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July 20, 2026

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

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

Dear Ms. Westbrook-Sedgwick:

Enclosed, please find the Office of the People's Counsel for the District of Columbia's petition seeking review of Public Service Commission Order Nos. 22806 and 22866, which has been filed with the Court of Appeals for the District of Columbia and has been assigned Appeal No. 26-AA-0587.

If there are any questions regarding this matter, please contact me at 202.261.1192.

Sincerely,

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

Enclosure

cc: Parties of Record

DISTRICT OF COLUMBIA COURT OF APPEALS
PETITION FOR REVIEW

Appeal No. 26-AA-0587

OFFICE OF THE PEOPLE'S COUNSEL OF THE DISTRICT OF COLUMBIA, Petitioner, v. DISTRICT OF COLUMBIA PUBLIC SERVICE COMMISSION, Respondent.	Agency Order Nos. 22806 and 22866

PETITION FOR REVIEW

Pursuant to D.C. Code § 34-605, the Office of the People's Counsel of the District of Columbia ("OPC"), the statutory representative of District of Columbia ratepayers with respect to utility matters (D.C. Code § 34-804), respectfully seeks review by the District of Columbia Court of Appeals of the following decisions and orders of the Respondent District of Columbia Public Service Commission ("PSC"):

- Formal Case No. 1176, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia*, Order No. 22806, rel. March 27, 2026;[1] and

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[1] Attached hereto as Attachment A.

- 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. 22866, rel. May 20, 2026.[2]

A. The Challenged Orders Ignore the Effect of This Court's March 5, 2026 Decision in Case Nos. 25-AA-0250 and 25-AA-0310.

The challenged orders ignore the effect of this Court's March 5, 2026 opinion, which "vacate[d] the [PSC's] orders approving [The Potomac Electric Power Company's ('Pepco')] 2024-2026 rate plan …." *Office of the People's Counsel v. D.C. Pub. Serv. Comm'n*, 352 A.3d 682, 684 (D.C. 2026) ("Vacatur Decision"); *see also id*. at 692 ("[W]e vacate Order Nos. 22328 & 22358 and remand with instructions for the [PSC] to hold an evidentiary hearing."). Specifically, OPC submits that "[a] vacated order has no legal effect." *See* Formal Case No. 1176, OPC'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 at 3 (March 6, 2026). Consequently, on March 6, 2026, OPC submitted a motion that asked the PSC to: (1) "restore the last lawful rates, namely the distribution rates in effect prior to the issuance of Order No. 22328[;]" and (2) require Pepco to pay refunds to ratepayers equal to "the difference between revenues collected under the vacated Order No. 22328 and the revenues that would have been collected under the previously authorized rates[.]" *Id*. at 3-4.

[2] Attached hereto as Attachment B.

In a concurrently filed Petition for Review, OPC is challenging two additional orders the PSC issued as part of the remand proceeding that address the same issues OPC challenges in the instant Petition for Review.

In Order No. 22806, issued on March 28, 2026, the PSC denied OPC's request to reinstate the rates that were in place prior to the issuance of Order No. 22328, and it purported to hold OPC's request for relief in abeyance. However, the PSC's determination that it had discretion to ignore the legal effect of the Court's Vacatur Decision and continue or establish rates without a valid rate order was a final determination and effectively denied OPC's requested relief. In Order No. 22806, the PSC contended "that the Court's vacatur in this matter was based on procedural, not substantive, deficiencies[.]" Order No. 22806 at ¶ 35; *see also id*. at ¶ 38 (discussing "the procedural nature of the Court's vacatur"). The PSC further found that "the Court expressly did not find that the [multi-year rate plan] rates approved in Order No. 22328 were unjust, unreasonable, confiscatory, or otherwise unlawful." *Id*. at ¶ 33; see also id. at ¶ 34 ("Because the Court did not declare the [multi-year rate plan ('MRP')] rates unjust or unreasonable, any immediate refunds would risk converting a procedural defect into a substantive financial penalty, precisely the type of action the retroactive ratemaking doctrine prohibits."). Based on its interpretation of the Vacatur Decision—that vacatur does not mean vacatur—the PSC found that it "must make an interim rate determination" while the remand proceedings are underway. *Id*. at ¶ 29. Until that decision was made, the PSC purported to hold OPC's requests in abeyance.

On April 27, 2026, OPC submitted an application for reconsideration of Order No. 22806, arguing that the PSC has no discretion to allow Pepco to continue charging rates that were established in orders that the Court vacated. *See generally* Formal Case No. 1176, OPC's Application for Reconsideration (April 27, 2026). Consequently, OPC argued that Order No. 22806 constitutes final agency action because the PSC fixed parties' legal rights when it found that the Vacatur Decision did not find that the rates set in the vacated orders were unjust and unreasonable. *Id*. at 15-30.

On May 20, 2026, the PSC issued Order No. 22866, which denied OPC's Application for Reconsideration on the grounds that Order No. 22806 is not a final order subject to reconsideration. Attachment B, Order No. 22866 at ¶¶ 39-45.

OPC disagrees with the PSC's conclusion. By refusing to restore the preexisting rates or require Pepco to pay refunds, the PSC exceeded its authority by maintaining rates that were set in orders vacated by the Vacatur Decision. Consequently, Order Nos. 22860 and 22892 impose an obligation on ratepayers to pay rates that have never been deemed to be just and reasonable. *See Washington Urban League, Inc. v. Pub. Serv. Comm'n*, 295 A.2d 906, 908 (D.C. 1972) (an order is final if it "'impose[s] an obligation'") (quoting *Chi. & S. Air Lines, Inc. v.*

Waterman S.S. Corp., 333 U.S. 103, 113 (1948)). Order Nos. 22806 and 22866 also "fix some legal relationship as a consummation of the administrative process" declining to restore the preexisting rates and provide refunds for amounts recovered through assessment of the vacated rates. Through this Petition for Review, OPC asks the Court to review Order Nos. 22806 and 22892.

B. OPC Is Concurrently Filing a Related Petition for Review and Will Be Filing a Motion to Consolidate, a Motion for Summary Disposition or Expedited Briefing Schedule, and a Motion for Stay of All Challenged Orders.

Concurrent with the submission of this Petition for Review, OPC is also submitting a separate Petition for Review of related orders. OPC will also be filing procedural and substantive motions relating to the two appeals. To assist the Court and interested parties in understanding the relationships and interrelationships among the various submissions, OPC briefly describes its related submissions below.

1. In a Concurrently Filed Petition for Review, OPC Challenges Related Order Nos. 22860 and 22892.

As explained above, Order No. 22806 found that the PSC must establish an interim rate. The PSC established that interim rate in Order No. 22860 issued on May 8, 2026, which simply maintained the vacated rates. The PSC continued to express the view "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 [PSC's] authority to continue the currently effective tariffed rates during the remand proceeding." Order No. 22860 at ¶ 74 (May 8, 2026); *see also id*. at ¶ 76 ([T]he Court's vacatur nullifies the [PSC's] prior order but does not, by itself, rescind or unwind the tariffed rates that were placed into effect pursuant to that order."). Based on that interpretation, Order No. 22860 found that: (1) the PSC is not "preclude[d] … from determining an appropriate rate posture during the remand proceeding[;]" (2) the PSC is not obligated to "reinstate[] … the prior rates approved in Order No. 20755[;]" and (3) "the currently effective tariffed rates [are not] unlawful following the Court's procedural vacatur." *Id*. at ¶ 72. Consequently, the PSC "reauthorize[d] the currently effective rate levels during remand, effective as of the date of this Order," as "interim rates." *Id*. at ¶ 82.

On June 8, 2026, OPC submitted an Application for Reconsideration of Order No. 22860, challenging the PSC's interpretation of the effect of the Vacatur Decision, authority to establish "interim" rates, decision not to reinstate the rates from Formal Case No. 1156, and decision not to require Pepco to pay refunds to ratepayers equal to the difference between revenues collected under the vacated Order No. 22328 and the revenues that would have been collected under the previously authorized rates. *See generally* Formal Case No. 1176, OPC's Application for Reconsideration (June 8, 2026).

On June 30, 2026, the PSC issued Order No. 22892, which denied OPC's June 8, 2026 Application for Reconsideration on the grounds that Order No. 22860 is not a final order subject to reconsideration. Order No. 22892 at ¶¶ 64-66.

OPC disagrees with the PSC's conclusion. By maintaining the rates that were set in orders vacated by the Vacatur Decision, Order Nos. 22860 and 22892 impose an obligation on ratepayers to pay rates that have never been deemed to be just and reasonable. *See Washington Urban League, Inc.*, 295 A.2d at 908 (an order is final if it "'impose[s] an obligation'") (quoting *Chi. & S. Air Lines, Inc.*, 333 U.S. at 113). Order Nos. 22860 and 22892 also "fix some legal relationship as a consummation of the administrative process" declining to restore the preexisting rates and provide refunds for amounts recovered through assessment of the vacated rates. Through its concurrently filed Petition for Review, OPC asks the Court to review Order Nos. 22860 and 22892.

2. OPC Will Ask the Court to Consolidate the Petition for Review of Order Nos. 22806/22866 and the Petition for Review of Order Nos. 22860/22892.

Given the overlapping issues underlying each Petition for Review and the subject matter of the findings in the four challenged orders, OPC will be submitting a Motion to Consolidate the two Petitions for Review under Rule 27(b)(1)(D).

3. OPC Will Ask the Court to Resolve the Challenges on Summary Disposition or Expedited Briefing Procedures.

Pursuant to Rule 25.1(c)(1)(B), OPC will be submitting a Motion for Summary Disposition under Rule 27(c), asking the Court to vacate the challenged orders. *See* Rule 25.1(c)(1)(B) ("Parties may … file motions for summary disposition under Rule 27(c)"). In the alternative, OPC asks the Court to adopt an expedited briefing schedule. *See* Rule 25.1(c)(2)(E) (explaining that expedited procedures are appropriate for "appeals from certain orders or decisions of the [PSC], D.C. Code § 34-605(a)….").

4. OPC Will Ask the Court to Protect Ratepayers By Staying the Challenged Orders and Giving Full Effect to the Vacatur Decision.

