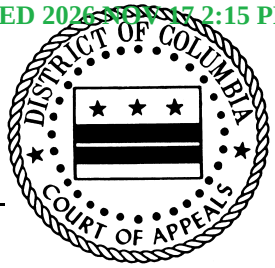
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APPEAL NOS. 26-AA-0587 & 26-AA-0588

IN THE
DISTRICT OF COLUMBIA COURT OF APPEALS

OFFICE OF THE PEOPLE'S COUNSEL
FOR THE DISTRICT OF COLUMBIA,
Petitioner,

v.

D.C. PUBLIC SERVICE COMMISSION,
Respondent.

ON PETITIONS FOR REVIEW FROM THE
PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

RESPONSE OF INTERVENOR POTOMAC ELECTRIC POWER COMPANY TO THE MOTION TO STAY AND FOR INJUNCTIVE RELIEF OF THE OFFICE OF THE PEOPLE'S COUNSEL FOR THE DISTRICT OF COLUMBIA

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INTRODUCTION

Pursuant to Rule 27(a)(4),[1] Intervenor Potomac Electric Power Company ("Pepco") respectfully submits its response to the Motion to Stay and for Injunctive Relief ("Motion") of the Office of the People's Counsel for the District of Columbia ("OPC").

The Public Service Commission of the District of Columbia ("Commission") is tasked with carrying out the remand from this Court's March 5, 2026, decision vacating Order Nos. 22328 and 22358. *Off. of the People's Couns. of D.C. v. D.C. Pub. Serv. Comm'n*, 352 A.3d 682 (D.C. 2026) ("Vacatur Decision"). That decision held that when the Commission approved Pepco's new rates effective January 1, 2025 (the "MYP Rates"), there were two procedural issues: The Commission did not hold an evidentiary hearing and did not adequately explain aspects of its decision.[2] The Commission must address those issues and hold the hearing this Court directed—which it has now rescheduled from May 12, 2026 to October 13-14, 2026 to December 7-8, 2026.[3]

As the Commission implements the Vacatur Decision, it has had to address a key practical question that this Court properly left to the Commission: What rates should govern during the remand until the hearing occurs and the Commission sets final rates? The Commission adopted a sensible approach that avoids unnecessary disruption and protects customers and Pepco alike. Invoking its authority to set interim rates, which this Court has recognized for more than 50 years, the Commission chose to preserve the MYP Rates that have been in effect since January 2025, subject to potential refunds if the Commission later sets final rates lower.

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[1] Unless otherwise indicated, references in this Response to a Rule are to the Rules of the District of Columbia Court of Appeals.

[2] Vacatur Decision, 352 A.3d at 684, 692.

[3] Most recently, on September 9, 2026, OPC and others filed a Joint Motion to Modify the Procedural Schedule that proposed that the evidentiary hearing be moved to June 8-9, 2027—fifteen months after the Vacatur Decision. The Commission has not yet ruled on this motion.

Now, OPC seeks the most extraordinary relief: In the midst of expedited briefing, OPC asks this Court to seize control of the ongoing ratemaking proceeding and dictate OPC's preferred rates—the rates set in 2021 in Formal Case No. 1156, based on nearly decade-old data ("2021 Rates"). For three reasons, this request fails. *First*, OPC is unlikely to succeed on the merits. OPC must show both (a) that the Vacatur Decision vacated the MYP Rates and automatically reinstated the 2021 Rates and (b) that the Commission lacked authority to decide to continue the MYP Rates on an interim basis. Unless OPC shows both, it cannot establish that the 2021 Rates must govern. And OPC can show neither. *Second*, OPC cannot show irreparable harm or establish the remaining stay factors. Every dollar Pepco collects going forward is subject to refund if the final rates set on remand are lower. And OPC's own witness conceded that the 2021 Rates today are far too low. The relief OPC seeks would violate the Constitution and severely harm Pepco and the public by imposing confiscatory rates that do not provide a lawful return. *Third*, what OPC seeks is not a stay but a writ of mandamus under which this Court itself would reinstate the 2021 Rates—an extraordinary request that exceeds this Court's role under District law and does not satisfy the sky-high standard for relief under the All Writs Act. The Court should deny the Motion.

BACKGROUND

On July 20, 2026, OPC filed Petitions for Review from (i) Order Nos. 22806 and 22866 issued by the Commission in Formal Case No. 1176 on March 27, 2026, and May 20, 2026, respectively (Appeal No. 26-AA-0587); and (ii) Order Nos. 22860 and 22892[4] issued by the Commission in Formal Case No. 1176 on May 8, 2026, and June 30, 2026 (Appeal No. 26-AA-0588). The Court consolidated the appeals. The Court also denied motions to stay

[4] Collectively, Order Nos. 22806, 22866, 22860, and 22892 are referred to in this Response as the "Orders."

