

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

ORDER

May 8, 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. 22860**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) hereby: (1) grants the Motion to Stay the Procedural Schedule issued in Order No. 22806 filed by the Office of the People’s Counsel for the District of Columbia (“OPC”), the District of Columbia Government (“DCG”), and the Apartment and Office Building Association of Metropolitan Washington (“AOBA”); (2) grants AOBA’s Motion to Extend the Procedural Schedule Adopted in Order No. 22806; (3) grants OPC’s Motion to file its Supplemental Brief and Statement of Issues Out-of-Time; (4) adopts a Revised Remand Procedural Schedule detailed in paragraphs 25-48 and Attachment A to this Order; (5) denies OPC’s Motion to Suspend Rates Under Multi-Year Rate Plan Approved Under Order No. 22328, Restore Previously Approved Rates Prior to Order No. 22328, and Issue Refunds to Residential Ratepayers; (6) denies AOBA’s Motion 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; (7) reauthorizes the rates contained in the Potomac Electric Power Company’s (“Pepco” or the “Company”) tariff and updated compliance filing filed on December 11, 2024¹ during the remand period, subject to appropriate adjustments upon the issuance of a new rate order in this proceeding; and (8) adopts the ancillary directives treatment as detailed in paragraphs 83-92 of this Order.²

II. BACKGROUND

2. On April 13, 2023, Pepco filed an application for approval to increase rates through the implementation of a Multiyear 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 2026.³ By Order No. 22328, the Commission approved a *Formal Case*

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”)*, Pepco’s Updated Compliance Filing, filed December 12, 2024.

² Commissioner Richard Beverly took no position on this Order and abstained from the vote.

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

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.⁴

3. The Commission denied Petitions for Reconsideration of Order No. 22328 filed by AOBA and OPC.⁵ On March 18 and 28, 2025, OPC and AOBA, respectively, petitioned for review of Order Nos. 22328 and 22358 to the District of Columbia Court of Appeals (“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.⁶ Pepco filed a motion requesting that the Commission promptly schedule and hold the trial-type evidentiary hearing required by the Court’s remand.⁷ OPC and AOBA filed motions requesting that the Commission, among other things, suspend the distribution rates authorized under Order No. 22328, restore the rates in effect as of December 31, 2024, and issue refunds.⁸ Pepco filed an amended request for an expedited schedule and evidentiary hearing.⁹ Pepco filed a response opposing the OPC and AOBA motions.¹⁰ OPC and AOBA filed a joint response opposing Pepco’s request for an expedited hearing and continuation of distribution rates set in vacated orders.¹¹ 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.¹² Pepco filed a

⁴ *Formal Case No. 1176*, Order No. 22328, rel. November 26, 2024 (“Order No. 22328”).

⁵ *Formal Case No. 1176*, Order No. 22358, rel. January 28, 2025 (“Order No. 22358”).

⁶ *Office of the People’s Counsel of Dist. of Columbia v. D.C. Public Service Commission*, 352 A.4d 682 (D.C. 2026).

⁷ *Formal Case No. 1176*, Motion of Potomac Electric Power Company for Expedited Evidentiary Hearing at 1-2, filed March 5, 2026.

⁸ *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. *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.

⁹ *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.

¹⁰ *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.

¹¹ *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.

¹² *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.

request for leave to file a sur-reply and a limited sur-reply to the OPC Reply.¹³

5. On March 27, 2026, the Commission issued Order No. 22806, which denied Pepco's Motion for Expedited Hearing, held the Motions to Suspend Rates filed by OPC and AOBA in abeyance, established a remand proceeding, and directed parties to file supplemental briefs on potential remand proceeding rate approaches within ten (10) days of the Order.¹⁴

6. On April 6, 2026, the Joint Motion to Stay the Procedural Schedule issued in Order No. 22806 was filed by OPC, DCG, and AOBA;¹⁵ and Pepco¹⁶ and AOBA¹⁷ each filed Supplemental Briefs in Response to Order No. 22806. On April 7, 2026, OPC filed a Motion to file its Supplemental Brief and Statement of Issues Out-of-Time¹⁸ and filed its Supplemental Brief.¹⁹ On April 10, 2026, Pepco filed a Response to Joint Motion to Stay the Procedural Schedule.²⁰ On April 16, 2026, AOBA filed a Motion to Extend the Procedural Schedule Adopted in Order No. 22806.²¹ On April 20, 2026, Pepco filed a Response to AOBA's Motion to Extend

¹³ *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.

¹⁴ *Formal Case No. 1176*, Order No. 22806, ¶ 1, rel. March 27, 2026 ("Order No. 22806").

¹⁵ *Formal Case No. 1176*, Office of the People's Counsel for the District of Columbia, the District of Columbia Government, and the Apartment and Office Building Association of Metropolitan Washington's Motion to Stay the Procedural Schedule, filed April 6, 2026 ("Joint Motion").

¹⁶ *Formal Case No. 1176*, Supplemental Brief of Potomac Electric Power Company in Response to Order No. 22806, filed April 6, 2026 ("Pepco Brief").

¹⁷ *Formal Case No. 1176*, Brief in Response to Order No. 22806 of the Apartment and Office Building Association, filed April 6, 2026 ("AOBA Brief").

¹⁸ *Formal Case No. 1176*, Office of the People's Counsel for the District of Columbia's Motion for Leave to File Comments Out-of-Time, filed April 7, 2026 ("OPC Motion").¹⁸ In its Motion, OPC argues that the Commission has broad discretion to manage its docket and accept filings where good cause is shown. OPC asserts that, in accordance with Rule 117.5, good cause exists to grant it leave to file a pleading out of time because the delay was de minimis -- caused by technical difficulties, no party was prejudiced, OPC served the filings on the other parties, the other parties were not hindered from responding to the pleadings, and accepting the pleadings will ensure the Commission has a complete and robust record upon which to base its decision. OPC Motion at 1. The Commission finds that good cause exists to grant OPC's Motion and accepts the Supplemental Brief into the record. *See, e.g., Formal Case No. 1175, In the Matter of Washington Gas Light Company's Application for Approval of PROJECTpipes 3 Plan*, Order No. 21573, ¶ 10 n.16, rel. February 17, 2023.

¹⁹ *Formal Case No. 1176*, Office of the People's Counsel for the District of Columbia's Supplemental Brief, filed April 7, 2026 ("OPC Brief").

²⁰ *Formal Case No. 1176*, Response of Potomac Electric Power Company to the Motion to Stay the Procedural Schedule, filed April 10, 2026 ("Pepco Response to Joint Motion").

²¹ *Formal Case No. 1176*, Motion of the Apartment and Office Building Association for an Extension of the Procedural Schedule Adopted in Order No. 22806, filed April 16, 2026 ("AOBA Motion to Extend").

the Procedural Schedule.²²

III. DISCUSSION AND DECISION

7. The Commission begins its analysis by addressing the Joint Motion to Stay the Procedural Schedule and AOBA's Motion for an Extension of the Procedural Schedule, because resolution of these motions is necessary to establish the structure and scope of the remand proceeding. Only after clarifying the remand process and the evidentiary framework that will govern it will the Commission turn to the supplemental briefs submitted in response to Order No. 22806.

A. **Remand Proceeding**

1. Joint Motion to Stay the Procedural Schedule

8. OPC, DCG, and AOBA ("Joint Movants") in their April 6, 2026, motion argue that Order No. 22806 created a highly condensed procedural schedule culminating with the filing of all issues of material facts in dispute, identifying all witnesses for cross-examination, the pre-hearing conference, the evidentiary hearing, and post-hearing briefs by May 22, 2026. The Joint Movants request that the procedural deadlines be stayed pending further clarification by the Commission and Pepco.²³

9. The Joint Movants argue that, following the issuance of Order No. 22328 and the Court decision, Pepco has filed subsequent updated financial data (*i.e.*, Compliance Reporting, Prudency Process Reporting, Reconciliation Filings, and Quarterly Financial Reports).²⁴ The Joint Movants requested that Pepco file testimony explaining the variances between the MRP and the Reconciliation Report in order to conduct a proper prudence review.²⁵

10. The Joint Movants contend that clarification and time is needed to understand the scope of the evidentiary hearing. Specifically, clarification is needed as to the treatment of cost-shifting divergence from the approved MRP and more time is needed to identify witnesses for cross examination understand the evidence and the position Pepco is adopting in advance of the hearing, to allow for discovery authorized under Order No. 22328 of Pepco's 2025 Annual Informational Filing, and until Pepco files a new traditional test year filing for 2026 consistent with Commission directives in this case.²⁶ The Joint Movants claim that failure to stay the proceeding would violate the statutory due process requirements of D.C. Code § 2-509, including the requirements for an evidentiary hearing in contested cases and for reasonable notice of the

²² *Formal Case No. 1176*, Response of Potomac Electric Power Company to the Motion for an Extension of the Procedural Schedule, filed April 20, 2026 ("Pepco Response to Motion to Extend").

²³ Joint Motion at 2.

²⁴ Joint Motion at 5-7.

²⁵ Joint Motion at 7.

²⁶ Joint Motion at 2.

issues involved and the nature of the proceeding.²⁷

11. According to the Joint Movants’ “[t]he procedural schedule must be stayed until the range of years in the rate case are identified.”²⁸ Joint Movants aver that because of the statement in Order No. 22328 regarding adjustments of rates for time periods in the past would be violative of the rule against retroactive ratemaking, it is unclear whether the evidentiary hearing will cover CY 2025 as well as CYs 2023 through 2024. The Joint Movants state that if refunds or corrective mechanisms are not legally appropriate to apply to past years, then it is unclear whether past years are part of this evidentiary hearing.²⁹

12. In addition, Joint Movants argue that the procedural schedule must be stayed until the Commission clarifies the treatment of the updated financial information, as the updated actual financial filings now exist and cannot be ignored.³⁰ The Commission needs to “consider and weigh” the most recent available operating and capital expenditure figures when making ratemaking decisions.³¹ The Joint Movants point to the updated financials filed in this proceeding, dating back to 2023, including the CY 2025 Annual Information Filing.³² Moreover, the Joint Movants assert that the Commission should not rely on forecasted data known to be inaccurate, or on data identified by Pepco in its reconciliation reports and the parties’ corresponding comments.³³ The Joint Movants state that Order No. 22328 is silent on these issues and that the procedural schedule should be stayed until clarified. Without clarification, the parties argue it is impossible to identify all material issues of fact in dispute, to make stipulations, and to understand whether Pepco is adopting updated information and providing updated testimony and exhibits to address the divergence.³⁴ Joint Movants argue that, without clarification regarding the use of updated testimony and exhibits that account for the actuals, it is unlikely that Pepco can satisfy its burden of proof in explaining why budgeted expenditures fail to match projected costs;³⁵ asserting that, without knowing which information Pepco is adopting to support its rate application, they cannot

²⁷ Joint Motion at 9.

²⁸ Joint Motion at 9.

²⁹ Joint Motion at 10.

³⁰ Joint Motion at 10.