Pursuant to Rule 18, OPC will be submitting a Motion for Stay of the challenged orders. In essence, the PSC's position is that "vacatur does not actually mean vacatur." *Contrast* Order No. 22860 at ¶ 76 ("Tariffs remain in effect until the [PSC] affirmatively changes, supersedes, or rescinds them."), *with* D.C. Code § 34-603 ("All rates, tolls, charges, time and condition of payment thereof, schedules, and joint rates fixed by the [PSC] shall be in force and shall be prima facie reasonable until finally found otherwise in an action brought for that purpose."). *Contrast* Order No. 22892 at ¶ 67 ("[T]he Vacatur Decision was expressly procedural in nature and did not invalidate either the underlying multiyear rate plan framework or the tariffed rates currently in effect."), *with* Vacatur Decision, 352 A.3d at 684 ("We … vacate the [PSC's] orders approving Pepco's 2024-2026 rate plan" as "unsustainable[.]"). Building on its untenable interpretation of the Vacatur Decision, the PSC finds that it has statutory authority to allow Pepco to continue charging the vacated rates on an "interim" basis, despite the fact that those rates have never been deemed to be just and reasonable; and (2) deprive ratepayers of refunds for the difference between amounts they would have paid under the pre-existing rates and the amounts they actually paid under the rates that were ultimately vacated. OPC's separate motion will ask the Court to stay the challenged orders pending resolution of the appeals to protect ratepayers from these harms.

C. OPC is Serving This Petition for Review on the PSC and All Parties to the Agency Proceedings Below.

The names, addresses, and telephone numbers of the Respondent PSC and all parties to the proceedings below on the attached Certificate of Service.

Respectfully submitted,

/s/ Karen R. Sistrunk, Esq.
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Dated: July 20, 2026

Attachment A

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

ORDER

March 27, 2026

FORMAL CASE NO. 1176, IN THE MATTER OF THE APPLICATION OF THE POTOMAC ELECTRIC POWER COMPANY FOR AUTHORITY TO IMPLEMENT A MULTIYEAR RATE PLAN FOR ELECTRIC DISTRIBUTION SERVICE IN THE DISTRICT OF COLUMBIA, Order No. 22806

I. INTRODUCTION

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

II. BACKGROUND

2. On April 13, 2023, Pepco filed an application for approval to increase rates through the implementation of a Multi-year Rate Plan ("MRP"), also referred to as the "Climate Ready Pathway," for its electric distribution service in the District of Columbia ("Pepco Application") for the years 2024 through 2026.[1] By Order No. 22328, the Commission approved a *Formal Case No. 1176* Modified MRP Extended Pilot, which authorized Pepco to increase its electric distribution rates during a two-year term with a revenue requirement of $99.7 million in 2025 and $23.7 million in 2026 for a cumulative revenue requirement increase of $123.4 million over two years.[2]

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

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

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

Order No. 22328.[3] On March 18 and 28, 2025, OPC and AOBA, respectively, petitioned for review of Order Nos. 22328 and 22358 to the Court.

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

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

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

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

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

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

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

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

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

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

a limited sur-reply to the OPC Reply.[12]

III. DISCUSSION

A. Court's Decision

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

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

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

B. Pepco Motions

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

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

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

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

10. In its Amended Motion, Pepco asserts that the record in *Formal Case No. 11*76 is already extensive, with all parties having submitted testimony and with no dispute that a rate increase is warranted.[17] Accordingly, Pepco contends that the Commission can expeditiously convene the evidentiary hearing based on the existing record, consistent with the Court's directive.[18] Pepco also asks the Commission to keep the currently effective rates in place during the remand. It argues that these are the only filed rates and that changing them now, only to change them again after the evidentiary hearing, would cause customer rate "whiplash" and undermine rate stability.[19] Pepco cites past D.C. and federal precedent for the proposition that vacatur does not automatically revive earlier tariffs and that existing rates should remain in effect until the Commission issues a new order on remand.[20] Pepco further asserts that uncertainty over interim rates could negatively affect its access to capital, borrowing costs, and planned infrastructure investments, with potential impacts on reliability and the District's economy.[21]

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

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

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

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

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

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

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

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

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

C. OPC and AOBA Response to Pepco Amended Motion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Pepco's rate of return, unexplained discrepancies in project costs, failure to meet projected rate base levels, and major variances identified by the Atrium Economics Management Audit Report for 2023–2024.[34] Pepco also added over $25.6 million in new capital projects not included in its original MRP application.[35] Given these discrepancies, OPC and AOBA argue that Pepco must submit updated testimony explaining its actual performance for 2023–2025.[36] Because all prior testimony addressed outdated forecasts, new proceedings are required, including an opportunity for OPC and other parties to file new testimony.[37]

13. OPC and AOBA argue that there is no legal basis for maintaining the current rates, as the Court has vacated Commission Order Nos. 22328 and 22358.[38] They contend that under D.C. Code § 34-607, Commission orders remain in force only until they are suspended, superseded, rescinded, or vacated, and since the Court has expressly vacated the relevant orders, continuing to enforce the existing rates would violate the statute, the Court's vacatur decision, and the filed-rate doctrine.[39] They argue further that the Court also determined that this case required a trial-type evidentiary hearing and that the Commission's failure to conduct one rendered its orders unsustainable.[40] Because those orders are vacated and invalid, OPC and AOBA assert that the Commission cannot lawfully maintain the rates it established.[41]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. OPC Motion

17. OPC argues that the Court's March 5, 2026, vacatur of Order Nos. 22328 and 22358 eliminated Pepco's legal authority to charge the rates established in those orders.[59] OPC asserts that a vacated order "has no legal effect." Therefore, Pepco's continued collection of the vacated rates would be equivalent to giving "perpetual legal effect to an unlawful order," citing *Pepco v. PSC*.[60] According to OPC, the filed-rate doctrine requires that only properly authorized and filed rates may be charged, and because the vacatur decision renders the MRP-based rates no longer lawful, the Commission must immediately reinstate the last lawful rates to those in effect before issuance of Order No. 22328.[61]

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

E. AOBA Motion

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

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

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

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

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

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

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

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

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

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

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

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

F. Pepco Response to OPC and ABA Motions

20. Pepco argues that OPC and AOBA misinterpret the Court's remand by assuming that a procedural flaw permits the revival of rates from *Formal Case No. 1156*, even though those rates have not been effective since January 1, 2025.[69] Pepco stresses that the Court did not, and could not, legally determine what the proper rates should be, because ratemaking authority lies exclusively with the Commission, as recognized in cases such as *Gearhart v. PUC.,* 356 Or. 216, 221 (Or. 2014) and *People's Natural Gas Co. v. Minnesota PUC.,* 369 N.W. 2d 530, 533 (Minn. 1985).[70] Pepco further explains that longstanding precedent establishes that vacatur of a rate order does not resurrect superseded rates. In *Pepco v. PSC*, the Court held that existing filed rates remain in place pending a new Commission decision. The U.S. Supreme Court's decision in *Burlington Northern v. United States* similarly held that vacating rate orders does not reinstate earlier rates and that equity favors maintaining current filed rates until the regulator sets new ones. [71]

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

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

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

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

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

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

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

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

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

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

reject retrospective remedies based on alleged procedural errors.[75]

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

G. OPC Request to File Reply and Reply to Pepco's Response[80]

23. OPC argues that, under D.C. Code § 34-607, the Commission cannot lawfully continue the rates approved in Order No. 22328 because the Court has vacated that order in its entirety, leaving no valid authorizing tariff in place.[81] OPC maintains that, once vacated, an order has no legal effect, and the filed-rate doctrine, as reflected in D.C. Code §§ 34-901 and 1-204.93 and the Court's decision in *Watergate East*, permits a utility to charge only those rates supported by a valid Commission order.[82] Because the MRP rates rest solely on orders the Court has voided, OPC contends that the Commission must restore the last lawful rates in effect before January 1, 2025.[83]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27. OPC clarifies that its motion seeks only two forms of relief: restoration of the last lawful rates and refunds to ratepayers for amounts collected under the vacated orders. It does not raise or rely on any issues related to working-group reports or other directives contained in Order Nos. 22328 and 22358.[95] Accordingly, OPC argues that Pepco's references to those matters fall

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. DECISION

A. Interim Rate Determination

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

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

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

Legal Authority & Effect of Vacatur

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

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

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

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

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

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

B. Refunds

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

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

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

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

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

C. Remand Proceeding

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

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

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

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

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

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

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

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

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

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

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

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

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

1. **Notice & Pre-hearing Conference.** The Commission will issue a Notice directing parties to appear for a prehearing conference to discuss any genuine issues of fact the parties submit to the Commission for consideration, confirm witnesses identified to address the disputed issues of fact, finalize exhibit lists, and resolve preliminary evidentiary and scheduling matters.[117]

2. **Evidentiary Hearing.** The Commission will convene a trial-type evidentiary hearing at which parties may present witnesses and conduct cross-examination on the genuine issues of disputed fact designated by the Court and the Commission, consistent with D.C. Code § 2-509(b).

3. **Post-Hearing Briefing.** The Commission will provide the parties with an opportunity to submit post-hearing briefs and proposed findings of fact and conclusions of law. The Commission will then issue a final order resolving the remanded issues on the merits.

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

THEREFORE, IT IS ORDERED THAT:

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

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

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

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

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

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

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

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

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

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

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

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:

CHIEF CLERK:

BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY

ATTACHMENT A

Formal Case No. 1176
Remand Procedural Schedule

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

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

March 27, 2026

FORMAL CASE NO. 1176, IN THE MATTER OF THE APPLICATION OF POTOMAC ELECTRIC POWER COMPANY FOR AUTHORITY TO IMPLEMENT A MULTIYEAR RATE PLAN FOR ELECTRIC DISTRIBUTION SERVICE IN THE DISTRICT OF COLUMBIA,

ABSTENTION OF COMMISSIONER RICHARD BEVERLY FROM ORDER NO. 22806

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COMMISSION ACTION

FORMAL CASE NO. 1176, IN THE MATTER OF THE APPLICATION OF THE POTOMAC ELECTRIC POWER COMPANY FOR AUTHORITY TO IMPLEMENT A MULTIYEAR RATE PLAN FOR ELECTRIC DISTRIBUTION SERVICE IN THE DISTRICT OF COLUMBIA,

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

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

Certification of Action

Dionne Joemah

General/Deputy General Counsel

Brian Edmonds

OGC Counsel/Staff

Attachment B

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

ORDER ON RECONSIDERATION

May 20, 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. 22866

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") denies the Office of the People's Counsel for the District of Columbia ("OPC") Application for Reconsideration of Order No. 22806.[1]

II. BACKGROUND

2. On April 13, 2023, the Potomac Electric Power Company ("Pepco" or the "Company") 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.[2] By Order No. 22328, the Commission approved a *Formal Case No. 1176* Modified MRP Extended Pilot, which authorized Pepco to increase its electric distribution rates during a two-year term with a revenue requirement of $99.7 million in 2025 and $23.7 million in 2026 for a cumulative revenue requirement increase of $123.4 million over two years.[3]

3. The Commission denied Petitions for Reconsideration filed by the Apartment and Office Building Association of Metropolitan Washington ("AOBA") and OPC of Order No. 22328.[4] 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 vacated Order Nos. 22328 and 22358, concluding that the Commission had failed to conduct an evidentiary hearing and had not sufficiently explained its reasoning on two issues. The Court remanded the matter for further proceedings, including a hearing

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

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

3 *Formal Case No. 1176*, Order No. 22328, rel. November 26, 2024 ("Order No. 22328").

