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January 21, 2020

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. 1144, In the Matter of the Application of the Potomac Electric Power Company's Notice to Construct Two 230 kV Underground Circuits from the Takoma Substation to the Rebuilt Harvard Substation and from the Rebuilt Harvard Substation to the Rebuilt Champlain Substation (Capital Grid Project)**

Dear Ms. Westbrook-Sedgwick:

Please find enclosed for filing the "Office of the People's Counsel for the District of Columbia's Application for Reconsideration of Order No. 20274" (**PUBLIC**).

If there any questions regarding this matter, please contact me at (202) 727-3071.

Sincerely,



Barbara L. Burton  
Assistant People's Counsel

Cc: All parties of record  
Enclosures: as stated

In the Matter of the Potomac Electric Power Company's Notice to Construct Two 230 kV Underground Circuits from the Takoma Substation to the Rebuilt Harvard Substation and from the Rebuilt Harvard Substation to the Rebuilt Champlain Substation (Capital Grid Project)

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) **Formal Case No. 1144**  
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3 *Formal Case No. 1144, , In the Matter of the Potomac Electric Power Company's Notice to Construct Two*  
*230 kV Underground Circuits from the Takoma Substation to the Rebuilt Harvard Substation, and from the Rebuilt*  
*Harvard Substation to the Rebuilt Champlain Substation ("Capital Grid Project") ("Formal Case No. 1144"), rel.*  
*Dec. 20, 2019 ("Order No. 20274").*

## **II. EXECUTIVE SUMMARY**

Order No. 20274 authorizes Pepco to proceed with construction of the approximately \$143 million Mt. Vernon Substation as the final piece of a massive infrastructure program expected to cost approximately \$850 million dollars. In approving the Mt. Vernon Substation, the Commission has accepted Pepco's flawed load growth projections that purported to justify the need for the additional capacity, and the Commission has accepted Pepco's claims which sought to devalue the effectiveness of non-wires alternatives ("NWAs") – such as, distributed energy resources ("DER"), demand response, direct load control, and energy-efficiency programs. These are the types of energy conservation and sustainability measures in which the District of Columbia is at the fore in encouraging through law, regulation, and policy.

By approving Pepco's application of the 90/10 load-forecasting method, which has demonstrably and consistently overstated (significantly) demand in the District, the Commission has given Pepco the tool with which the Company, in this case and in future cases, can appear to justify continued reliance on expensive infrastructure investment in lieu of the progressive and agile measures the District, through its elected officials and their respective constituencies, seeks to advance. By erroneously finding in Order No. 20274 that non-wires alternatives ("NWAs") effectively cannot be relied upon for distribution system planning purposes, the Commission tips the scales in favor of the 20<sup>th</sup> Century solution – i.e., building more infrastructure – and against cost-effective, carbon-free alternatives that advance the District's goals, not Pepco's. Perhaps the most troubling aspect of Order No. 20274 is the Commission's findings that call into question whether DER and other 21<sup>st</sup> Century technologies can ever be feasible alternatives to adding distribution system infrastructure. In making such findings, the Commission has effectively concluded that the only voice to be heard in relation to the Company's distribution

system is Pepco's and that the only measures that can be implemented are Pepco's – the party with the most significant vested interest in implementing an infrastructure-first approach that adds to the Company's rate base for decades to come. By accepting Pepco's flawed analyses in this proceeding, the Commission has dismissed, without adequate justification, the detailed demonstrations made by OPC and the DOEE which show cost-effective alternatives to Pepco's proposal.

The Office therefore seeks reconsideration of the following errors in Order No. 20274:

1. The Commission erred by accepting Pepco's flawed load forecasts purporting to demonstrate the need for the Mt. Vernon Substation.
2. The Commission erred in finding that NWA cannot provide any demand value on the Pepco distribution system.
3. The Commission erred in rejecting the cost-effective, traditional utility alternatives to the CPG presented by OPC witness Mara without any record evidence.
4. The Commission erred in rejecting OPC's request for additional procedures which would have required Pepco to provide the most current load projection data available for the Mt. Vernon area and would have permitted the Commission to address material issues of disputed fact in the record.