³¹ Joint Motion at 10-11, citing *People’s Counsel of D.C. v. Pub. Serv. Com.*, 455 A.2d 391, 395 (D.C. 1982); see also *Potomac Electric Power Co. v. Public Serv. Com.*, 402 A.2d 14, 19 (D.C. 1979) (Court upholding rate order where Commission relied on 1974 as the test year but still cited to updated data from 1975 that the utility submitted at the last minute, before the close of the hearing, which the utility failed to identify clearly).

³² Joint Motion at 11-12.

³³ Joint Motion at 12.

³⁴ Joint Motion at 12, noting as an example the Tax Net Operating Loss Carryforward change as having an impact on the Company’s financials, but has yet to be addressed in any testimony because it arose after Order No. 22328, citing *Formal Case No. 1176*, Reconciliation Report at 2.

³⁵ Joint Motion at 13.

meaningfully participate or meet the procedural schedule deadlines.³⁶

13. The Joint Movants contend that the procedural schedule should be stayed until the treatment of cost-shifting is clarified, noting that expenditures forecasted for 2024 changed after the filing of the MRP, and it is difficult to discern the extent to which funds were shifted between capital investments and whether those expenditures were prudent.³⁷ They argue that, with capital investments differing from those approved, it is unclear how the rate of return (“ROR”) or return on equity (“ROE”) should be calculated to account for the changes, and whether they would be based solely on investments that match the projections.³⁸ In addition, the Joint Movants are unsure whether the MRP itself is still in place and whether Pepco is obligated to continue adhering to the capital investments previously approved for the MRP. They argue that if the MRP is no longer valid, then the CY 2026 rate increase should be suspended.³⁹ The Joint Movants want clarity on these issues to understand the rate base, capital investments, rate of return, and rate structure at issue in the evidentiary hearing.⁴⁰

14. Also, the Joint Movants state the remand proceeding must be stayed so that the parties have an opportunity to conduct discovery into the 2025 Annual Information filing, since the Commission has held that the vacatur decision was limited to procedural, not necessarily substantive, decisions, such as the reconciliation and prudence review, designed to address the accountability and transparency of the MRP.⁴¹ The Joint Movants argue that the May 12, 2026, evidentiary hearing date set in Order No. 22806 does not give the parties sufficient time to conduct the discovery provided for in Order No. 22328, which would not end until May 15, 2026.⁴² Discovery is necessary to clarify the scope of the proceeding, to accurately identify the issues, and to reconcile the actuals for CY 2025.⁴³

15. The Joint Movants state that the procedural schedule should be stayed until Pepco, consistent with the directives in Order No. 21886, files a traditional test-year rate application to determine whether to proceed with an MRP.⁴⁴ Because the Commission is obligated to consider the most recent financial information, Joint Movants argue that Pepco should file an application

³⁶ Joint Motion at 13,

³⁷ Joint Motion at 14.

³⁸ Joint Motion at 14.

³⁹ Joint Motion at 14.

⁴⁰ Joint Motion at 14. Clarity on these issues is necessary to understand the rate base, capital investments, and rate of return, and rate structure at issue in the evidentiary hearing.

⁴¹ Joint Motion at 14-15.

⁴² Joint Motion at 15. Joint Movants note that discovery was extended for the reconciliation review for CY 2023 – 2024.

⁴³ Joint Motion at 15.

⁴⁴ Joint Motion at 16.

for CY 2026 to allow the Commission to accurately assess the MRP Application.⁴⁵

2. Pepco's Response to Motion to Stay Procedural Schedule

16. Pepco asserts that the Joint Motion should be denied because it ignores and seeks to supplant the Commission's directions regarding the evidentiary hearing in this matter.⁴⁶ Pepco argues that, contrary to the motion's assertions that "the Commission has proposed to proceed with an evidentiary process divorced from a defined record, and devoid of clear scope, or settled evidentiary foundation," Order No. 22806 is clear on how this case would proceed on remand.⁴⁷ The process did not include new updated testimony, additional rounds of discovery, and responsive testimony.⁴⁸ The motion seeks to disregard the Commission's established process and provides the parties with more than a "do over," essentially proposing a new rate case.⁴⁹ Pepco states that the Commission should reject these efforts and, after the hearing, issue an Order on remand that considers the evidence adduced.⁵⁰

17. As to the suggestion that Pepco should be required to submit a traditional historic test year filing ("TTY Filing") for 2026, Pepco states that the Commission should reject this request as it did for the similar request to update the TTY Filing for the MRP application earlier in this proceeding.⁵¹ Pepco states that the Commission, in Order No. 22806, even without a clear directive, declined to adopt OPC and AOBA's suggestion to require that Pepco submit updated testimony, to refile its MRP Application, as well as update the TYY Filing with updated data or supplemental testimony.⁵² Pepco argues that Commission precedent in this proceeding has been to decline to require Pepco to update its testimony, and to do otherwise would make an already lengthy proceeding unworkable and never-ending.⁵³ According to Pepco, the reconciliation processes are designed to address any variances in projections and actual results.⁵⁴ Pepco requests that the Commission deny the motion, maintain the procedural schedule, and hold the evidentiary

⁴⁵ Joint Motion at 16.

⁴⁶ Pepco Response to Joint Motion at 1.

⁴⁷ Pepco Response to Joint Motion at 2.

⁴⁸ Pepco Response to Joint Motion at 2.

⁴⁹ Pepco Response to Joint Motion at 3.

⁵⁰ Pepco Response to Joint Motion at 3.

⁵¹ Pepco Response to Joint Motion at 4.

⁵² Pepco Response to Joint Motion at 4, citing Order No. 22806, ¶¶ 11, 12, and referencing *Formal Case No. 1176*, Motion to Dismiss or, In the Alternative, Motion for Summary Disposition of the Office of the People's Counsel for the District of Columbia and the Apartment and Office Building Association of Metropolitan Washington at 2, filed June 10, 2024.

⁵³ Pepco Response to Joint Motion at 5.

⁵⁴ Pepco Response to Joint Motion at 5.

hearing as scheduled.⁵⁵

3. AOBA's Motion for Extension of the Procedural Schedule

18. In the Motion for Extension of the Procedural Schedule, AOBA states that by April 6, 2026, Order No. 22806 required the parties to submit multiple filings that identified all issues of “*genuine material fact*” that are at issue in the proceeding, identified all witnesses the parties intend to cross-examine and the subject matter that each witness will address, the expected time needed for cross-examination, and legal briefs addressing multiple issues.⁵⁶ AOBA notes that the parties timely submitted the requisite filings along with the Joint Motion.⁵⁷ AOBA reiterates its support for all of the positions set forth in the Joint Motion and states that it seeks an extension of the procedural schedule because of the fundamental uncertainties of the scope of the proceeding (*i.e.*, would actual results be included), which would require additional discovery prior to an evidentiary hearing.⁵⁸ According to AOBA, the Joint Motions were not exhaustive because the parties were awaiting the Commission’s decision on earlier motions, including one on the Joint Motion.⁵⁹

19. Alternatively, AOBA requests that, if the Commission does not stay the proceedings, then the procedural schedule set forth in Order No. 22806 be extended due to constraints that the schedule imposes on AOBA’s ability to represent its members’ interests fully and ensure their due process rights.⁶⁰ According to AOBA, the short timeframe for the remand proceeding is jeopardizing its ability to represent its members, as they have one attorney and two witnesses involved in pre-existing proceedings in multiple local jurisdictions, now with overlapping schedules.⁶¹ AOBA argues that moving forward with the proposed schedule deprives AOBA members of their due process rights and their right to an evidentiary hearing provided by D.C. Code § 2-509(b).⁶² AOBA notes that its motion to extend the procedural schedule does not alter its position set forth in the Joint Motion.⁶³

20. AOBA requests that the Commission grant the Motion to provide time to allow the parties to confer and submit a proposed procedural schedule and extend the Remand Procedural Schedule in Order No. 22806 to provide for a pre-hearing conference no sooner than

⁵⁵ Pepco Response to Joint Motion at 5.

⁵⁶ AOBA Motion to Extend at 3-4.

⁵⁷ AOBA Motion to Extend at 4.

⁵⁸ AOBA Motion to Extend at 4.

⁵⁹ AOBA Motion to Extend at 4.

⁶⁰ AOBA Motion to Extend at 4.

⁶¹ AOBA Motion to Extend at 5.

⁶² AOBA Motion to Extend at 6.

⁶³ AOBA Motion to Extend at 6.

May 28, 2026.⁶⁴

4. Pepco's Response to AOBA's Motion to Extend Procedural Schedule

21. Pepco argues that AOBA's Motion for Extension of the Procedural Schedule should be denied because AOBA wants time to confer and submit a proposed procedural schedule when "the Commission already established a procedural schedule that allows the Commission to efficiently comply with the Court's instructions."⁶⁵ Pepco avers that the Commission is not required to adjust the procedural schedule for additional discovery and written testimony that it has already decided is not within the scope of the remand.⁶⁶

22. Pepco states that if AOBA's approach is adopted, the evidentiary hearing on remand would be delayed for several months,⁶⁷ pointing out that the Motion only addresses the date of the pre-hearing conference, moving it from May 7, 2026, to May 28, 2026, and fails to propose a date for the evidentiary hearing or post-hearing briefs.⁶⁸ AOBA's proposal extends the pre-hearing conference by three (3) weeks and provides no assurance that the evidentiary hearing or briefs would not be delayed even longer (presumptively after June 29, 2026), unnecessarily delaying a decision on remand.⁶⁹

23. Pepco asserts that although AOBA notes overlapping procedural schedules with other jurisdictions, it fails to identify any actual conflict.⁷⁰ According to Pepco, AOBA appears to argue that the proceeding should be deferred because it lacks the resources to simultaneously participate in this proceeding and the other proceedings in which it has elected to intervene.⁷¹ Pepco questions AOBA's delay in requesting an extension of the procedural schedule now, since it could have been done after the schedule was set by Order No. 22806 or after the Company filed its motion for expedited evidentiary hearing.⁷²

24. Pepco is concerned that delays in issuing an Order on remand continue to create uncertainty for customers regarding rates and could negatively affect Pepco's access to capital, borrowing costs, and planned infrastructure investments, potentially impacting system reliability

⁶⁴ AOBA Motion to Extend at 7-8.

⁶⁵ Pepco Response to Motion to Extend at 2.

⁶⁶ Pepco Response to Motion to Extend at 2-3.

⁶⁷ Pepco Response to Motion to Extend at 4.

⁶⁸ Pepco Response to Motion to Extend at 3.

⁶⁹ Pepco Response to Motion to Extend at 3. Pepco noted that this is the date by which reply briefs are currently due in Maryland Case No. 9849, a matter in which AOBA is also a party.

⁷⁰ Pepco Response to Motion to Extend at 4.

⁷¹ Pepco Response to Motion to Extend at 4.

⁷² Pepco Response to Motion to Extend at 4-5.

and the District economy.⁷³

DECISION

25. While Order No. 22806 set forth a clear and limited procedural path to comply with the Court’s remand that is focused solely on conducting the missing evidentiary hearing, resolving disputed facts, and supplying fuller Effective Rate Adjustment (“ERA”) and Bill Stabilization Adjustment (“BSA”) explanations, the Joint Motion raises important considerations that warrant a reassessment of that approach. The Joint Motion highlights the practical effects of proceeding under the existing schedule and raises concerns about fairness, administrative efficiency, and consistency with the Court’s mandate. As a result, although Order No. 22806 accurately reflected the Commission’s intentions at the time, the Joint Motion now requires the Commission to revisit and evaluate whether the previously outlined remand process remains appropriate considering these intervening developments.