OPC had filed on August 14, 2026. The denial was without prejudice to renewal if OPC first requested a stay before the Commission. On November 10, 2026, OPC refiled the Motion.

ARGUMENT

Four factors govern stays: (1) whether the movant is likely to succeed on the merits; (2) whether the movant is in danger of suffering irreparable harm; (3) whether the opposing party is likely to suffer harm if the stay is granted or the balance of harms weighs in favor of a stay; and (4) whether the public interest favors a stay.[5] Each factor supports denial of the Motion. Moreover, what OPC seeks is not a stay but a "writ of mandamus reinstating the prior rates,"[6] and OPC has not satisfied the even more stringent requirements for that relief.

I. OPC's Motion Fails to Demonstrate That a Stay Is Warranted.

A. OPC Fails to Demonstrate a Likelihood of Success on the Merits.

As an initial matter, as both the Commission and Pepco have argued in prior filings,[7] the Orders here are not final and OPC's appeals should be dismissed.[8] That alone provides a sufficient basis for concluding that OPC is unlikely to succeed in the underlying case.

Nor is OPC likely to succeed if the Court reaches the merits. Because the relief OPC seeks is reinstatement of the 2021 Rates, the question is whether OPC is likely to succeed in showing that those rates must govern. And to do that, OPC must prevail on two separate

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[5] *District of Columbia v. Towers*, 250 A.3d 1048, 1053 (D.C. 2021); *see also Nken v. Holder*, 556 U.S. 418, 434 (2009).

[6] Motion at 21.

[7] *E.g.*, *Respondent Public Service Commission of the District of Columbia's Motion to Dismiss Petitions for Review* at 1-2, No. 26-AA-0587 (D.C. July 30, 2026); *Response of Intervenor Potomac Electric Power Company to the Office of the People's Counsel for the District of Columbia's Motion for Expedited Procedures* at 2-3, No. 26-AA-0587 (D.C. Aug. 21, 2026).

[8] Although the Court denied the Commission's July 30, 2026, motion to dismiss in its September 16, 2026, order, the Court indicated that the arguments made therein could be renewed.

points. First, OPC must show that this Court's Vacatur Decision of its own force reinstated the 2021 Rates. If not, then the MYP Rates remain in effect. Second, even if OPC prevailed on the first point, the MYP Rates today independently rest on the Commission's decision to readopt those rates as interim rates. The Motion has not established a likelihood of success as to either contention—and it does not even address the second, essential point.

1. The Vacatur Decision Did Not Automatically Reinstate the 2021 Rates.

OPC's case rests on the incorrect premise that when a court vacates a Commission order, it automatically vacates the underlying rates. The Supreme Court rejected that automatic-reversion theory in *Burlington Northern, Inc. v. United States*, 459 U.S. 131 (1982). It held that judicial authority "to reject Commission rate orders for whatever reason extends to the orders alone, and not to the rates themselves." *Id.* at 141. And the Court held that when the lower court purported to reinstate the prior rates, it exceeded its authority by "freez[ing] the rate . . . prior to a decision by the Commission as to what a reasonable rate should be." *Id.* at 142. Instead, a judicial decision "striking the orders" operates to "leave in effect the rates filed under the Commission's authority pending the Commission's redetermination of a reasonable rate." *Id.* at 144.

Federal and District rate-setting precedent follows this law. *ISO New England Inc.*, cited in Order No. 22860, explained: "*Burlington Northern* indicates that when a federal court vacates a Commission order under the [Federal Power Act], the court lacks authority to dictate the rate to be in effect as a result of that vacatur. Accordingly, the fact that the D.C. Circuit vacated Opinion No. 531 et seq. cannot automatically reinstate the" rates permitted "prior to Opinion No. 531." *ISO New England Inc. v. Bangor Hydro-Elec. Co.*, 161 FERC ¶ 61,031 at P 27 (2017). District practice is in accord. *See, e.g.*, *Tel. Users Ass'n v. Pub. Serv. Comm'n*, 304 A.2d 293, 303 (D.C. 1973) (order granting rate increases "shall remain in effect pending the further

proceedings on remand"); *Potomac Elec. Power Co. v. Pub. Serv. Comm'n*, 380 A.2d 126, 147-50 (D.C. 1977), *rev'd on other grounds en banc*, 402 A.2d 14 (D.C. 1979).[9]

This precedent-supported approach also accords with the rate-setting framework in the D.C. Code. OPC relies on D.C. Code §§ 34-601, 34-901, and 34-607,[10] but those provisions distinguish between Commission *orders*, which is what this Court reviews, and the *rates* on file, which only the Commission may change. The statutory scheme provides that filed rate schedules "shall be the lawful rates . . . and shall remain and be in force until set aside *by the Commission*." D.C. Code § 34-1123 (emphasis added). Once a utility conforms its schedules to a Commission order, "no change shall thereafter be made . . . without the approval *of the Commission*." *Id.* § 34-601 (emphasis added). And Section 34-607 provides that Commission "orders and decisions" remain in effect unless "suspended, superseded, or rescinded by the Commission or are vacated" by this Court; it does not address what happens to the underlying *rates* in the event of vacatur.

