

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005

ORDER

March 27, 2026

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, Order No. 22806

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) denies the Motion of Potomac Electric Power Company (“Pepco” or “Company”) for an Expedited Evidentiary Hearing, holds in abeyance the Office of the People’s Counsel for the District of Columbia’s (“OPC”) Motion to Suspend Rates Under the Multi-Year Rate Plan Approved Under Order No. 22328 Restore the Previously Approved Rates Prior to Order No. 22328, and Issue Refunds to Residential Ratepayers, holds in abeyance the Motion of the Apartment and Office Building Association of Metropolitan Washington (“AOBA”) seeking restoration of prior rates and refunds, and initiates the remand proceeding directed by the District of Columbia Court of Appeals (“Court”) in its March 5, 2026, decision. The Commission establishes the remand process and adopts the Procedural Schedule in Attachment A; directs the Parties to appear for a pre-hearing conference, participate in an evidentiary hearing resolving the genuine issues of material fact identified by the Court, and any additional issues filed pursuant to this Order; and directs the Parties to submit supplemental briefing on the potential interim rate approaches identified in Paragraph 31 within ten (10) days of the date of this Order.

II. BACKGROUND

2. On April 13, 2023, Pepco filed an application for approval to increase rates through the implementation of a Multi-year Rate Plan (“MRP”), also referred to as the “Climate Ready Pathway,” for its electric distribution service in the District of Columbia (“Pepco Application”) for the years 2024 through 2026.¹ By Order No. 22328, the Commission approved a *Formal Case No. 1176* Modified MRP Extended Pilot, which authorized Pepco to increase its electric distribution rates during a two-year term with a revenue requirement of \$99.7 million in 2025 and \$23.7 million in 2026 for a cumulative revenue requirement increase of \$123.4 million over two years.²

3. The Commission denied Petitions for Reconsideration filed by AOBA and OPC of

¹ *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*”), 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 (“*Formal Case No. 1176*”).

² *Formal Case No. 1176, Order No. 22328, rel. November 26, 2024* (“*Order No. 22328*”).

Order No. 22328.³ On March 18 and 28, 2025, OPC and AOBA, respectively, petitioned for review of Order Nos. 22328 and 22358 to the Court.

4. On March 5, 2026, the Court issued its decision in vacating Commission Order Nos. 22328 and 22358, and remanding this matter to the Commission for further proceedings.⁴ Pepco filed a motion requesting that the Commission promptly schedule and hold the trial-type evidentiary hearing required by the Court's remand.⁵ OPC filed a motion requesting that the Commission immediately: (1) suspend the distribution rates authorized under Order No. 22328; (2) restore the distribution rates that were in effect prior to January 1, 2025; and (3) require Pepco to issue refunds or bill credits to residential customers for the amounts collected under the vacated MRP rates.⁶ AOBA filed a motion requesting that the Commission vacate Order Nos. 22328 and 22358, restore the last lawful rates in effect as of December 31, 2024, and require Pepco to refund all revenues collected under the vacated rate increases.⁷ Pepco filed an amended request for an expedited schedule and evidentiary hearing.⁸ Pepco filed a response opposing OPC and AOBA Motions.⁹ OPC and AOBA filed a joint response opposing Pepco's request for an expedited hearing and continuation of distribution rates set in vacated orders.¹⁰ OPC filed a request for leave to submit a reply, along with its reply to Pepco's March 16, 2026, response to OPC's and AOBA's motions to suspend the current distribution service rates.¹¹ Pepco filed a request for leave to file a sur-reply and

³ *Formal Case No. 1176*, Order No. 22358, rel. January 28, 2025 ("Order No. 22358").

⁴ *Office of the People's Counsel v. D.C. Pub. Serv. Comm'n*, --- A.3d --- 2026 WL 628329 (D.C. March 5, 2026).

⁵ *Formal Case No. 1176*, Motion of Potomac Electric Power Company for Expedited Evidentiary Hearing at 1-2, filed March 5, 2026 ("Pepco Motion").

⁶ *Formal Case No. 1176*, Office of the People's Counsel for the District of Columbia's Motion to Suspend Rates Under Multi-Year Rate Plan Approved Under Order No. 22328, Restore the Previously Approved Rates Prior to Order No. 22328, and Issue Refunds to Residential Ratepayers, filed March 6, 2026 ("OPC Motion").

⁷ *Formal Case No. 1176*, Motion of the Apartment and Office Building Association of Metropolitan Washington to Restore the Last Approved Electric Rates Consistent with the District of Columbia Court of Appeals Decision Vacating Order Nos. 22328 and 22358 and Refund Improperly Implemented Rate Increases, filed March 9, 2026 ("AOBA Motion").

⁸ *Formal Case No. 1176*, Amended Motion of Potomac Electric Power Company for Expedited Evidentiary Hearing and to Continue Current Rates in Effect, filed March 10, 2026 ("Pepco Amended Motion").

⁹ *Formal Case No. 1176*, Response of Potomac Electric Power Company to the Office of the People's Counsel's and the Apartment and Office Building Association's Motion to Suspend Rates, filed March 12, 2026 ("Pepco Response").

¹⁰ *Formal Case No. 1176*, Office of the People's Counsel and the Apartment and Office Building Association of Metropolitan Washington's Joint Response in Opposition to the Potomac Electric Power Company's Request for an Expedited Hearing and Continuation of Distribution Rates Set in Vacated Orders, filed March 12, 2026 ("Joint Response").

¹¹ *Formal Case No. 1176*, Office of the People's Counsel's Request to File Reply, and Reply to the Potomac Electric Power Company's Response to the Office of the People's Counsel's and the Apartment and Office Building Association's Motions to Suspend Rates, filed March 19, 2026 ("OPC Reply").

a limited sur-reply to the OPC Reply.¹²

III. DISCUSSION

A. Court's Decision

5. The Court concluded that the Commission's approval of Pepco's 2024–2026 MRP was made after the Commission failed to conduct the trial-type evidentiary hearing required under D.C. Code § 2-509(b) in a contested case where multiple material factual disputes existed. The Court emphasized that the Commission proceeded through a “legislative-style” hearing, which improperly denied the parties the opportunity to present and cross-examine expert witnesses on disputed factual issues, including the accuracy of projected GT-LV customer counts, the resulting Bill Stabilization Adjustment (“BSA”) deferral balance, and the accuracy of Pepco's forecasted energy use per customer. The Court held that these were quintessential disputes of material fact requiring cross-examination for a “full and true disclosure of the facts” under D.C. Code § 2-509(b), and that evidentiary hearings are the rule, not the exception, in such ratemaking matters.