26. Following Order No. 22328, Pepco continued to file updated financial information with the Commission as required, which was created to reconcile Pepco’s projected MRP spending with actual expenditures. This process was designed to increase transparency and evaluate whether the MRP produced the anticipated benefits. It consists of three stages: an initial Reconciliation and Prudency Review for 2023–2024; an Annual Informational Filing for 2025; and a final prudence review and reconciliation for 2025–2026, which could require ratepayer credits if Pepco is found to have over-earned.⁷⁴

27. In accordance with these requirements, Pepco filed its Reconciliation Filing for 2023 and 2024 in March 2025, detailing variances between forecasted and actual spending, including capital projects and major revenue requirement components.⁷⁵ Parties subsequently filed comments, and OPC and AOBA requested a hearing and supporting testimony to address discrepancies in the data, though the Commission has not yet ruled on these requests.⁷⁶ Pepco submitted its Annual Informational Filing for 2025 on March 31, 2026,⁷⁷ along with its ongoing quarterly financial reports, including its Q4 2025 ROR Report, which shows an unadjusted ROE

⁷³ Pepco Response to Motion to Extend at 3. Pepco points to Order Nos. 22820 (dismissal without prejudice of the Underground Project Charges) and 22821 (BSA rider held in abeyance) illustrate the effect of not having a final decision in this proceeding.

⁷⁴ Order No. 22328, ¶¶ 103-108.

⁷⁵ *Formal Case No. 1176*, Potomac Electric Power Company Reconciliation Filing for Calendar Years 2023 and 2024, filed March 31, 2025.

⁷⁶ *Formal Case No. 1176*, Comments of the Apartment and Office Building Association of Metropolitan Washington on the Potomac Electric Power Company’s CY 2023 and CY 2024 Reconciliation Filing Under the Company’s Pilot Multi-Year Rate Plan, filed August 29, 2025; 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, filed August 29, 2025.

⁷⁷ *Formal Case No. 1176*, Potomac Electric Power Company Annual Information Filing, filed March 31, 2026.

of 9.72% and an adjusted ROE of 9.48%.⁷⁸

28. The Joint Movants contend that the scope of the remand evidentiary hearing remains unclear because the MRP applied to prospective years (2023–2025) that have now passed, while the Commission has stated that current rates are lawful and the rule against retroactive ratemaking prevents adjustments to previously collected revenues. They argue that uncertainty remains regarding which years, such as 2023, 2024, and 2025, fall within the scope of the remand. The Joint Movants further assert that if refunds or other remedies affecting earlier periods are legally unavailable, it is unclear why testimony or evidentiary submissions related to those years would be required. They therefore maintain that the procedural schedule should be stayed until the Commission clarifies the specific issues and time periods to be addressed at the evidentiary hearing.

29. The Joint Movants additionally argue that updated actual financial information must be incorporated into the record because material facts relevant to Pepco's ERA, BSA, and capital-variance positions can only be evaluated using the most recent actual data. They note that Order No. 22806 did not specify how updated actuals or revised projections should be treated on remand, and they assert that the precedent in *Potomac Elec. Power Co. v. Pub. Serv. Comm'n* requires consideration of the most recent data information available when determining whether the record is complete.⁷⁹ For these reasons, the Commission finds that additional clarification and updated supplemental testimony are necessary before Parties can identify material disputed facts or prepare for cross-examination.

30. The Commission acknowledges the Joint Movants' concern that subsequent financial filings, including Pepco's reconciliation reports, quarterly ROR filings, and the 2025 Annual Informational Filing, contain updated actual data that diverge from the forecasts underlying the original MRP, and that Order No. 22806 did not expressly state how these actuals would be treated in the remand proceeding. The Commission also recognizes that, under District law, its decisions must be rational, lawful, and supported by substantial evidence, and that the Court in *Potomac Elec. Power Co. v. Pub. Serv. Comm'n* held that the Commission must consider the most recent available material where such information has been available for a meaningful period and is properly noticed.⁸⁰ Ignoring updated actual financial data under those circumstances would undermine the evidentiary foundation required for lawful ratemaking. Consistent with that precedent, the Commission finds that the updated actual financial data for 2024–2025 must be incorporated into the remand record to resolve the material factual disputes identified by the Court and any others the Commission determines warrant adjudication and to enable the Commission to render a decision on the merits.

31. The Commission also acknowledges that, although Order No. 22328 was vacated, Pepco has, consistent with the directives in Paragraphs 204 and 105 of that Order, already filed its

⁷⁸ *Formal Case No. 1176*, Potomac Electric Power Company Q4 2025 Rate of Return Report, filed March 30, 2026.

⁷⁹ *See Potomac Elec. Power Co. v. Pub. Serv. Comm'n*, 402 A.2d 14, 18-19 (D.C. 1979).

⁸⁰ Joint Motion at 10-11 (citing *Potomac Elec. Power Co. v. Pub. Serv. Comm'n*, 402 A.2d 14, 18–19 (D.C. 1979)).

Reconciliation Filing and Prudency Review for Calendar Years 2023 and 2024, as well as its Annual Informational Filing for Calendar Year 2025. As several Parties have noted, discovery on the 2025 Annual Informational Filing remains ongoing and is scheduled to conclude on May 26, 2026. To preserve due process and ensure that the remand proceeding proceeds on a complete and transparent record, the Commission will permit all Parties to conduct discovery through the deadline established in Attachment A for “Deadline for Data Requests to Pepco Regarding Application, Direct, Supplemental, and Updated Remand Testimony.” This approach ensures that Parties are able to review Pepco’s prior reconciliation materials, test the accuracy and completeness of the 2025 informational filing, and fully examine Pepco’s updated remand testimony and workpapers before the evidentiary hearing.

32. The Commission clarifies that the updates required in this Order are not a reconstruction or expansion of the record but a targeted supplementation necessary to ensure that the evidentiary hearing proceeds on a defined and transparent foundation. This supplementation provides the notice and procedural protection required by D.C. Code § 2-509 and supports the development of a record capable of sustaining the Commission’s decision and judicial review. These clarifications are fully consistent with Order No. 22806, which authorizes repeating only those steps necessary to cure the procedural defect and complete the record.

33. To avoid ambiguity, the Commission confirms that updated actual expenditures will be included not only to resolve disputed material facts and complete the ERA/BSA explanations required by the Court, but also to ensure that the Commission has a full and complete record upon which to base its final decision. This clarification does not reopen the entire MRP or authorize retroactive rate changes; rather, it ensures that the evidentiary record is complete and consistent with governing legal standards.

34. To that end, the Commission directs Pepco to file updated supplemental testimony and exhibits with supporting workpapers that incorporate actual financial data for 2023–2025 grounded on actuals. This limited supplementation is required to enable the Parties and the Commission to analyze Pepco’s filing. Following Pepco’s updated submission, OPC and the Intervenors will have the opportunity to file responsive testimony. Only after Pepco submits the updated testimony and exhibits can the Parties meaningfully conduct discovery, identify disputed facts, prepare witnesses, and satisfy the due process requirements of D.C. Code § 2-509(b). The procedural schedule will be modified to ensure adequate time for review of Pepco’s submission and the responsive testimony.

35. The Commission further clarifies the scope of the remand proceeding, including the years and issues to be addressed: the use of 2024–2025 actual expenditure data, the development of an updated 2026 projection grounded in those actuals, and the ERA/BSA, cost-shifting, and capital-variance issues identified by the Court and raised by the Parties. The Commission does not require Pepco to file updated 2023 actual expenditures, as that data was already part of the record before the Commission issued Order No. 22328. Likewise, the Commission does not find requiring Pepco to update its 2026 forecasts would be useful at this time, as meaningful forward-looking projections must first be anchored in verified 2024–2025 actuals and informed by the evidentiary record developed during the remand proceeding.

36. To ensure a complete evidentiary record, the Commission directs Pepco to file

updated testimony, exhibits, and supporting workpapers that:

- a. Present detailed actual financial capital and O&M expenditure data for calendar years 2024 and 2025, identifying any previously not forecasted expenditures;
 - b. Provide updated ratemaking adjustments for the 2025 and 2026 revenue requirement that reflect actual expenditures as appropriate;
 - c. Provide the BSA Deferral Balance monthly calculations by rate class, including all inputs (including class customer counts), identify all data sources, formulas, class-allocation factors, and adjustments from January 1, 2017, to the present (use the approved BSA mechanisms that were in place for each period); and
 - d. Provide a full explanation of the mechanics of the ERA (and its predecessor) from its inception, including its cost-allocation methodology, its interaction with the BSA, and the approved revenue requirement for each customer rate class.
37. For the BSA, Pepco shall include at a minimum the following components:
- a. Monthly BSA deferral ledgers by customer class (2017–April 2026), showing determinants, targets, monthly adjustment, and caps on collections and credits;
 - b. Customer rate class counts (monthly), including data provenance, billing determinants, and data sources;
 - c. Usage per customer (for each applicable rate class); and
 - d. All allocation factors and class-revenue targets used in BSA and ERA calculations.
38. For the ERA, Pepco shall include the following components:
- a. ERA formula descriptions, including relevant tariff pages, implementation manuals, and any applicable caps, thresholds, or exclusions; and
 - b. Comprehensive documentation of how the ERA interacts with the BSA, including the sequence of application, any netting or offsetting, and all reconciling adjustments at the class level.

For purposes of this filing, the “netting method” refers to the defined calculation sequence demonstrating how ERA and BSA adjustments interact. Specifically, whether one mechanism is applied upstream or downstream of the other, whether offsets, cancellations, or additive effects occur, and how the combined adjustments ultimately produce the final class-level revenue requirement. The netting method must clearly show how ERA and BSA values are combined and how each mechanism affects the other before the final revenue amounts for each customer class are calculated. This approach ensures that the remand proceeds deliberately, protects the Parties’ due process rights, and enables the Commission to develop the full evidentiary record required to

support a legally sustainable decision.

39. We direct OPC, AOBA, and other interested Parties to provide proposed ratemaking adjustments to Pepco's 2025 and 2026 revenue requirements based on the actual expenditures filed as a part of the Company's Remand Testimony, including exhibits and supporting workpapers with their direct testimony filing.