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

under D.C. Code § 2-509(b).[5]

5. Pepco filed a motion requesting that the Commission promptly schedule and hold the trial-type evidentiary hearing required by the Court's remand.[6] OPC and AOBA filed motions requesting (1) immediate reversion to distribution rates last in effect on December 31, 2024 under Order No. 20755, and (2) refunds of all amounts collected above those rates beginning January 1, 2025.[7] Pepco filed an amended request for an expedited schedule and evidentiary hearing.[8] Pepco filed a response opposing the OPC and AOBA motions.[9] OPC and AOBA filed a joint response opposing Pepco's request for an expedited hearing and continuation of distribution rates set in vacated orders.[10] OPC filed a request for leave to submit a reply, along with its reply to Pepco's March 16, 2026, response to OPC's and AOBA's motions to suspend the current distribution service rates.[11] Pepco filed a request for leave to file a sur-reply and a limited sur-reply to the OPC Reply.[12]

6. 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 interim rate approaches within ten (10) days of the Order.[13]

7. On April 6, 2026, OPC, the District of Columbia Government ("DCG"), and AOBA

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[5] *Office of the People's Counsel of Dist. of Columbia v. D.C. Public Service Commission*, 352 A.4d 682 (D.C. 2026) ("Vacatur Decision").

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

[7] *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.

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

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

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

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

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

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

filed a Joint Motion to Stay the Procedural Schedule issued in Order No. 28806,[14] and Pepco[15] and AOBA[16] 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-Time[17] and filed its Supplemental Brief.[18] On April 10, 2026, Pepco filed a Response to the Joint Motion to Stay the Procedural Schedule.[19] On April 16, 2026, AOBA filed a Motion to Extend the Procedural Schedule Adopted in Order No. 22806.[20] On April 20, 2026, Pepco filed a Response to AOBA's Motion to Extend the Procedural Schedule.[21]

8. On April 27, 2026, OPC filed an Application for Reconsideration of Commission Order No. 22806, asserting that the order contains legal errors, each of which the Commission addresses below.[22] On May 4, 2026, Pepco filed a Response to OPC's Application for Reconsideration.[23]

9. On May 8, 2026, the Commission issued Order No. 22860 which, among other things, (1) granted the Joint Motion; (2) granted the AOBA Motion for an Extension of the Procedural Schedule Adopted in Order No. 22806; (3) adopted a Revised Remand Procedural Schedule; and (4) reauthorized the rates contained in the Pepco tariff and updated compliance filing filed on December 11, 2024 as interim the rates that shall continue in effect during the remand period, subject to appropriate adjustments upon issuance of a new rate order in this

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14 *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").

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

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

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

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

20 *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's Motion to Extend").

21 *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's Response to Motion to Extend").

22 *Formal Case No. 1176*, Office of the People's Counsel for the District of Columbia's Application for Reconsideration of Order No. 22806, filed April 27, 2026 ("OPC Application").

23 *Formal Case No. 1176*, Response of Potomac Electric Power Company to the Office of the People's Counsel's Application for Reconsideration of Order No. 22806, filed May 4, 2026 ("Pepco Response").

proceeding.[24]

III. DISCUSSION

10. **OPC Application for Reconsideration.** OPC argues an order is considered final and immediately reviewable when it denies a right, imposes an obligation, or otherwise fixes a legal relationship.[25] It does not need to conclude the entire proceeding; an order issued at any point can be final if it determines rights or obligations and creates legal consequences flowing from the agency's action.[26] OPC contends that courts also consider whether review would disrupt the adjudicatory process, but an order may still be final even if further agency proceedings remain. OPC states that the Court in *Goodman v. Public Service Comm'n* illustrates this principle: the Commission's Phase 1 decision approving an overall rate increase was deemed final and reviewable, even though the separate Phase 2 proceeding on cost allocation was still pending, because the Phase 1 determination stood on its own and was not affected by later actions.[27]

11. OPC argues that in Order No. 22806, the Commission concludes that the Court's Order did not invalidate current rates or otherwise make them unlawful. By declaring the existing rates lawful, the Commission has created binding legal consequences for District ratepayers, who must continue paying the higher rates established under the vacated order.[28] The first consequence of Order No. 22806 is that the Commission concludes it has no obligation to reinstate the prior rates, which forces ratepayers to continue paying higher rates approved in a vacated order. Instead, the Commission claims it may establish interim rates, even though it has not identified clear authority to do so or explained how such rates would be calculated or implemented. In effect, the Order gives the Commission discretion to devise an undefined interim-rate process instead of restoring the last lawful rates.[29] Second, OPC argues that the Commission's determinations undermine the entire purpose of holding an evidentiary hearing on the MRP. By treating the current rates as lawful, the Commission effectively shifts the burden of proof from Pepco to OPC and other intervenors. OPC contends that since Order No. 22806 preserves the rate increase approved in the vacated order, Pepco has little incentive to litigate the case unless it seeks even higher rates. At the same time, OPC appears barred from seeking lower rates. As a result, OPC and other parties are denied a fair opportunity to litigate the rate case fully.[30] According to OPC, the third consequence of Order No. 22806 is that ratepayers will not receive any refunds or other retroactive adjustments, even though they have been paying rates approved in a vacated order. Because the Commission treats the current rates as valid, it concludes it has no obligation to return

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24 *Formal Case No. 1176*, Order No. 22860, rel. May 8, 2026 ("Order No. 22860").

25 *Formal Case No. 1176*, OPC Application at 15 (citations omitted).

26 *Formal Case No. 1176*, OPC Application at 15 (citations omitted).

27 *Formal Case No. 1176*, OPC Application at 15 (citations omitted).

28 *Formal Case No. 1176*, OPC Application at 16.

29 *Formal Case No. 1176*, OPC Application at 16.

30 *Formal Case No. 1176*, OPC Application at 16.

money collected since either January 1, 2025, when the rates took effect, or March 6, 2026, when the Order was issued.[31]

12. OPC argues that Order No. 22806 goes to great lengths to reject the possibility of issuing refunds. The Commission argues that the Court's Order provides no basis for refunds and that refunds would violate the rule against retroactive ratemaking by turning a procedural flaw into a financial penalty. Although the Commission briefly states that the refund question will be deferred until after the remand proceeding, OPC asserts that this does not alter its clear determination that the current rates are lawful and that no refunds are required. The Commission's Order also offers no explanation of how refunds could be issued legally later if they cannot be issued now, nor does it identify any authority, process, or timeline for doing so. At most, the Commission suggests the issue may be discussed in an unspecified future proceeding, underscoring that it has already made a final decision that immediate relief is not required.[32]

13. OPC argues that Order No. 22806 fails to explain any connection between the refund question and the remand proceeding. Because the refund issue could be reviewed without interfering with the remand hearing, OPC maintains that the Order clearly makes a final determination on refunds. OPC further argues that the Commission's statement that it is holding OPC's and AOBA's motions "in abeyance" does not change the finality of its decisions. OPC contends that the Commission expressly denied both forms of relief OPC requested, and it does not identify what, if anything, is actually being held in abeyance or for how long. According to OPC, this vague language does nothing to alter the fact that the Commission has already made final decisions on the two central issues raised in OPC's motions.[33]

14. OPC argues that the Commission's conclusion that the current rates remain lawful after the Court Order, and its refusal to reinstate the prior rates, is legally erroneous and arbitrary and capricious. OPC notes that the Commission relies on two flawed premises: first, that the Court needed to explicitly state that the rates approved under Order No. 22328 were unlawful, and second, that the Court's procedural basis for vacating the orders is insufficient to invalidate the underlying rates. OPC argues that neither contention has any legal support.[34]

15. OPC argues that the legal effect of vacatur is to void an order entirely, as if it never existed. Citing Supreme Court precedent, OPC explains when a court vacates an agency order, the order becomes null and void *ab initio*, legally treated as though it "never occurred," and the slate is wiped clean. Citing Supreme Court precedent, OPC explains that vacatur "wipes the slate clean" and that when a court vacates an agency order, the order becomes null and void ab initio, legally treated as though it "never occurred," the slate is wiped clean, and it is treated as though the underlying order never existed. Therefore, by vacating Order Nos. 22328 and 22358, the Court

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31 *Formal Case No. 1176*, OPC Application at 16-17.

32 *Formal Case No. 1176*, OPC Application at 17.

33 *Formal Case No. 1176*, OPC Application at 18.

34 *Formal Case No. 1176*, OPC Application at 18-19.

rendered them legally nonexistent.[35] OPC further argues that once a court vacates an order, the order is void regardless of whether the Court relied on procedural or substantive grounds. Therefore, an explicit statement by the Court declaring the current rates unlawful was not required to invalidate them. OPC contends that the Commission provides no legal authority supporting its view that the Court needed to label the rates unlawful or unreasonable expressly, and that the Commission's reasoning would improperly nullify the established legal effect of vacatur.[36]

16. OPC argues that Order No. 22806 does not dispute that the Court vacated the prior orders in full, including the entire multiyear rate increase. OPC notes that the Commission does not claim the vacatur was limited to a narrow issue; even if it were, vacatur would still render the entire order void. But the Court made clear that it vacated the orders in their entirety, including Pepco's 2024–2026 MRP. The Court emphasized that the appeal challenged the full rate plan, and it vacated "the orders approving Pepco's 2024–2026 rate plan" without preserving any portion of the rate increase.[37] OPC further argues that because the Commission's findings must be supported by substantial evidence, and because the absence of an evidentiary hearing violated statutory due process, there were no factual findings capable of supporting the rate order. The case involved contested issues of fact and mixed questions of fact and policy, none of which were substantiated. As a result, the Court vacated the orders entirely.[38]

17. OPC argues that the combined effect of the Court's Order and the governing statutory framework makes the current rates unlawful and requires reinstatement of the prior rates. Because vacatur renders Order Nos. 22328 and 22358 null and void, OPC explains that Pepco can only charge rates authorized by a valid Commission order, as required by D.C. Code §§ 34-601, 34-901, and 34-607.[39] OPC therefore argues that the current rates, which were authorized solely by the now-vacated orders, have no legal basis and cannot be lawfully charged. OPC further notes that this is why the Commission's claim that the Court needed to state the rates explicitly were "unlawful" is incorrect: the legal effect of vacatur itself, combined with the statutory requirements, invalidates the rates.[40] According to OPC, the last valid rate order is Order No. 20755, and the Commission must adjust the rate schedule to conform to that order. OPC argues that the Commission cannot disregard the Court's Order or the statutory mandates and must therefore reinstate the prior rates.[41]

18. OPC argues that allowing Pepco to continue charging the current rates violates the filed rate doctrine. Because vacatur rendered Order Nos. 22328 and 22358 legally nonexistent, the rates they authorized are no longer "properly filed" with the Commission, as required by D.C.

