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November 23, 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 Statement of Concerns and Motion for Clarification, filed by the Office of the People's Counsel for the District of Columbia and the Apartment and Office Building Association of Metropolitan Washington in the above-referenced case.

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

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

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

THE OFFICE OF THE PEOPLE'S COUNSEL FOR THE DISTRICT OF COLUMBIA AND THE APARTMENT AND OFFICE BUILDING ASSOCIATION OF METROPOLITAN WASHINGTON'S STATEMENT OF CONCERNS AND MOTION FOR CLARIFICATION

I. INTRODUCTION

Pursuant to Rule 105.8 of the Public Service Commission of the District of Columbia's ("PSC" or "Commission")[1] Rules of Practice and Procedure, the Office of the People's Counsel for the District of Columbia ("Office" or "OPC"), the statutory representative of District of Columbia ("District") ratepayers with respect to utility matters,[2] and the Apartment and Office Building Association of Metropolitan Washington ("AOBA") (collectively, the "Joint Parties"), submit this Statement of Concerns and Request for Clarification regarding the upcoming evidentiary hearing, scheduled for December 7-8, 2026, in the above-captioned case. The Joint Parties submit this filing in anticipation of the pre-hearing conference, scheduled for December 3, 2026, and respectfully request that the Commission provide a response by that date. A response to the concerns and questions presented is necessary to provide the requisite clarity to litigate this case.

[1] 15 DCMR § 105.8.

[2] D.C. Code § 34-804.

II. DISCUSSION

A. Concerns Regarding Upcoming Evidentiary Hearing

Under the PSC's present circumstances, particularly in light of the statements issued by the Commissioners individually, the Joint Parties have a growing list of concerns, detailed below, regarding the prudence and cost of proceeding with the evidentiary hearing scheduled for December 7–8, 2026.

1. Unnecessary Costs to Ratepayers

The Commission has an obligation to administer its proceedings in a manner that promotes efficiency, avoids unnecessary expenditures, and protects the public interest. Conducting an expensive evidentiary hearing without a functioning decision-making body capable of resolving the issues presented serves neither regulatory efficiency nor consumer interests. Proceeding under these circumstances will likely require additional proceedings, supplemental testimony, or further hearings once the Commission is fully constituted. Because the costs OPC and the PSC incur in litigating rate cases are paid by ratepayers, these additional procedural measures impose additional financial burdens on consumers.

Therefore, at a time when District residents are confronting unaffordable utility bills, the Commission must be mindful of expenditures that provide no clear regulatory benefit.

2. Hearing Before a Single Commissioner Limits the Commission's Effectiveness

Proceeding with only one Commissioner limits the opportunity for multiple decision-makers to meaningfully examine the evidence. This undermines the development of a comprehensive evidentiary record and increases the likelihood that additional hearings will be necessary.

An evidentiary hearing is not merely a procedural exercise designed to receive testimony and admit exhibits into the record. It is a critical component of the Commission's fact-finding responsibilities. Through questioning witnesses, examining competing expert opinions, testing assumptions, and identifying deficiencies in the evidence, Commissioners play an essential role in ensuring that their ultimate determinations are supported by substantial evidence.

A hearing conducted before only one Commissioner necessarily eliminates the benefit of this collective examination of the evidence. The question is not simply whether such a hearing is procedurally permissible. Rather, it is whether proceeding in this manner represents sound regulatory practice, particularly when the Commission is already unable to issue a final order.

3. Inability to Properly Develop the Record by a Single Commissioner

It is questionable whether one Commissioner, presiding over an "evidentiary" proceeding and attempting to "compile" a fully developed evidentiary record, can do so. Under D.C. Code § 34-802, a majority of the Commissioners constitutes a quorum to do business. While a single Commissioner may hold a hearing, any order must be approved by "the Commission" to be deemed an "order of the Commission." It is anticipated that multiple motions will be made at the hearing, including the admissibility of evidence, testimony, exhibits, data responses, and the qualifications of various witnesses to testify.[3] However, a ruling by a single Commissioner cannot bind the Commission on these matters because a binding Commission decision requires the concurrence of at least two Commissioners.

As discussed more fully below, the Joint Parties are severely disadvantaged by not knowing what issues we are to litigate, even though all parties have submitted their list of issues to the

[3] This list of objections is not meant to be complete, but just examples of potential motions and challenges during the hearing.

Commission on April 6, and then again on September 28, 2026, the Commission has not to date issued a decision.

4. Inability of a Single Commissioner to Issue a Valid Rate Order

Pursuant to D.C. Code § 2-509 (d), a single Commissioner cannot issue a rate order:

> Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision adverse to a party to the case (other than the Mayor or an agency) shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision, who, in such case, shall personally consider such portions of the exclusive record, as provided in subsection (c) of this section, as may be designated by any party. personally consider such portions of the exclusive record as provided in subsection (c) of this section, as may be designated by any Party."