40. The Commission rejects Pepco's contention that the Joint Movants' request seeks to force a new rate case or expand the remand beyond the Court's directive. The Commission's clarification of the treatment of updated actual financial data, cost-shifting, and prudence issues is a necessary refinement to address the due process and notice concerns raised by the Joint Movants. The requirement that Pepco provide updated supplemental testimony remains narrow in scope and is consistent with the Commission's authority to manage its docket and ensure the development of a complete, usable record.⁸¹

41. The Commission recognizes that OPC, AOBA, and other Parties have raised substantive concerns regarding Pepco's Reconciliation Filings for 2023 and 2024, including significant variances from the capital investments and expenditures presented in the original MRP. These variances affect the prudence review, rate base calculations, and revenue requirement components during the MRP period. Given these issues, the Commission finds that the prudence, cost-shifting, and rate base questions identified in the updated filings must be addressed directly in the remand record. To provide additional clarity, the Commission applies the prudence standard articulated in *Potomac Electric Power Co. v. PSC*, 661 A.2d 131 (D.C. 1995), and reaffirmed in Paragraph 90 of Order No. 22358: utilities are not required to demonstrate in their case-in-chief that all expenditures were prudent; however, when another participant creates a serious doubt as to the prudence of a particular expenditure, the utility bears the burden of dispelling that doubt and proving the expenditure was prudently incurred.⁸² Consistent with that standard, the Commission clarifies that at the conclusion of the two-year MRP it will determine the prudence of capital investments and expenditures during the relevant MRP years, including variances from forecasted spending, and will require Pepco to explain, through updated supplemental testimony, all material deviations from the projections in its MRP Application and to rebut any serious doubts raised by the Parties regarding the prudence of specific investments. These requirements reflect Pepco's continuing burden of proof under D.C. Code § 2-509(b). Nothing in this Order alters that allocation of responsibility; rather, the supplemental filings ensure that the record is sufficient for the Commission to evaluate whether Pepco has met that burden.

42. The financial analyses presented in the remand proceeding must be based on the actual investments, plant-in-service additions, and revenue requirement components relevant to the years under review, and Pepco must provide supporting workpapers reconciling its actual results with the projections underlying Order No. 22328. These clarifications ensure that the

⁸¹ See *Washington Urban League, Inc. v. Public Service Commission*, 295 A.2d 906, 908 (D.C. 1972) (citing *City of San Antonio v. C. A. B.*, 374 F.2d 326 (D.C. Cir. 1967) ("No principle of administrative law is more firmly established than that of agency control of its own calendar."))

⁸² See Order No. 22358, ¶ 90, rel. January 28, 2025 (citing *Potomac Electric Power Co. v. Public Serv. Comm'n of the District of Columbia*, 661 A.2d 131, 140 (D.C. 1995) (citations omitted)).

Commission's findings rest on substantial evidence. The Commission further clarifies the status of the MRP following the Court's vacatur. Because the Court vacated Order No. 22328 on procedural grounds only, the underlying MRP framework was not substantively invalidated. In light of the material divergences between projected and actual capital spending identified in the March 31, 2025, Reconciliation Filing and in the Parties' comments, Pepco must identify and explain those deviations through limited supplemental testimony to enable the Commission to make legally sufficient prudency determinations on the remand record. Although the MRP framework survives the Court's vacatur, the absence of the required evidentiary hearing and related explanations means that its evidentiary underpinnings must be rebuilt. Accordingly, this Order requires supplemental testimony and updated inputs to ensure the MRP can be lawfully evaluated on remand.

43. Requiring Pepco to identify and reconcile these actual expenditures does not convert the remand into a new MRP case or a new traditional rate case, but rather enables the Commission to rely on the most recently available information. The Commission's consideration of updated financial data is limited to ensuring that the evidentiary hearing addresses the disputed factual issues identified by the Court, that the ERA and BSA explanations rest on a complete and accurate record, and that the final remand order satisfies the substantial evidence standard. This approach preserves the integrity of the MRP framework while fulfilling the Commission's obligation to consider the updated information necessary for a legally sustainable decision.

44. Because the Court's vacatur was limited to procedural defects and did not invalidate the substantive components of the MRP, the reconciliation and prudency review framework established in Order No. 22328, including multi-year reporting, variance analysis, and discovery on Annual Informational Filings, remains in effect. Only those portions of Order No. 22328 expressly addressed by the Court were affected; all other elements continue to operate unless modified by subsequent Commission order.

45. The Commission recognizes that issues raised in the Joint Motion concern clarity, notice, and the proper scope of the evidentiary hearing. To ensure orderly litigation and meaningful participation by all Parties, the Commission clarifies in this Order the issues and years relevant to the remand hearing, the treatment of updated actual expenditures, and the approach for evaluating disputed factual questions arising from the ERA, BSA, and other MRP components. These targeted adjustments do not alter the core procedural posture established in Order No. 22806; rather, they provide a defined and administratively workable basis for the hearing and ensure that the Commission's final decision is rational, lawful, and supported by substantial evidence, consistent with *Potomac Elec. Power Co. v. Pub. Serv. Comm'n* and the forward-looking nature of an MRP.

46. Because clarity on these issues is essential to defining the scope of the evidentiary hearing and ensuring due process under D.C. Code § 2-509, the Commission finds that the procedural schedule must be modified to allow Pepco to file updated testimony and exhibits and to provide time for the Commission to issue further guidance on the rate structure and issues to be addressed at the evidentiary hearing. This modification ensures that all parties receive adequate notice and that the final order rests on a complete and legally sufficient evidentiary record. The Commission further finds that the procedural schedule must be modified because discovery on Pepco's March 31, 2026, Annual Informational Filing has been interrupted. Under Order No. 22328, Parties are entitled to a 45-day discovery period extending to May 15, 2026, while the

evidentiary hearing date and the deadline for identifying disputed facts as set forth in Attachment A of Order No. 22806 fall before that window closes. Proceeding under those deadlines would deny Parties a reasonable opportunity to review and test the 2025 actuals, which the Commission is required to consider.

47. The Joint Movants contend that, under Order No. 21886, the Commission directed Pepco to file a traditional one-year test-year rate case for Calendar Year 2023 to determine whether to proceed with an MRP, and they argue that because 2023 has passed, Pepco must now file an updated traditional test-year application for Calendar Year 2026 before the remand proceeding can continue. They assert that such a filing is necessary for the Commission to consider the most recent financial information and conduct a prudence review. The Commission disagrees. Order No. 21886 did not direct Pepco to file a new traditional rate case application in the event of a procedural remand, nor did it obligate Pepco to submit a 2026 test-year filing as a precondition to moving forward. Requiring such a filing now would be unnecessary, duplicative, and inconsistent with the Court's mandate, which is limited to curing the procedural defects identified by the Court, specifically, holding an evidentiary hearing and providing the required explanations, not initiating a new or parallel rate case. The updated 2024–2025 actual expenditure data and associated revenue-requirement adjustments that the Commission requires Pepco to file in this remand proceeding will provide the necessary evidentiary foundation to evaluate prudence, cost variances, and rate impacts without the need for a separate 2026 test-year application.

48. Accordingly, the Commission hereby grants the Joint Motion to Stay the previously adopted Procedural Schedule and grants AOBA's Motion for an Extension of the Procedural Schedule. All deadlines established in Order No. 22806 and Attachment A thereto are stayed, and the Commission adopts the revised remand procedural schedule set forth in Attachment A to this Order.

B. Treatment of Existing Rates During Remand Proceeding

49. In Order No. 22806, the Commission held OPC's and AOBA's rate-suspension and refund motions in abeyance and directed the Parties to submit supplemental briefing on the potential rate approaches during the remand.⁸³ As the Commission explained in Order No. 22806, the Court vacated Order Nos. 22328 and 22358 and remanded this matter with instructions for the Commission to conduct the evidentiary hearing required under D.C. Code § 2-509(b).⁸⁴ The Court vacated Order No. 22328 without finding the rates approved therein to be unjust, unreasonable, or otherwise unlawful, Order No. 22806 made clear that the Commission must determine an appropriate rate posture during the pendency of the remand proceeding and directed the Parties to address, through supplemental briefing, the legal framework, the effect of vacatur on existing rate levels, and the practical consequences of potential approaches for continuing the currently effective tariffed rates.⁸⁵ In directing the Parties to file these briefs, the Commission explained that the supplemental briefing was intended to assist the Commission in determining the lawful

⁸³ Order No. 22806, ¶ 31.

⁸⁴ Order No. 22806, ¶ 29.

⁸⁵ Order No. 22806, ¶¶ 29-31.

and appropriate rate posture during the remand period and in evaluating the customer and utility impact implications of each potential approach.⁸⁶ The Commission further stated that, in order to ensure that any rate-continuity decision rests on a complete record consistent with the Court's directive, it would defer selecting an interim rate approach until after reviewing the Parties' supplemental briefs, at which point the Commission would issue a subsequent order establishing the treatment of the existing rates during remand. Order No. 22806 also clarified that, pending that determination, no changes would be made to the rates currently being billed to customers.⁸⁷ With the remand proceeding now clarified above, the Commission turns to the supplemental briefs.

50. **OPC.** *Interim Rate Treatment.* OPC argues that "interim rate treatment" is not clearly defined, and that Order No. 22806 contains conflicting statements. OPC points to Paragraph 39 (a), which states that the parties should provide support for "Party's proposed interim rate treatment."⁸⁸ OPC claims that this conflicts with the beginning of Order No. 22806, which directs parties to be aware of the "potential interim rate approaches" identified in Paragraph 31.⁸⁹ OPC claims that Paragraph 31 does not identify or propose any specific approach and does not specify exactly what an interim rate would be.⁹⁰

51. OPC further expresses confusion by the Commission's statement that it needs a complete record to select interim rates.⁹¹ OPC argues that briefs and pleadings are not evidence in the record, making it unclear how supplemental briefs could provide a more complete record.⁹² OPC also claims the logic is circular because parties are directed to comment on interim rate treatment, but the Commission will not identify any interim rate treatments until it has received briefs.⁹³

52. OPC argues that, on the other hand, Order No. 22806 suggests it's up to a specific party to create an interim rate treatment approach.⁹⁴ OPC argues that the Commission should reinstate the prior rates and directs the Commission's attention to OPC's Motion to Suspend, the Joint Response, and OPC's Reply.⁹⁵

53. *Applicable Statutory Analysis.* With respect to the specific statutes that the

⁸⁶ Order No. 22806, ¶¶ 31-32.

⁸⁷ Order No. 22806, ¶ 32.

⁸⁸ OPC Brief at 5.

⁸⁹ OPC Brief at 5.

⁹⁰ OPC Brief at 5.

⁹¹ OPC Brief at 5.

⁹² OPC Brief at 6.

⁹³ OPC Brief at 6.

⁹⁴ OPC Brief at 6.

⁹⁵ OPC Brief at 6.