6. The Court explicitly stated that it would have vacated and remanded even if the evidentiary hearing defect had not existed. The Court found that the Commission failed to “fully and clearly” explain its determinations concerning the Effective Rate Adjustment (“ERA”) and the BSA deferral balance. In particular, the Court noted that the Commission did not explain why it credited Pepco's BSA deferral calculations over AOBA's, despite a discrepancy between the parties' expert analyses, nor why it rejected AOBA's contention that the ERA improperly increased the GT-LV class revenue requirement. To be clear, the Court held that these explanation defects were so significant that it would have independently vacated the Commission's orders even if the evidentiary-hearing defect had not existed. The Court emphasized that the Commission's determinations regarding the ERA and the BSA deferral balance were “conclusory and unsubstantiated,” leaving the Court “with no idea” of the reasoning underlying the Commission's acceptance of Pepco's calculations or rejection of AOBA's positions. This remand therefore requires the Commission not only to conduct a trial-type hearing under D.C. Code § 2-509(b), but also to supply the full and clear explanation the Court found lacking.

7. The Court vacated Order Nos. 22328 and 22358 and remanded the case with instructions for the Commission to conduct a trial-type evidentiary hearing, where parties must be allowed to present testimony, submit rebuttal evidence, and conduct cross-examination. The Court did not find the rates authorized under Order No. 22328 unjust, unreasonable, or otherwise unlawful; rather, it vacated the orders because the Commission's process and explanations were insufficient under the governing statutes and administrative law principles.

B. Pepco Motions

8. Pepco notes that the Court held the Commission is legally required to hold a formal evidentiary hearing under D.C. Code § 2-509(b) and remanded the matter with instructions to do so. Pepco asserts that the evidentiary record in *Formal Case No. 1176* is already extensive, containing

¹² *Formal Case No. 1176*, Motion for Leave to File a Sur-Reply and Limited Sur-Reply of Potomac Electric Power Company to the Reply of the Office of People's Counsel, filed March 23, 2026 (“Pepco Reply”).

substantial written testimony from all parties, each of whom acknowledged that a rate increase was warranted.¹³ On this basis, Pepco contends that the Commission can efficiently convene an evidentiary hearing on the existing record without delay.

9. Pepco also requests that current rates remain in effect pending completion of the remand proceeding. Pepco argues that allowing existing rates to continue avoids “whiplash” for customers, prevents unnecessary interim volatility, and maintains billing predictability.¹⁴ The Company cites *Potomac Electric Power Company v. Pub. Serv. Comm’n*, 380 A.2d 126 (D.C. 1977) (“*Pepco v. PSC*”) for the proposition that when the Court previously vacated Commission orders, existing rates stayed in effect until the Commission issued a new order on remand.¹⁵ Pepco emphasizes that the same principle should apply here because the parties’ testimony in this case likewise reflects that some rate increase is appropriate. Pepco further asserts that rate uncertainty during remand may negatively affect the Company’s credit profile, increase borrowing costs, and potentially curtail capital investments in the District of Columbia (“District”). According to Pepco, reduced or delayed investment could impair system reliability and resiliency and have negative economic effects in the District.¹⁶ For these reasons, Pepco urges the Commission to act expeditiously and schedule the evidentiary hearing while keeping current rates in effect until the Commission issues its final order on remand.

10. In its Amended Motion, Pepco asserts that the record in *Formal Case No. 1176* is already extensive, with all parties having submitted testimony and with no dispute that a rate increase is warranted.¹⁷ Accordingly, Pepco contends that the Commission can expeditiously convene the evidentiary hearing based on the existing record, consistent with the Court’s directive.¹⁸ Pepco also asks the Commission to keep the currently effective rates in place during the remand. It argues that these are the only filed rates and that changing them now, only to change them again after the evidentiary hearing, would cause customer rate “whiplash” and undermine rate stability.¹⁹ Pepco cites past D.C. and federal precedent for the proposition that vacatur does not automatically revive earlier tariffs and that existing rates should remain in effect until the Commission issues a new order on remand.²⁰ Pepco further asserts that uncertainty over interim rates could negatively affect its access to capital, borrowing costs, and planned infrastructure investments, with potential impacts on reliability and the District’s economy.²¹

¹³ *Formal Case No. 1176*, Pepco Motion at 1-2.

¹⁴ *Formal Case No. 1176*, Pepco Motion at 2.

¹⁵ *Formal Case No. 1176*, Pepco Motion at 2.

¹⁶ *Formal Case No. 1176*, Pepco Motion at 2.

¹⁷ *Formal Case No. 1176*, Pepco Amended Motion at 2.

¹⁸ *Formal Case No. 1176*, Pepco Amended Motion at 2.

¹⁹ *Formal Case No. 1176*, Pepco Amended Motion at 2.

²⁰ *Formal Case No. 1176*, Pepco Amended Motion at 2.

²¹ *Formal Case No. 1176*, Pepco Amended Motion at 3.

C. OPC and AOBA Response to Pepco Amended Motion

11. OPC and AOBA argue that an expedited evidentiary hearing is not feasible for two fundamental reasons. First, there is no valid evidentiary record on which a hearing could proceed.²² The Court vacated the Commission's orders that purported to establish such a record, and the Court made clear that the Commission's prior decisions were unsustainable based on the record before it.²³ Second, OPC and AOBA contend that expedited procedures are inappropriate because the circumstances of this case make such an approach unworkable.²⁴ Pepco's MRP was based entirely on forecasts for 2024–2026, years that have now passed.²⁵ OPC and AOBA contend that before the Commission can proceed, Pepco must submit updated testimony addressing its actual performance over the now-completed period.²⁶ OPC and AOBA point out that Pepco has also raised new issues not covered in its earlier filings, which further require new evidence and analysis.²⁷ OPC and AOBA maintain that all parties must have the opportunity to conduct discovery and file answering testimony. Any attempt to shortcut these due process requirements would risk another appeal.²⁸ OPC and AOBA argue that Pepco's motion must be denied because an expedited evidentiary hearing on an MRP that is no longer prospective, supported only by moot testimony and exhibits, is unsupported by the Court's vacatur decision.²⁹

12. OPC and AOBA argue that Pepco's original forecasts are now outdated, and it would be unreasonable and arbitrary for the Commission to rely on them in an expedited hearing.³⁰ OPC and AOBA cite prior opinions of the Court that have instructed the Commission to consider the most current and relevant data in ratemaking, emphasizing that forecasting future needs must be grounded in a utility's known, recent performance.³¹ They contend that, because actual financial data for 2023–2025 is now available, the Commission should review it.³² OPC and AOBA assert that new information exists, including Pepco's Reconciliation Report, quarterly filings, and additional data filed in the case, all of which show substantial variances between Pepco's forecasts and actual results.³³ These include higher-than-forecast the Operation and Management costs, changes affecting

²² *Formal Case No. 1176*, Joint Response at 6.

²³ *Formal Case No. 1176*, Joint Response at 6.

²⁴ *Formal Case No. 1176*, Joint Response at 6.

²⁵ *Formal Case No. 1176*, Joint Response at 6.

²⁶ *Formal Case No. 1176*, Joint Response at 7.

²⁷ *Formal Case No. 1176*, Joint Response at 7.

²⁸ *Formal Case No. 1176*, Joint Response at 7.

²⁹ *Formal Case No. 1176*, Joint Response at 7.

³⁰ *Formal Case No. 1176*, Joint Response at 7.

³¹ *Formal Case No. 1176*, Joint Response at 7-8.

³² *Formal Case No. 1176*, Joint Response at 8.