Accordingly, since only one Commissioner is attending the hearing, there is no possibility of an actual rate order being issued. Rather, a proposed rate order would have to be issued pursuant to § 2-509. But the problem here is two-fold. First, the two Commissioners are split as to whether to proceed forward with this case and adjudicate Pepco's MRP Application. It does not appear that the Commission can reach a consensus on a proposed order.[4] Secondly, the inability to issue formal orders on evidentiary or other matters, due to a lack of a quorum at the evidentiary hearing, frustrates the ability for parties to later "file exceptions" and "present argument" to a proposed order, assuming the Commission could even reach consensus on a proposed order. One Commissioner cannot unilaterally determine what is in the record, as noted above, pursuant to § 34-802. Indeed, one of the principal reasons for this hearing was to develop a record, but that is now impossible.[5]

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[4] D.C. Code § 34-802 notes the need for an order to be approved by the Commission for it to be an official act of the Commission.

[5] It is also questionable whether a record can withstand judicial scrutiny when the District of Columbia Government, one of the principal parties to this case, has identified that it cannot attend the

5. Uncertainty Regarding the Scope of the Hearing

The Joint Parties are further concerned that, despite the soon-approaching December 7–8 evidentiary hearing dates, the Commission has not identified which specific issues it will examine. This uncertainty is particularly troubling given the complexity of the proceeding, the breadth of the evidence, and the significance of the Commission's ultimate determination to District ratepayers. Furthermore, at this stage it is unclear whether issues can be identified. Rule 121.7 provides:

> At the conclusion of the pre-hearing conference, the *Commission* shall issue, as soon thereafter as possible, an Order and Report on Prehearing Conference, designating the parties, setting forth the issues to be decided in the hearing(s), any extraordinary rules of procedures, and the procedural schedule of the proceeding." (emphasis added).

Accordingly, it is the Commission that must identify the issues to be decided—not a single Commissioner. This is consistent with the requirements identified above under § 34-802. The parties are entitled to know the issues to be litigated at the hearing, prior to the hearing. Not to provide the issues to be litigated is a denial of the Joint Parties' procedural due process rights.

Rate cases are inherently complex proceedings involving numerous interrelated issues, including rate base, operating expenses, capital investments, cost allocation, rate design, return on equity, and the overall reasonableness of the utility's revenue requirement. These issues cannot be examined in isolation. The Commission must define these issues so the parties can adequately prepare their cross-examination and legal strategy.

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currently scheduled hearing. This hearing was rescheduled *sua sponte* without consulting the parties. There is no reason provided as to why the Commission, which on its own volition chose to reschedule the hearing by nearly two months, cannot grant a few extra weeks to make sure all the parties are available. No party, other than Pepco, has objected to modifying the schedule. However, a delay poses no harm Pepco, but it would create irreparable harm for DCG. This, in turn, would preclude the likelihood of a sustainable record or decision.

The District of Columbia Court of Appeals' decision in *Office of the People's Couns. v. D.C. Pub. Serv. Comm'n*, 352 A.3d 682, 684 (D.C. 2026) ("*Vacatur Decision*"), underscores the importance of this obligation. The Court vacated the Commission's orders, Order Nos. 22328 and 22358, and remanded the matter for an evidentiary hearing. Significantly, the Court did not direct the Commission to conduct an abbreviated hearing confined to a narrow selection of issues. It follows that enough time needs to be reserved to conduct the hearing, including sufficient time to conduct cross-examination of all witnesses.[6]

6. Additional Information is Needed from Pepco.

Although Pepco has recently provided sponsors for several data requests on November 16, 2026, which were previously sponsored by "the Company," Pepco has not provided sponsors of all of the Company's previously provided data responses. Specifically, in response to AOBA Data Request Set 13, provided on July 16, 2024, 28 of the 29 responses list "The Company" as the sponsor. Only Pepco's response to AOBA 13-29 has a named sponsor, and that was Witness Cantler, who has since been replaced by Witness Alo. Pepco must provide the sponsors of all of its data responses, *before* an evidentiary hearing, and with enough time that the parties can prepare appropriate cross-examination.

The Court of Appeals *Vacatur Decision* emphasized the ability of the parties to test the credibility of witnesses. More than half of Pepco's witnesses who have filed testimony have been replaced, and in some cases, have been replaced multiple times. Yet credentials on new witnesses have not been provided. For example, Pepco Witness Alston assumes responsibility for Exhibits Pepco (J), (2J), and (3J), which were initially sponsored by Pepco Witness Hightower, then assumed by Pepco Witness Vosvick, and have now been assumed by Witness Alston. Witness

[6] No contingency dates have been established beyond December 7-8th.