As specified herein, the Commission, in making these errors, has failed to engage in reasoned decision making. This failure arises in substantial part because the Commission often rejects as OPC's position not the position stated in the Office's comments and sworn affidavits, but instead Pepco's mischaracterization of the Office's position as stated in Pepco's comments. The Office submits that these arguments must be addressed on reconsideration and that the Commission should, for the reasons discussed herein, reverse its decision in Order No. 20274 and withdraw authorization for the Company to proceed with the Mt. Vernon Substation construction until the need for that investment has been demonstrated through substantial record evidence.

### III. RELEVANT BACKGROUND

On May 10, 2017, Pepco filed what would have been the first of two Notice of Construction (“NOC”) filings necessary to complete the CGP. In it, Pepco proposes to construct two 230kV underground transmission lines from the Takoma Substation to the rebuilt Harvard Substation and from the rebuilt Harvard Substation to the rebuilt Champlain Substation and to upgrade aging infrastructure.

On November 29, 2017, the Office filed Comments<sup>4</sup> regarding Pepco’s first NOC urging the Commission to require Pepco to file the complete C GP as a single project. As the Office explained, Pepco’s decision to bifurcate the CGP into two distinct NOCs meant that “the Commission and interested stakeholders [were] left with an incomplete picture when analyzing the justness, reasonableness, and ultimate financial ratepayer impact of the current NOC.”<sup>5</sup>

In Order No. 19274, the Commission directed Pepco to refile its proposal and explained, “[t]he purported overall reliability and resiliency benefits of the Capital Grid Project necessitates a holistic view of the entire Capital Grid project, incorporating both NOC-1 and NOC-2 since both projects are interconnected.”<sup>6</sup> Order No. 19274 directed the Company to include in its single NOC all of the information requested in Paragraph 12 of that Order and Attachment A to that order, which included detailed load forecasts and detailed analysis of project alternatives to the proposed CGP.<sup>7</sup>

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<sup>4</sup> *Formal Case No. 1144*, Comments of the Office of the People’s Counsel for the District of Columbia Concerning the Potomac Electric Power Company’s Formal Notice of Construction of the Capital Grid Project, filed Nov. 29, 2017 (“OPC NOC-1 Comments”).

<sup>5</sup> *Formal Case No. 1144*, OPC NOC-1 Comments at 6.

<sup>6</sup> *Formal Case No. 1144*, Order No. 19274 ¶ 12, rel. Feb. 14, 2018 (“Order No. 19274”).

<sup>7</sup> *Formal Case No. 1144*, Order No. 19274 ¶ 16.

On June 29, 2018, Pepco filed a new application to commence construction on a revised CGP.<sup>8</sup> As directed by the Commission, the Company's revised submission combined both phases of the CGP into one comprehensive proposal.

On April 5, 2019, the Commission issued Order No. 19886, in which it indicated it would "review and make separate findings of fact" on the Capital Grid Project in two Phases.<sup>9</sup> Phase I, as described by the Commission and which is the subject of Order No. 20203, concerns modifications to the existing Harvard and Champlain substations and construction of 10 miles of two networked 230 kV underground transmission lines supplying these stations, extending up to the Waterfront Substation. According to the Commission, Phase II of the Commission's review will focus on the proposed construction of the new Mt. Vernon Substation.<sup>10</sup>

On December 20, 2019, the Commission issued Order No. 20274, which authorized the Company to proceed with construction of the new Mt. Vernon Substation. In doing so, the Commission found that without the proposed Mt. Vernon Substation, the contingency capacity margins of Pepco's distribution system will decline and thereby present a risk to the safe reliable operation of the Company's distribution system.<sup>11</sup>

#### **IV. APPLICABLE LEGAL STANDARDS**

Section 1-204.93 of the D.C. Code obligates this Commission "to insure that every public utility doing business within the District of Columbia is required to furnish service and

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<sup>8</sup> *Formal Case No. 1144*, The Potomac Electric Power Company's Formal Notice of Construction of the Capital Grid Project Pursuant to Order No. 19274, filed June 29, 2018 ("Pepco Application").

<sup>9</sup> *Formal Case No. 1144*, Order No. 19886 ¶ 1, rel. Apr. 5, 2019 ("Order No. 19886").

<sup>10</sup> *Formal Case No. 1144*, Order No. 19886 ¶¶ 3-5.