³³ *Formal Case No. 1176*, Joint Response at 9.

Pepco's rate of return, unexplained discrepancies in project costs, failure to meet projected rate base levels, and major variances identified by the Atrium Economics Management Audit Report for 2023–2024.³⁴ Pepco also added over \$25.6 million in new capital projects not included in its original MRP application.³⁵ Given these discrepancies, OPC and AOBA argue that Pepco must submit updated testimony explaining its actual performance for 2023–2025.³⁶ Because all prior testimony addressed outdated forecasts, new proceedings are required, including an opportunity for OPC and other parties to file new testimony.³⁷

13. OPC and AOBA argue that there is no legal basis for maintaining the current rates, as the Court has vacated Commission Order Nos. 22328 and 22358.³⁸ They contend that under D.C. Code § 34-607, Commission orders remain in force only until they are suspended, superseded, rescinded, or vacated, and since the Court has expressly vacated the relevant orders, continuing to enforce the existing rates would violate the statute, the Court's vacatur decision, and the filed-rate doctrine.³⁹ They argue further that the Court also determined that this case required a trial-type evidentiary hearing and that the Commission's failure to conduct one rendered its orders unsustainable.⁴⁰ Because those orders are vacated and invalid, OPC and AOBA assert that the Commission cannot lawfully maintain the rates it established.⁴¹

14. OPC and AOBA argue that Pepco has no legal support for its claim that rates established in a vacated order should remain in effect. Pepco cites *Pepco v. PSC*, but OPC and AOBA explain that the case is inapplicable and factually distinguishable.⁴² They contend that in the earlier appeal, no party challenged the validity of the rate increase itself; the only issue was whether Pepco should have received a larger increase. There was no due-process violation, no missing evidentiary hearing, and no invalid evidentiary record.⁴³ The Court's remand in *Pepco v. PSC* was extremely narrow and concerned only the calculation of additional sums owed to Pepco.⁴⁴ OPC and AOBA further note that the situation today is fundamentally different: the Court vacated the entire order in this case because the Commission failed to hold a required evidentiary hearing.⁴⁵ They also point out

³⁴ *Formal Case No. 1176*, Joint Response at 9.

³⁵ *Formal Case No. 1176*, Joint Response at 10.

³⁶ *Formal Case No. 1176*, Joint Response at 10.

³⁷ *Formal Case No. 1176*, Joint Response at 10.

³⁸ *Formal Case No. 1176*, Joint Response at 10.

³⁹ *Formal Case No. 1176*, Joint Response at 10.

⁴⁰ *Formal Case No. 1176*, Joint Response at 10.

⁴¹ *Formal Case No. 1176*, Joint Response at 10-11.

⁴² *Formal Case No. 1176*, Joint Response at 11.

⁴³ *Formal Case No. 1176*, Joint Response at 11.

⁴⁴ *Formal Case No. 1176*, Joint Response at 11-12.

⁴⁵ *Formal Case No. 1176*, Joint Response at 12.

that Pepco's claim that the 1977 rates in *Pepco v. PSC* remained in effect on remand is incorrect because those rates had already been replaced by a subsequent rate case before the opinion was issued.⁴⁶ Moreover, the *Pepco v. PSC* panel decision was later vacated and reversed *en banc*, leaving no precedential reasoning for Pepco to rely on.⁴⁷ Because the orders here were fully vacated and the underlying rates have been deemed unsustainable, OPC and AOBA argue that Pepco's attempt to draw parallels to the 1977 case fails and offers no basis for keeping the vacated rates in place.⁴⁸

15. OPC and AOBA argue that Pepco's reliance on *Burlington Northern v. United States*, 459 U.S. 131 (1982) to justify maintaining rates from a vacated order is misplaced because that case involved the Interstate Commerce Act, a federal statutory scheme entirely different from the D.C. Code.⁴⁹ The Supreme Court's reasoning there depended on statutory features that do not exist here, including the Interstate Commerce Commission's limited suspension authority and a reparations provision that protects customers by requiring refunds if rates are later found unreasonable.⁵⁰ OPC and AOBA emphasize that while none of those statutory safeguards or structures in *Burlington Northern* apply in this matter, D.C. Code § 34-607 states that Commission orders are valid only until vacated, and the District's filed-rate doctrine is statutory and mandatory.⁵¹ OPC and AOBA contend that, unlike in *Burlington Northern*, the statutes governing the Commission do not authorize continuation of vacated rates.⁵²

16. OPC and AOBA argue that Pepco's remaining points are merely policy arguments and cannot justify continuing to charge unlawful, vacated rates.⁵³ They note that Pepco's claims are "peculiar." For example, Pepco warns that reverting to pre-Order No. 22328 rates would cause whiplash for customers, but this ignores that ratepayers already experienced their own financial shock when Pepco was improperly awarded the largest multiyear rate increase in District history.⁵⁴ They argue further that Pepco's argument that issuing refunds would harm its creditworthiness is also unpersuasive, as the Commission's own modified MRP included reconciliation mechanisms designed to return over-collections to customers through surcredits or reduced rates.⁵⁵ As for Pepco's assertion that all parties agreed a rate increase was warranted, OPC and AOBA respond that even if some parties believed a limited increase might have been appropriate two years ago, such general sentiment

⁴⁶ *Formal Case No. 1176*, Joint Response at 13.

⁴⁷ *Formal Case No. 1176*, Joint Response at 13.

⁴⁸ *Formal Case No. 1176*, Joint Response at 14 (citing *Potomac Electric Power Company v. Pub. Serv. Comm'n*, 402 A.2d 14 (D.C. 1979)).

⁴⁹ *Formal Case No. 1176*, Joint Response at 14.

⁵⁰ *Formal Case No. 1176*, Joint Response at 15.

⁵¹ *Formal Case No. 1176*, Joint Response at 15.

⁵² *Formal Case No. 1176*, Joint Response at 16.

⁵³ *Formal Case No. 1176*, Joint Response at 16.

⁵⁴ *Formal Case No. 1176*, Joint Response at 16-17.

⁵⁵ *Formal Case No. 1176*, Joint Response at 17.

cannot justify continuing rates that have been ruled unlawful by the Court.⁵⁶ They emphasize that OPC filed multiple motions to dismiss the MRP Application and submitted testimony opposing the multi-year rate increase.⁵⁷ OPC and AOBA argue that public-policy considerations actually support relieving customers from unlawfully imposed rates, especially amid high energy-cost burdens.⁵⁸

D. OPC Motion

17. OPC argues that the Court's March 5, 2026, vacatur of Order Nos. 22328 and 22358 eliminated Pepco's legal authority to charge the rates established in those orders.⁵⁹ OPC asserts that a vacated order "has no legal effect." Therefore, Pepco's continued collection of the vacated rates would be equivalent to giving "perpetual legal effect to an unlawful order," citing *Pepco v. PSC*.⁶⁰ According to OPC, the filed-rate doctrine requires that only properly authorized and filed rates may be charged, and because the vacatur decision renders the MRP-based rates no longer lawful, the Commission must immediately reinstate the last lawful rates to those in effect before issuance of Order No. 22328.⁶¹

18. OPC further contends that customers are entitled to bill credits or refunds for the period during which the vacated rates were collected.⁶² OPC requests that Pepco be directed to calculate the difference between revenues collected under Order No. 22328 and the revenues that would have been collected under the prior lawful rates, and to refund the difference to residential customers.⁶³ OPC argues that prompt Commission action is necessary to uphold the filed-rate doctrine, maintain the integrity of the ratemaking process, and ensure that District ratepayers are made whole.⁶⁴

E. AOBA Motion

19. AOBA asks the Commission to formally vacate both orders, asserting that the Court's ruling rendered them "null and void" and eliminated their legal effect.⁶⁵ AOBA also requests that the Commission immediately restore Pepco's electric distribution rates to the levels in effect as of December 31, 2024, and require Pepco to implement those rates no later than the April 2026 billing

⁵⁶ *Formal Case No. 1176*, Joint Response at 17.