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35 *Formal Case No. 1176*, OPC Application at 19.

36 *Formal Case No. 1176*, OPC Application at 19-20.

37 *Formal Case No. 1176*, OPC Application at 20-21.

38 *Formal Case No. 1176*, OPC Application at 21.

39 *Formal Case No. 1176*, OPC Application at 21.

40 *Formal Case No. 1176*, OPC Application at 22.

41 *Formal Case No. 1176*, OPC Application at 22.

law. The only valid, properly filed rates are those approved in Order No. 20755. Under both the common-law filed rate doctrine and its statutory codification, a utility may charge only the rates authorized in a valid Commission order. OPC, therefore, contends that permitting Pepco to charge anything above the rates in Order No. 20755 is a clear violation of the filed rate doctrine.[42]

19. OPC argues that the Commission's decision in Order No. 22806 to create an interim rate is legally erroneous, arbitrary, and capricious. OPC maintains that, under the Court's Order and the governing statutory framework, the Commission lacks authority to authorize any rate other than those approved in the last valid rate order, Order No. 20755. If the Commission wishes to alter those rates, it must follow statutory due-process requirements, including holding an evidentiary hearing.[43] OPC further argues that the Commission offers no legal basis for establishing interim rates, a term that appears nowhere in the statute. Order No. 22806 does not explain how such rates would be calculated, when they would take effect, or what authority allows their creation. The Commission's request for parties to brief on the validity of interim rates highlights this lack of authority. OPC contends that creating interim rates contradicts the Court's vacatur, violates the statutory rate-setting framework, and conflicts with the filed rate doctrine. Accordingly, OPC argues that the Commission's plan to impose interim rates is unlawful, unsupported, and arbitrary and capricious.[44]

20. OPC argues that the Commission relies on two incorrect reasons for refusing to issue refunds. First, the Commission claims the Court needed to find the rates unlawful explicitly. Second, it asserts that the rule against retroactive ratemaking bars refunds. OPC maintains that both arguments are wrong.[45] OPC contends that refunds do not depend on the Court including special wording in its opinion. The legal effect of vacatur does not change based on the Court's reasoning, so the Commission's claim that the Court needed to declare the rates "substantively unlawful" is unfounded. OPC notes that the Commission relies on *Pepco v. PSC* to suggest that only certain magic words, such as "confiscatory," can justify refunds. Still, the Commission does not explain how that case supports such a requirement. OPC further points out that *Pepco v. PSC* was later reversed *en banc*, and that the Commission's reading would imply that only utilities, not ratepayers, are ever entitled to refunds.[46] OPC also highlights that the term "confiscatory" historically refers to rates that are too low and harm the utility. Here, the appeal challenged the validity of any rate increase, and the Court agreed that ratepayers were unlawfully charged higher rates beginning January 1, 2025. Thus, OPC argues that the Commission's reliance on special terminology is misplaced and provides no basis for denying refunds.[47]

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[42] *Formal Case No. 1176*, OPC Application at 22-23.

[43] *Formal Case No. 1176*, OPC Application at 23.

[44] *Formal Case No. 1176*, OPC Application at 23.

[45] *Formal Case No. 1176*, OPC Application at 23-24.

[46] *Formal Case No. 1176*, OPC Application at 24-25.

[47] *Formal Case No. 1176*, OPC Application at 25.

21. OPC argues that the Commission's reliance on the rule against retroactive ratemaking is misplaced. The rule prevents a regulatory commission from later correcting rates that were charged under a valid, final, and unappealed rate order, even if those rates are later found to be too high or too low.[48] But OPC notes that the rule applies only when the rates at issue were charged under a valid, operative order at the time. It does not apply when a court has overturned or vacated the rate order itself.[49] OPC contends that applying the rule here would improperly limit the courts' ability to provide meaningful remedies, including refunds, to successful appellants.[50] Once the Court vacated Order Nos. 22328 and 22358, those orders were no longer valid for any period leading up to the decision.[51]

22. OPC argues that the rule against retroactive ratemaking does not prevent refunds when a court has overturned a rate order. OPC explains that once a reviewing court vacates and remands an order, the Commission is not acting retroactively when it adjusts rates or issues refunds. It is simply carrying out the Court's mandate. In such circumstances, the Commission has both the authority and the responsibility to implement the Court's decision, including making retroactive rate adjustments. OPC notes that courts and the Supreme Court have consistently recognized that, even if an agency may lack independent authority to order reparations, it does have authority to provide refunds or other corrective measures on remand to give full legal effect to the Court's order.[52]

23. OPC argues that the Commission misreads the case law it relies on to justify denying refunds, beginning with *District of Columbia v. D.C. Public Service Commission*. OPC explains that the circumstances in that case are entirely different. There was no vacated Commission order, no due-process violation, and the dispute involved only a reclassification of a single telecom service within an already valid rate plan.[53] OPC notes that, in that case, the Commission approved the Price Cap Plan after a hearing; no party challenged or appealed that order, and the higher rates were charged under a valid tariff that took effect automatically under the plan. When the Commission later reclassified the service in a separate proceeding initiated by the D.C. Government, it appropriately applied the rule against retroactive ratemaking because the earlier rates had been charged under a final, valid, and unchallenged rate order.[54] OPC argues that the situation in *Formal Case No. 1176* is entirely different from the case relied on by the Commission. In the earlier case, no party sought reconsideration or appealed the order establishing the rate plan, so that order became final and valid once the appeal period expired. By contrast, in *Formal Case No. 1176*, both OPC and AOBA filed motions for reconsideration and appealed Order Nos. 22328 and 22358, meaning those orders were never final for purposes of retroactive

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48 *Formal Case No. 1176*, OPC Application at 25 (citations omitted).

49 *Formal Case No. 1176*, OPC Application at 26.

50 *Formal Case No. 1176*, OPC Application at 26 (citations omitted).

51 *Formal Case No. 1176*, OPC Application at 26.

52 *Formal Case No. 1176*, OPC Application at 26-27.

53 *Formal Case No. 1176*, OPC Application at 27.

54 *Formal Case No. 1176*, OPC Application at 27-28.

ratemaking. OPC further emphasizes that the Court ultimately vacated those orders, rendering them void from the moment they were issued.[55]

24. OPC argues that the Commission's reliance on *Chesapeake & Potomac Tel. Co. v. PSC* is also misplaced because the circumstances in *Formal Case No. 1176* are entirely different. First, OPC notes that the case did not involve a vacated Commission order; instead, the Court upheld the Commission's decision and found its legal and factual determinations reasonable and lawful. OPC further explains that the regulatory framework at the time differed: rate applications were adjudicated in two phases. The subsequent appeal involved a utility claim that existing rates were confiscatory, not a situation where a rate order had been overturned by a court.[56] OPC asserts that *Chesapeake & Potomac Tel. Co.* is further distinguishable because in this case, Pepco did not appeal to the Court, and no interim rate application was filed. OPC notes that although the Commission cites *Chesapeake & Potomac Tel. Co.* for the idea that refunds are unavailable unless the rates were unlawful when charged, it overlooks that the current rates are unlawful. Under the rule against retroactive ratemaking, the lawfulness of rates hinges on whether they were charged pursuant to a valid, final rate order. OPC states that Order No. 22328 was never final and was ultimately ruled invalid.[57]

25. **Pepco Response.** Pepco argues that OPC's Application should be denied because Order No. 22806 is not a final order under D.C. Code § 34-604(b).[58] Pepco notes that the Commission explicitly held OPC's and AOBA's motions in abeyance to allow the evidentiary hearing mandated by the Court and to issue a final determination on remand.[59] According to Pepco, Order No. 22806 neither establishes an overall rate increase nor allocates any such increase among customer classes; rather, it sets forth the process necessary to remedy the procedural deficiencies identified by the Court.[60] Pepco maintains that, consistent with long-standing Commission and judicial precedent, procedural orders governing future proceedings are not final orders and therefore are not subject to reconsideration.[61]

26. Pepco further argues that even if OPC's Application were properly before the Commission, the Application would still fail on the merits. Pepco contends that OPC's position rests on the mistaken premise that the Court's Vacatur Decision required the Commission to revive the rates from *Formal Case No. 1156* and issue refunds based on those rates, even though those rates ceased to be effective on January 1, 2025.[62] According to Pepco, the Commission correctly

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55 *Formal Case No. 1176*, OPC Application at 28-29.

56 *Formal Case No. 1176*, OPC Application at 29.

57 *Formal Case No. 1176*, OPC Application at 30.

58 *Formal Case No. 1176*, Pepco Response at 3.

59 *Formal Case No. 1176*, Pepco Response at 4.

60 *Formal Case No. 1176*, Pepco Response at 4.

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

62 *Formal Case No. 1176*, Pepco Response at 6.

recognized that the Vacatur Decision did not direct reinstatement of the prior rate schedule and did not hold that the rates approved in Order No. 22328 were unjust, unreasonable, or otherwise unlawful.[63] Instead, Pepco notes, the Court vacated the Commission's orders solely because the Commission had not conducted the evidentiary hearing or provided the explanation required under the governing statutes and administrative law principles.[64]

27. Pepco argues that the Order properly held OPC's and AOBA's motions in abeyance and directed supplemental briefing to assist the Commission in determining the appropriate interim-rate treatment during remand.[65] Pepco notes that the Commission expressly stated it would make no changes to rates until it issued a subsequent order.[66] Pepco further contends that OPC mischaracterizes the Order as requiring an explicit judicial finding that the prior rates were "unlawful" before any rate change could occur. According to Pepco, the Order acknowledged that the Court's vacatur was based on procedural error and did not determine that the previously approved rates were unjust, unreasonable, confiscatory, or otherwise unlawful.[67]

28. Pepco also argues that precedent confirms that ratemaking authority rests exclusively with the Commission, not the Court. As the Court has explained, Congress vested the Commission with the sole responsibility for balancing consumer and investor interests and determining just and reasonable rates; the Court's role is limited to ensuring that the Commission's decisions reflect reasoned consideration of the relevant factors, not to substitute its judgment for the Commission's. Because the current rates have not been found unjust or unreasonable, Pepco maintains that it would be premature to make any rate adjustments before the Commission completes the evidentiary hearing and issues its final decision on remand.[68]

29. Pepco argues that OPC's objections regarding the interim rate process are not grounds for reconsideration because the Commission has not yet reached the stage of determining interim rate specifics.[69] Pepco notes that the Order properly held OPC's and AOBA's motions in abeyance and directed supplemental briefing to assist the Commission in determining lawful interim rate treatment during remand. According to Pepco, OPC's claim that the Order failed to specify what issues remain or how interim adjustments will be made misunderstands the procedural posture: the Commission will resolve those matters only after the evidentiary hearing and final merits briefing, consistent with the Court's instructions. Pepco further contends that the Commission clearly explained that any questions regarding refunds or adjustments would be

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63 *Formal Case No. 1176*, Pepco Response at 6-7.