This approach also accords with the D.C. Code's division of authority between the Commission (which sets rates) and this Court (which reviews agency orders)—the same division

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[9] Especially close to home, in Formal Case No. 1156, this Court "vacate[d] the Commission's orders as to [two] issues and remand[ed] for further proceedings consistent with [its] opinion." *Off. of the People's Couns. v. D.C. Pub. Serv. Comm'n*, 284 A.3d 1027, 1029 (D.C. 2022). Yet existing rates continued in effect while the Commission addressed the two deficiencies the Court identified. This is just the most recent example of an unbroken practice. The same outcome occurred in Formal Case No. 989, where *Office of the People's Counsel v. District of Columbia Public Service Commission*, 845 A.2d 1128 (D.C. 2004), remanded for the Commission to better explain the allocation of revenues from the Maritime Plaza development. It occurred in Formal Case No. 929, where *Potomac Electric Power Co. v. Public Service Commission*, 661 A.2d 131 (D.C. 1995), remanded for the Commission to better explain the basis for its disallowance of a percentage of demand-side management costs. And it occurred in *Potomac Electric Power Co.*, 380 A.2d at 147-50, where this Court also vacated the Commission's orders—yet under the Court's decision, the rates stayed in effect subject to adjustment once the Commission issued a decision on remand.

[10] Motion at 13-16.

that was key in *Burlington Northern*. On the one hand, "Congress has delegated rate-making authority to the Commission, not to this court."[11] On the other, "[w]hile [this Court] must ascertain that . . . the Commission has given reasoned consideration to each of the pertinent factors" and acted lawfully, the Court "must not substitute [its] judgment for that of the Commission" and may not set rates itself.[12] OPC's automatic-reversion theory would turn every vacatur decision into a forbidden judicial ratemaking decision. As the Commission explained, "[i]f OPC's interpretation were correct, any vacatur—regardless of its basis—would instantaneously impose a new rate structure by judicial implication."[13]

OPC's automatic-reversion theory also depends on OPC's assertion that the 2021 Rates were adopted in the "last valid rate order."[14] But that order (Order No. 20755) was superseded when the Commission approved the Formal Case No. 1176 rates and Pepco filed new schedules in December 2024.[15] The later vacatur of that superseding order does not undo the fact that the Commission superseded the 2021 Rates. Those rates are no longer on file, so it is simply incorrect to claim that they would spring back to life due to a stay. And while OPC asserts that the "last valid rate order" adopted the 2021 Rates,[16] that order was itself vacated in part by this Court,[17] meaning OPC is inconsistently applying its own (flawed) automatic-reversion theory. The better

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[11] *United States v. Pub. Serv. Comm'n*, 465 A.2d 829, 832 (D.C. 1983) (citing *Wash. Gas Light Co. v. Pub. Serv. Comm'n*, 450 A.2d 1187, 1193 (D.C. 1982)); *see Potomac Elec. Power Co. v. Pub. Serv. Comm'n*, 402 A.2d 14, 17 (D.C. 1979) (en banc); *Wash. Pub. Int. Org. v. Pub. Serv. Comm'n*, 393 A.2d 71, 75 (D.C. 1978).
[12] *Potomac Elec. Power Co.*, 661 A.2d at 135 (quoting *Potomac Elec. Power Co. v. Pub. Serv. Comm'n*, 457 A.2d 776, 782 (D.C. 1983)) (citations and internal quotation marks omitted).
[13] Motion Ex. 1, p. 76, Order No. 22866 ¶ 56.
[14] Motion at 15.
[15] *Id*. at Ex. 1, p. 24, Order No. 22860 ¶ 1 & n.1.
[16] *Id*. at 7.
[17] *See OPC*, 284 A.3d at 1034, 1037.

understanding—the understanding *Burlington Northern* prescribes—is that the 2021 Rates remained in effect while the Commission addressed the issues on remand during Formal Case No. 1156, and the same is true here with respect to the MYP Rates during Formal Case No. 1176.