⁵⁷ *Formal Case No. 1176*, Joint Response at 17.

⁵⁸ *Formal Case No. 1176*, Joint Response at 17.

⁵⁹ *Formal Case No. 1176*, OPC Motion at 3.

⁶⁰ *Formal Case No. 1176*, OPC Motion at 3.

⁶¹ *Formal Case No. 1176*, OPC Motion at 3.

⁶² *Formal Case No. 1176*, OPC Motion at 3-4.

⁶³ *Formal Case No. 1176*, OPC Motion at 4-5.

⁶⁴ *Formal Case No. 1176*, OPC Motion at 4-5.

⁶⁵ *Formal Case No. 1176*, AOBA Motion at 3.

cycle.⁶⁶ AOBA seeks refunds, with interest, of all amounts collected under the vacated rate increases from January 1, 2025, through the effective date of restored rates, arguing that customers were improperly billed under those rates.⁶⁷ AOBA states that these steps are necessary to effectuate the Court's ruling.⁶⁸

F. Pepco Response to OPC and ABA Motions

20. Pepco argues that OPC and AOBA misinterpret the Court's remand by assuming that a procedural flaw permits the revival of rates from *Formal Case No. 1156*, even though those rates have not been effective since January 1, 2025.⁶⁹ Pepco stresses that the Court did not, and could not, legally determine what the proper rates should be, because ratemaking authority lies exclusively with the Commission, as recognized in cases such as *Gearhart v. PUC.*, 356 Or. 216, 221 (Or. 2014) and *People's Natural Gas Co. v. Minnesota PUC.*, 369 N.W. 2d 530, 533 (Minn. 1985).⁷⁰ Pepco further explains that longstanding precedent establishes that vacatur of a rate order does not resurrect superseded rates. In *Pepco v. PSC*, the Court held that existing filed rates remain in place pending a new Commission decision. The U.S. Supreme Court's decision in *Burlington Northern v. United States* similarly held that vacating rate orders does not reinstate earlier rates and that equity favors maintaining current filed rates until the regulator sets new ones.⁷¹

21. Pepco argues that OPC and AOBA are mistaken in claiming that vacating Order Nos. 22328 and 22358 automatically restores the 2021 rates from *Formal Case No. 1156*.⁷² Under the filed rate doctrine and the Supreme Court's decision in *Burlington Northern*, those earlier rates were extinguished once the Commission-approved 2025 rates took effect, and vacatur does not revive expired rate schedules.⁷³ Pepco notes that the Court has repeatedly held that only the Commission can set rates, and that existing filed rates should remain in place until the Commission adjusts them after an evidentiary hearing.⁷⁴ Pepco further explains that OPC's and AOBA's refund requests improperly rely on outdated, superseded rates and contradict precedent such as *Watergate East, Inc. v. D.C. Pub. Serv. Comm'n.*, 662 A.2d 881, 888 (D.C.1995) ("*Watergate East*") and *District of Columbia v. District of Columbia Pub. Serv. Comm'n.*, 905 A.2d 249 (D.C. 2006) ("*D.C. v. D.C. PSC*"), which

⁶⁶ *Formal Case No. 1176*, AOBA Motion at 4.

⁶⁷ *Formal Case No. 1176*, AOBA Motion at 5.

⁶⁸ *Formal Case No. 1176*, AOBA Motion at 5.

⁶⁹ *Formal Case No. 1176*, Pepco Response at 2.

⁷⁰ *Formal Case No. 1176*, Pepco Response at 2.

⁷¹ *Formal Case No. 1176*, Pepco Response at 3-5.

⁷² *Formal Case No. 1176*, Pepco Response at 5.

⁷³ *Formal Case No. 1176*, Pepco Response at 5.

⁷⁴ *Formal Case No. 1176*, Pepco Response at 5-6.

reject retrospective remedies based on alleged procedural errors.⁷⁵

22. Pepco argues that AOBA's request for the Commission to vacate Order Nos. 22328 and 22358 is premature and would unnecessarily disrupt the extensive work completed in *Formal Case No. 1176*, including testimony, data responses, and the development of multiple working group reports and regulatory reforms.⁷⁶ Pepco contends that maintaining the existing findings and structures from *Formal Case No. 1176* is the most efficient and least disruptive approach, as unraveling these efforts would be inefficient, and the Commission has discretion to manage its docket accordingly.⁷⁷ Pepco argues that if it is prevented from recovering its costs during the remand, the resulting regulatory uncertainty and potential reversal of rates would significantly weaken the Company's financial condition.⁷⁸ Such instability, Pepco explains, would impair its ability to secure capital on reasonable terms, ultimately harming customers and limiting the Company's capacity to continue making critical infrastructure investments in the District.⁷⁹

G. OPC Request to File Reply and Reply to Pepco's Response⁸⁰

23. OPC argues that, under D.C. Code § 34-607, the Commission cannot lawfully continue the rates approved in Order No. 22328 because the Court has vacated that order in its entirety, leaving no valid authorizing tariff in place.⁸¹ OPC maintains that, once vacated, an order has no legal effect, and the filed-rate doctrine, as reflected in D.C. Code §§ 34-901 and 1-204.93 and the Court's decision in *Watergate East*, permits a utility to charge only those rates supported by a valid Commission order.⁸² Because the MRP rates rest solely on orders the Court has voided, OPC contends that the Commission must restore the last lawful rates in effect before January 1, 2025.⁸³

24. OPC further asserts that Pepco's reliance on prior cases is misplaced because those matters involved narrow remands that did not vacate entire rate orders.⁸⁴ Unlike those cases, the Court

⁷⁵ *Formal Case No. 1176*, Pepco Response at 6-9.

⁷⁶ *Formal Case No. 1176*, Pepco Response at 9-10.

⁷⁷ *Formal Case No. 1176*, Pepco Response at 10.

⁷⁸ *Formal Case No. 1176*, Pepco Response at 10-11.

⁷⁹ *Formal Case No. 1176*, Pepco Response at 10-11.