<sup>11</sup> *Formal Case No. 1144*, Order No. 20274, rel. December 20, 2019.

facilities reasonably safe and adequate and in all respects just and reasonable.”<sup>12</sup> The District of Columbia’s Administrative Procedure Act requires the Commission’s decisions to “be supported by and in accordance with the reliable, probative, and substantial evidence.”<sup>13</sup> In explaining what constitutes “substantial evidence,” the D.C. Court of Appeals has held that the “‘substantial evidence’ test is not directed solely at the quantity of evidentiary support for an administrative determination.”<sup>14</sup> Rather, the Commission must demonstrate in its findings a “rational connection between facts found and the choice made.”<sup>15</sup> When describing the quantity of evidentiary support, the Court has held that “‘substantial evidence’ is ‘more than a mere scintilla’; it is ‘such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’”<sup>16</sup>

Further, judicial precedent acknowledges that the Commission is afforded broad discretion in making its decisions. However, that discretion is not without bounds.<sup>17</sup>

For the Commission properly to exercise its discretion, it must make decisions “drawn from a firm factual foundation” — *i.e.*, “the factual record must be capable of supporting the determination reached.” *Johnson v. United States*, 398 A.2d 354, 364 (D.C.1979). It must “exercise its judgment in a rational and informed manner,” meaning that it “should be apprised of all relevant factors pertaining to the pending decision,” (and, in turn, a reviewing court “must determine whether the decision maker failed to consider a relevant factor, whether [it] relied upon an improper factor, and whether the reasons given reasonably support the conclusion”). *Id.* at 365. It also should state the basis of its ruling “in sufficient detail so that both parties may, if they desire, object and seek to

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<sup>12</sup> D.C. Code § 1–204.93 (Lexis 2020).

<sup>13</sup> D.C. Code § 2-509(e) (Lexis 2020).

<sup>14</sup> *Washington Pub. Interest Org. v. Pub. Serv. Comm’n*, 393 A.2d 71, 77 (D.C. 1998), *supplemental opinion and dissent*, 404 A.2d 541 (D.C. 1979), *cert. denied, sub nom Potomac Electric Power Co. v. Pub. Serv. Comm’n*, 444 U.S. 926 (1979).

<sup>15</sup> *Id.* (citations omitted).

<sup>16</sup> *Id.* at n.6 (citation omitted).

<sup>17</sup> *Office of the People’s Counsel v. Pub. Serv. Comm’n*, 21 A.3d 985, 996 (D.C. 2011).

persuade [the Commission] to change the basis.” *Winkler v. Ballard*, 63 A.2d 660, 662 (D.C.1948).

*Office of the People’s Counsel v. Pub. Serv. Comm’n*, 21 A.3d 985, 996 (D.C. 2011). Thus, the PSC’s conclusions must be rationally drawn from the record on which they are based.<sup>18</sup>

In addition, section 34-606 of the D.C. Code specifies that judicial review of Commission orders “shall be limited to questions of law, including constitutional questions; and the findings of fact by the Commission shall be conclusive unless it shall appear that such findings of the Commission are unreasonable, arbitrary, or capricious.”<sup>19</sup>

Finally, under section 34-604 of the D.C. Code and Rule 140 of the Commission’s Rules of Practice and Procedure, any person affected by any final order or decision of the Commission may, within thirty (30) days after the publication of the order or decision, file with the Commission an application in writing requesting reconsideration or modification of the matters addressed in the order. The instant *Application for Reconsideration* is timely filed pursuant to that requirement. Moreover, applications for reconsideration or modification must set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous.<sup>20</sup> Sections V and VI of the instant *Application for Reconsideration* satisfy this requirement.

## **V. STATEMENT OF ERRORS**

Pursuant to section 34-604(b) of the D.C. Code and Rule 140.2, OPC submits that Order No. 20274 suffers from the following principal errors:

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<sup>18</sup> *Telephone Users Association v. Public Service Com.*, 304 A.2d 293 (D.C. 1973).

<sup>19</sup> D.C. Code § 34-606 (Lexis 2020).

<sup>20</sup> D.C. Code § 34-604 (Lexis 2020); 15 D.C.M.R. § 140.2 (Lexis 2020).