Commission asked Parties to address in supplemental briefs, OPC argues that the aforementioned statutes do not give the Commission authority to ignore a Court decision or create an unspecified interim rate.⁹⁶ OPC argues that § 34-403 only allows for liberal construction of the provisions of the subtitle and that it alone does not provide any specific guidance.⁹⁷ OPC argues that rates are no longer prima facie reasonable as required by § 34-603 because of the Court vacating Order Nos. 22328 and 22358.⁹⁸ OPC argues that it is unclear how § 34-908 is applicable, as it does not refer to the applicability or inapplicability of a Court order vacating a Commission order.⁹⁹ OPC claims that § 34-908 only allows the Commission to open an investigation into unreasonable or unjustly discriminatory rates, but that doing so would still require an evidentiary hearing before it could result in changes.¹⁰⁰ OPC argues there is no investigation here, and if there were, it would be based on the claim that the rates are unjust.¹⁰¹

54. *Case Law Analysis.* OPC asserts that the refunds awarded for the inappropriately charged rate, as contemplated by *D.C. v. D.C. PSC*, 905 A.2d 249 (D.C. 2006), are distinct from what the Commission appears to mean by an interim rate.¹⁰² OPC also argues that *D.C. v. D.C. PSC* is distinct from what OPC is requesting, because OPC is not seeking a refund but only that the Commission reinstate prior rates.¹⁰³ OPC argues that *Chesapeake & Potomac Tel. Co. v. Pub. Serv. Comm'n*, 330 A.2d 236 (D.C. 1974) is distinguishable because it did not involve the legal effect of a vacated Commission order, making the case inapplicable.¹⁰⁴ OPC also argues that the Commission no longer adjudicates rate cases in two phases, as it did at the time.¹⁰⁵ OPC also notes that the telecom company in the case is the one that appealed to the Court, claiming the interim rates it applied for were denied.¹⁰⁶ OPC argues that Pepco neither appealed to the Court nor submitted an application for any interim rate.¹⁰⁷

55. With respect to the *MISO Transmission Owners* case, OPC argues that the Court's distinction of refunds does not apply because the Court was addressing two circumstances that are

⁹⁶ OPC Brief at 6.

⁹⁷ OPC Brief at 6.

⁹⁸ OPC Brief at 6-7.

⁹⁹ OPC Brief at 7.

¹⁰⁰ OPC Brief at 7.

¹⁰¹ OPC Brief at 7.

¹⁰² OPC Brief at 7.

¹⁰³ OPC Brief at 7.

¹⁰⁴ OPC Brief at 8.

¹⁰⁵ OPC Brief at 8.

¹⁰⁶ OPC Brief at 8.

¹⁰⁷ OPC Brief at 8.

not relevant here.¹⁰⁸ OPC argues that *MISO Transmission Owners* is not relevant because the case addressed FERC orders in complaint proceedings under Section 206 of the Federal Power Act.¹⁰⁹ OPC argues that the finding in this case is irrelevant because the issue before the PSC does not involve the extent to which refunds are permissible in a subsequent complaint that was submitted under Section 206(b) of the Federal Power Act.¹¹⁰

56. Legal Effect of the Court's Vacatur. Regarding the effect of the Court's vacatur on existing rate levels, OPC states it continues to believe what it has already argued in previous filings, which is that the Court's vacatur has resulted in the Order Nos. 22328 and 22358 being null and void.¹¹¹ OPC cites § 34-607, which states Commission orders remain in full effect unless vacated by the D.C. Court of Appeals.¹¹² OPC argues that keeping rates in place would contravene § 34-607, violate the Court's vacatur decision, and violate the filed rate doctrine.¹¹³ OPC argues the Commission has no authority to adopt any rate other than those approved in the last rate case order.¹¹⁴ OPC argues that the Commission must follow due process and hold an evidentiary hearing before adopting a new rate.¹¹⁵

57. Filed Rate Doctrine. OPC argues it has already discussed the filed rate doctrine in other filings, and it is unclear what the Commission means when it requests parties discuss the doctrine in "this context."¹¹⁶ OPC argues that the filed rate doctrine requires the Commission to reinstate the prior rate from Order No. 20755 due to the Court vacating Order No. 22328.¹¹⁷

58. OPC says the question as to whether judicial vacatur is an exception or constrains "interim action" by the Commission presumes that interim action is clearly defined, which, OPC argues, it is not.¹¹⁸ OPC argues that the Commission has not delineated this term or cited any relevant statute that defines it.¹¹⁹ Due to the lack of clarity on the term, OPC argues that it is not

¹⁰⁸ OPC Brief at 9.

¹⁰⁹ OPC Brief at 9-10.

¹¹⁰ OPC Brief at 11.

¹¹¹ OPC Brief at 8.

¹¹² OPC Brief at 8.

¹¹³ OPC Brief at 9.

¹¹⁴ OPC Brief at 9.

¹¹⁵ OPC Brief at 9.

¹¹⁶ OPC Brief at 12.

¹¹⁷ OPC Brief at 12.

¹¹⁸ OPC Brief at 12.

¹¹⁹ OPC Brief at 12.

even established that the Commission can take interim action.¹²⁰

59. *Impact of OPC's Proposed Interim Rate Approach.* OPC argues that the original rates from Order No. 20755 should be reinstated, which would be a simple and easy process.¹²¹ OPC argues that the Commission has not clearly defined the scope of its question or what it means by financial, administrative, or operational impacts.¹²² OPC argues that, at a minimum, the financial impacts would be the difference between the rates currently being charged under the vacated order and those charged under Order No. 20755.¹²³ OPC argues fact finding would be necessary for further discussion.¹²⁴ OPC argues that the legal effect remains the same regardless of these issues: current rates are unlawful.¹²⁵

60. **AOBA.** AOBA argues in its Supplemental Brief that the “interim rate approach” in light of Order No. 22806 and the vacatur of Order Nos. 22328 and 22358 is straightforward: Pepco’s rates must revert to those implemented through its December 30, 2022, Compliance Filing and Commission Order No. 21563.¹²⁶ According to AOBA, these rates were the last rates lawfully approved in the District, and as such, must remain in place until lawfully superseded or rescinded.¹²⁷ AOBA submits that there is no appropriate evidentiary record or Commission determination supporting any alternative regulatory deferral mechanism at this time, and that Pepco should provide refunds for the surplus in revenue collected during the period of January 1, 2025, to the date the rates are restored to the previous January 1, 2023 levels.¹²⁸

61. While AOBA argues that the impact on Pepco from these refunds is speculative at this time due to a lack of evidence, it stresses that Pepco is free to file a new rate application to cure revenue deficits and claim a return for the administrative costs associated with implementing the reversion, though it also notes that Pepco’s reports show earnings beyond Order No. 22328-authorized returns.¹²⁹ AOBA requests a full ratepayer refund, with interest, for the difference between the rates charged from January 1, 2025, and the rates in place immediately prior, for the

¹²⁰ OPC Brief at 12.

¹²¹ OPC Brief at 13.

¹²² OPC Brief at 13.

¹²³ OPC Brief at 13.

¹²⁴ OPC Brief at 13.

¹²⁵ OPC Brief at 13.

¹²⁶ AOBA Brief at 5, citing *Formal Case No. 1156, In the Matter of the Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for the Electric Distribution Service in the District of Columbia* (“*Formal Case No. 1156*”), Pepco Compliance Filing, filed December 30, 2022; *Formal Case No. 1156*, Order No. 20755, rel. June 8, 2021; *Formal Case No. 1156*, Order No. 21042, rel. October 26, 2021; and *Formal Case No. 1156*, Order No. 21563, rel. December 22, 2022.

¹²⁷ AOBA Brief at 5, citing DC Code § 34-607.

¹²⁸ AOBA Brief at 6-7.

¹²⁹ AOBA Brief at 7.

period from January 1, 2025, through the date the rates are restored to previous levels.¹³⁰

62. **Pepco.** *Legal Effect of the Court's Vacatur.* In its Brief, Pepco asks the Commission to maintain the rates established in *Formal Case No. 1176* pending its decision on remand. Pepco contends that the District of Columbia Court of Appeals' decision did not "automatically revive the rates approved five years ago in Formal Case No. 1156,"¹³¹ opposing AOBA, DCG, and OPC's position.¹³² Pepco posits that the Appeals Court's decision was procedural and that its determination does not render the current rates unjust or unreasonable.¹³³ Ultimately, Pepco asks the Commission to approve its proposed interim rate treatment by maintaining the Commission-approved rates currently on file, subject to adjustment once the Commission determines just and reasonable rates in its order on remand.¹³⁴ As support, Pepco posits that the Court's decision does not "impact the rates currently on file with the Commission and in effect," find the rates to be unjust or unreasonable, or "suspend the collection of the currently effective rates."¹³⁵ Instead, Pepco asserts, the Court's decision remanded the matter to the Commission based on a procedural error with instructions to hold an evidentiary hearing. Arguing that setting rates is solely within the Commission's purview, Pepco suggests the Commission hold the evidentiary hearing as the Court directed and determine the rates and any adjustments in its order on remand.¹³⁶ Pepco believes this is the most equitable, administratively efficient, and least disruptive approach.

63. *Applicable Statutory Analysis.* Turning to specifically identified D.C. Code sections and their implications on the party's interim rate treatment proposal, Pepco contends that Section 34-403 gives the Commission implied broad authority to establish interim rates,¹³⁷ Section 34-

¹³⁰ AOBA Brief at 7-8.

¹³¹ *Formal Case No. 1156*, Order No. 20755, rel. June 8, 2021. Pepco argues extensively that reinstating the 2021 rates approved Order No. 20755 would constitute an unreasonable and unjust rate, stating that those rates were already inadequate in 2024 and are even more so now. To bolster its position, Pepco states that "prior to the rates filed in *Formal Case No. 1176* becoming effective on January 1, 2025, Pepco was earning substantially less than the 9.275% return on equity the Commission had authorized in Formal Case No. 1156." Pepco Brief at 3-4.

¹³² Pepco Brief at 1.

¹³³ Pepco Brief at 1. It is Pepco's position that the Court's direction was to correct procedural issues in the Commission's prior order by holding a trial-type evidentiary hearing and by explaining the Commission's determinations concerning the Effective Rate Adjustment ("ERA") and the Bill Stabilization Adjustment ("BSA") deferral balance.

¹³⁴ Pepco Brief at 2.

¹³⁵ Pepco Brief at 16.

¹³⁶ Pepco Brief at 16.

¹³⁷ Pepco Brief at 11-12. While broad, Pepco notes that this authority cannot conflict with the Public Utilities Act's explicit limitations and must comply with other applicable legal requirements.

603 codifies the filed rate doctrine, supporting its interim rate position,¹³⁸ Section 34-607 prevents any rate decision preceding a hearing, as it does not address rates in the event of vacatur,¹³⁹ Section 34-908 has no impact on its proposed interim rate treatment because it is irrelevant to this proceeding, which is not an investigation,¹⁴⁰ and Section 34-605(b) requires existing rates to remain in effect until the deficiency identified by the Court of Appeals order to vacate is rectified. Summarily, Pepco argues that none of the cases or statutory provisions discussed above support the proposition that the Court's decision extinguished the current rates.

64. Case Law Analysis. Pepco addresses the *Chesapeake & Potomac Tel. Co. v. Pub. Serv. Comm'n* ("C&P") case¹⁴¹ and provisions of the Public Utilities Act. In regard to the C&P case, Pepco argues that it is procedurally distinguishable from the present proceeding,¹⁴² but informative in that in both cases the "Court embraced the notion that a Commission Order can put parties on notice that the rate is provisional and could be modified."¹⁴³ Pepco uses C&P and other proceedings to argue that the Commission adopt its interim rate approach.¹⁴⁴

65. Pepco then discusses decisions issued by FERC, mainly the D.C. Circuit decision in *Miso Transmission Owners v. FERC* ("MISO").¹⁴⁵ Pepco asserts that the approach taken in

¹³⁸ Pepco Brief at 12. This section, Pepco argues, supports rejection of *Formal Case No. 1156* and the continued use of the rates that became effective on January 1, 2026, through a determination based on "extensive testimony submitted in *Formal Case No. 1176*."