⁸⁰ OPC's filing includes a request for leave to reply under 15 DCMR § 105.9, which prohibits replies without leave of the Commission. Aside from noting that the Commission has previously granted leave when a reply addresses new issues, clarifies the record, or aids decision-making, OPC offers no specific justification for its request. Nevertheless, because the Commission is requesting supplemental briefing from the Parties and is not ruling on the merits of OPC's rate-setting arguments in this order, the Commission will accept OPC's filing without reaching the merits of the arguments presented therein.

⁸¹ *Formal Case No. 1176*, OPC Reply at 4.

⁸² *Formal Case No. 1176*, OPC Reply at 4.

⁸³ *Formal Case No. 1176*, OPC Reply at 5.

⁸⁴ *Formal Case No. 1176*, OPC Reply at 5-6.

here found fundamental procedural deficiencies, including the absence of an evidentiary hearing and insufficient explanation of ERA and BSA determinations, requiring full vacatur.⁸⁵ OPC argues that this procedural posture precludes any continuation of the MRP rates and undermines Pepco's claim that prior precedent authorizes such an approach.⁸⁶ OPC concludes that, because Orders 22328 and 22358 are void and cannot support ongoing rates, the Commission must restore the rates established in the last validly issued order.⁸⁷

25. OPC also argues that Pepco's reliance on the filed rate doctrine is misplaced because it overlooks the legal effect of vacatur under District law.⁸⁸ According to OPC, *Burlington Northern* offers no support for continuing the vacated MRP rates because that case interpreted the Interstate Commerce Act, a different statutory regime with refund and reparation provisions not present in the D.C. Code, and the Supreme Court expressly declined to apply the filed-rate doctrine in that context.⁸⁹ OPC further notes that recent Federal Energy Regulatory Commission ("FERC") precedent likewise rejects Pepco's interpretation, holding that judicial vacatur restores the status quo ante and requires reversion to the previously effective rates.⁹⁰

26. OPC argues further that Pepco's assertion that it will face financial hardship if it cannot recover costs during the remand, and that this may affect future distribution investments, is unsubstantiated.⁹¹ OPC contends that the Company's additional generalized claims that certain investments may need to be re-evaluated likewise provide no factual or legal basis for continuing to implement rates the Court has deemed unlawful.⁹² Pepco may present evidence regarding its financial condition and any asserted need for a rate increase in further proceedings, including an evidentiary hearing.⁹³ OPC argues that absent such evidence, these conclusory assertions cannot justify maintaining unlawful rates or withholding refunds.⁹⁴

27. OPC clarifies that its motion seeks only two forms of relief: restoration of the last lawful rates and refunds to ratepayers for amounts collected under the vacated orders. It does not raise or rely on any issues related to working-group reports or other directives contained in Order Nos. 22328 and 22358.⁹⁵ Accordingly, OPC argues that Pepco's references to those matters fall

⁸⁵ *Formal Case No. 1176*, OPC Reply at 6.

⁸⁶ *Formal Case No. 1176*, OPC Reply at 6-7.

⁸⁷ *Formal Case No. 1176*, OPC Reply at 8.

⁸⁸ *Formal Case No. 1176*, OPC Reply at 9.

⁸⁹ *Formal Case No. 1176*, OPC Reply at 9-10.

⁹⁰ *Formal Case No. 1176*, OPC Reply at 10-11.

⁹¹ *Formal Case No. 1176*, OPC Reply at 12.

⁹² *Formal Case No. 1176*, OPC Reply at 12.

⁹³ *Formal Case No. 1176*, OPC Reply at 12.

⁹⁴ *Formal Case No. 1176*, OPC Reply at 12.

⁹⁵ *Formal Case No. 1176*, OPC Reply at 12.

outside the scope of the relief OPC requested and have no bearing on the Commission's consideration of its motion.⁹⁶

H. Pepco Request to File a Sur-Reply and Limited Sur-Reply to OPC's Reply

28. Pepco requests that the Commission grant it permission to file a sur-reply to OPC's Reply. Pepco states that good cause exists to allow the sur-reply because the Company believes OPC mischaracterized certain FERC authority, and Pepco seeks to clarify and distinguish that precedent.⁹⁷ Pepco argues that the 2017 *ISO New England Martha Coakley, Att'y Gen. of the Commonwealth of Massachusetts, et al.*, 161 FERC ¶ 61,031 (2017) FERC decision remains a valid authority supporting the continuation of existing rates during remand.⁹⁸ Pepco explains that although OPC claimed the 2017 order was on appeal and held in abeyance, FERC issued a new decision on March 19, 2026, which reaffirmed its earlier approach.⁹⁹ Pepco contends that in that decision, FERC again declined to reinstate the prior, pre-vacatur ROE and instead required the utilities (NETOs) to continue collecting the ROE currently on file while FERC corrected the legal error on remand. FERC also dismissed as moot the request to restore the older ROE, ultimately setting a new ROE of 9.57% effective for the entire relevant period.¹⁰⁰ Pepco argues that the 2025 FERC decision OPC relies on is not relevant to this case because it involved a notice-and-comment rulemaking, not a rate case.¹⁰¹ Pepco explains that in that rulemaking, FERC failed to follow required APA procedures when modifying an index, and the D.C. Circuit therefore vacated the revised rule and ordered FERC to reinstate the original index.¹⁰² Pepco emphasizes that procedural defects in rulemakings cannot be cured retroactively because rulemakings operate prospectively, unlike rate cases, where an agency can correct errors on remand.¹⁰³ Pepco further notes that FERC explicitly stated in the Oil Pipeline Regulations decision that changes to an index can only take effect prospectively through proper notice-and-comment procedures.¹⁰⁴ Pepco argues that the 2025 Revisions to Oil Pipeline Regulations decision does not affect the issue before the Commission because it arose in a notice-and-comment rulemaking, not a rate case.¹⁰⁵ Pepco emphasizes that the rulemaking was vacated solely because FERC failed to follow APA procedures.¹⁰⁶ Pepco argues that OPC has not identified any legal authority showing that D.C. Code §§ 34-607 or

⁹⁶ *Formal Case No. 1176*, OPC Reply at 12.

⁹⁷ *Formal Case No. 1176*, Pepco Reply at 1.

⁹⁸ *Formal Case No. 1176*, Pepco Reply at 2.

⁹⁹ *Formal Case No. 1176*, Pepco Reply at 2 (citing 194 FERC ¶ 61,208 (2026)).

¹⁰⁰ *Formal Case No. 1176*, Pepco Reply at 2 (quoting 194 FERC ¶ 61,208 at ¶469).

¹⁰¹ *Formal Case No. 1176*, Pepco Reply at 3.

¹⁰² *Formal Case No. 1176*, Pepco Reply at 3.

¹⁰³ *Formal Case No. 1176*, Pepco Reply at 3.

¹⁰⁴ *Formal Case No. 1176*, Pepco Reply at 3.

¹⁰⁵ *Formal Case No. 1176*, Pepco Reply at 3.

¹⁰⁶ *Formal Case No. 1176*, Pepco Reply at 3-4.