1. The Commission errs in accepting Pepco's flawed application of the 90/10 load forecasting methodology. This error is discussed in more detail in Section VI.A, *infra*.
2. The Commission errs in rejecting non-wires alternatives to the Capital Grid Project and finding that those solutions cannot provide capacity value on the Pepco distribution system. This error is discussed in more detail in Section VI.B *infra*.
3. The Commission errs in arbitrarily rejecting traditional, cost-effective utility solutions which obviate the need for the Mt. Vernon Substation. This error is discussed in more detail in Section VI.C *infra*.
4. The Commission errs in refusing to grant the Office's request for additional procedures in order to assess the material issues of fact in this proceeding. This error is discussed in more detail in Section VI.D *infra*.
5. The Commission errs in failing to designate this proceeding a "contested case" and thereby failing to afford the parties their rights under the DC Administrative Procedures Act. This error is discussed in more detail in Section VI.E *infra*.

## **VI. APPLICATION FOR RECONSIDERATION**

### **A. The Commission Errs in Accepting Pepco's Application of the 90/10 Methodology.**

The Commission's finding that the Mt. Vernon Substation was reasonable and needed to serve load on the SW LVAC network by 2023 hinges on whether Pepco's load growth assumptions are reasonable and justify the proposed \$143 million capital expenditure.<sup>21</sup> In Order No. 20274, the Commission acknowledges "Pepco's load forecasting methodology is a central

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<sup>21</sup> *Formal Case No. 1144*, NOC at p. 25.

issue in this case.”<sup>22</sup> The Commission, however, fails to address several critical, well-supported arguments that undermine the reasonableness of Pepco’s load forecasts. Instead, the Commission addresses and dismisses a series of straw-man arguments that do not reflect the record in this proceeding nor address the central question of whether Pepco has met its burden to demonstrate the reasonableness of and need for the Mt. Vernon Substation. For example, the Commission finds in Order No. 20274 “Pepco was correct in using the 90/10 load forecasting methodology rather than the 50/50 load forecast recommended by Mr. Mara.”<sup>23</sup> This finding is plainly erroneous. The Commission cites to Paragraph 12 of Mr. Mara’s affidavit in support of the proposition that OPC advocates in favor of a 50/50 methodology to the exclusion of the 90/10 forecast. In that paragraph, however, Mr. Mara asks the Commission to arm itself with additional information so it can better understand the adjustments for extreme weather which are being driven by the Company’s application of its 90/10 methodology, but Mr. Mara does not advocate that the Company abandon that approach. Specifically, Mr. Mara recommends that “Pepco provide a 50/50 load forecast *and* a weather normalized 90/10 forecast.”<sup>24</sup>

The purpose of these dual forecasts is to understand the magnitude of the adjustment that is being made for severe weather in Pepco’s 90/10 forecast versus the expected demands under normal conditions. As Mr. Mara explains, the 50/50 forecast “can rely solely on the historical peak for the initial load projections without additions and subtractions for Prospective New Business (“PNB”), Direct Load Control (“DLC”) and Distributed Energy Resources (“DER”).”<sup>25</sup> Accordingly, the 50/50 load forecast provides a baseline to determine if Pepco’s *application* of

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<sup>22</sup> *Formal Case No. 1144*, Order No. 20274 ¶ 58.

<sup>23</sup> *Formal Case No. 1144*, Order No. 20274 ¶ 70, citing Mara Affidavit ¶ 12.

<sup>24</sup> *Formal Case No. 1144*, Mara Affidavit, ¶ 12 (emphasis supplied).

<sup>25</sup> *Formal Case No. 1144*, Mara Affidavit, ¶ 12.

the 90/10 forecast is reasonably accounting for PNBs, DLC, DER, and other changes on the Pepco distribution system that have occurred since the 90/10 peak was established in 2011.

In Order No. 20274, the Commission rejects the need for a 50/50 load forecast because the Commission directed Pepco to file additional information about its load forecasts in Formal Case No. 1139, and the Company complied with that directive in Formal Case No. 1150.<sup>26</sup> The Commission, however, provides no rational connection between the filing of “certain information” in Formal Case No. 1150 and its conclusion that the 90/10 forecast submitted by Pepco in this proceeding demonstrates the need for the Mt. Vernon Substation. Worse yet, Formal Case No. 1150 was resolved through negotiated settlement,<sup>27</sup> meaning the Company’s evidentiary submission regarding its application of the 90/10 forecast was never subjected to cross examination at hearing and the Commission has never made any substantive findings regarding the reasonableness of that submission. The Commission’s reliance on that submission to reject OPC arguments in this proceeding is therefore arbitrary and capricious and not reasoned decision making.