¹³⁹ Pepco Brief at 13-14. Pepco supplements this argument by noting that the Court's review on appeal from a Commission decision is narrowly prescribed under Section 34-606. Pepco argues that the "Court does not have legal authority to set rates. . . and that Congress vested sole ratemaking authority in the expertise of the Public Service Commission."

¹⁴⁰ Pepco Brief at 14-15. Pepco asserts "to the extent the rates found to be just and reasonable on remand differ from the current rates, the Commission will also determine the appropriate adjustment and how it will be made."

¹⁴¹ Pepco Brief at 7-10. *Chesapeake & Potomac Tel. Co. v. Pub. Serv. Comm'n*, 30 A.2d 236 (D.C. 1974).

¹⁴² Pepco Brief at 7-10. According to Pepco, the "proceeding at issue in *C&P* was in a different procedural posture. There, the Commission had determined the amount of the increase," but not the customer class allocation. Conversely, Pepco argues, this case has already established just and reasonable rates, and the vacatur is procedural and does not address the substance of the Commission's rate decision.

¹⁴³ Pepco Brief at 9.

¹⁴⁴ Pepco Brief at 9. Pepco states that its approach is consistent with the approach used in connection with the interim rates it established for Washington Gas Light Company in *Formal Case No. 567, In The Matter of the Application of Washington Gas Light Company for authority to increase existing rates, tolls, charges, and schedules for gas service*, Order No. 5517, rel. June 26, 1972; *Formal Case No. TT96-15, In The Matter of the Application of Bell Atlantic - Washington, D.C., Inc. For Authority to Amend the General Services Tariff, P.S.C. - D.C - No. 203, Section 14b*, Order No. 10851, rel. November 25, 1996; *Formal Case No. 647, In The Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates And Charges for Gas Service*, Order No. 5833, rel. October 29, 1976; and *Formal Case No. 722, In the Matter of the application of Washington Gas Light Company for Authority To Increase Existing Rates and Charges for Gas Service*, Order No. 7193, rel. October 3, 1980.

¹⁴⁵ Pepco Brief at 18. Pepco recognizes that these cases are not binding precedent but argues that they provide persuasive precedent for the Commission to follow in this case. Pepco notes the 2017 decision in *ISO New England Inc. v. Bangor Hydro-Electric Company, et al.*, 161 FERC ¶ 61,031 (2017).

MISO is consistent with its proposed interim rate treatment – “while FERC conducted its proceedings on remand, the 12.38% rate MISO had been using before the D.C. Circuit decision *remained in force* even though all were on notice that it could later be modified when FERC issued its order on remand.”¹⁴⁶ Ultimately, FERC found the standing rate unreasonable and directed the MISO transmission owners to issue refunds based on the new reasonable rate.¹⁴⁷ Pepco argues that the Commission should adopt a similar approach here, “namely, the rates currently on file with the Commission should continue in effect, and following an evidentiary hearing, be modified from those it found to be just and reasonable in Order No. 22328.”¹⁴⁸

66. *Filed Rate Doctrine.* Pepco next discusses the filed rate doctrine, stating that it has followed it in the present matter and that its interim rate proposal is consistent with it.¹⁴⁹ Indicating that if the Commission explicitly gave the parties notice that “the continued use of the rates approved by and on file with the Commission could be subject to adjustment once the order on remand is issued,” Pepco asserts that its interim rate proposal would continue to be compliant with the doctrine and would also not constitute impermissible retroactive ratemaking.¹⁵⁰ Pepco also argues that its interim rate proposal is “markedly different” from the *Formal Case No. 1156* rates that the opposing parties “have claimed are required to be revived.”¹⁵¹ Those rates, Pepco asserts, are not on file with the Commission, have not been effective for more than a year, and have already been found to be unjust and unreasonable.¹⁵²

67. *Impact of Pepco’s Proposed Interim Rate Approach.* According to Pepco, maintaining the current rates will “minimize disruption and confusion for customers and permit [the Company] to continue executing on its investment plans.”¹⁵³ It addresses the potential impact of the *Formal Case No. 1156* proposal in an attached Affidavit¹⁵⁴ and asserts that it would “recognize significantly reduced revenues of approximately \$10 million per month, for each month, depending on seasonality, for the interim period between March 27, 2026, until the

¹⁴⁶ Pepco Brief at 18. Pepco acknowledges the MISO decision did not involve a procedural error, as is the case here, and that the Court vacated and remanded for further proceedings without dictating any result. Pepco argues that the Commission would be “serious[ly] misreading” the Court’s ruling if it concluded that the current rate must be supplanted prior to acting on remand.”

¹⁴⁷ Pepco Brief at 19.

¹⁴⁸ Pepco Brief at 20.

¹⁴⁹ Pepco Brief at 20. Pepco describes the filed rate doctrine broadly stating that it “prohibits a public utility, such as Pepco, from charging any rate for a regulated service other than the rate approved by and on file with the Commission.”

¹⁵⁰ Pepco Brief at 21.

¹⁵¹ Pepco Brief at 21.

¹⁵² Pepco Brief at 21.

¹⁵³ Pepco Brief at 22.

¹⁵⁴ Pepco Brief at 22. See Attachment 1 – Affidavit of Elizabeth Morgan Downs O’Donnell, Pepco Holdings LLC Senior Vice President and Chief Financial Officer. The Affidavit further explains the customer impacts of potential reconciliation adjustment for underearning and O&M reductions on operations.

Commission sets new rates after the remand proceeding.”¹⁵⁵

68. Pepco further states that it would seek a revenue deferral mechanism should the Commission place *Formal Case No. 1156* rates, or any rate lower than the current rates, in effect during the interim period.¹⁵⁶ Pepco contends that this mechanism would mitigate financial impacts while the remand is pending by tracking and recovering the difference between the lower rate and the rates the Commission ultimately approves.¹⁵⁷ The Company would seek to collect the difference over a future period, and customers could “bear a potentially significant shortfall to be collected by Pepco once the new rates are determined and the adjustment calculated.”¹⁵⁸ Pepco posits that no revenue deferral mechanism would be necessary under its interim rate proposal. It reasserts that its approach is equitable and would “minimize any adjustment that is necessary and will be less disruptive and confusing to customers.”¹⁵⁹

69. Pepco asks the Commission to approve its interim rate solution and to leave the current rates in effect pending a Commission decision on remand. The Company includes an attachment to support its brief. The attachment includes the Affidavit of Elizabeth Morgan Downs O’Donnell, which discusses the expected financial, administrative, and operational impacts of Pepco’s proposed interim rates during the remand period. It also includes a letter from the International Brotherhood of Electrical Workers Local Union 1900, which addresses the operational and customer impacts of Pepco’s interim rate proposal. Both support Pepco’s request and highlight “negative impacts” that reducing rates could have on customer rates and existing benefits.

70. Ultimately, it is Pepco’s position that its proposed interim rate treatment is consistent with judicial precedent¹⁶⁰ and the Public Utilities Act¹⁶¹ and that instituting any other rate would “replicate the very error identified by the Court insofar as no evidentiary hearing has

¹⁵⁵ Pepco Brief at 22. Pepco asserts that the Van Ness Switchgear Replacement, G Street 4kV Supply Line, Harvard Re-build, Georgetown 4 kV Conversion, and NoMa Neighborhood Performance Enhancement Project are investment projects that could be impacted during the remand period if its interim rate proposal is not accepted.

¹⁵⁶ Pepco Brief at 23.

¹⁵⁷ Pepco Brief at 23.

¹⁵⁸ Pepco Brief at 23. Pepco notes that the Maryland Public Service Commission approved a similar mechanism for the collection of deferred revenue in the Pepco Maryland multi-year plan in Case No. 9702. *See In re: Potomac Electric Power Co.*, Maryland Public Service Commission Case No. 9701, Order No. 90729 (August 7, 2023).

¹⁵⁹ Pepco Brief at 23.

¹⁶⁰ Pepco Brief at 2. Pepco cites the U.S. Supreme Court case, *Burlington Northern, Inc. v. United States*, 459 U.S. 141 (1982), arguing that “the default rule is that issuance of a new rate order ‘would have terminated the vitality of the earlier rate order’ and that this ‘principle has been recognized by courts in multiple jurisdictions.’” Pepco Brief at 4.

¹⁶¹ DC Code § 34-603.

been held.”¹⁶² Pepco posits that its interim rate approach is consistent with the filed rate doctrine¹⁶³ and would not violate the prohibition on retroactive rate changes because the parties would be on notice that the rates could be adjusted if the Commission adopted different rates in its order on remand.¹⁶⁴ According to Pepco, its approach is equitable, administratively efficient, and “minimizes the impact on customers.”¹⁶⁵

DECISION

71. The Commission requested supplemental briefing to clarify the Parties’ views regarding the lawful rate posture during remand, consistent with the Court’s procedural vacatur and the Commission’s ongoing statutory ratemaking obligations. OPC and AOBA argue that vacatur eliminates any lawful basis for the current *Formal Case No. 1176* rates and compels reinstatement of the last pre-2025 tariff. Pepco argues that although the Court vacated Order Nos. 22328 and 22358, it did not invalidate the rate levels currently on file, and the Commission retains full authority to determine the appropriate rate posture during remand. Pepco further asserts that rate continuity is both lawful and administratively superior, because the Court issued no finding that existing rates are unjust or unreasonable, leaving rate treatment to the Commission on remand.

72. Although the Parties raised competing interpretations of the filed rate doctrine, the Commission clarifies that the doctrine does not preclude the Commission from determining an appropriate rate posture during the remand proceeding, does not compel reinstatement of the prior rates approved in Order No. 20755, nor does it render the currently effective tariffed rates unlawful following the Court’s procedural vacatur.¹⁶⁶ The filed rate doctrine prohibits a utility from charging a rate other than one approved by and on file with the Commission, but it does not restrict the Commission itself from exercising its ratemaking authority on remand to maintain or establish interim rates through a new and independent decision.¹⁶⁷ Likewise, because all Parties are on

¹⁶² Pepco Brief at 2. Pepco notes that the currently used rates became effective more than a year ago after a 19-month proceeding that involved extensive discovery and thousands of pages of testimony. It intimates that instituting the rates from *Formal Case No. 1156* (or any other rate) does not have the support of an evidentiary hearing under the current conditions.

¹⁶³ Pepco Brief at 2, 4. The filed rate doctrine “forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate regulatory authority.” Pepco contends that the filed rate doctrine supports its having been operating under and charging the rates approved by and on file with the Commission in *Formal Case No. 1176*.

¹⁶⁴ Pepco Brief at 6. Pepco notes that in *DC v. PSC*, the Court “specifically noted that the filed rate doctrine and the prohibition against retroactive ratemaking are **not** applicable to situations when parties are placed on notice by the regulatory body that the rate is not a final rate, but rather is subject to adjustment based on the future resolution of some specific issue.”

¹⁶⁵ Pepco Brief at 6.