64 *Formal Case No. 1176*, Pepco Response at 7.

65 *Formal Case No. 1176*, Pepco Response at 7.

66 *Formal Case No. 1176*, Pepco Response at 7 (quoting Order No. 22806 at ¶ 32).

67 *Formal Case No. 1176*, Pepco Response at 7-8.

68 *Formal Case No. 1176*, Pepco Response at 8.

69 *Formal Case No. 1176*, Pepco Response at 9.

decided "pending the remand proceeding and a final merits determination."[70] Because the Commission has not completed the required evidentiary process or issued a final decision on remand, Pepco maintains that OPC's request for reconsideration is premature and should be denied, as OPC will have the opportunity to raise any arguments once a final order issues.[71]

30. Pepco argues that OPC's claim that the Order prevents OPC from seeking lower rates or shifts the burden of proof is incorrect and unsupported by the text of the Order.[72] Pepco notes that nothing in Order No. 22806 restricts OPC's ability to advocate for lower rates or alters the burden of proof in the remand proceeding. Pepco maintains that the Order simply preserves all issues for resolution after the evidentiary hearing and does not modify any party's litigation rights or obligations.[73]

31. Pepco argues that OPC's assertions about the legal effect of the Court's vacatur are incorrect and lack any supporting authority. According to Pepco, OPC relies primarily on *Hewitt v. United States*, a criminal-law decision that has no application to utility ratemaking and has never been used to interpret the effect of vacatur in Commission proceedings.[74] Pepco further notes that OPC cites no decision from this Commission or any other utility commission supporting its claim that vacatur automatically voids prior rates "as if they never existed."[75] By contrast, Pepco points out that its prior filings identified multiple cases adopting the same approach the Commission used here, confirming that procedural vacatur does not reinstate earlier rates or predetermine the remedy on remand.[76]

32. Pepco notes that, consistent with *Burlington Northern*, FERC has held that when a court vacates a rate order, the vacatur does not revive earlier rate levels or dictate what rate must apply going forward; instead, the regulatory agency must determine the appropriate rates on remand based on its own statutory authority.[77]

33. Pepco contends that OPC's claim that a vacatur automatically requires the Commission to reinstate the rates approved in *Formal Case No. 1156* and issue refunds is unsupported. Pepco notes that OPC cites no ratemaking authority for the proposition that the basis for a vacatur is irrelevant.[78] Under OPC's theory, any vacated ratemaking order would require

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70 *Formal Case No. 1176*, Pepco Response at 9 (quoting Order No. 22806 at ¶ 34).

71 *Formal Case No. 1176*, Pepco Response at 9.

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

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

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

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

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

77 *Formal Case No. 1176*, Pepco Response at 10-11 (citing 161 FERC ¶ 61,031 (2017)).

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

reinstatement of prior rates. Pepco points to *Formal Case No. 1156* itself, where the Court vacated and remanded the Commission's order, yet the existing rates remained in effect while the Commission addressed the Court-identified deficiencies and issued its remand order.[79]

34. Pepco argues that the D.C. Code provisions cited in the OPC Application do not require reinstatement of the rates approved in *Formal Case No. 1156*. As the Company explained in its prior filings, including its Supplemental Brief, these statutes do not address the effect of a vacatur on rates. Pepco notes in particular that D.C. Code § 34-607 is inapplicable because the Court of Appeals lacks authority to set or revive rates.[80]

35. Pepco argues that the Application's claim that allowing rates higher than those approved in *Formal Case No. 1156* to remain in effect violates the filed rate doctrine is incorrect. As explained in Pepco's remand filings, including its Supplemental Brief, both the filed rate doctrine and the prohibition on retroactive ratemaking, as well as the Public Utilities Act, support keeping current rates in place until the Commission conducts the evidentiary hearing required by the Court of Appeals and issues a new rate determination on remand. Pepco maintains that there is no legal basis to revive the 2021 rates from *Formal Case No. 1156*, which the Commission found in 2024 to be not just and reasonable. The current rates have been properly on file and in effect since January 1, 2025, and the Commission reasonably preserved the status quo by holding the pending motions in abeyance pending the outcome of the remand proceeding.[81]

36. Pepco argues that the OPC Application is incorrect in asserting that the Commission lacks authority to establish interim rates while it conducts the evidentiary hearing required on remand. Pepco asserts that, as the Company explains in its Supplemental Brief, Commission precedent recognizes this authority, and the Court has expressly upheld it. In *Chesapeake & Potomac Tel. Co. v. PSC*, the Court confirmed that, under what is now D.C. Code § 34-403, the Commission's ratemaking authority necessarily includes the implied power to establish interim rates when warranted.[82]

37. Pepco argues that the OPC Application mischaracterizes the Commission's reasoning regarding refunds. According to Pepco, the Commission did not rely on specific language in the Court's remand opinion, but instead on established precedent, the governing statutory framework, and the broad discretion granted under the Public Utilities Act.[83] Pepco argues that the Commission correctly observed that the Court's Vacatur Decision addressed procedural deficiencies, specifically, the lack of an evidentiary hearing, but did not make any findings about the substance of the rates approved in *Formal Case No. 1176*. Pepco emphasizes that only the Commission has authority to set rates, and courts do not disturb Commission-approved rates absent a determination that those rates are unreasonable, arbitrary, or

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79 *Formal Case No. 1176*, Pepco Response at 11-12.

80 *Formal Case No. 1176*, Pepco Response at 12.

81 *Formal Case No. 1176*, Pepco Response at 13.

82 *Formal Case No. 1176*, Pepco Response at 14.

83 *Formal Case No. 1176*, Pepco Response at 14-15.

capricious.[84] Pepco asserts that the Commission properly relied on *ISO New England Inc.* as relevant precedent governing the interaction between the filed rate doctrine, refunds, and court remands. In that decision, FERC explained, citing *Burlington Northern*, that although a court may vacate an agency's order, it lacks authority to set the rate that follows from that vacatur. Pepco notes that this principle aligns with the D.C. Code, which limits the Court's review to questions of law and leaves factual ratemaking determinations to the Commission.[85] Pepco argues that when a procedural defect arises from a Commission error, the appropriate remedy is one that neither penalizes nor rewards any party.[86] Pepco notes that the Commission is following this principle on remand by returning to the point at which the procedural flaw occurred and repeating only the necessary steps, consistent with established administrative practice. This approach ensures that no party gains an unfair advantage from the vacatur. Pepco maintains that it is reasonable for the Commission to defer any rate adjustments until it completes the evidentiary hearing required by the Court and issues a remand decision. Under the current circumstances, Pepco contends that no refund is warranted or legally permissible.[87]

38. Pepco states that because D.C. Code § 34-604(b) provides that filing an application for reconsideration automatically stays a Commission order unless the utility gives written consent for the order to remain in effect, the Company provides that written consent to the Order not being stayed.[88]

IV. DECISION

A. Order No. 22806 Is Not a Final Order Subject to Reconsideration

39. D.C. Code § 34-604(b) states in pertinent part:

> Any public utility or any other person or corporation affected by any final order or decision of the Commission may, within 30 days after the publication thereof, file with the Commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration.[89]

40. As a threshold matter, OPC asserts that Order No. 22806 is a final order because it allegedly fixes legal rights and obligations and produces immediate legal consequences. In *Washington Urban League, Inc. v. Public Service Commission*, the Court held that an agency order

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84 *Formal Case No. 1176*, Pepco Response at 15.

85 *Formal Case No. 1176*, Pepco Response at 15.

86 *Formal Case No. 1176*, Pepco Response at 16.

87 *Formal Case No. 1176*, Pepco Response at 16.

88 *Formal Case No. 1176*, Pepco Response at 16-17.

89 D.C. Code § 34-604(b) (2001).

is not final unless it imposes an obligation, denies a right, or fixes a legal relationship as the consummation of the administrative process.[90] The Court emphasized that evidentiary or procedural rulings that merely define the issues to be examined, limit evidence to relevant matters, or structure the course of the proceeding are not final orders and therefore are not immediately reviewable.[91] The Court further stated that interlocutory rulings remain non-final even when a party alleges legal or constitutional error, because such allegations "are not enough to convert an evidentiary ruling into a final order," and parties will have an ample opportunity to raise those objections after the Commission issues its final merits-based order.[92] Such rulings do not resolve the merits or conclude the administrative process; they simply direct how the agency will proceed toward a later substantive determination. These principles apply with full force here. The Commission's conclusion that Order No. 22806 is non-final is further supported by the Court's long-standing precedent emphasizing judicial restraint in reviewing interlocutory agency rulings. The Court has repeatedly held that procedural or scheduling orders such as consolidation rulings, evidentiary hearing directives, or other case management decisions are not final because they do not determine rights or obligations nor conclude the administrative process. In *Washington Urban League, Inc. v. D.C. Public Service Commission*, the Court explained that "[c]ourts are especially reluctant to interfere with agency procedural decisions."[93] The Court reaffirmed this principle in *District of Columbia v. D.C. Public Service Commission*, stating that "no principle of administrative law is more firmly established than that of agency control of its own calendar," and that interlocutory decisions addressing scope, timing, and process do not constitute final, reviewable orders.[94] Likewise, in *Office of the People's Counsel v. D.C. Public Service Commission*, the Court emphasized that only in "extreme instances" where an interlocutory ruling effectively deprives a party of its rights may judicial review occur prior to final agency action.[95] None of those circumstances is present here. Order No. 22806 merely implements the procedural steps required to conduct the evidentiary hearing mandated on remand. As in *Bender v. D.C. Dep't of Employment Services*, judicial efficiency and administrative autonomy are best served by allowing the administrative process to run its course, particularly where, as here, the remand proceeding may resolve or narrow the issues without the need for premature review.[96]

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90 *Washington Urban League, Inc. v. Public Service Comm'n of the District of Columbia*, 295 A.2d 906, 908 (D.C. 1972) (citing *Chicago & Southern Air Lines, Inc. v. Waterman S. S. Corp.*, 333 U.S. 103, 113, 68 S.Ct. 431, 437, 92 L.Ed. 568 (1948)).