Order No. 20274 also operates under the false assumption that OPC’s arguments regarding Pepco’s load forecasts rest on the abandonment of a “bottom-up” approach for a “top-down” methodology.<sup>28</sup> Again, one searches the record in vain for any testimony in which OPC based its analysis on the abandonment of a bottom-up approach. Accordingly, the Commission commits plain error when it dismisses OPC’s arguments on that basis.

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<sup>26</sup> *Formal Case No. 1144*, Order No. 20274 ¶ 65.

<sup>27</sup> *In the Matter of the Application of Potomac Electric Power Company for Authority to Increase Existing Retail Rate and Charges for Electric Distribution Service* (“*Formal Case No. 1150*”), rel. August 9, 2018 (“Order No. 19433”).

<sup>28</sup> *Formal Case No. 1144*, Order No. 20274 ¶ 65.

This considerable distortion of the record begs the very question that must be answered in order to justify the need for the Mt. Vernon Substation – namely, does Pepco’s bottom-up, 90/10 load forecast support the need for the additional capacity that will be provided by the new infrastructure investment? Here, the Commission fails to come to terms with several flaws identified in the Pepco load forecasting approach. For example, OPC and DOEE raised significant concerns regarding the reasonableness of the PNB load for the Mt. Vernon Triangle, NoMa, Capitol Crossing, and Northwest One areas that purportedly drives the need for the Mt. Vernon Substation. Mr. Mara identified that Pepco, in the projections included in the NOC, had significantly overstated the anticipated PNB load for 2018, just one year into the Company’s forecast. Of the 12 MVA of new load projected by the Company, only 6.5 MVA of metered demand was on the Pepco system as of July 2018.<sup>29</sup> As Mr. Mara notes, one of the reasons the in-service date for the Mt. Vernon Substation has been repeatedly delayed is updated PNB forecasts (as well as increased DER penetration) which showed reduced load growth and delayed the need for the upgrades.<sup>30</sup>

One likely reason for Pepco’s overstated PNB estimates is the record evidence which shows that the Company uses metering data from buildings that are, on average, 15.25 years old (16.14 years old for buildings with demand over 500 kW) to estimate the projected demand for state of the art, energy efficient, ongoing construction projects.<sup>31</sup> As Mr. Mara explained, because the Company is not looking at AMI metering data from new buildings, the estimates do not fully reflect the currently-effective, energy-efficiency standards in the District (implemented

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<sup>29</sup> *Formal Case No. 1144*, Mara Affidavit ¶ 14.

<sup>30</sup> *Formal Case No. 1144*, Mara Affidavit ¶ 97.

<sup>31</sup> *Formal Case No. 1144*, Mara Affidavit ¶ 104.

in 2013) and cannot account for the new efficiency standards (enacted in 2017 and currently being implemented in the District).<sup>32</sup>

Further evidence of Pepco's overstatement of PNBs was provided by the Pacific Northwest National Laboratory ("PNNL") report entitled "Energy Savings Analysis of the Proposed Revision of the Washington D.C. Non-Residential Energy Code",<sup>33</sup> which was developed at the request of the District of Columbia Department of Consumer and Regulatory Affairs through the Department of Energy and Environment ("DOEE"). As demonstrated therein, Pepco's approach significantly overstated the expected electricity consumption per square foot on an energy basis.<sup>34</sup>

In Order No. 20274, the Commission does not address any of these remonstrations and instead tackles yet another straw-man argument. Specifically, the Commission finds that "reliance by DOEE and OPC on the PNNL Report to generate what they consider to be a 'corrected' load forecast turns largely on the use of unsupported assumptions, including the load-factor used to convert PNNL's energy values into demand values, extrapolation of results to building types not modeled by PNNL, and application of energy data based on a future building code."<sup>35</sup> OPC disagrees with this finding, but even assuming it is true, it does not mean Pepco's PNB load is reasonable. In fact, the Commission finds only that Pepco's approach is "preferable" to the PNNL report because, "Pepco instead relies on AMI data reflecting actual building performance in the District of Columbia", which the Commission concludes "is

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<sup>32</sup> *Formal Case No. 1144*, Mara Affidavit ¶ 108.