This point, moreover, is no mere formality, and the facts underscore *why* courts have so uniformly rejected similar automatic-reversion theories. In adopting new rates in Formal Case No. 1176, the Commission found that the rates established in Formal Case No. 1156 were no longer just and reasonable and so no longer lawful.[18] Indeed, OPC's own witness proposed revenue requirements of $90.5 million for 2025 and $120.2 million for 2026, compared with the $99.7 million and $123.4 million the Commission approved.[19] Reimposing rates that every party's witness agreed are too low would, on this record, yield a constitutionally inadequate return.[20] *Burlington Northern* rejected just such a result as "inequitable in the best of times."[21]

OPC's contrary authorities involve not ratemaking but criminal law. *Hewitt v. United States*, 606 U.S. 419 (2025), concerned vacated criminal sentences; *United States v. Ayres*, 76 U.S. 608 (1869), an order granting a new trial; and *Nelson v. Colorado*, 581 U.S. 128 (2017), fees and restitution exacted on the basis of invalidated convictions. *Nelson*'s observation that "reversal is reversal" addressed whether invalidated convictions were "void" or "voidable."[22] And while OPC avers that the Vacatur Decision vacated Order Nos. 22328 and 22358 "in their entirety,"[23] nothing in the Vacatur Decision directed reinstatement of prior rates; the Court simply remanded "with

[18] *See, e.g.*, D.C. Code § 34-901(d); Motion Ex. 2, pp. 9, 35, Order No. 22328 ¶¶ 12, 92.
[19] Motion Ex. 2, pp. 6-7, 36-37, Order No. 22328 ¶¶ 6, 95, 98.
[20] *See Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944); Joint Appendix ("JA") 22-23, 165-66; *Pepco Supplemental Brief in Response to Order No. 22806*, Ex. 1 (Apr. 6, 2026) ("O'Donnell Aff.") ¶¶ 7-8, 11. The O'Donnell Affidavit is attached as Exhibit 1.
[21] 459 U.S. at 142.
[22] *Nelson*, 581 U.S. at 136 n.10.
[23] Motion at 14.

instructions for the Public Service Commission to hold an evidentiary hearing."[24] Nor did the Court hold that the rates lacked "any evidence";[25] it held that the parties were entitled to cross-examine experts on disputed facts[26]—a procedural defect the remand evidentiary hearing will cure.

2. OPC's Arguments Also Fail Because the Commission Lawfully Reauthorized the MYP Rates as Interim Rates.

Even if the Vacatur Decision had (counterfactually) reinstated the 2021 Rates, OPC still could not show a likelihood of success. OPC insists that "utility rates must be supported by a valid rate order,"[27] but it fails even to address the rate order the Commission issued on remand invoking its interim-rate authority to continue the MYP Rates. To establish a likelihood of success on its claim that the 2021 Rates should apply, OPC must show that this interim-rate decision is unlawful. But OPC does not even try to do so. Its Motion relies entirely on its automatic-reversion arguments, ignoring that those arguments—even if correct—would not support the relief OPC seeks. That is reason enough to deny OPC's Motion.

The Commission, moreover, acted well within its broad discretion in setting interim rates. In *Chesapeake & Potomac Telephone Co. v. Public Service Commission*, 330 A.2d 236, 240 (D.C. 1974), this Court recognized that the Commission has the authority to adopt interim rates under the implied powers conferred by D.C. Code § 34-403 (formerly § 43-1003). This Court reaffirmed as much in *Potomac Electric Power Co. v. Public Service Commission*, which emphasized that the already deferential review of Commission ratemaking is *even more* deferential, and the Court's role is "even more limited," when the Commission sets interim

[24] Vacatur Decision, 352 A.3d at 692.
[25] Motion at 14-15.
[26] Vacatur Decision, 352 A.3d at 689-90.
[27] Motion at 13.

rates—"an administrative inquiry whose purpose and consequences are much more limited."[28]

Below, the Commission reasonably invoked this interim-rate authority to continue the rates currently in effect while the Commission holds an evidentiary hearing and issues a final order on remand—subject to adjustment once final rates are established. It explained that caselaw nationwide "confirm[s]" that maintaining "the continuity of existing tariffed rates is a lawful and equitable means of addressing procedural deficiencies identified by the Court while avoiding unnecessary volatility for customers and the utility."[29] It emphasized that this authority "prevents regulatory gaps and allows the Commission to fulfill its obligation . . . to ensure just and reasonable rates at all times."[30] And the Commission articulated *why* it chose to keep the MYP Rates. It had to pick *some* rates, and the MYP Rates—based on the latest data and an extensive evidentiary record—promoted "administrative efficiency, regulatory stability, and protection of ratepayers" and would be the "most practical and least disruptive approach."[31] The Commission certainly could reasonably choose this approach over reverting to the 2021 Rates based on nearly decade-old data (which no party claimed were just and reasonable) or embarking on a separate ratemaking proceeding to set interim rates (delaying setting final rates).

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[28] *Pepco*, 457 A.2d at 784.

[29] Motion Ex. 1, p. 50, Order No. 22860 ¶ 77. Illinois courts have held that "following the reversal of rates ordered by the Commission, the utility could continue to charge the rate approved by the Commission," while noting that the utility "is subject to ratepayers' claims for reparations for excessive rates collected from the time of this court's reversal through the time new rates are approved by the Commission." *People ex rel. Hartigan v. Ill. Com. Comm'n*, 510 N.E.2d 865, 877 (Ill. 1987). Ohio courts similarly hold that a "remand order . . . does not automatically render the existing rates unlawful, as 'the rate schedule filed with the commission remains in effect until the commission executes this court's mandate by an appropriate order.'" *In re Application of Columbus S. Power Co.*, 8 N.E.3d 863, 875 (Ohio 2014) (quoting *Cleveland Elec. Illuminating Co. v. Pub. Utils. Comm'n*, 346 N.E.2d 778 (Ohio 1976)).