91 *Washington Urban League, Inc. v. Public Service Comm'n of the District of Columbia*, 295 A.2d at 908.

92 *Washington Urban League, Inc. v. Public Service Comm'n of the District of Columbia*, 295 A.2d at 908.

93 *Washington Urban League, Inc. v. Public Service Comm'n of the District of Columbia*, 295 A.2d at 908.

94 *District of Columbia v. Public Service Comm'n of the District of Columbia*, 802 A.2d 373, 378 (D.C. 2002) (citing *Washington Urban League, Inc. v. Pub. Serv. Comm'n*, 295 A.2d 906, 908 (D.C. 1972) (per curiam) (quoting *City of San Antonio v. C.A.B.*, 126 U.S.App. D.C. 112, 115, 374 F.2d 326, 329 (D.C. Cir. 1967).

95 *Office of the People's Counsel v. Public Service Comm'n of the District of Columbia*, 414 A.2d 516, 517 (D.C. 1980); *see also* No. 23-AA-959, *Office of the People's Counsel v. Public Service Comm'n of the District of Columbia*, Per Curiam Order (January 16, 2024).

96 *Bender v. D.C. Dep't of Emp. Servs.*, 562 A.2d 1205, 1208 (D.C. 1989).

41. OPC's reliance on *Goodman v. Public Service Commission* is misplaced for a few reasons. *Goodman* involved a Phase I order that granted an overall rate increase and made specific findings on the fair rate of return, revenue requirement, and allocation among customers. The D.C. Circuit held that the order was final because the Commission had completed its rate-increase determination and nothing remained to be decided regarding that increase. The Phase I order, therefore, carried immediate legal consequences.[97] Order No. 22806 bears none of these characteristics.

42. *Goodman* also underscores that finality depends on the nature of the order and is appropriate only when the agency has concluded its substantive determination such that there was nothing else for the Commission to do. Here, by contrast, the Commission must still conduct an evidentiary hearing, develop the full record, and issue a new rate order based on the record. Judicial review now would disrupt, rather than complete, the administrative process. For these reasons, *Goodman* offers no support for OPC's claim that Order No. 22806 is a final order. The Commission's procedural order initiating the remand process is not a final determination of rights or obligations and is therefore not subject to reconsideration under D.C. Code § 34-604(b). Therefore, OPC's Reconsideration Petition is denied on this basis alone.

B. OPC Fails to Identify Any Errors of Law or Fact Warranting Reconsideration

1. <u>Standard of Review for Reconsideration Petitions</u>

43. Assuming *arguendo* Order No. 22806 is a final order, something the Commission does not concede, the standards governing applications for reconsideration of Commission orders are well-settled. The sole purpose of a petition for reconsideration is to identify errors of law or fact in the Commission's initial order so that they can be corrected. It is not a vehicle for losing parties to rehash arguments that were earlier considered and rejected.[98] Nor is it an occasion to raise new issues for the first time that, with due diligence, could have been raised and addressed earlier in the case.[99] If there is substantial evidence to support the Commission's initial decision, that decision is not erroneous simply because there is substantial evidence that could have supported a contrary conclusion.[100] The party seeking reconsideration must state "specifically the

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[97] *Goodman v. Public Service Comm'n* 467 F.2d 375, 377 (D.C. Cir. 1972).

[98] *Formal Case No. 1137*, *In the Matter of the Application of Washington Gas Light Company for Authority to Increase Existing Rates and Charges for Gas Service*, Order No. 18768, ¶ 5, rel. May 12, 2017 (footnotes omitted). *See also*, *Formal Case No. 1093*, *In the Matter of the Investigation into the Reasonableness of Washington Gas Light Company's Existing Rates and Charges for Gas Service*, Order No. 16894, ¶ 3, rel. September 7, 2012.

[99] *Formal Case No. 1139*, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 19130, ¶ 4, rel. October 6, 2017.

[100] *Formal Case No. 945, In the Matter of the Investigation into the Electric Service, Market Competition, and Regulatory Practices,* Order No. 15883, ¶ 8, rel. July 16, 2010, *citing Formal Case No. 1053*, *In The Matter Of The Application Of The Potomac Electric Power Company For Authority To Increase Existing Retail Rates And Charges For Electric Distribution Service*, Order No. 14832, rel. June 13, 2008 (citing *State of New York v. United States*, 880 F. Supp. 37 (D.D.C. 1995) and *Wash. Gas Light Co. v. D.C. Pub. Serv. Comm'n*, 856 A.2d 1098, 1104 (D.C. 2004)).

errors claimed as grounds for such reconsideration."[101] The party seeking reconsideration bears the burden of showing that the challenged portions of the Order were "unreasonable, arbitrary, or capricious by demonstrating clearly and convincingly a fatal flaw in the action taken."[102] The Commission enjoys wide discretion on the issues that come before it. When reviewing an application for reconsideration, the Commission may exercise its discretion to reconsider or clarify the findings and conclusions in its initial decision.[103] With this standard in mind, the Commission turns to the arguments raised in OPC's Application, none of which constitute errors of law or fact warranting reversal of the Commission's determinations in Order No. 22806, and all of which were also fully addressed in Order No. 22860, wherein the Commission approved a revised procedural schedule and continued and reauthorized the existing tariffed rates for the remand period, subject to appropriate adjustments upon the issuance of a final rate order in this proceeding.[104]

2. Order No. 22806 Makes No Substantive Determinations

44. OPC mischaracterizes both the text and effect of the Order. It neither declares the current rates lawful nor resolves any substantive ratemaking question. It is strictly procedural, implementing the Court's remand and preserving the Commission's ability to conduct the required evidentiary hearing and issue the necessary explanations. Moreover, the Commission reiterates that Pepco bears the burden of proof throughout the remand proceeding to demonstrate that any rate it seeks to maintain or modify is just and reasonable.[105] The remand requirements for supplemental testimony and updated data established in Order No. 22860 reflect the Company's obligation to meet that burden.

45. By stating that Order No. 22806 made no substantive determinations, the Commission means that Order No. 22806 made no final determinations on the lawfulness of the current rates, refunds, or the effect of vacatur. Order No. 22806 necessarily included limited procedural reasoning to explain why certain motions were held in abeyance, but that reasoning did not constitute a merits-based or evidentiary finding. All substantive determinations remain

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101 D.C. Code Ann. § 34-604(b) (2001).

102 *Formal Case No. 1144*, *In the Matter of the Potomac Electric Power Company's Notice to Construct Two 230kV Underground Circuits from the Takoma Substation to the Rebuilt Harvard Substation, and from the Rebuilt Harvard Substation to the Rebuilt Champlain Substation*, Order No. 20235, ¶ 9, rel. October 11, 2019. *See also*, D.C. Code § 34-606 (2001). *Bell Atl. Washington, D.C., Inc. v. Pub. Serv. Comm'n*, 655 A.2d 1231, 1233 (D.C. 1995).

103 *See, e.g.*, *Formal Case No. 1119*, *In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction*, Order No. 18243, ¶¶ 20-21, rel. June 17, 2016; *Formal Case No. 1103*, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 17539, ¶ 4, rel. July 10, 2014; *Formal Case No. 1087*, *In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rate and Charges for Electric Distribution Service*, Order No. 17027, ¶ 3, rel. December 26, 2012.

104 *See Formal Case No. 1176*, Order No. 22860, rel. May 8, 2026. The Commission hereby incorporates by reference Order No. 22860.

105 *See also* Order No. 22860, ¶¶ 41 and 81.

reserved for the remand proceeding. It placed the Parties' motions in abeyance. The Order solicited supplemental briefs on potential approaches during remand. To avoid any misunderstanding, the Commission clarifies that Order No. 22806's deferral of refund issues pertained solely to the absence of a record adequate to determine refund entitlement at that time. That reasoning did not and was not intended to address or limit the Commission's independent authority to establish an interim rate for the remand proceeding in a subsequent order. As explained in Order No. 22860, the Commission's rate authority arises from its express statutory ratemaking responsibilities and the implied powers necessary to ensure regulatory continuity, prevent gaps in lawful rates, and protect ratepayers from uncertainty and volatility during the remand proceeding. The Commission exercised its independent ratemaking authority to establish interim rate treatment for the remand period by continuing and reauthorizing the existing tariffed rates as an interim rate structure.[106]

46. OPC argues that the presence of disputed factual and policy issues means the Commission must immediately revert to the prior rates. That gets the legal standard backward. The very existence of contested issues, including the disputed questions concerning the Effective Rate Adjustment ("ERA"), the Bill Stabilization Adjustment ("BSA"), and the proper revenue-requirement implications of those disputes, is precisely why the Court required the Commission to conduct an evidentiary hearing, so those factual disputes can be tested, resolved, and supported by substantial evidence. Order No. 22806 simply launches that required process by setting the schedule, directing supplemental filings, and identifying the issues to be examined; it does not resolve, forecast, or prejudge any of those disputed questions. In short, contested facts trigger the hearing requirement; they do not compel reinstatement of prior rates.

47. OPC's claims regarding burden shifting and refunds also rest on misinterpretations. Because Order No. 22806 reaches no merits issues, it assigns no burden of proof. Therefore, all Parties retain their rights under D.C. Code § 2-509(b), and Pepco continues to bear the obligation to justify any rate increase.[107]

48. OPC mischaracterizes the nature of the Commission's action when it argues that the Commission must follow due process requirements. Order No. 22806 did not create or establish any interim rate, nor did it authorize Pepco to charge any new or modified rate level. Order No. 22806 merely held rate-suspension motions in abeyance and initiated the remand process to develop the evidentiary record required by the Court. The Order expressly stated that no changes to existing rates would occur until the Commission issued a subsequent order.[108]

49. The independent ratemaking action to establish interim rate treatment occurred later, in Order No. 22860. In that Order, the Commission reauthorized the existing tariffed rates pending completion of the remand proceeding. Order No. 22860 explains in detail that the

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[106] *See* Order No. 22860, ¶¶ 80–82.

[107] *See* D.C. Code § 2-509(b) ("the proponent of a rule or order shall have the burden of proof"); *Atlantic Tel. Co. v. Public Service Comm'n*, 390 A.2d 439, 443 (1978) ("the utility must show that expenditures relied upon as a basis for the rates are themselves reasonable").

[108] *See* Order No. 22860, ¶ 32.

Commission possesses both express statutory authority under D.C. Code Title 34 and implied authority recognized by the Court to maintain or establish interim rates to ensure regulatory continuity and protect ratepayers during remand.

50. OPC's argument that the Commission lacks authority to authorize any rate other than those in Order No. 20755 misstates both the effect of vacatur and the governing statutory framework. The Court's vacatur nullified Orders 22328 and 22358, but it did not reinstate prior rates, nor does the Court have authority to impose or revive any rate schedule. Only the Commission is empowered to determine the appropriate rate posture on remand, including selecting an interim rate structure to prevent regulatory gaps and maintain lawful and stable rates during the hearing process.

