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pepco
AN EXELON COMPANY

Kimberly A. Curry
Associate General Counsel

EP9628
701 Ninth Street NW
Washington, DC 20068-0001

Office 202.428.1141
Fax 202.331.6767
pepco.com
Kimberly.curry@exeloncorp.com

September 9, 2026

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

Re: *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

Response of Potomac Electric Power Company to August 20, 2026, Statement of Commissioner Beverly

Dear Ms. Westbrook-Sedgwick:

Potomac Electric Power Company ("Pepco" or "the Company") submits this, Response to the *Statement of Commissioner Richard Beverly*, released August 20, 2026 ("Statement"), announcing in this open and ongoing proceeding his strong inclination to dismiss Pepco's April 13, 2023 rate case application ("Application") on the grounds it does not meet Alternative Form of Regulation ("AFOR") filing requirements for Multiyear Rate Plans ("MRP"), and indicating that his Statement would become a decision of the Commission if other Commissioner(s) joined him.[1] By his own acknowledgement, this Statement has no legal effect; however, the Company submits this Response to address the violation of its due process rights and other harmful

[1] Statement at 1 ("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.")

implications of the Statement to the Company, customers, the rate case and the regulatory environment in the District of Columbia.

In his statement, Commissioner Beverly sets forth his opinions as follows:

- 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.[2]
- The Application on its face must satisfy the oversight responsibilities of the Commission under D.C. Code § 34-1106[3] and D.C. Code § 34-1116[4] - statutory provisions that have not previously been applied to the Application or case.[5]
- The Application does not clearly identify or explain how the proposed MRP satisfies each of the ten framework principles established in Order No. 20273, nor how it will enable the Commission to reconcile actual spending with projected spending.[6]
- The parties remain free to settle this matter to achieve a faster resolution than may be available through litigation.[7]

For these reasons, Commissioner Beverly states that he is "strongly disinclined to do anything other than dismiss an application that's deficient on its face."[8]

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[2] Statement at ¶ 3.
[3] D.C. Code § 34-1106 provides 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."
[4] D.C. Code § 34-1116 requires the Commission to keep itself informed of all new construction, extensions, and additions to the property of all public utilities.
[5] Statement at ¶¶ 6-7.
[6] Statement at ¶ 8.
[7] Statement at fn 8.
[8] Statement at ¶8 ("I'm strongly disinclined to do anything other than dismiss an application that's deficient on its face.")

This Statement contradicts and threatens reversal of the Commission Orders establishing interim rates during the remand proceeding; deprives Pepco of due process by opining on a predetermined outcome to dismiss the Application; improperly imposes new and/or additional requirements on the MRP filing; predetermines his decision on this matter, prior to the conclusion of the DC Court of Appeals (the "Court")-ordered direction to hold an evidentiary hearing; and, ignores Pepco's traditional test year filing.

A. Procedural History of Formal Case No. 1176

On April 13, 2023, Pepco filed an Application for approval of cost recovery through the implementation of an MRP. On October 16, 2023, in compliance with Commission direction, Pepco filed supplemental testimony and exhibits to support a traditional test year rate case. The current proceeding has been ongoing for over three years, with several rounds of testimony by multiple parties and extensive discovery. The Commission, supported by Commissioner Beverly, declined to hold an evidentiary hearing and instead convened a legislative-style hearing. On November 26, 2024, by Order No. 22328, the Commission approved a Modified MRP Extended Pilot.

By Order No. 22358, the Commission denied Petitions for Reconsideration filed by the Apartment and Office Building Association of Metropolitan Washington ("AOBA") and the Office of the People's Counsel ("OPC"). Those parties then petitioned for review of Order Nos. 22328 and 22358 to the District of Columbia Court of Appeals ("Court").

On March 5, 2026, the Court vacated Order Nos. 22328 and 22358, concluding that the Commission had erred in failing to conduct an evidentiary hearing.[9] The Court therefore remanded the matter. Pepco filed a motion on the same day requesting an expedited evidentiary hearing, which OPC and AOBA opposed. On March 6, 2026, and March 9, 2026, respectively, OPC and AOBA filed motions requesting reversion to distribution rates last in effect on December 31, 2024, and refunds of all amounts collected greater than those rates from January 1, 2025 forward. On May 8, 2026, the Commission, by Order No. 22860, determined that the Company's tariffed rates beginning January 1, 2025, would be the interim rates during the pendency of the remand proceeding.

Evidentiary hearings are scheduled for October 13-14, 2026. On August 14, 2026, Chairman Emile Thompson resigned from the Commission and on August 18, 2026, the Mayor named Commissioner Ted Trabue the Interim Chairman. On August 20, Commissioner Beverly issued the Statement opining on key issues in this pending proceeding.