Matthew Bowen now assumes responsibility for Pepco Exhibit (I), originally filed by Pepco Witness Vavala, then adopted by Witness Williams, before being assumed by Witness Bowen. Further, according to Pepco's November 16, 2026, Notice of Change in Sponsors for Data Responses, Witness Bowen is now responsible for several data request responses relating to Pepco's reconciliation filings, provided over a year ago. The Joint Parties still need full resumes, including a full employment history, responsibilities in each position, and listings of all prior testimonies before utility regulatory commissions, for each witness that has been substituted by Pepco since the filing of the Company's Updated Remand Testimony on May 28, 2026, such as Witnesses Alston and Bowen. The Joint Parties request that the Commission resolve this issue prior to the pre-hearing conference on December 3, 2026.

B. Unresolved Questions Requiring Clarification

At this time, several unresolved issues and questions remain surrounding the hearing. To be compliant with the due process requirements under the District of Columbia Administrative Procedures Act, including proper notice, the Joint Parties request that the Commission clarify the following issues below by the date of the pre-hearing conference, currently scheduled for December 3, 2026. Some of these questions have been asked previously but no response has been provided to date:

1. What is the Commission-approved ROE and ROR at the moment? Because Order No. 22328 was vacated, the proper ROE and ROR should be those approved under Order No. 20755, the last valid rate order. The ROE approved under that order was 9.2750%. Based on this figure, Pepco would be over-earning, as its own filings for CY 2025. Can the Commission clarify what is the appropriate ROR and ROE at this time?

2. If the Commission is going to assume that the proper ROE and ROR for the Company currently are levels approved under Order No. 22328 for the MRP, how are parties to calculate the ROE and ROR? Specifically, where there are divergences between forecasted spending and actual spending, should the divergences in spending be

included in calculating the ROE or ROR? Since they were never approved as part of the MRP, they should be excluded. Clarification is needed.

3. How is prudency and cost recovery to be evaluated and justified where there are divergences between actual investment and what was forecasted and approved in the MRP?

4. The Commission has indicated it plans to establish a new rate at the close of the remand proceeding (herein the "remand rate") and retroactively apply it. Will this rate assume cost recovery for divergences, i.e., investments that were neither forecasted nor approved in Order No. 22328? If so then:

    a. How does this not constitute impermissible retroactive ratemaking?
    b. How does this not constitute an unreasonable shift in risk to ratepayers?
    c. What purpose does approving investments for an MRP, if the Company can recover retroactively, divergences from approved spending?

5. In the absence of performance incentive mechanisms (PIMs), does the Commission have a clear standard by which it can measure the prudency of divergences between forecasted spending and actual spending? If so, can the Commission let the parties know in advance of the hearing?

6. In Order No. 22892, the Commission indicated it had yet to determine how far back it would apply the remand rate. Can the Commission indicate how far back it would apply the remand rate? Without clarity on this issue, the Joint Parties cannot effectively litigate this case as the timeframe at issue remains unclear.

7. This hearing only covers CY 2024-2025. Yet, the MRP Application is for CY 2024-2026. Will there be a subsequent hearing for CY 2026?

8. Does the Commission intend to issue a rate order after this hearing, or will the Commission wait to issue a rate order after holding a hearing on CY 2026?

9. If the Commission plans to issue a rate order after this hearing without or prior to holding another hearing for CY 2026, what years will the rate order cover?

10. In Order No. 22860, the Commission indicated that the record developed at the evidentiary hearing for CYs 2024-2025 can help Pepco provide updated projections for CY 2026:

    a. Why does Pepco need to provide updated projections as a general matter?
    b. Why does Pepco need to provide updated projections when the actuals for almost all of 2026 are already available? How would this information be relevant?

The Joint Parties submit that all these issues need to be resolved prior to the evidentiary hearing. Ostensibly, this appears to be a significant challenge as it would take two concurring commissioners to issue a decision.

III. CONCLUSION

The Joint Parties respectfully request that the Commission address the concerns and clarify the issues raised here by the pre-hearing conference scheduled for December 3, 2026. If the Joint Parties enumerated concerns cannot be clarified by that date, the Joint Parties respectfully request that the hearings scheduled for December 7-8, 2026, be modified and rescheduled.

Respectfully submitted,

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Dated: November 23, 2026

CERTIFICATE OF SERVICE

Formal Case No. 1176, In the Matter of Pepco's Application for Approval to Increase Rates Through the Implementation of a Multiyear Rate Plan ("MYP"), also referred to as the "Climate Ready Pathway" for its Electric Distribution Service

I certify that on November 23, 2026, a copy of the Statement of Concerns and Motion for Clarification was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

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