34-901 prevent the Commission from allowing current rates to remain in effect during the remand.¹⁰⁷

IV. DECISION

A. Interim Rate Determination

29. The Court vacated Order Nos. 22328 and 22358 and remanded the case with instructions for the Commission to conduct a trial-type evidentiary hearing, where parties must be allowed to present testimony, submit rebuttal evidence, and conduct cross-examination. The Court did not explicitly find the rates authorized under Order No. 22328 unjust, unreasonable, or otherwise unlawful; rather, it vacated the orders because the Commission's process and explanations were insufficient under the governing statutes and administrative law principles. Therefore, the Commission must make an interim rate determination.

30. The Commission acknowledges that OPC, AOBA, and Pepco present differing views concerning (1) the distribution service rate level that should apply during remand, and (2) whether refunds or bill credits should be issued. Resolving these issues requires targeted briefing on the Commission's legal authority, the effect of vacatur, potential interim mechanisms, and quantified customer and utility impacts. The Commission therefore sets the following briefing requirements.

31. Accordingly, the Commission will hold AOBA and OPC Motions in abeyance and directs the Parties to file, within ten (10) days of the date of this Order, each Party shall file a supplemental brief (not to exceed 25 pages, excluding exhibits) that addresses, with specificity and supporting authority and evidence, the following:

Legal Authority & Effect of Vacatur

- a. Identify and analyze all legal authority supporting the Party's proposed interim rate treatment, including discussion of D.C. Code §§ 34-403, 34-603, 34-607, 34-908, and the prohibition on retroactive ratemaking articulated in *Chesapeake & Potomac Tel. Co. v. Pub. Serv. Comm'n*, 30 A.2d 236 (D.C. 1974), *D.C. v. D.C. PSC*, 905 A.2d 249 (D.C. 2006), and related precedent.
- b. Explain the legal effect of the Court's vacatur on existing rate levels and the Commission's interim rate-setting authority, including whether and how vacatur constrains or informs the Commission's authority to adopt interim rates prospectively. State whether vacatur (a) compels automatic reversion to the last previously effective rates, (b) permits continuation of the rates set in the vacated orders pending remand, or (c) requires a different interim approach, and why.
- c. Address the relevance (or inapplicability) of *MISO Transmission Owners v. FERC*, 45 F.4th 248 (D.C. Cir. 2022),¹⁰⁸ in which the court vacated orders for a substantive methodology defect and directed FERC to reopen proceedings, noting that refund issues could not be resolved "until FERC sets a new Return." Discuss whether and how that holding applies (or does not apply) to *Formal Case No. 1176*'s procedural vacatur.

¹⁰⁷ *Formal Case No. 1176*, Pepco Reply at 4.

¹⁰⁸ *See also Martha Coakley, et al.* 194 FERC P 61208 (F.E.R.C.), 2026 WL 805689.

- d. Discuss the filed rate doctrine in this context and whether judicial vacatur provides any exception or constraint on interim action by the Commission under District law.
- e. Describe how the Party's proposed interim rate approach would function in practice, including whether it requires a regulatory deferral mechanism and how such a mechanism should operate.
- f. Explain the expected financial, administrative, and operational impacts of the proposed approach on both customers and Pepco during the remand period.

This supplemental briefing will assist the Commission in determining the lawful and appropriate interim rate treatment during remand and in evaluating the customer- and utility-impact implications of each approach.

32. Due to the need to have a complete record, the Commission defers selecting an interim rate approach at this time. After reviewing the Parties' supplemental briefs, the Commission will issue a subsequent order establishing the interim distribution service rate treatment that will govern during the remainder of the remand proceeding. Pending that determination, no changes will be made to the rates currently being billed. This process ensures that any interim rate action is based on a complete record, consistent with the Court's directive, and compliant with the governing statutory and case-law framework.¹⁰⁹

B. Refunds

33. OPC asks the Commission to, among other things, require Pepco to issue refunds or bill credits for amounts collected under the vacated orders. The Commission declines to grant OPC's requested refunds at this time. The Court's decision vacates Order Nos. 22328 and 22358 for procedural reasons, does not reach the merits of the rates approved in those orders, and does not direct that refunds be issued. Because the vacatur here is procedural, rather than a determination that the rates themselves were unlawful, unjust, or unreasonable, the Commission notes that *Pepco v. PSC* involved a fundamentally different posture than the present case. In *Pepco v. PSC*, the Court held that the Commission's rate order was substantively unlawful and constitutionally infirm because it produced confiscatory rates that deprived the utility of a fair return. It was this finding of confiscation, not the mere vacatur of the Commission's order, that required the Commission on remand to "devise a means for restoring to Pepco the revenues which it improperly has been denied," including using a prospective surcharge mechanism.¹¹⁰ By contrast, in the present matter, the Court expressly did not find that the MRP rates approved in Order No. 22328 were unjust, unreasonable, confiscatory, or otherwise unlawful. The Court did not determine that Pepco had been denied a constitutionally required opportunity to earn a fair return or that customers had been charged unlawful rates; rather, the Court vacated the orders solely because the Commission failed to provide the procedural protections and explanatory clarity required by the D.C. Administrative Procedure Act. In the absence of any judicial finding that the rates themselves were unlawful, the constitutional and statutory rationales for the remedial approach applied in *Pepco v. PSC* are entirely inapplicable

¹⁰⁹ See D.C. Code § 2-509(c): "The testimony and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for order or decision."

¹¹⁰ *Potomac Electric Power Co. v. Pub. Serv. Comm'n*, 380 A.2d 126, 148 (D.C. 1977).

here. The surcharge remedy endorsed in *Pepco v. PSC* was predicated on the Court's determination that the previously approved rates were confiscatory. Because no such finding exists here, *Pepco v. PSC* provides no basis for refunds, surcharges, or other retroactive or quasi-retroactive adjustments. Accordingly, *Pepco v. PSC* does not support OPC's or AOBA's requests for refunds in this remand proceeding.

34. Moreover, with respect to refunds or bill credits, the D.C. Court of Appeals has consistently held that refunds are permissible only where the rates in issue have been found substantively unlawful. For example, in *District of Columbia v. District of Columbia Public Service Commission*, the Court upheld a refusal to refund charges even where the Commission later found a rate unreasonable, distinguishing between prospective reform and retrospective invalidation.¹¹¹ Likewise, in *Chesapeake & Potomac Tel. Co. v. Public Service Commission*, the Court upheld an interim surcharge mechanism rather than a retrospective refund, reinforcing that retroactive adjustments are impermissible absent a finding that the earlier rates were invalid.¹¹² Additionally, the rule against retroactive ratemaking rests on the principle that a previously established rate is not rendered illegal simply because it is later found to be impermissible or unreasonable.¹¹³ The Court's ruling here provides no legal basis for issuing refunds or bill credits at this stage. The Court did not find the authorized rates unjust, unreasonable, confiscatory, or otherwise unlawful, and it did not direct the Commission to issue refunds or to suspend collection of the currently effective rates. These cases make clear that refunds or bill credits are appropriate only when the Commission (or a court) finds the underlying rates were unlawful, not when an order is vacated for procedural defects, as is the case here. Because the Court did not declare the MRP rates unjust or unreasonable, any immediate refunds would risk converting a procedural defect into a substantive financial penalty, precisely the type of action the retroactive ratemaking doctrine prohibits. The question of refunds will be deferred pending the remand proceeding and a final merits determination.