¹⁶⁶ See *Chesapeake & Potomac Tel. Co. v. Public Service Comm’n*, 330 A.2d 236 (D.C. 1974).

¹⁶⁷ See *District of Columbia v. Public Service Comm’n*, 905 A.2d 249, 256 (D.C. 2006) (citing *Watergate East, Inc. 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, 101 S.Ct. 2925, 69 L.Ed.2d 856 (1981)); See also *Maryland Office of People’s Counsel v. Federal Energy Regulatory Commission*, 164 F.4th 920, 922-923 (D.C. Cir. 2026).

notice that the current rates may be subject to adjustment upon completion of the remand proceeding, continuing the currently effective rates during the remand proceeding does not constitute impermissible retroactive ratemaking.

73. The Commission further clarifies that its authority to maintain or reauthorize the existing tariffed rates during the remand proceeding is firmly grounded in the District's statutory framework and the Commission's implied powers. As the Court has long recognized, where Congress has granted the Commission specific ratemaking responsibilities, those express duties carry with them "all additional, implied, and incidental powers which may be proper and necessary to effect and carry out" the Commission's statutory mandate.¹⁶⁸ That principle applies here. The term "interim rates" is not a separate statutory category but simply reflects a Commission action to continue the tariffed rates currently in effect during the remand proceeding. Establishing such rate continuity prevents regulatory gaps and allows the Commission to fulfill its obligation under D.C. Code § 1-204.93 and Title 34 to ensure just and reasonable rates at all times. Only the Commission, not the Court, sets rates in the District of Columbia, and regulatory continuity is necessary to preserve lawful billing, avoid administrative disruption, and protect ratepayers from uncertainty and volatility. Accordingly, the Commission's exercise of its implied authority to maintain current tariff rates is both lawful and necessary to preserve regulatory stability during the remand process.

74. At the outset, the Commission emphasizes that the Court's vacatur was expressly procedural; it did not nullify the tariffed rates currently on file, nor did it reinstate prior rates or limit the Commission's authority to continue the currently effective tariffed rates during the remand proceeding. The Court found only that an evidentiary hearing and additional explanation were required; it did not find the existing *Formal Case No. 1176* rates unjust, unreasonable, excessive, confiscatory, or otherwise unlawful, nor did it order suspension, reversion, or refunds. In the absence of a substantive finding invalidating the rates themselves, the Commission retains full ratemaking authority to determine appropriate rate posture during the remand process, including the authority to adopt a rate structure identical to those established in Order No. 22328.¹⁶⁹

75. The Commission finds support in the Supreme Court's decision in *Burlington Northern Inc. v. United States*, which held that when a court vacates an agency's rate order, the court may not itself impose or revive prior rates because the authority to determine the applicable rates during remand lies exclusively with the regulatory commission, not the judiciary.¹⁷⁰ The Court explained that vacatur of a rate order nullifies the order's reasoning but does not reinstate earlier rates; instead, the rates filed under the agency's authority remain in effect until the agency

¹⁶⁸ *Chesapeake & Potomac Telephone Co. v. Public Service Comm'n*, 330 A.2d 236, 240 (D.C. 1974) (Congress intended the Commission's expressly enumerated powers to include all implied and incidental authority necessary to carry them out, and this necessarily encompasses the Commission's power to establish interim rates when justified.); D.C. Code § 34-403.

¹⁶⁹ "Congress meant to foreclose a judicial power to interfere with the *timing* of rate changes which would be out of harmony with the uniformity of rate *levels* fostered by the doctrine of primary jurisdiction." *Burlington Northern Inc. et al. v. United States et al.*, 459 U.S. 131, 139 (1982) (emphasis supplied); see also *Chesapeake & Potomac Telephone Co. v. Public Service Comm'n*, 330 A.2d 236 (D.C. 1974).

¹⁷⁰ *Burlington Northern Inc. et al. v. United States et al.*, 459 U.S. 131 (1982).

determines otherwise, subject to later adjustment or reparations once the agency completes its review. *Burlington Northern* thus supports this Order's determination that the Commission is obligated to and has the discretion to maintain the tariffed rates currently in effect during the remand proceeding. Maintaining and continuing the existing tariffed rates subject to future adjustment and pending a final decision ensures orderly ratemaking and provides regulatory stability.

76. The Commission further clarifies that the Court's vacatur nullifies the Commission's prior order but does not, by itself, rescind or unwind the tariffed rates that were placed into effect pursuant to that order. Consistent with the principle in *Burlington Northern*, D.C. Code § 34-607 governs the continued force of Commission orders but does not mandate the automatic reinstatement of superseded tariffs upon vacatur of an order. Tariffs remain in effect until the Commission affirmatively changes, supersedes, or rescinds them. Thus, following the Court's procedural vacatur, it is the Commission's responsibility to determine the appropriate rate posture for the remand proceeding, including whether to maintain, reauthorize, or modify the tariffed rates currently on file.

77. The Commission also finds relevant the reasoning of the D.C. Circuit's decision in *MISO Transmission Owners v. FERC* and similar federal cases, which make clear that when a rate order is vacated on procedural grounds, the regulatory authority may maintain or reauthorize the existing rate levels during remand, subject to later adjustment based on a fully developed record.¹⁷¹ These cases confirm that the continuity of existing tariffed rates is a lawful and equitable means of addressing procedural deficiencies identified by the Court while avoiding unnecessary volatility for customers and the utility. The Commission therefore concludes that it has full authority to adopt interim rates during remand as part of its ongoing ratemaking responsibility.

78. Consistent with the above principles and precedent, the Commission concludes that it has the authority to continue the tariffed rate levels currently in effect, and that doing so is necessary to ensure administrative efficiency, regulatory stability, and protection of ratepayers. The Commission's authority to maintain current tariff rates flows from its broad statutory mandate to regulate public utility rates and to ensure that such rates remain just and reasonable. This authority includes the ability to take appropriate action on remand to correct procedural defects while preserving the integrity of the ratemaking process.¹⁷²

79. The Commission further finds that maintaining the currently effective rate levels during the remand proceeding is the most practical and least disruptive approach. Reversion to prior rates would introduce significant administrative complexity, require the unwinding of

¹⁷¹ See *MISO Transmission Owners v. Federal Energy Regulatory Commission*, 45 F.4th 248 (D.C. Cir. 2022); *ISO New England Inc. et al., v. Bangor Hydro Electric Company et al.*, 161 FERC P 61031 (October 6, 2017).

¹⁷² The Commission possesses broad discretion to fashion an equitable remedy on remand when one of its decisions is vacated by court order. That authority "emanates from an understanding that an 'agency, like a court, can undo what is wrongfully done by virtue of its order' and it includes the ability 'to regard as being done that which should have been done.'" Consistent with that understanding, the D.C. Circuit has concluded that the Commission may take action to correct its legal error even if that action might otherwise be impermissible under the Commission's authority pursuant to sections. *ISO New England Inc., et al., v. Bangor Hydro Electric Company, et al.*, 161 FERC P 61031 (October 6, 2017).

existing tariffs, and likely necessitate extensive reconciliation mechanisms to address differences between interim and final rates.¹⁷³ By contrast, continuing the current rate structure avoids unnecessary disruption, preserves continuity for ratepayers and the utility, reduces the risk of large, abrupt rate adjustments in the future, and aligns with the approach recognized in analogous regulatory contexts. Maintaining a single, consistent set of rates during the remand proceeding simplifies subsequent reconciliation and avoids the complications of managing multiple rate structures.

80. The Commission is mindful that regulatory stability is essential for both ratepayers and the utility, and it recognizes the significant concerns raised by many customers and stakeholders regarding the level of current rates. The Commission appreciates that households and businesses are experiencing real financial pressures and that uncertainty about applicable rates during the remand proceeding could heighten those concerns, undermine public confidence, and increase the likelihood of future rate volatility. Maintaining existing tariff rates provides clarity to all stakeholders, mitigates the risk of abrupt or destabilizing changes, and ensures that the Commission can fulfill its obligations on remand without prejudging the outcome of the evidentiary hearing or the final rate determination. The Commission remains committed to thoroughly evaluating the justness and reasonableness of Pepco's rates on remand and to protecting ratepayers' interests throughout this proceeding.

81. The Commission further emphasizes that maintaining the currently effective rates does not alter the burden of proof or impede any party's ability to fully and fairly litigate the issues on remand. Pepco will bear the burden of demonstrating, throughout this remand proceeding and at the evidentiary hearing required by the Court, that its proposed rates are just and reasonable and supported by substantial evidence. The Commission's decision to preserve existing rates during the remand proceeding does not constitute a final ratemaking determination, does not prejudice any outcome, and does not diminish the rights of OPC or any other party to challenge Pepco's evidence, present their own testimony, or contest the lawfulness of any rate element. To the contrary, proceeding to an evidentiary hearing ensures that all factual disputes, prudence questions, rate-design issues, and legal arguments will be fully examined on a complete record, consistent with the procedural protections and due process requirements articulated by the Court.

82. Accordingly, having carefully reviewed the supplemental briefs, the statutory framework, and federal and District ratemaking precedent, the Commission concludes that the most reasonable, legally supportable, and administratively efficient approach is to continue and reauthorize the currently effective rate levels during remand, effective as of the date of this Order. These continued rates are established through the Commission's independent ratemaking authority. The rates shall remain in effect during the remand proceeding and will be subject to prospective adjustment, including any appropriate reconciliation, upon issuance of a final order

¹⁷³ "In particular, having multiple ROEs in effect during the period for which the Commission orders refunds or surcharges will make identifying and allocating the particular refunds or surcharges into a significantly more complex process. That is because allocating the appropriate surcharges or refunds across the different types of transmission service provided by NETOs is a complicated and time-consuming task. A need to consider multiple previous ROEs in performing that exercise will add unnecessary complexity to the Commission's task on remand—complexity that ultimately will not benefit any party." *ISO New England Inc., et al., v. Bangor Hydro Electric Company et al.*, 161 FERC 61031 (October 6, 2017).

following the evidentiary hearing. This approach preserves the Commission's flexibility to ensure just and reasonable rates following remand, while minimizing administrative burden and protecting ratepayers and Pepco from unnecessary uncertainty and rate volatility. By continuing current rates, the Commission maintains regulatory continuity and respects the procedural nature of the Court's vacatur.¹⁷⁴

IV. ANCILLARY DIRECTIVES REMAND TREATMENT

83. Order No. 22328 included a number of non-rate directives, compliance filings, and other requirements (collectively, "Ancillary Directives") issued in the exercise of the Commission's broader regulatory and supervisory authority. As a result of the Court's vacatur of that Order, those directives no longer have binding legal effect; however, the Court's order did not expressly address each of these Ancillary Directives. Accordingly, the Commission finds that providing clarity regarding the status and treatment of these directives during the pendency of this remand proceeding is necessary to ensure regulatory certainty, avoid unnecessary duplication of effort, and maintain continuity in critical areas of oversight.