51. Moreover, establishing interim rate treatment does not violate due process. Interim rates do not predetermine the outcome of the evidentiary hearing, alter the burden of proof, or limit any party's ability to argue for higher or lower rates. Order No. 22860 reiterates that Pepco continues to bear the burden of proof under D.C. Code § 2-509(b) to justify any rate it seeks to maintain or modify and that all final rate determinations will be made after full evidentiary development.[109]

3. Deferral of Refund Issues is Not a Substantive Determination

52. OPC misinterprets the Commission's decision to defer a decision on its request to issue refunds as a denial. Order No. 22806 neither rejects refunds nor determines that the current rates are lawful. It defers the issue because refund entitlement depends on factual and legal findings that can only be made after the evidentiary hearing on remand. A deferral is not a denial. If, at the conclusion of the remand proceeding, the Commission determines that the just and reasonable distribution rates are lower than the rates the Commission reauthorized in Order No. 22860, Pepco will be directed to refund the difference to ratepayers, consistent with the Commission's remedial authority and the record developed on remand.

53. Order No. 22806 fully explains that refunds were deferred because their resolution requires the evidentiary development and legal analysis directed by the Court. Recognizing that the Court did not make any findings regarding the lawfulness of prior rates does not declare the current rates lawful; it simply acknowledges what the Court did and did not decide. Whether any rate is lawful after vacatur must be determined on remand, not presumed in a preliminary procedural order. The Commission's determination to reauthorize the use of existing tariffed rates during the remand period, as set forth in Order No. 22860, in no way prejudges the outcome of that merits determination or limits the Commission's authority to order refunds if the final evidentiary record demonstrates that lower rates are required.

4. The Legal Consequences of Vacatur Do Not Support OPC's Position

54. OPC overstates the legal effect of the Court's Order. Vacatur renders the prior orders without legal force, but it does not determine which rates are lawful going forward or require

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[109] *See* Order No. 22860, ¶¶ 41 and 81.

reinstatement of prior rates. The Court's decision was based solely on procedural deficiencies; it made no finding that the previously approved rates were unjust, unreasonable, or confiscatory. OPC argues that because the Court found the Commission's prior proceedings procedurally deficient and because the Commission lacked an evidentiary record, "there were no factual findings capable of supporting the rate order," and therefore the Court effectively determined that the rates themselves must be treated as invalid. That is not what the Court held. The Court vacated the orders because the Commission did not (1) conduct the evidentiary hearing required by D.C. Code § 2-509(b) and (2) adequately explain its reasoning on the ERA and BSA matters. The Court did not find that the rates were substantively unjust, unreasonable, confiscatory, or otherwise unlawful. It did not conduct a merits review of the rates, nor did it instruct the Commission to deem any rate level invalid. The Court's remedy of vacatur and remand reflects the principle that the merits question must be resolved by the Commission, on a proper record, in the first instance.

55. OPC incorrectly claims the Commission required the Court to declare the vacated rates unlawful or unreasonable. Order No. 22806 does not make that assertion. It simply recognizes that the Court's Order rested on procedural deficiencies and did not decide the substantive lawfulness of any rate level. That distinction matters because refund entitlement and reinstatement depend on the merits, not on the procedural posture of the vacated order. By initiating the remand proceeding and deferring remedies until a full record is developed, the Commission gives full effect to the Court's decision and ensures that any rate or refund determination complies with statutory standards. OPC's argument improperly attempts to convert procedural vacatur into an automatic ratemaking outcome, a result neither the statute nor case law supports.

56. OPC further misconstrues the relationship between vacatur and the statutory rate requirements. Vacatur does not identify the operative rate schedule or mandate immediate reversion to any prior order. While OPC is correct that a utility may charge only rates authorized by a valid Commission order, it incorrectly assumes that vacatur automatically identifies the lawful operative rate and requires reinstatement of the last pre-vacatur rate schedule. Neither the Vacatur Decision nor the cited statutes impose such a requirement. Vacatur renders Order Nos. 22328 and 22358 without legal effect; the Commission does not dispute that. But the Court's Order does not answer the separate remedial question of what rate schedule should govern pending the Commission's new merits determination on remand. The Court did not order reinstatement of Order No. 20755, did not identify a default rate schedule, and did not instruct the Commission to implement immediate rate changes. Instead, it directed the Commission to conduct an evidentiary hearing and provide the explanation the Court found lacking. That directive confirms that the Commission—not the Court—must determine, in the first instance, which rate structure is lawful under D.C. Code §§ 34-601, 34-901, and 34-607. Those statutes require utilities to charge rates approved by a Commission order; they do not prescribe the consequences of judicial vacatur, require automatic reversion to the last chronologically prior order, or prohibit the Commission from evaluating rate treatment during the remand period as part of the broader evidentiary and legal inquiry mandated by the Court. If OPC's interpretation were correct, any vacatur—regardless of its basis—would instantaneously impose a new rate structure by judicial implication. Consistent with that responsibility, the Commission, in Order No. 22860, independently exercised its ratemaking authority to establish interim rates for the remand period by reauthorizing the existing tariffed rates until the Commission issues its final merits determination. This

reauthorization does not suggest that the prior tariffs lapsed; rather, it establishes an independent ratemaking basis for their continued effect while the Commission conducts the evidentiary hearing and issues a new merits determination on remand.

5. OPC Misapplies the Filed Rate Doctrine and Misstates Its Effect on Remand

57. OPC's filed rate arguments are also unpersuasive. Vacatur does not reinstate prior rates; it nullifies the vacated orders and leaves the Commission to determine the lawful rate structure on remand, including whether interim, reinstated, or adjusted rates are warranted. As the Commission explained in Order No. 22860, the Commission has authority and, in remand circumstances like these, the obligation to establish interim rates when necessary to preserve administrative efficiency, regulatory stability, and fairness to ratepayers. Exercising that authority requires the Commission to determine, based on evidence and argument on remand, whether: (1) reinstating the older rates is appropriate; (2) the rates in Order No. 20755 remain just and reasonable under current conditions; and (3) an alternative interim or adjusted approach is required to comply with statutory ratemaking obligations and to maintain continuity for ratepayers and the utility. The Commission has already recognized that reverting to prior rates would introduce significant administrative complexity, require unwinding existing tariffs, and create the risk of large, abrupt adjustments later.[110] By contrast, maintaining the current rate avoids unnecessary disruption, reduces volatility, and does not prejudice any party's ability to fully litigate the issues at the evidentiary hearing mandated by the Court.[111] The Court's Order did not revert the Commission to a pre-2025 rate structure; it required the Commission to conduct the analysis that was missing from the original proceeding. Consistent with its statutory mandate and the principles articulated in the earlier order, the Commission will determine the appropriate rate treatment on remand, including whether reinstatement, adjustment, or an alternative interim approach is warranted, based on the complete evidentiary record developed in this proceeding.

58. 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 existing rates.[112] Case law confirms that vacatur does not create default rates and that agencies must make rate determinations based on evidence and statutory standards. In *Burlington Northern Inc. v. United States*, the Supreme Court held that vacatur of federal rate orders does not vest default rates; rather, it leaves such issues to the primary regulatory agency.[113] Similarly, here, the vacatur of Order Nos. 22328 and 22358

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110 *See* Order No. 22860, ¶¶ 79-80.

111 *See* Order No. 22860, ¶¶ 73, 79-80, 82.

112 *See District of Columbia v. Pub. Serv. Comm'n*, 905 A.2d 249, 256 (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 Comm'n*, 164 F.4th 920, 922-923 (D.C. Cir. 2026).

113 *Burlington Northern, Inc. v. U.S.*, 459 U.S. 131, 141-142 (1982) (holding that the ICC has primary authority to determine reasonable rail rates, that federal courts may set aside ICC orders but cannot impose or reinstate rates,

nullifies those orders but does not establish what should immediately supersede them. The Commission must determine lawful rates on remand, consistent with the Court's directives and its statutory ratemaking responsibilities.[114] OPC further claims that Order No. 20755 automatically remains the filed rate. But neither statutes nor precedent supports this presumption. Thus, OPC incorrectly applies the filed rate doctrine to mandate immediate rate reversion. The doctrine ensures rate authority lies with the Commission but does not dictate what step follows a vacatur.

59. OPC again misstates both the reasoning of Order No. 22806 and the governing legal standards. Order No. 22806 does not deny refunds or rely on magic words such as "unlawful" or "confiscatory" as prerequisites for relief. Rather, the Order explains that refund entitlement depends on factual and legal determinations that must be made after the evidentiary hearing on remand, not in a preliminary procedural order. The decisions in *Potomac Electric Power Co. v. Public Service Comm'n*, 380 A.2d 126 (D.C. 1977), *reh'g en banc*, 402 A.2d 14 (D.C. 1979), reinforce that refunds in ratemaking contexts require substantive findings based on a developed record, not mere procedural vacatur, which emphasize that ratemaking determinations, including whether rates were unjust, unreasonable, or confiscatory, must be supported by substantial evidence and a reasoned explanation. In the 1977 decision, the Court permitted compensatory relief only after finding, on the basis of a fully developed record, that the Commission's order was arbitrary, unreasonable, and confiscatory. In contrast, nothing in the Court's Vacatur Decision here constitutes a substantive finding of rate unlawfulness. The 1979 *en banc* opinion further reinforces that remedial measures such as refunds or surcharges must follow from the Commission's own evidentiary determinations on remand, not from judicial assumptions about the consequences of vacatur. These principles confirm that refund decisions cannot be made in the absence of factual findings, which is the precise circumstance following the Court's Vacatur Decision in this case, and that Order No. 22806 appropriately preserves the refund request for resolution with the conclusion of the remand proceeding.

6. <u>Refunds Require Substantive Findings, Not Procedural Vacatur</u>

60. OPC argues that Order No. 22806 improperly rejects refunds on two grounds: first, by suggesting that refunds cannot be issued unless the Court explicitly found the vacated rates unlawful, unreasonable, or confiscatory; and second, by treating the rule against retroactive ratemaking as an absolute bar to refunds following vacatur. According to OPC, the Court's Order rendered the prior rate orders void *ab initio*, making refunds automatically available regardless of the Court's reasoning.

61. OPC misconstrues the continued relevance of the rule against retroactive ratemaking and the legal effect of vacatur. Vacatur removes the legal force of an order but does not establish that the prior rates were substantively unjust, unreasonable, or confiscatory. Under District law, refund authority depends on the Commission's substantive findings, not on procedural

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and that when the proper rate is uncertain, the carrier's filed rate governs pending ICC action because shippers can obtain reparations for overpayment while carriers cannot be made whole for underpayment).