C. Remand Proceeding

35. The Commission notes that the Court's vacatur in this matter was based on procedural, not substantive, deficiencies, specifically, the absence of the evidentiary hearing required under D.C. Code § 2-509(b) and the lack of full and clear explanations regarding the ERA and BSA determinations. The Court did not address the substance of Pepco's ratemaking methodologies. By contrast, in *MISO Transmission Owners v. FERC*, the D.C. Circuit vacated FERC's orders because the core ratemaking methodology FERC used to establish the transmission owners' return on equity

¹¹¹ *District of Columbia v. District of Columbia Pub. Serv. Comm'n*, 905 A.2d 249, 257 (D.C. 2006) (refunds inappropriate where rates have not been found unlawful or if the Commission made an error).

¹¹² *Chesapeake & Potomac Tel. Co. v. Pub. Serv. Comm'n*, 330 A.2d 236 (D.C. 1974) (rates may not be retroactively adjusted and refunds may not be ordered unless the underlying rates were themselves unlawful at the time they were charged).

¹¹³ *See District of Columbia v. District of Columbia Pub. Serv. Comm'n*, 905 A.2d 249, 259 (D.C. 2006) (rule against retroactive ratemaking rests on the principle that a previously established rate is not rendered illegal simply because it is later found impermissible or unreasonable).

(“Return”) was unlawful.¹¹⁴ There, FERC had adopted a new four-model methodology for determining the Return, repeatedly changed that methodology over several orders, and ultimately reintroduced a risk-premium model that FERC had previously rejected as economically unsound. The court concluded that FERC failed to provide a reasoned explanation for these methodological shifts, particularly its reversal on reintroducing the risk-premium model, which FERC itself had criticized as “def[ying] general financial logic,” lacking evidence of investor reliance, and suffering from “particularly direct and acute” circularity problems.¹¹⁵ Because FERC did not adequately justify how its reversal aligned with basic financial logic, did not reconcile its earlier finding that investors do not use the model, did not meaningfully address the model’s circularity problems, and ignored its own concerns about overweighting risk-premium theory, the D.C. Circuit held that the resulting Return was unlawful and vacated FERC’s orders.¹¹⁶ The *MISO* decision is offered only as a contrast: in that case, vacatur followed from a substantively unlawful ratemaking methodology. Therefore, unlike *MISO*, this remand does not necessarily require the Commission to abandon or reconstruct its underlying methodologies, but only to complete the evidentiary hearing, better explain the steps the Court found lacking, and issue a new order based on the disposition of the remand proceeding.

36. The purpose of this remand is to develop an evidentiary record sufficient to resolve the genuine issues of material fact identified by the Court and the Commission to enable the Commission to issue a decision supported by substantial evidence and a clear explanation of its reasoning. To ensure that all such issues are addressed at the evidentiary hearing, the Commission will allow the Parties to identify any additional genuine issues of material fact in dispute. Any Party asserting additional issues must file them within ten (10) calendar days of this Order and must include: (1) citations to the specific disputed factual statements in the record; (2) a brief explanation of why the issue is material; and (3) an indication of whether any portion of the fact is stipulated or undisputed, and what portion remains contested. Issues not submitted in this required format may be excluded from the evidentiary hearing.

37. The Commission will convene a pre-hearing conference to address all submissions. The evidentiary hearing will address the disputed factual issues identified by the Court, as well as those accepted by the Commission from the Parties’ submissions. The Commission acknowledges that it must independently provide a full and clear explanation of its ERA and BSA determinations in the final order, as required by the Court’s opinion.

38. Considering the procedural nature of the Court’s vacatur, the Commission clarifies that the purpose of this remand proceeding is not to revisit the entire MRP application or reconstruct the record in full, but to conduct the evidentiary hearing and provide the full and clear explanations the Court found lacking. Consistent with the Court’s directive and established administrative practice, the Commission intends to restart the proceeding at the procedural point where the defect occurred (*i.e.*, to repeat only the procedural steps that were flawed, not to reopen the entire case). This approach ensures that no party gains an advantage from the procedural posture created by the

¹¹⁴ *MISO Transmission Owners v. FERC*, 45 F.4th 248 (D.C. Cir. 2022).

¹¹⁵ *MISO Transmission Owners v. FERC*, 45 F.4th at 263-264.

¹¹⁶ *MISO Transmission Owners v. FERC*, 45 F.4th at 264.

vacatur. Accordingly, on remand, the Commission will: (1) conduct the evidentiary hearing the Court required; (2) make findings of fact on disputed material issues; (3) provide the required ERA/BSA explanations; and (4) issue a lawful final order based on a complete record. This approach ensures compliance with the Court's mandate while avoiding unnecessary reopening of issues unaffected by the procedural defects identified on appeal.

39. To implement the Court's directive and organize the evidentiary hearing efficiently, the Commission sets forth the following remand process:

1. **Notice & Pre-hearing Conference.** The Commission will issue a Notice directing parties to appear for a prehearing conference to discuss any genuine issues of fact the parties submit to the Commission for consideration, confirm witnesses identified to address the disputed issues of fact, finalize exhibit lists, and resolve preliminary evidentiary and scheduling matters.¹¹⁷
2. **Evidentiary Hearing.** The Commission will convene a trial-type evidentiary hearing at which parties may present witnesses and conduct cross-examination on the genuine issues of disputed fact designated by the Court and the Commission, consistent with D.C. Code § 2-509(b).
3. **Post-Hearing Briefing.** The Commission will provide the parties with an opportunity to submit post-hearing briefs and proposed findings of fact and conclusions of law. The Commission will then issue a final order resolving the remanded issues on the merits.

40. The remand proceeding procedural schedule is set forth in Attachment A. The Commission may modify the schedule established in this Order for good cause shown.

THEREFORE, IT IS ORDERED THAT:

41. The Office of the People's Counsel for the District of Columbia's Motion to Suspend Rates Under Multi-Year Rate Plan Approved Under Order No. 22328, Restore the Previously Approved Rates Prior to Order No. 22328, and Issue Refunds to Residential Ratepayers is **HELD IN ABEYANCE**;

42. The Motion of the Apartment and Office Building Association of Metropolitan Washington to Restore the Last Approved Electric Rates Consistent with the District of Columbia Court of Appeals Decision Vacating Order Nos. 22328 and 22358 and Refund Improperly Implemented Rate Increases is **HELD IN ABEYANCE**;

43. The Parties are **DIRECTED** to file supplemental briefing within ten (10) days from the date of this Order addressing the legal, practical, and customer and utility impact implications

¹¹⁷ The Commission will issue an order addressing the parties' submissions of additional genuine issues of material fact in dispute to be resolved at the evidentiary hearing. The Commission may convene an additional prehearing conference if necessary to address any procedural matters before the scheduled evidentiary hearing.

of the interim distribution service rate approaches the Commission may adopt during the remand as outlined in Paragraph 31;