84. The Commission emphasizes that directives previously completed or otherwise rendered moot require no further action unless expressly revisited in this proceeding or a subsequent Order.¹⁷⁵ Similarly, unless otherwise expressly stated herein, Pepco and other

¹⁷⁴ Consistent the determinations herein and Order No. 22806, the Commission also denies OPC's Motion to Suspend Rates Under the Multi-Year Rate Plan Approved in Order No. 22328, Restore the Previously Approved Rates Prior to Order No. 22328, and Issue Refunds to Residential Ratepayers, as well as AOBA's Motion to Restore the Last Approved Electric Rates and Refund the Rate Increases Implemented Under the Vacated Orders. As the Commission previously explained, the Court's vacatur of Order Nos. 22328 and 22358 was expressly procedural in that the Court found that the Commission failed to conduct the evidentiary hearing required by statute and did not sufficiently explain its reasoning regarding the BSA and the ERA, but it did not determine that the rates themselves were unjust, unreasonable, confiscatory, or otherwise unlawful. In *Potomac Electric Power Co. v. Pub. Serv. Comm'n*, 380 A.2d 126 (D.C. 1977), by contrast, the Court found that the rates at issue were substantively unlawful because they were confiscatory, and it was that constitutional violation, not the mere vacatur of the underlying order, that required the Commission on remand to "devise a means for restoring to Pepco the revenues which it improperly has been denied." *Potomac Electric Power Co. v. Pub. Serv. Comm'n*, 380 A.2d 126, 148 (D.C. 1977). Because no comparable finding exists here, *Potomac Electric Power Co.* does not provide a basis for retroactive refunds or other forms of backward-looking ratemaking relief. Moreover, as Order No. 22806 recognized, the D.C. Court of Appeals has consistently held that refunds are appropriate only where the rates charged were themselves substantively unlawful; where, as here, an order is vacated for procedural deficiencies rather than on the merits of the rate determination, the proper remedy is a remand for further proceedings, not retroactive financial adjustments. See *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); *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). The Commission, therefore, reaffirms that it would be procedurally inappropriate to award refunds at this juncture without first developing a complete evidentiary record and making the substantive findings necessary to support such relief under District law.

¹⁷⁵ The following ancillary directives were completed prior to the issuance of the Court's Order vacating Order No. 22328: (1) The Commission directed Pepco to undergo a two-phase management audit conducted by an independent auditor. Phase 1 was an Audit of 2023 and 2024 actual expenditures as contained in the Reconciliation Filings. The Phase 1 Pepco DC Management Audit was filed on December 31, 2025. (2) The Commission directed Pepco to provide updated detailed capital additions (by project) and O&M expense projects (by FERC account) for CY 2025 and CY 2026 by March 1, 2025. Order No. 22323, ¶ 569. Pepco submitted the required Capital and O&M

stakeholders are not required to take further action on vacated directives during the remand period. Actions taken in compliance with previously issued directives may be considered part of the evidentiary record in this proceeding, but shall not be deemed determinative of any issue under review. The Commission will issue updated, binding directives, as appropriate, upon conclusion of this remand proceeding. For directives that remain outstanding or implicate ongoing regulatory obligations, the Commission provides the following guidance:

A. Two-Phase Independent Management Audit

85. The Commission directed Pepco to undergo a two-phase management audit conducted by an independent auditor.¹⁷⁶ As indicated in footnote 175 above, the Phase 1 Audit was completed. Phase 2 is an Audit of the 2025 and 2026 actual expenditures in the Company's Annual Information Filing and Final Reconciliation Filing. The Commission defers further action on the Management Audit until the conclusion of the remand proceeding.

B. Annual Information and Reconciliation Filings

86. The Commission directed Pepco to file the 2025 Annual Information Filing by March 31, 2026, and the final 2025–2026 MRP Reconciliation Filing by March 31, 2027.¹⁷⁷ The Commission defers further action on the Annual Information and Reconciliation Filings until the conclusion of the remand proceeding.

C. Collaborative Working Groups

87. The Commission directed Pepco to continue or establish the following collaborative working groups to further advance District goals: (1) Lessons Learned; (2) BSA; (3) Utility Discount Program Education; and (4) Rate Design.¹⁷⁸ The Commission provides the following determinations:

88. *Lessons Learned Working Group (“LLWG”)*. The LLWG convened in January 2025 and filed the final report in December 2025.¹⁷⁹ The Commission will hold this matter

filing on March 3, 2025. (3) The Commission directed Pepco to file the CY 2023 and CY 2024 Reconciliation filing by March 31, 2025. Order No. 22323, ¶ 570. Pepco submitted the required Reconciliation filing on March 31, 2025. (4) The Commission directed Pepco to include a revised BSA tariff in the compliance filing. *See* Order No. 22323, ¶ 580. Pepco filed the BSA Tariff as a Chapter 49 Tariff application on March 3, 2025. (5) Pepco was directed to file a compliance filing, including revised rate schedules and supporting exhibits consistent with the Opinion and Order, no later than December 9, 2024. *See* Order No. 22323, ¶ 582. Pepco filed the Compliance Report on December 9, 2024. (6) Pepco was directed to include a revised MRP Adjustment Rider in the compliance filing. *See* Order No. 22323, ¶ 584. Pepco filed compliance filings on December 9th and 11th 2024. (7) Pepco was directed to file an updated Long-Range Plan in the *Formal Case No. 1182* IDSP docket within 180 days of the issuance of Order No. 22328. *See* Order No. 22323, ¶ 592. Pepco filed the initial plan on June 27, 2025.

¹⁷⁶ Order No. 22328, ¶¶ 8(h), 92(h), 156-160.

¹⁷⁷ Order No. 22323, ¶ 570.

¹⁷⁸ Order No. 22323, ¶ 572.

¹⁷⁹ *Formal Case No. 1176*, Lessons Learned Working Group Report, filed December 19, 2025.

in abeyance pending the outcome of the remand proceeding. No further action is required at this time.

89. *BSA Improvement Working Group (Demand Component)*. Pepco was directed to reconvene a Working Group to evaluate potential improvements to the BSA, including the introduction of a demand component.¹⁸⁰ Pursuant to an unopposed Motion filed by AOBA, the Commission suspended the meetings of the BSA WG, extended the deadline for the working group to file its Report to September 30, 2026, and directed Pepco to file monthly BSA reports.¹⁸¹ To ensure procedural clarity, the Commission formally suspends the meeting and final working group report deadline directives of Order No. 22416 during the pendency of the remand proceeding; however, Pepco is to continue filing the monthly BSA reports pursuant to paragraph 13 of that Order. The Commission defers further action on the BSA Working Group until the conclusion of the remand proceeding.

90. *Utility Discount Program Education Working Group (“UDPEWG”)*. The UDPWG convened in February 2025 and filed the Report in July 2025.¹⁸² The Commission finds that issues addressed therein are more appropriately considered in the recently initiated Affordability proceeding, *Formal Case No. 1186*. Accordingly, the Commission transfers the UDPE WG Report and any future associated determinations to *Formal Case No. 1186*.

91. *Rate Design Working Group (Time-of-Use Rates)*. The working group met multiple times in 2025 and filed its Report in January 2026.¹⁸³ The Commission finds that these issues will also more appropriately be addressed in *Formal Case No. 1186* and transfers this Report and any future associated determinations accordingly.

D. BSA-Related Directives

92. *On-going Treatment*. The Commission clarifies that no changes will be made to the existing BSA collections at this time. The Commission directed Pepco to continue the BSA under the Modified MRP Extended Pilot.¹⁸⁴ To preserve continuity and avoid disruption to rate design and revenue stability mechanisms, the Commission directs Pepco to continue calculating and tracking the BSA during the pendency of the remand proceeding. However, the application of any BSA-related charges or credits shall be subject to adjustment, reconciliation, or refund based on the Commission’s final determinations in this proceeding. As a part of this Remand Proceeding, based on all the filings and updated information in the record, the Commission will make a determination on all aspects of the BSA.

¹⁸⁰ Order No. 22323, ¶ 579.

¹⁸¹ *Formal Case No. 1176*, Order No. 22416, rel. May 7, 2026.

¹⁸² *Formal Case No. 1176*, Report of the Utility Discount Education Working Group, filed July 31, 2025.

¹⁸³ *Formal Case No. 1176*, Report of the District of Columbia Rate Design Working Group Regarding Proposed Time-of-Use Rates for Pepco Customers, filed January 30, 2026.

¹⁸⁴ Order No. 22323, ¶ 576.

THEREFORE, IT IS ORDERED THAT:

93. The Office of the People's Counsel for the District of Columbia, the District of Columbia Government, and the Apartment and Office Building Association of Metropolitan Washington's Motion to Stay the Procedural Schedule is **GRANTED**;

94. The Motion of the Apartment and Office Building Association for an Extension of the Procedural Schedule Adopted in Order No. 22806 is **GRANTED**;

95. The Office of the People's Counsel for the District of Columbia's Motion to file its Supplemental Brief and Statement of Issues Out-of-Time is **GRANTED**;

96. The Commission **ADOPTS** the Revised Remand Procedural Schedule set forth in Attachment A to this Order per the proceeding described in paragraphs 25-48;

97. 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 **DENIED**;

98. 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 **DENIED**;

99. The Commission **REAUTHORIZES** the rates filed under the tariff and updated compliance filing filed on December 11, 2024, for the remand period, subject to appropriate adjustments upon the issuance of a new rate order in this proceeding; and

100. The Commission **ADOPTS** the Ancillary Directives Treatment as detailed in paragraphs 83-92 of 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**

Scheduling Order	May 8, 2026
Status Conference	May 18, 2026
Updated Remand Testimony and Workpapers	May 28, 2026
Deadline for Data Requests to Pepco Regarding Application, Direct, Supplemental, and Updated Remand Testimony	June 16, 2026
Pepco Responses to Data Requests	July 2, 2026
Settlement and Stipulation Conference	July 9, 2026
Parties' Report on Settlement and Stipulation Conference	July 13, 2026
Direct Testimony and Exhibits of OPC and Intervenors	July 22, 2026
Deadline for Data Requests Regarding OPC and Intervenors' Testimony	August 11, 2026
All Responses to Data Requests Regarding OPC and Intervenors' Testimony	August 27, 2026
Rebuttal Testimony and Exhibits by All Parties	September 4, 2026
Deadline for Data Requests Regarding Rebuttal Testimony	September 14, 2026
All Responses to Data Requests Regarding Rebuttal Testimony	September 21, 2026
Settlement and Stipulation Conference	September 22, 2026
Parties' Report on Settlement and Stipulation Conference	September 25, 2026
Parties' Statements of Genuine Issues of Material Facts in Dispute	September 28, 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	September 28, 2026
Pre-Hearing Conference	October 6, 2026
Evidentiary Hearing	October 13-14, 2026
Post-Hearing Briefs	October 21, 2026

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 5/8/26 Formal Case No. 1176 Tariff No. _____ Order No. 22860

	Approve Initial & Date	Dissent Initial & Date	Abstain Initial & Date
Chairman Emile Thompson	<u>ET/DJ 5/8/26</u>	_____	_____
Commissioner Richard A. Beverly	_____	_____	<u>RB/DJ 5/8/26</u>
Commissioner Ted Trabue	<u>TT/DJ 5/8/26</u>	_____	_____

Certification of Action

Dionne Joemah
General/Deputy General Counsel

Brian Edmonds
OGC Counsel/Staff