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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
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August 20, 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

STATEMENT OF COMMISSIONER RICHARD BEVERLY

1. With the recent departure of Chairman Emile Thompson, the consensus for moving forward in this case has changed. In my opinion, we have two threshold issues in this case: 1) whether and to what extent retroactive ratemaking is permissible; and 2) whether Pepco satisfied the Alternative Form of Regulation ("AFOR") requirements that we laid out for evaluating whether a Multiyear Rate Plan ("MRP") is in the public interest. My opinion on these issues is laid out below and it becomes a decision of the Commission to the extent that other members of the Commission join it on some subsequent date.

2. The prohibition against retroactive ratemaking is related to the filed rate doctrine. Generally speaking, the Commission's rates are prospective only and cannot be applied retroactively to substitute a new rate for a prior rate that was previously filed and approved by the Commission. No party disputes that retroactive ratemaking is generally prohibited. However, as Pepco points out, these two doctrines are subject to the exception that a rate can be "functionally prospective" if the relevant audience is on notice at the outset that the rates are provisional only and subject to a later adjustment before becoming final. This exception is not applicable in the case before us because the rate was issued to be final, subject to reconsideration as a final order under D.C. Code §34-604(b), and its finality was, in fact, the reason that the appellate court had jurisdiction under this same statutory provision.

3. This situation changed when the order was vacated. At that point, the rate cannot rest on the order, nor can it rest on a tariff whose legal support is a vacated order. Therefore, the only valid tariff is the one in effect on December 31, 2024, and customers who were billed above that rate starting on January 1, 2025, are entitled to a refund or credit up until the majority set an interim rate on May 8, 2026.

4. I see no compelling legal reason why the majority couldn't set an interim rate. However, the nature of an interim rate and the language in the order reflects that the intent of this interim rate is to put the parties on notice that it's subject to later adjustment and, therefore,

functionally prospective. But that means the rate potentially can be adjusted downward to be the same as the rate that triggered the refund described above.

5. Turning now to the AFOR, Order No. 20273 directs the utility seeking AFOR treatment to provide information in the application itself showing how its proposal addresses the Commission's AFOR framework.[1] To date, the Commission has not addressed arguments from non-utility parties, particularly DCG,[2] that this information was absent in whole or in part. As the Commission said, an evidentiary hearing is not the place to conduct discovery, nor is it the place to amend or supplement an application, so I do not expect to hear from witnesses in a hearing testifying on this issue beyond whether or not the information is in the application.

6. My review of an AFOR is also informed by the Commission's independent statutory responsibilities concerning the treatment and valuation of public utility property. D.C. Code § 34-1106 states that the Commission "shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation."[3] D.C. Code § 34-1116 further requires the Commission to keep itself informed of all new construction, extensions, and additions to the property of all public utilities.[4] These statutory responsibilities are part of the Commission's continuing oversight of utility construction, property, and accounts, and remain relevant when the Commission considers rates established through an AFOR. Additionally, these statutory responsibilities assume particular significance in an MRP because rates may incorporate capital investments that are forecast to occur in future rate years.

7. The prospective nature of an MRP application thus requires the Commission to consider not only the reasonableness of forecasts when rates are established, but also the mechanisms through which forecasted expenditures and investments may be identified, monitored, reviewed, and compared with the expenditures and investments that occurred during the term of the plan. Order No. 20273 anticipated these concerns. Among other things, the AFOR framework requires Pepco to explain the process or mechanism used to project revenues and expenses;

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[1] Order No. 20273 at ¶ 6.

[2] *Formal Case No. 1176,* District of Columbia Government's Post Legislative-Style Hearing Brief: "The record of this case does not and cannot support approval to Pepco's MYP. Pepco cannot point to any measurable, qualitative or quantitative, benefits of its MYP either to its customers, or to the District's climate and energy goals, despite the District's repeated requests to produce such information." Pg. 7.

[3] D.C. Code § 34-1106: "The Commission shall value the property of every public utility within the District of Columbia actually used and useful for the convenience of the public at the fair value thereof at the time of said valuation."

[4] D.C. Code § 34-1116: The Commission shall keep itself informed of all new construction, extensions, and additions to the property of all public utilities, and shall prescribe the necessary forms, regulations, and instructions to the officers and employees of all public utilities for the keeping of construction accounts, which shall clearly distinguish all operating expenses and new construction"

demonstrate measurable customer benefits; foster productivity and cost control; mitigate the risk of utility over-earning; preserve the Commission's ability to conduct cost prudency reviews; provide transparency and reporting concerning operational and capital plans; and avoid unreasonable shifting of risk to customers.[5] In order to discharge its duties under D.C. Code §§ 34-1106 and 34-1116, the Commission must be able to understand the treatment of projects that are delayed, canceled, materially modified, underspent, or not placed into service during the rate year in which the associated investment was forecasted. The Commission must also be able to determine how the proposed reporting, reconciliation, annual adjustment, and prudency review mechanisms will enable it to remain informed about Pepco's construction and additions to utility property and to determine whether property reflected in rates is appropriately recognized for ratemaking purposes.

8. The Application standing alone must provide a sufficient basis for the Commission to determine how forecasted capital investments included in rates will be identified, tracked, reviewed, and reconciled with the investments actually made and placed into service during the applicable rate period. While Pepco argued in its final brief that the application complies with AFOR requirements in Order No. 20273,[6] I do not see where the Application clearly identifies or explains how the proposed MRP satisfies each of the ten framework principles established in Order No. 20273,[7] nor how it will enable the Commission to reconcile actual spending with projected spending. Much of this is echoed in my earlier dissents and I'm strongly disinclined to do anything other than dismiss an application that's deficient on its face.[8]

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[5] Order No. 20273 at ¶ 94.

[6] *Formal Case No. 1176,* Post Legislative Style Hearing Brief of Potomac Electric Power Company, Pgs. 6-7. I note that Pepco then contradicts itself on page 83 of its brief by relying on Commission Order No. 20755 approving Pepco's first MRP in *Formal Case No. 1156*, from which I dissented, stating that the AFOR requirements in Order No. 20273 were guidelines rather than bright-lines.

[7] For example, one of the AFOR principles is advancing "public safety, the economy of the District, the conservation of natural resources, and the preservation of environmental quality, including effects on global climate change and the District's public climate commitments." I have not seen an estimated impact on GHG emissions in Pepco's application.

[8] The parties, however, remain free to settle this matter to achieve a faster resolution than may be available through litigation.