<sup>33</sup> Pacific Northwest National Laboratory, *Energy Savings Analysis of the Proposed Revision of the Washington D.C. Non-Residential Energy Code* ("PNNL Report"), December 2017, p. 1.1.

<sup>34</sup> *Formal Case No. 1144*, Mara Affidavit ¶¶ 105-108.

<sup>35</sup> *Formal Case No. 1144*, Order No. 20274 ¶ 66.

reasonable instead of relying on converting data from a study performed for a purpose unrelated to the need for the Mt. Vernon Substation.”<sup>36</sup> The Commission, however, fails to articulate any reasoned basis to conclude that Pepco’s PNBs load projections reasonably reflect expected load growth in the Mt. Vernon area.

In particular, the Commission fails to explain why use of AMI metering data from buildings that are approximately 16 years old constitutes a reasonable approximation of load for new construction that must comply with existing, more energy-efficient District building codes. The Commission relies on September 2019 Board Minutes from the Construction Codes Coordinating Board (“CCCB”) meeting as evidence the 2017 District building codes may not be fully in place in time to affect 2023 loads in the Mt. Vernon area. But that finding is immaterial, as the average age of the Pepco buildings surveyed to develop its PNB estimates also predates the 2013 building code, which is already in full effect. Moreover, the September CCCB Board Minutes indicate that, while the implementation process is ongoing, the CCCB is considering forgoing a third notice of proposed rulemaking in order to implement the 2017 Building Code legislation in light of the need to “move forward expeditiously with adoption of the 2015 model codes” in light of the compelling public interest reasons “to adopt more modern building, energy conservation and fire safety provisions.”<sup>37</sup> Thus, contrary to the implication in Order No. 20274, it appears CCCB intends to move forward expeditiously with further modification to the District building codes, which will further advance energy-efficiency measures in the District.

Together, these flaws evidence that the Commission has not engaged in reasoned decision making in accepting Pepco’s load forecasting methodology in this proceeding. The

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<sup>36</sup> *Formal Case No. 1144*, Order No. 20274 ¶ 68.

<sup>37</sup> Available online at: <https://dcra.dc.gov/node/1385696>, last accessed on January 9, 2020.

PSC's failure with respect to this "central issue" in this proceeding is grounds to reverse the Commission's decision to permit Pepco to proceed with construction of the Mt. Vernon Substation.

**B. The Commission Erred in Rejecting Non-Wires Alternatives to the Capital Grid Project.**

The Office<sup>38</sup> and DOEE submitted considerable detailed demonstrations showing cost-effective alternatives to Pepco's proposal for the CGP – including, non-wires alternatives ("NWAs") to the Mt. Vernon Substation. The Commission agrees with the Office and DOEE that DER resources "can and do reliably provide energy to customers in the District of Columbia."<sup>39</sup> The Commission, however, without a reasoned explanation proceeds to devalue these resources and finds that they cannot provide any capacity value that leads to the deferral of the Mt. Vernon Substation "because (1) DER integration on LVAC networks is complicated by the need to manage N-1 contingencies; and (2) their application in densely populated, urban locations presents additional complexities in contrast to the pilot programs cited by the opponents of Pepco's proposal."<sup>40</sup> The Commission, however, fails to adequately explain in Order No. 20274 why these "complications" cannot be overcome by the Company in a way that permits further deferral of the Mt. Vernon Substation. As noted above, there is evidence in the record that these same technologies have *already* caused the Company to delay the in-service date of the Mt. Vernon Substation several times.

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<sup>38</sup> *Formal Case No. 1144, Mara Affidavit* ¶¶ 118-139; *Formal Case No. 1144, Comments by the Department of Energy and Environment on behalf of the District of Columbia Government*, filed September 27, 2018 ("DDOE Comments"), pp. 42-79.

<sup>39</sup> *Formal Case No. 1144, Order No. 20274* ¶ 81.