44. The Motion of Potomac Electric Power Company for Expedited Evidentiary Hearing is **DENIED**;

45. The Parties are **DIRECTED** to identify and file all genuine issues of material fact in dispute for the evidentiary hearing in this remand proceeding within ten (10) days from the date of this Order;

46. Parties are **DIRECTED** to appear for a pre-hearing conference on the date set by Commission Notice to confirm witness lists and address the disputed issues of fact identified by the Court;

47. An evidentiary hearing shall be convened to allow presentation and cross-examination of witnesses on the genuine issues of material facts in dispute identified by the D.C. Court of Appeals and the Commission, with the hearing record consisting of the existing record, the hearing transcript, and admitted exhibits;

48. The Procedural Schedule outlined in Attachment A is **ADOPTED**; and

49. All parties are **DIRECTED** to comply with the schedule and requirements established in this Order.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

ATTACHMENT A

Formal Case No. 1176
Remand Procedural Schedule

| | |
|---|---------------|
| Parties File Statements of Genuine Issues of Material Facts in Disputed | April 6, 2026 |
| For Witnesses a Party Seeks to Cross-Examine, Parties File Statement Identifying the Witnesses, Expected Subject Matter of Each Witness's Testimony, and Estimated Time for Cross-Examination of Each Witness | April 6, 2026 |
| Pre-hearing Conference | May 7, 2026 |
| Evidentiary Hearing | May 12, 2026 |
| Post-Hearing Briefs and Proposed Findings | May 22, 2026 |

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005**

March 27, 2026

**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,**

ABSTENTION OF COMMISSIONER RICHARD BEVERLY FROM ORDER NO. 22806

1. Although the Court has vacated Orders No. 22328 and 22358, my position in this case remains unchanged. As I stated in my dissent to Order No. 22328: “For me, my opinion rests on issues of pure policy which don’t require an evidentiary hearing to resolve.”¹ I continue to believe the case should be dismissed for all the reasons I previously stated, which I will summarize below.

2. First, Pepco’s Application for an MRP is premature because it was filed before the Commission reviewed the pilot MRP.² Second, as a matter of pure policy, I think an MRP Application is not in the public interest if it lacks the following: cost containment measures, performance incentive mechanisms to align Pepco’s incentive structure with the District’s climate mandates, GHG emissions forecasts and accounting, alignment with an adopted integrated

¹ *Formal Case No. 1176*, Dissent of Commissioner Richard Beverly to Order No. 22328, November 26, 2024 (“Beverly Dissent to Order No. 22328”).

² *Formal Case No. 1176*, Dissent of Commissioner Richard Beverly to Order No. 21886, July 28, 2023: “The Commission ultimately adopted a modified version of the MRP as a Pilot, with the stated purpose of allowing it to ‘serve as an opportunity to gather lessons learned in assessing future MRP proposals and to facilitate the development of AFOR regulations.’ No actual plan for assessing the Pilot was set forth in the Order nor were AFOR regulations ever proposed. Two years after the approval of the MRP in *Formal Case No. 1156*, Pepco filed a second MRP similar to the first... What this Order does is take the evaluation of the initial MRP (including the question of whether a general paradigm shift away from traditional ratemaking is in the public interest) and adds the second MRP into the mix (even though it doesn’t benefit from an evaluation of the first). Then a traditional rate case is added on top of that with everything jumbled together for the parties to sort out among themselves in a process that is too abbreviated to be meaningful. In my opinion, this is unnecessarily confusing and a waste of the parties’ resources as well as a waste of our own. Although no party has requested it, I think the Commission should act on its own motion to reject the MRP as premature and place a moratorium on the filing of future MRPs until we have evaluated the first one and issued AFOR regulations.”

resource plan, alignment with updated Distributed Energy Resource (“DER”) interconnection regulations,³ and alignment with AFOR rules which we have yet to develop.⁴

3. Third, by Pepco’s own admission, the Company was over-earning for the majority of the pilot MRP period, including when they filed this second MRP application. This over-earning should have triggered a credit to ratepayers, but never did. Further, the application should have been dismissed due to the Company’s over-earning at the time of filing.⁵

4. Fourth, the projected expenditures for the pilot MRP period varied significantly from what was projected. “These differences include major cost overruns for certain projects, approved projects for which no spending occurred, and unapproved projects for which spending did occur.”⁶ Proceeding at this juncture with any rate case (whether MRP or traditional rate case), requires the Commission to proceed under the assumption that Pepco’s expenditures for the pilot MRP period were 100% prudent, “an assumption that is contrary to traditional ratemaking.”⁷

5. Fifth, our rate case process has been unfair: “Pepco’s responsibility to carry the burden of proof by a preponderance of the evidence seems to have been implicitly watered down to only requiring Pepco to make a weak prima facie showing. Under this weakened standard, Pepco makes any representation that it cares to make and then the burden shifts to the non-utility litigants to rebut Pepco by trying to squeeze information out of the company through discovery under a tight schedule in a confusing simultaneous review of a pilot, MRP, and traditional rate case. What makes it worse is that any gaps in Pepco’s case are apparently being filled by the Commission itself through staff’s data requests. This entire process needs to be revised so we do not inadvertently stack the deck against ratepayers.”⁸

³ *Formal Case No. 1176*, Dissent of Commissioner Richard Beverly to Order No. 21903, September 14, 2023: “I think approving an MRP at this juncture puts the cart before the horse. First, an MRP should have cost containment measures and actual PIMs that include the potential to increase or decrease Pepco’s return on equity, to align Pepco’s actions with the District’s public policy goals. It should also have GHG emissions accounting and forecasts. Finally, it should be aligned with an integrated distribution resource plan and updated rules regarding the interconnection of DER. I recognize that Pepco is not at fault for the absence of integrated resource planning and updated interconnection rules, but that doesn’t justify knocking traditional ratemaking off the table and serving ratepayers with an MRP process that isn’t fully baked.”

⁴ Beverly Dissent to Order No. 22328, ¶ 1.

⁵ Beverly Dissent to Order No. 22328, ¶ 6.

⁶ Beverly Dissent to Order No. 22328, ¶ 7.

⁷ Beverly Dissent to Order No. 22328, ¶ 7.

⁸ *Formal Case No. 1176*, Dissent of Commissioner Richard Beverly to Order No. 22358, January 28, 2025, ¶ 1.

COMMISSION ACTION

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,

Date 3/27/26 Formal Case No. 1176 Tariff No. _____ Order No. 22806

| | Approve Initial & Date | Dissent Initial & Date | Abstain Initial & Date |
|---------------------------------|---------------------------|---------------------------|---------------------------|
| Chairman Emile Thompson | <u>ET/DJ 3/27/26</u> | _____ | _____ |
| Commissioner Richard A. Beverly | _____ | _____ | <u>RB/DJ 3/27/26</u> |
| Commissioner Ted Trabue | <u>TT/DJ 3/27/26</u> | _____ | _____ |

Certification of Action

Dionne Joemah
General/Deputy General Counsel

Brian Edmonds
OGC Counsel/Staff