B. Due Process Requires an Impartial and Unbiased Trier of Fact

The District of Columbia Court of Appeals has held, in the context of a conflict of interest, that an impartial decision maker is essential to the due process rights of litigants, whether before a judicial tribunal or an agency of the District of Columbia government. *See Gordon v. District of Columbia*, 309 A.3d 543, 564 (D.C. 2024) *citing Goldberg v. Kelly*, 397 U.S. 254, 271 (1970)("[A]n impartial decision maker is essential" to the due process right to adequate notice and the opportunity to be heard"). That same standard applies to this rate case.

[9] The Court also found that the Commission did not sufficiently explain its reasoning for why it approved the Effective Rate Adjustment and the Bill Stabilization Adjustment despite discrepancies in the record about their proper calculations.

In the Statement, Commissioner Beverly prejudges key aspects of this ongoing contested proceeding, including seeking reversal of prior Commission orders, which is highly prejudicial, and is procedurally improper. Although the Statement is not an order of the Commission and presently does not have any legal effect, the Statement indicates that Commissioner Beverly has made a decision to dismiss the Petition without providing Pepco due process or a fair and impartial proceeding in accordance with the Court's directive.

C. The Statement's Positions Are Legally Unsupported

1. Interim Rates

Commissioner Beverly's representation that "the rate potentially can be adjusted downward to be the same as the rate that triggered the refund described above"[10] should be discounted because it is in direct contradiction of the Commission's holding, and applicable law, that the filed rate doctrine required Pepco to charge the only tariffed rate in effect, *i.e.*, that which was filed based on the Commission's decision in Formal Case No. 1176. First, Order No. 22860 expressly reauthorized the rates the Company filed on December 11, 2024, as the interim rate[11] and Commissioner Beverly's statement that the rates can be adjusted to something other than that approved rate is in direct conflict with that order. Second, because there is no other Commission-approved rate in effect, adjusting the Company's rates to anything other than those filed on December 11, 2024, would violate the filed rate doctrine, which forbids a utility from charging a rate not on file with the regulatory commission.[12]

[10] Statement at ¶4.
[11] Order No. 22860 at ¶99.
[12] *See e.g., DC v. Pub. Serv. Comm'n*, 30 A.2d 236, 256 (D.C. 1974).

2. Dismissal of the Application

The Statement further threatens dismissal of the Application on the grounds that it does not meet AFOR requirements, which again is in direct conflict with not only a prior Commission order, but also the Commissioner's own prior position.[13] First, in the underlying proceeding, in Order No. 22013, the Commission, joined by Commissioner Beverly, denied motions to dismiss filed by OPC and AOBA, which were based in part on the grounds that Pepco's Application did not satisfy AFOR requirements. The Commission held, as follows:

> In the absence of Commission rules governing summary disposition, the Commission has been guided by the Superior Court Rules of Civil Procedure. However, we are not bound by those rules and granting dispositive motions remains a matter entirely within the broad discretion of the Commission. This case is part of an unprecedented paradigm shift in the way we regulate rates. As a result, any dispositive motion necessarily raises issues of first impression that we think are more appropriately decided after we have a more complete record. Although the motions are denied, we have not decided any issue of policy or law that undergird the motions so the parties remain free to argue their case as they would if no dispositive motion had been filed.[14]

As Commissioner Beverly acknowledged in his dissent in Order No. 22328:

> The problems were so apparent that I was inclined to grant the non-utility parties' Motions for summary disposition or dismiss this case sua sponte on related grounds, but I *decided to let the case play ou*t for the reasons in Order No. 22013 that denied the Motions.[15]

Second, the Court ordered the Commission to hold an evidentiary hearing. Attempted dismissal of the Application without an evidentiary hearing[16] on grounds not previously raised and in contradiction of the Commission's prior denial of motions to dismiss as set forth above is an impermissible circumvention of the Court's order and the required evidentiary hearing.

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[13] Statement at ¶8.
[14] Order No. 22013 at ¶28.
[15] Order No. 22328, Dissent of Commissioner Richard Beverly at ¶1 (Nov. 26, 2024)(emphasis added).
[16] Statement at ¶5 (" 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.").

Third, the Company filed a traditional test year rate case in October 2023. To dismiss the Company's MRP Application without then turning to consideration of the traditional rate case is unreasonable and not supported by the record. All parties to this proceeding have recognized from the outset that whether under AFOR standards or traditional rate case standards, the Company was entitled to an increase over the rates set in Formal Case No. 1156.

