed rate ... for good cause or for any other equitable considerations.”).

⁵² Pepco Motion at 2.

suffered “whiplash” when the Company was illegally awarded the largest multiyear rate increase in the history of the District of Columbia.

Its arguments against a refund because it would undermine financial credit-worthiness are similarly unavailing. The Commission, in approving a modified version of Pepco’s proposed MRP, included a reconciliation process that would refund and return potential over-collections by the Company to ratepayers through sur-credits or reduced rates.⁵³

Additionally, Pepco argues that no party denies that the Company is entitled to a rate increase. Even if this were true, a vague sense that parties agreed two years ago that some rate increase may be warranted provides no legal justification for continuing rates that the Court of Appeals has now determined are unlawful. Furthermore, as mentioned above, OPC filed two dispositive motions seeking to dismiss Pepco’s MRP Application as well as testimony in opposition to a multiyear rate increase. The rates in place are the result of a multiyear rate increase that OPC opposed. Simply put, OPC and AOBA do not, nor did they ever, support the rates established in the vacated orders. Pepco’s claim that some kind of consensus position exists is unsupported speculation that simply does not provide a valid reason for continuing rates under the now void MRP. Recognizing the challenges to affordability in the wake of unprecedented energy costs, public policy supports providing ratepayers relief from an unlawfully imposed rate increase.

⁵³ *Formal Case No. 1176*, Order No. 22328 at ¶¶ 106-07.

IV. CONCLUSION

For the reasons articulated above, the OPC and AOBA respectfully request that the Commission deny the Pepco Motion and grant the relief requested by the Office and AOBA.

Respectfully submitted,



Sandra Mattavous-Frye, Esq.
People's Counsel
D.C. Bar No. 375833
Karen R. Sistrunk, Esq.
Deputy People's Counsel
D.C. Bar No. 390153

Laurence Daniels, Esq.
Director of Litigation
D.C. Bar No. 471025

Ankush Nayar, Esq.
Assistant People's Counsel
D.C. Bar No. 1040768

Knia Tanner
Assistant People's Counsel
D.C. Bar No. 985496

Jason T. Gray
Duncan & Allen LLP
D.C. Bar No. 984273

/s/ Frann G. Francis
Frann G. Francis, Esq.
Senior Vice President & General Counsel
Apartment and Office Building
Association of Metropolitan Washington
1025 Connecticut Avenue, NW, Suite 1005
Washington, D.C. 20036
(202) 296-3390, Ext 766
DC Bar Number 210385

Date: March 12, 2026

CERTIFICATE OF SERVICE

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

I certify that on March 12, 2026, a copy of the *Office of the People's Counsel's and the Apartment and Office Building Association of Metropolitan Washington's Joint Response in Opposition to the Potomac Power Electric Company's Request for an Expedited Hearing and Continuation of Distribution Rates Set in Vacated Orders* was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission
of the District of Columbia
1325 G Street, NW, Suite 800
Washington, DC 20005
bwestbrook@psc.dc.gov

Jamond Perry
Brian Edmonds
Acting General Counsel
Public Service Commission
of the District of Columbia
1325 G Street, NW, Suite 800
Washington, DC 20005
jperry@psc.dc.gov
bedmonds@psc.dc.gov

Anne C. Bancroft, Esq.
Dennis P. Jamouneau, Esq.
Taylor Beckham, Esq.
Julianny Tate, Esq.
Potomac Electric Power Company
701 Ninth Street, N.W.
Washington, DC 20068
Anne.bancroft@exeloncorp.com
djamouneau@pepcoholdings.com
taylor.beckham@exeloncorp.com
jcarvalho@pepco.com

Dennis Goins
Potomac Management Group
P.O. Box 30225
Alexandria, Virginia 2310-8225
dgoinspmg@verizon.net

Frann G. Francis, Esq.
Senior Vice President & General Counsel
Excetral K. Caldwell, Esq.
Apartment and Office Building Association
of Metropolitan Washington
1025 Connecticut Avenue, NW, Suite 1005
Washington, DC 20036
FFrancis@aoba-metro.org
ecaldwell@aoba-metro.org

Lariza Sepulveda
Economist
Public Utility Rates and Regulations
Energy Division, U.S. GSA
1800 F Street, NW, Room 5122
Washington, DC 20405
Lariza.Sepulveda@gsa.gov

Michael R. Engleman, Esq.*
Robert C. Fallon, Esq.
Engleman Fallon, PLLC
1717 K Street NW, Suite 900
Washington, DC 20006
mengleman@efenergyllaw.com
rfallon@efenergyllaw.com

Brian R. Caldwell
Assistant Attorney General
Public Integrity Section
441 4th Street, N.W., Suite 600-S
Washington, D.C. 20001
Brian.caldwell@dc.gov

Marc Battle, Esq.
Chief Legal Officer and Executive Vice
President, Government & Legal Affairs
Barbara Mitchell, Esq.
Assistant General Counsel
District of Columbia Water and Sewer
Authority
1385 Canal Street SE
Washington, D.C. 20003
Marc.battle@dcwater.com
barbara.mitchell@dcwater.com

Mike Lavanga
Laura Barker
Stoney Mattheis Xenopoulos & Brew, PC.
1025 Thomas Jefferson Street, NW 8th Fl.
Washington, DC. 20007
lwb@smxblaw.com
MKL@smxblaw.com

Shilpa Sadhasivam
Special Assistant Attorney General
Office of the Attorney General
for the District of Columbia
Public Advocacy Division Housing and
Environmental Justice Section
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001
Shilpa.Sadhasivam@dc.gov

Hussain Karim, Esq.
Department of Energy
& Environment
1200 First Street, N.E., 5th Floor
Washington, D.C. 20002
Hussain.karim@dc.gov

/s/ Ankush Nayar
Ankush Nayar
Assistant People's Counsel