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

September 11, 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 IN RESPONSE TO THE POTOMAC ELECTRIC POWER COMPANY

1. This case brought into focus issues regarding the relationship between the Court's vacatur of the rate case order, the Commission ordered interim rate, the filed rate doctrine, and the prohibition against retroactive ratemaking. Pepco specifically argued that giving notice that a rate is subject to future adjustment is functionally prospective and creates an exception to both retroactive ratemaking and the filed rate doctrine. Based on Pepco's argument, the Commission in Order No. 22892 stated "[t]here are two periods at issue here, which may be subject to different analyses: from January 1, 2025, the date that the rates in Order No. 22328 went into effect; and from May 8, 2026, the date the interim rate went into effect. The specific question is whether either or both of these periods fit within a 'functionally prospective' exception to retroactive ratemaking. We think the parties should have an opportunity to provide further legal briefing before we decide."[1]

2. There is nothing in Order No. 22892 that remotely suggests (nor did any party argue) that the Commission needs a fact finding to decide this purely legal issue or that the Commission needs to wait to decide the issue beyond the filing of the briefs. The brief that Pepco submitted was the process that was due on this issue, and the issue was ripe for decision once the briefs were submitted. Seeing no reason to delay, I decided the issue based on my independent authority under D.C. Code §34-802, which says that I can take any action that the Commission itself can take but it only becomes an act of the Commission if approved by a majority of the Commissioners. If any party's rights have been denied, then it's the non-utility parties' right (or reasonable expectation) to a have this issue decided by the Commission in a timely fashion as a preliminary matter well before the scheduled evidentiary hearing.

3. Pepco also complains that my statement regarding the deficiency of its application essentially prejudges the outcome of the case by upending the prior majority's view that the application isn't deficient. However, upending the prior majority's view is the logical consequence of a shift on the Commission where my dissenting view holds significantly more weight when I

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[1] Order No. 22892, rel. June 30, 2026. ¶ 84.

am one of only two Commissioners. As my dissents have made clear, I have repeatedly opposed this MRP. Nothing in the Court's vacatur prevents me from having a view based entirely on policy grounds as set forth in my dissents and nothing prevents me from pointing out that the Commission has never actually made a decision on whether the MRP Application satisfies the framework requirements established by the Commission for alternative forms of regulation ("AFOR") in Order No. 20273. Pepco counters that the Commission actually did make a decision on the AFOR requirements by denying the non-utility parties' motions to summarily dismiss this case which were themselves based in part on an argument that the Company had not satisfied the AFOR. However, Pepco also cites language from the Order which states "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." I remain similarly free to view the AFOR issue as though no dispositive motion had been filed or denied.

4. Pepco also argues that the MRP was deemed compliant with the AFOR framework when the Commission approved the modified EMRP in Order No. 22328. I'm not exactly sure why Pepco thinks this, but it doesn't really matter because Order No. 22328 was vacated by the Court. Therefore, the AFOR issue is still on the table, and I can decline to approve the MRP Application unless its reasonableness has been determined through the analytical prism of the AFOR. Even if that were somehow not the case, I can still decline to approve it as a matter of pure policy for reasons stated in my dissents (all of which are public). To argue as Pepco does that it's a violation of Pepco's right to due process when I oppose kicking the AFOR issue under the rug ignores the fact that the non-utility parties have a right to understand what we're deciding and why.

5. Pepco maintains that the Court ordered the Commission to hold an evidentiary hearing and dismissing this case without such a hearing is an impermissible circumvention of the Court's Order. Additionally, Pepco says that even if the MRP were dismissed, the Company should still be able to pursue a rate increase under traditional rate case standards. While Pepco might have a point if that's what I was saying, this is not my position. I have not opposed holding a hearing pursuant to the Court remand, nor have I said that a traditional rate case can't be pursued if the MRP aspect of the application is dismissed. To restate my position: 1) the MRP can be rejected on policy grounds in a final order regardless of whether a motion for summary disposition was previously denied; and 2) we can't impose a rate retroactively, whether or not it's the result of the approval of an MRP or a traditional rate case. Also, when I stated that I am strongly opposed to approving an application that is deficient on its face (as should be the view of any serious regulatory body), the intent was not to create an irrebuttable presumption of deficiency but rather to make it unequivocally and immediately clear that, for me, the question of the Application's deficiency is still an open question. If Pepco wishes to rebut the presumption, then it is free to do so.