[30] Motion Ex. 1, p. 49, Order No. 22860 ¶ 73.

[31] *Id.* at p. 50, Order No. 22860 ¶¶ 78-79.

The Motion does not even try to show that the Commission lacked the long-established authority, under its implied powers, to set such interim rates. And while OPC's opening appellate brief (though not its Motion) has developed an argument that the Commission was required to hold an evidentiary hearing[32] before setting interim rates under the D.C. Administrative Procedure Act ("DCAPA") and D.C. Code § 34-908, that argument fails too.[33]

In *Chesapeake*, this Court noted that the Commission had previously approved interim relief even though "no such hearing was held," and declined to "substitute [its] judgment for the Commission's" as to when a hearing was warranted.[34] Section 34-908 applies when the Commission investigates "[u]pon its own initiative or upon reasonable complaint" that rates are "unreasonable or unjustly discriminatory." But below, the Commission instead invoked its implied authority to set interim rates—and OPC itself told the Commission that "it is unclear how § 34-908 is applicable."[35] Meanwhile, the DCAPA's requirement that decisionmakers "personally hear the evidence" applies only to a "final order or decision" "in a contested case."[36] The Commission's *interim* rate decision, however, was not a *final* decision.

Even when these statutes apply, a hearing is needed only where "there is a dispute

[32] As explained, the Commission has rescheduled the hearings ordered on remand twice. OPC's argument for *other* hearings before those hearings will only serve to further delay a decision and certainty for customers and the District, as well as Pepco's financial stability.
[33] This argument is also unpreserved. *See* D.C. Code § 34-604(b). OPC did not cite § 34-908 in either of its applications for reconsideration. Its second application invoked D.C. Code § 2-509 in only a single sentence, and a party fails to exhaust when "[t]he most to which [a party] can point is one sentence in its rehearing request." *Citadel FNGE Ltd. v. FERC*, 77 F.4th 842, 861-62 (D.C. Cir. 2023).
[34] 330 A.2d at 239.
[35] Motion Ex. 1, p. 41, Order No. 22860 ¶ 53.
[36] D.C. Code § 2-509(d).

concerning a material fact, but not if the only dispute involves issues of law or policy."[37] OPC has identified no disputed fact bearing on the interim-rate question, which turned on the legal effect of vacatur and on predictive judgments about rate stability and administrative burden.[38] OPC's due process argument fails too: the Commission requested briefing "with specificity and supporting authority and evidence" before deciding refunds,[39] and ratepayers have no protected property interest in refunds absent a finding that rates paid were unlawful.[40]

B. OPC Has Not Shown Irreparable Harm Absent a Stay.

OPC has not satisfied and cannot satisfy its obligation to show irreparable harm. The Commission has been clear throughout this remand proceeding that if the rates ultimately approved on remand differ from the rates currently being charged on an interim basis, it will direct that appropriate adjustments be made.[41] It has committed that if the final rates are lower, "Pepco will be directed to refund the difference."[42] Pepco has acknowledged that any such adjustment may extend back to the date this Court's mandate issued in the Vacatur Decision.[43] And a stay would operate only prospectively; OPC does not seek refunds in the Motion.[44] These facts destroy OPC's case for irreparable harm: Every dollar subject to the requested stay is also subject to refund. Because there is an adequate legal remedy available, a stay is not warranted.[45] As stated in *Zirkle*

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[37] *Apartment & Off. Bldg. Ass'n of Metro. Wash. v. Pub. Serv. Comm'n*, 203 A.3d 772, 782 (D.C. 2019); *see Watergate E., Inc. v. D.C. Pub. Serv. Comm'n*, 662 A.2d 881, 890 (D.C. 1995).
[38] Motion Ex. 1, pp. 50-51, Order No. 22860 ¶¶ 78-80.
[39] *Id.* at Ex. 1, p. 14, Order No. 22806 ¶ 31.
[40] *Id.* at Ex. 1, pp. 110-11, Order No. 22892 ¶ 72.
[41] *See, e.g., id.* Ex. 1, pp. 60-61, Order No. 22866 ¶ 9 ("rates that shall continue in effect during the remand period, subject to appropriate adjustments upon issuance of a new rate order").
[42] *Id*. at Ex. 1, p. 75, Order No. 22866 ¶ 52.
[43] *See* JA361-71, 375-76.
[44] Motion at 7 & n.8.
[45] "An injunction should not be issued unless the threat of injury is imminent and well-founded, and unless the injury itself would be incapable of being redressed after a final hearing on the

v. District of Columbia, "[t]he possibility that adequate compensatory or other corrective relief will be available at a later date . . . weighs heavily against a claim of irreparable harm."[46]