[114] Even if the Court determined that the rates approved by the Commission were unlawful and remanded the orders to the Commission for further proceedings, the Commission retains the authority to set interim rates pending the remand proceeding.

deficiencies identified by a reviewing court. The Court's Order here did not declare the rates improper; it found that the Commission's process was incomplete. As the D.C. Court of Appeals explained in *Potomac Electric Power Co. v. Public Service Commission* (1977), compensatory remedies such as refunds or surcharges may be ordered only after the Commission determines, on an adequate evidentiary record, that the previously charged rates were substantively unlawful. The Court reaffirmed that it is the Commission, not the Court, that must make those determinations on remand.

62. While OPC is correct that the Commission may order refunds when necessary to implement a court mandate, those remedies presuppose an underlying finding that the earlier rates were unlawful in substance. No such finding exists here. Because the Court vacated Order Nos. 22328 and 22358 solely for procedural deficiencies, the Commission must now conduct the evidentiary hearing that the Court required and determine whether the prior rates were just and reasonable. Ordering refunds before making those findings would constitute impermissible retroactive ratemaking by altering the consequences of past rates without a determination that those rates were substantively defective. Order No. 22806 does not foreclose refunds; rather, it recognizes that the Commission may consider corrective relief—including refunds—only after the evidentiary record developed on remand establishes whether such relief is warranted. Nothing in Order No. 22806 should be read as determining that refunds are legally unavailable. Instead, the Commission concludes only that any refund determination requires a substantive evidentiary record and cannot be made until that record is developed on remand. Should the Commission ultimately determine that the reauthorized rates exceed the rates found just and reasonable at the conclusion of the remand, Pepco would be directed to refund the appropriate amounts to ratepayers.

63. *District of Columbia v. D.C. Public Service Commission* and *Chesapeake & Potomac Telephone Co. v. Public Service Commission* reinforce that retroactive relief requires a determination of substantive unlawfulness; neither case supports OPC's claim that vacatur alone authorizes refunds. Both decisions confirm that rates remain presumptively valid until the Commission makes contrary findings on the merits, which have not yet occurred here. In *District of Columbia v. D.C. Public Service Commission*, the Court held that refunds were unavailable because the rates at issue had been charged under a previously approved tariff that was effective, presumptively lawful, and not subject to any pending challenge.[115] The Court, citing D.C. Code § 34-603, emphasized that once a rate is in effect, "it shall be in force and shall be prima facie reasonable until finally found otherwise in an action brought for that purpose."[116] The Court further reaffirmed that the filed rate doctrine and its corollary rule against retroactive ratemaking bar retroactive relief unless a reviewing court has reversed the underlying rate determination or the agency has explicitly designated the rate as provisional.[117] OPC is correct that, in the 2006 case, no party appealed the Commission's approval of the Price Cap Plan, and therefore the plan became final by operation of law. But *District of Columbia v. D.C. Public Service Commission* does not

115 *District of Columbia v. D.C. Public Service Commission*, 905 A.2d 249 (D.C. 2006).

116 *District of Columbia v. D.C. Public Service Commission*, 905 A.2d at 256.

117 *District of Columbia v. D.C. Public Service Commission*, 905 A.2d at 256.

hold that pending reconsideration or appeal renders an order "non-final" for retroactive ratemaking purposes, nor does it suggest that vacatur alone retroactively voids the rates charged under the vacated order. The Court underscored that "an established rate is not made illegal if it is later found to be impermissible or unreasonable," reaffirming that retroactive adjustments require more than a subsequent change in regulatory judgment.[118]

64. Nor does *United Gas Imp. Co. v. Callery Properties, Inc.* support OPC's argument. The Court in *District of Columbia v. D.C. Public Service Commission* expressly limited *Callery* to situations in which the underlying agency order "never became final" because it was under judicial review and ultimately reversed.[119] As the Court explained, *Callery* merely illustrates "the general principle of agency authority to implement judicial reversals," which has the effect of undoing a non-final agency order.[120] That principle does not apply when, unlike in *Callery*, the agency order was final and effective while rates were being charged. Here, the Court's decision did not reverse the Commission's substantive rate determinations or find the rates unlawful. Instead, the Court remanded for further proceedings based on procedural deficiencies, including the lack of an evidentiary hearing and inadequate reasoning. The Court did not characterize the rates as unjust, unreasonable, or unlawful, nor did it hold that the rates had been provisional or subject to refund pending judicial review. As *District of Columbia v. D.C. Public Service Commission* makes clear, absent a judicial reversal on the merits or a provisional designation by the Commission, vacatur alone does not retroactively nullify rates that were in effect under color of law at the time they were charged. Thus, the Commission does not misapply *District of Columbia v. D.C. Public Service Commission* by recognizing that compensatory relief, such as refunds, requires a predicate finding, supported by substantial evidence, that the prior rates were substantively unlawful. *District of Columbia v. D.C. Public Service Commission* reaffirms the same point: even when the Commission later changes a classification or finds that a rate was excessive, the filed rate doctrine prevents retroactive refunds unless and until the rate has been "finally found otherwise in an action brought for that purpose."[121] That inquiry has not yet occurred in this case. For these reasons, OPC's attempt to distinguish *District of Columbia v. D.C. Public Service Commission* does not undermine Order No. 22806. The case supports rather than contradicts the Commission's conclusion that refunds cannot be ordered until the Commission makes the required substantive findings on remand.

65. OPC argues that the Commission misreads *Chesapeake & Potomac Telephone Co. v. Public Service Commission*, asserting that the case involved a completely different regulatory posture and therefore cannot justify the Commission's treatment of refunds in this proceeding. OPC's argument rests on a misunderstanding of what *Chesapeake & Potomac Telephone Co.* decided. While the *Chesapeake & Potomac Telephone Co.* case did not address vacated rate orders, it remains relevant because it articulates a key legal principle that applies regardless of

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118 *District of Columbia v. D.C. Public Service Commission*, 905 A.2d at 258 (citing *Verizon Tel. Cos. v. FCC*, 269 F.3d 1098, 1107 (D.C.Cir.2001) (citations omitted).

119 *District of Columbia v. D.C. Public Service Commission*, 905 A.2d at 259.

120 *District of Columbia v. D.C. Public Service Commission*, 905 A.2d at 259.

121 *District of Columbia v. D.C. Public Service Commission*, 905 A.2d at 257 (citing D.C. Code § 34-603).

procedural posture: retroactive ratemaking is prohibited unless the Commission makes substantive findings supported by evidence that the prior rates were unlawful when charged.[122] That is the proposition for which the Commission cites the case, and it is fully supported by the decision. In *Chesapeake & Potomac Telephone Co.*, the Court considered whether the Commission's interim rate relief plan violated "the established rate-making principle which precludes a utility from charging a higher rate in the future in order to recoup past losses."[123] The Court held that the Commission's plan did not violate the rule against retroactive ratemaking, because the relief it authorized was "prospective only," and because "past losses were not accorded any consideration" in establishing the authorized rate of return.[124] In so holding, the Court reaffirmed that any remedy that changes the economic consequences of past rates must be grounded in findings that those rates were unreasonable or unlawful, not simply in later disagreement with them, or in procedural defects. OPC's efforts to distinguish *Chesapeake & Potomac Telephone Co.* overlook this key point. Whether the earlier case involved a two-phase rate proceeding or a utility's claim of confiscatory rates is beside the point. The Court's reasoning did not turn on those procedural details. It turned on a substantive rule: retroactive adjustments require a showing that the earlier rates were unjust, unreasonable, or otherwise unlawful at the time they were charged. That rule applies equally here. The Court's Order did not contain any such finding; it vacated Order Nos. 22328 and 22358 solely for procedural reasons. Consequently, the Commission cannot assume that the current rates were unlawful merely because the orders approving them were vacated.

66. OPC also asserts that *Chesapeake & Potomac Telephone Co.* supports its position because, in its view, Order No. 22328 "was not a final order" and "was held to be not valid."[125] But *Chesapeake & Potomac Telephone Co.* rejects the argument that later developments or even asserted original error render the previously applied rates "illegal" retroactively. In *Chesapeake & Potomac Telephone Co.*, the company insisted that existing rates were inadequate, confiscatory, and based on past Commission error, but the Court held that those assertions could not justify retroactive adjustments absent a substantive determination by the Commission. The Court emphasized that rate orders are presumptively valid until replaced or set aside based on appropriate findings. OPC, therefore, misstates the holding of *Chesapeake & Potomac Telephone Co.* when it suggests that the decision supports refunds whenever a rate order is not "final." The case says the opposite: retrospective remedies are not available unless the Commission, on a proper record, determines that prior rates were unlawful when charged. That determination has not yet been made here. Accordingly, the Commission's reliance on *Chesapeake & Potomac Telephone Co.* is appropriate. The case confirms that retroactive relief, whether styled as refunds, surcharges, or other adjustments, requires substantive findings of unlawfulness, not merely procedural vacatur. Order No. 22806 correctly preserves the refund issue pending development of the evidentiary record required to make those findings. Accordingly, OPC's Application for Reconsideration is denied.

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122 *See Chesapeake & Potomac Telephone Co. v. Public Service Commission*, 330 A.2d 236 (D.C. 1974).

123 *Chesapeake & Potomac Telephone Co. v. Public Service Commission*, 330 A.2d at 240.

124 *Chesapeake & Potomac Telephone Co. v. Public Service Commission*, 330 A.2d at 240.

125 *Formal Case No. 1176*, OPC Application at 30.

THEREFORE, IT IS ORDERED THAT:

67. The Office of the People's Counsel for the District of Columbia's Application for Reconsideration of Commission Order No. 22806 is **DENIED**.

A TRUE COPY: **BY DIRECTION OF THE COMMISSION**

Brinda Westbrook-Sedgwick

CHIEF CLERK: **BRINDA WESTBROOK-SEDGWICK**
COMMISSION SECRETARY

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 5/20/26 **Formal Case No.** 1176 **Tariff No.**________ **Order No.** 22866

	Approve Initial & Date	Dissent Initial & Date	Abstain Initial & Date
Chairman Emile Thompson	ET/DJ 5/20/26		
Commissioner Richard A. Beverly			RB/DJ 5/20/26
Commissioner Ted Trabue	TT/DJ 5/20/26		

Certification of Action

Dionne Joemah
General/Deputy General Counsel

Brian Edmonds
OGC Counsel/Staff

CERTIFICATE OF SERVICE

I certify that on July 20, 2026, a copy of this Petition for Review was served on the following parties of record to the agency proceeding below, District of Columbia Public Service Commission Formal Case No. 1176, by hand delivery, first class mail, postage prepaid or electronic mail:

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