3. Retroactive Amendment of the AFOR Framework

The Statement's reliance on supposed "requirements" of the Commission's AFOR Order is also legally deficient. Although Pepco's original application in Formal Case No. 1176 was filed more than three years ago the Statement for the first time suggests that the Application is defective under D.C. Code §§ 34-1106 and 34-1116.[17] These Code Sections are not mentioned in the AFOR Order as being part of the 10 factors within the AFOR framework or otherwise as requirements that had to be addressed in an AFOR application. They also were not identified as requirements in any Commission decision following the AFOR Order, either in Formal Case No. 1156 or Formal Case No. 1176. It is improper to now, for the first time on remand, claim that these are "requirements" that the Company was required to address in its Application.

Moreover, the Commission has been clear that the AFOR framework principles identified in the AFOR Order, are guidelines and not requirements that an AFOR application must satisfy. As the Commission explained when it approved the Company's first MRP in Order No. 20755 in Formal Case No. 1156, the AFOR Order "is a policy decision which sets principles and guidelines

[17] Statement at ¶¶6-8. Pepco would note that with respect to the Company's investments in the District, it complies with all the reporting requirements the Commission has established in its orders and regulations regarding the Company's construction activities. In addition to the annual information filings mandated in Order No. 22328, the Company also files, for example, a Comprehensive Plan for the Planning, Design, and Operation of the Distribution System within the District of Columbia as part of its Annual Consolidated Report. The Company also submitted a detailed Construction Report as part of its Application in Formal Case No. 1176, consistent with the Commission's directives.

rather than bright-line requirements."[18] The Commission has not adopted any regulations that establish minimum filing requirements for AFOR applications and it has not mandated that all the AFOR framework principles must be incorporated into an AFOR application.

Dismissal also is not warranted based on the Statement's claim that the Application does not provide information responsive to the Commission's AFOR framework or provide sufficient details on how the Commission will "reconcile actual spending with proposed spending." The Application and accompanying testimony do address these issues and the reconciliation process permits all parties and the Commission to reconcile actual spending and proposed spending.

Finally, the Commission has already held that Pepco's application in Formal Case No. 1176 satisfied the AFOR framework when it previously approved the modified EMRP in Order No. 22328. No party argued on appeal from that order that the Application was deficient on this basis. Since the AFOR framework elements have not been modified and Pepco's Application remains the same, there is no rational basis for the Commission to come to the opposite conclusion now.

D. <u>Conclusion</u>

Pepco urges the Commission to follow the Court's direction on remand, hold an evidentiary hearing as required by the Court, maintain the procedural schedule in the case, and provide Pepco and all parties with due process and a fair hearing to make a legally supportable finding on just and reasonable rates.

Sincerely,
/s/ *Kimberly A. Curry*
Kimberly A. Curry

cc: All parties of record

[18] Order No. 20755 at ¶32 (June 8, 2021).

CERTIFICATE OF SERVICE

I hereby certify that a copy of Potomac Electric Power Company's Response to the August 20, 2026 Statement of Commissioner Beverly has been served via email on this September 9, 2026 on:

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

Laurence C. Daniels, Esq.
Ankush Nayar, Esq.
Karen Sistrunk, Esq.
Knia Tanner, Esq.
People's Counsel
Office of the People's Counsel
655 15th Street NW, Suite 200
Washington, DC 20005
ldaniels@opc-dc.gov
anayar@opc-dc.gov
ksistrunk@opc-dc.gov

Brian Caldwell, Esq.
Kathryn Blanco, Esq.
Assistant Attorney General
DC Government
441 4th Street, NW
Suite 600-S
Washington, DC 20001
Brian.caldwell@dc.gov
kathryn.blanco@dc.gov

Frann G. Francis, Esq.
Senior Vice President and General Counsel
AOBA
1025 Connecticut Avenue, NW
Suite 1005
Washington, DC 20036
ffrancis@aoba-metro.org
ecaldwell@aoba-metro.org

Kristi Singleton. Esq.
Senior Assistant General Counsel
Real Property Division (LR), GSA
1800 F. Street, NW Room 2016
Washington, DC 20405
Kristi.singleton@gsa.gov

Laura Baker
Stoney Mattheis Xenopoulos & Brew, PC.
1025 Thomas Jefferson St, NW, 8th Floor
Washington, DC 20007
lwb@smxblaw.com

Marc Battle, Esq. Chief Legal Officer &Executive Vice President, Government & Legal Affairs
Barbara Mitchell, Esq. Assistant General Counsel District of Columbia Water and Sewer Authority
1385 Canal Street SE
Washington, D.C. 20003
(202) 787-2000
Marc.battle@dcwater.com
barbara.mitchell@dcwater.com

Mike Lavanga
Stoney Mattheis Xenopoulos & Brew, PC.
1025 Thomas Jefferson St, NW, 8th Floor
Washington, DC 20007
MKL@smxblaw.com

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

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

/s/ *Kimberly A. Curry*
Kimberly A. Curry