OPC's primary argument—that some customers may face disconnections due to unpaid bills—falls far short.[47] OPC does not even try to show that disconnections are the result of the interim rates OPC seeks to set aside. And the evidence shows that this is extremely unlikely. On the one hand, as the Commission explained in Order No. 22328, under the modified multiyear rate plan approved by the Commission, the monthly bill increase for the average residential customer was $7.54 in 2025 and $3.80 in 2026[48]—a cumulative monthly bill increase of less than $12. On the other, the monthly average arrearage balance for low-income residential customers throughout 2026 was over $800 and was over $900 in the majority of months.[49] A cumulative increase of less than $12 per month has little to do with such arrearages. Customers are also protected by the Commission's safeguards governing residential service disconnections.[50] Nor can OPC ground irreparable harm on its claims about low-income residents when slightly over 6% of residential customers are low-income.[51] More to the point, low-income customers in the District are

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merits." *Wieck v. Sterenbuch*, 350 A.2d 384, 388 (D.C. 1976) (citations omitted). *See also Sampson v. Murray*, 415 U.S. 61, 88 (1974) ("the basis of injunctive relief . . . has always been irreparable harm and inadequacy of legal remedies" (citations and alterations omitted)).

[46] 830 A.2d 1250, 1257 (D.C. 2003).

[47] Motion at 16-17. Indeed, the rate whiplash that would occur from OPC's request that artificially low rates be imposed by this Court could cause this very issue when those rates are subsequently adjusted to those the Commission finds are just and reasonable.

[48] Motion Ex. 2, p. 169, Order No. 22328 ¶ 562(cc).

[49] In August 2026, the average arrearage balance for low-income residential customers was over $1,000. *See* Motion Ex. 6, p. 3. Each month a significant number of restorations also occur for low-income residential customers who have arrearages. In most months, restorations are in excess of 50% of the terminations. Restorations occur when, for example, the customer establishes or reinstates a deferred payment agreement with the Company. *See* 15 DCMR § 311.6.

[50] 15 DCMR § 310.3(a). *See also* 15 DCMR § 311.7 (generally prohibiting disconnections after 5:00 p.m. Thursday and before 8:00 a.m. Monday, on a legal holiday, or on days Pepco is closed).

[51] Motion Ex. 6, pp. 3-4.

eligible to participate in the Residential Aid Discount ("RAD") program. Customers in the RAD program receive a monthly credit on their electric bills that covers the full customer charge and energy charge for distribution service. Because RAD customers essentially are not charged for distribution service, they could not have an arrearage that is attributable to the Formal Case No. 1176 rate increase. The Commission in Order No. 22328 thus explained that the RAD program "will help the most vulnerable customers avoid a cost increase."[52]

OPC also fails with its argument that some customers are "transient" and may have left the District when refunds issue.[53] To begin, such purely monetary harms are not usually irreparable[54]—a general principle that applies with particular force here. The amount at issue averages less than $12 a month, and this charge affects only transient customers who are *not* enrolled in the RAD program. OPC's argument also proves too much: Some customers are *always* transient (in the District and elsewhere), and if OPC's arguments justified a stay here, they would do so in every rate case. Nor, finally, would OPC's requested stay *avoid* the issue it hypothesizes. The same problem would arise if the Court issued a stay and the rates set in Formal Case No. 1176 were deemed to be the lawful rates: Pepco would have to collect higher rates after the final decision to reflect the artificially low rates attributable to the stay. Residents who recently moved to the District would pay more than their fair share; residents who left would pay less.

C. The Balance of Harms and the Public Interest Weigh Heavily Against a *Stay.*

Pepco would face significant harm if it were required to charge extinguished rates that were set in June 2021 in Formal Case No. 1156. Below, Pepco detailed examples of the adverse

[52] Motion Ex. 2, pp. 144-45, Order No. 22328 ¶ 471.
[53] Motion at 16.
[54] *See Zirkle*, 830 A.2d at 1256-57.

financial, operational, and administrative impacts in the affidavit of Elizabeth Morgan Downs O'Donnell, the Senior Vice President, Chief Financial Officer, and Treasurer of Pepco Holdings, LLC. To serve customers, Pepco has invested $750 million in improvements to the electric distribution system in the District of Columbia since the rates in Formal Case No. 1156 were approved.[55] Pepco cannot un-invest these dollars, remove these assets that are providing service to its customers, or return funds borrowed to complete those investments. OPC's stay would prevent Pepco from recovering those investments, reducing its revenues by approximately $10 million per month.[56] Reversion could also force cuts to operations and maintenance spending and would likely increase the surcharges customers later pay.[57] If the Commission ultimately decides that Pepco's current interim rates should be changed, then it will make appropriate adjustments. That is the equitable solution that protects all parties.

The requested stay would also harm the public interest. Under the Public Utilities Act, the Commission is charged with "promot[ing] the public interest,"[58] and the Commission has made a well-supported determination. As the Commission noted, the public interest is best served by continuing the interim rates until such time as the remand proceeding is concluded:

> [T]he Commission concludes that it has the authority to continue the tariffed rate levels currently in effect, and that doing so is necessary to ensure administrative efficiency, regulatory stability, and protection of ratepayers. The Commission's authority to maintain current tariff rates flows from its broad statutory mandate to regulate public utility rates and to ensure that such rates remain just and reasonable. This authority includes the ability to take

[55] The O'Donnell affidavit explained that through December 31, 2025, Pepco's rate base had increased by $750 million, reflecting investments to enhance the reliability and resilience of the District's grid, support residential and commercial growth, and enable integration for more solar power, electric vehicles, and distributed energy resources. O'Donnell Aff. ¶ 8.
[56] *Id.* ¶ 7.
[57] *Id.* ¶¶ 11-12.
[58] D.C. Code § 34-301(2).

> appropriate action on remand to correct procedural defects while preserving the integrity of the ratemaking process.[59]

OPC has identified nothing to justify setting aside the Commission's public-interest balance.

OPC's approach would harm the public interest. Its position appears to be that whenever this Court finds a fault with the Commission's procedures or reasoning, no matter how minor, the rates must revert to the prior rates for the duration of any remand—even when those rates would be unlawful. That is a recipe for chaos and uncertainty that would deter investment and ultimately undermine the provision of affordable, reliable service in the District. OPC suggests that a stay would promote the "regulatory certainty" that Pepco has said benefits it.[60] But Pepco explained that the existing rates should remain in effect to avoid rate "whiplash"—which is the very thing that OPC's approach would create.[61] Moreover, OPC's request is particularly unwarranted because the Council of the District of Columbia, which also has a responsibility for the public interest, has focused on this issue. The Council on May 1, 2026, enacted legislation that prohibited disconnection of customers while the remand is pending before the Commission and for 15 days after, unless the household had an average outstanding balance of more than $1,000.[62] And while that rule expired in August, it shows how unwarranted is OPC's demand that this Court grant extraordinary emergency relief.

In urging this Court to second-guess the Commission's balancing, OPC argues that the U.S. Supreme Court in *Tennessee Gas* has recognized the importance of providing rate relief to

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[59] Motion Ex. 1, p. 50, Order No. 22860 ¶ 78.
[60] Motion at 17 & n.18.
[61] *Id*. at Ex. 1, p. 5, Order No. 22806 ¶¶ 9-10; O'Donnell Aff. ¶ 3.
[62] *Rate Plan Vacatur Interim Protections Emergency Amendment Act of 2026*, D.C. Act 26-0316 (effective May 1, 2026).

customers promptly.[63] But there, the agency itself had found, "after a full hearing," that the filed rate of return was excessive and had fixed the lawful return before ordering refunds—findings the utility did not contest.[64] The Court upheld the agency's discretionary choice to issue an interim reduction in light of "the certainty of the Commission's actions in finding the 7% rate unlawful, fixing the 6 1/8% lawful return,"[65] and it described the agency's duty to direct refunds "where refunds are found due" at "the earliest possible moment consistent with due process."[66] Here, nothing has been "found due"; those proceedings are (again) ongoing. More: *Tennessee Gas* deferred to an agency's sequencing—an approach the Court called "in the best tradition of effective administrative practice."[67] That pro-deference holding does not support OPC's demand that this Court step in while remand proceedings remain ongoing. More still: the hearing OPC now suggests is taking too long was originally scheduled for May 2026—and was postponed on OPC's motion. If OPC wants customers to promptly receive any refunds that may be due upon a final decision, it should support a speedy remand schedule, as Pepco proposed the day of remand, and stop its ongoing attempts to delay the remand into late 2027.

That leaves only OPC's meritless claim that a stay is appropriate to avoid "gamesmanship" and to ensure that agencies "comply with the Court's directives."[68] That argument assumes that the Vacatur Decision dictated what rates apply on remand. But as explained, the decision did not address that issue—properly, given the allocation of ratemaking authority to the Commission.

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[63] Motion at 16 (citing *Fed. Power Comm'n v. Tenn. Gas Transmission Co.*, 371 U.S. 145, 154-55 (1962)).
[64] *Tenn. Gas*, 371 U.S. at 146-49.
[65] *Id.* at 153.
[66] *Id.* at 155.
[67] *Id.*
[68] Motion at 18.

II. OPC Falls Even Farther Short of the Requirements for the Extraordinary Relief It Seeks Under the All Writs Act.

OPC's request would fail even if it only sought a stay. But as OPC all but admits, its "request exceeds the bounds of a Rule 18 request for stay."[69] Stays preserve the "status quo" pending review.[70] OPC's requested relief would upend what has been the status quo for nearly two years and direct the reinstatement of rates last "in effect on December 31, 2024."[71] That is not a stay but a mandatory injunction or (as OPC says) "a writ of mandamus."[72]

The mandatory relief OPC seeks—"direct[ing] the reinstatement of . . . rates"[73]—would, to begin, contravene the statutory division of authority between the Commission (which sets rates) and this Court (which reviews Commission decisions for lawfulness).[74] OPC's Motion asks this Court to set rates directly and would be a radical departure from the Court's role.[75] The Supreme Court has reversed comparable relief: When a court sets aside a rate order and remands, "an injunction ordinarily interferes with the primary jurisdiction of the Commission."[76] Because this relief would intrude on the Commission's statutory role, it cannot be justified as "necessary or appropriate in aid of [this Court's] jurisdiction[]."[77]

Mandatory writs are also subject to even more stringent standards that OPC cannot

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[69] *Id.* at 19.
[70] *E.g.*, *A.C. v. N.W.*, 160 A.3d 509, 523 (D.C. 2017); *Towers*, 250 A.3d at 1053; *Salvattera v. Ramirez*, 105 A.3d 1003, 1009 n.17 (D.C. 2014).
[71] Motion at 19 n.19.
[72] *Id.* at 21.
[73] *Id.* at 18-19.
[74] *See supra* Section I.A.1.
[75] *Neighborhood Legal Servs. Program v. Ryan*, 276 A.2d 728, 729 (D.C. 1971); *People's Couns. of D.C. v. Pub. Serv. Comm'n*, 414 A.2d 516, 518 (D.C. 1980) (statement of Nebeker, J.).
[76] *Burlington Northern*, 459 U.S. at 141 (discussing *Atchison, T. & S.F. Ry. Co. v. Wichita Bd. of Trade*, 412 U.S. 800 (1973)).
[77] 28 U.S.C. § 1651(a).

satisfy. Mandamus is available only where the petitioner "has no other adequate means to obtain relief and the right is clear and indisputable."[78] But OPC has another "adequate means to obtain relief"—refunds after the Commission fixes final rates. And OPC's strained arguments do not meet the "clear and indisputable" standard. The Vacatur Decision instructed the Commission to hold the evidentiary hearing that it failed to hold before issuing Order No. 22328. The Commission has endeavored to hold that hearing, over the persistent objections and efforts by OPC to cause delay, and its adoption of interim rates preserved the *status quo* during the remand period and allowed for orderly litigation of Formal Case No. 1176. OPC cannot show why this Court, rather than the Commission, should decide on the rates to be charged during this interim period. OPC's only real argument is the same one Pepco has already answered—that the Commission has "frustrated and undermined the Court's determinations in the Vacatur Decision."[79] But again, the Vacatur Decision did not purport to decree what rates should govern during remand.

III. The Commission Has Not Ruled on OPC's Motion to Stay.

In its September 16, 2026 Order denying OPC's August 14, 2026 motions to stay, the Court indicated that OPC could renew its request for a stay if OPC "first requests a stay before the Public Service Commission that is either denied or is not promptly ruled upon." OPC filed a motion to stay with the Commission on September 28, 2026. Pepco filed its response to OPC's motion on October 8, 2026. The Commission has not yet ruled on OPC's motion. In OPC's Motion before this Court, OPC references a statement submitted by Commissioner Beverly on

[78] *Stebbins v. Stebbins*, 673 A.2d 184, 192 (D.C. 1996).
[79] Motion at 21 (emphasis omitted).

October 9, 2026[80]—only one day after Pepco's response to OPC's motion to stay was filed with the Commission. That statement indicates "[a]s requested by OPC, this constitutes my notice that the Commission is unable to reach a majority decision on the Stay by October 12, 2026, or anytime soon thereafter."[81] But this statement of a single Commissioner is not an action of the Commission,[82] and the Commission itself has not approved the statement or its characterization of the Commission's ability to act. In weighing OPC's Motion, the Court should not accept OPC's suggestion that this statement is tantamount to Commission action.

CONCLUSION

For the foregoing reasons, Pepco respectfully requests that the Court deny the Motion.

Respectfully submitted,

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[80] *Id.* at 10.
[81] Statement of Commissioner Beverly ¶ 2.
[82] D.C. Code § 34-802 provides: "Any investigation, inquiry, or hearing within the powers of the Commission may be made or held by any commissioner, whose acts and orders, when approved by the Commission, shall be deemed to be the order of the Commission."

CERTIFICATE OF SERVICE

I hereby certify that a copy of Intervenor Potomac Electric Power Company's Response to the Office of the People's Counsel's Motion to Stay and for Injunctive Relief has been served this 17th day of November 2026 on the parties of record identified below via the District of Columbia Court of Appeals E-File System:

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