<sup>40</sup> *Id.*

Similarly, the Commission identifies a series of purported obstacles to the use of demand response programs, including the fact such programs “require regulatory approval” and “may not be sufficiently focused on the over-loaded feeders in question.”<sup>41</sup> The Commission, however, fails to explain why, as the regulator in charge of oversight of such programs, it cannot ensure reasonable demand response programs are implemented and properly tailored to permit the Company to utilize the capacity value of such resources. Furthermore, the Commission’s finding constitutes an unexplained departure from its decision in Order No. 18846 in Formal Case No. 1139, in which the Commission encouraged Pepco to “continue to explore its demand-side options as part of its business strategy.”<sup>42</sup> The Commission also stated:

The use of demand-side solutions has the potential *to delay or eliminate the need for distribution-related construction projects and thereby avoid future costs*. Demand response, if applied adequately, can relieve distribution bottlenecks and has the potential to defer construction of new substations.

*Formal Case No. 1139*, Order No. 18846 ¶ 53 (emphasis supplied). The Office recognizes that the Commission has rejected certain Pepco proposals to expand existing demand response and direct load control programs in the District, but the Commission’s findings in Order No. 20274 go well beyond the rejection of a specific program. Here, the Commission has effectively concluded that DER, demand response, and direct load control programs can *never* be utilized by the District to delay or obviate the need for additional infrastructure to address purported load growth. If this is not the Commission’s intent, the Commission should clarify it is not on reconsideration.

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<sup>41</sup> *Id.*

<sup>42</sup> *Formal Case No. 1139*, Order No. 18846 ¶ 53 (emphasis supplied).



Eliminating the capacity value of these resources and programs is a significant impediment to further development of the District's clean energy vision. As Mr. Mara explains: "DER projects will reduce energy consumption from the electric grid. In addition, DER projects can and do reduce system peak demands. These reductions in electric system demands have value which, in other jurisdictions, is monetized to the DER owner."<sup>43</sup> If the Commission does not permit DER and other resources to have a demand value that serves to defer infrastructure projects, the economic incentive for developers/customers to install new DER projects in the District will be reduced to energy-only savings. The Commission should grant the Office's request for reconsideration and correct these errors.

**C. The Commission Erred in Rejecting Traditional Utility Alternatives to the Mt. Vernon Substation with No Evidentiary Basis.**

In addition to the non-wires alternatives discussed above, Mr. Mara also presented several traditional utility solutions to the purported overload conditions Pepco claims are necessitating the Mt. Vernon Substation.<sup>44</sup> One such solution was to shift load and utilize excess capacity at the substations in neighboring areas of the District to alleviate any projected overloads. In its review of this proposal, the Commission concludes at least one such solution, which included extending a new network to the Florida Avenue Substation, was "physically feasible."<sup>45</sup> The Commission, however, rejects that solution on the theory that "transferring load among heavily loaded facilities will not decrease the amount of load to be served in the areas; it simply transfers the loading problems to another portion of the distribution system."<sup>46</sup> The

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<sup>43</sup> *Formal Case No. 1144*, Mara Affidavit ¶ 165.

<sup>44</sup> *Formal Case No. 1144*, Mara Affidavit ¶¶ 140-161.

<sup>45</sup> *Formal Case No. 1144*, Order No. 20274 ¶ 88.

<sup>46</sup> *Id.*

Commission offers no citation to any record evidence for this conclusion in Order No. 20274 and, instead, simply assumes the load transfers recommended by Mr. Mara will cause overloading conditions on other parts of Pepco's distribution system. There is, however, substantial evidence included in the Mara affidavit showing that there is currently significant excess capacity at several substations within a few miles of the proposed Mt. Vernon Substation site which could reliably accommodate a portion of the load on the SW LVAC system.<sup>47</sup>

**[BEGIN CONFIDENTIAL]**

**[END CONFIDENTIAL]** District ratepayers have already paid for this capacity, and they should not be required to build more infrastructure without a finding – based on substantial record evidence – that those facilities are inadequate to reliably serve the load both this Commission and the Company purport justify the need for the Mt. Vernon Substation.

Mr. Mara found that one of his wires alternatives, which could be implemented for approximately \$10.5 million, could obviate the need for the Mt. Vernon Substation.<sup>49</sup> The Commission, however, rejects this solution, finding that it “would be a temporary solution which would not be cost effective and provide less reliability benefits than a new Mt. Vernon Substation.”<sup>50</sup> The Commission, however, offers no citation to any record evidence for this conclusion. The Office submits the Commission has therefore failed to engage in reasoned decision making by failing to adequately explain the basis for its rejection of the OPC wires alternative, which could save District ratepayers hundreds of millions of dollars in infrastructure costs.

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<sup>47</sup> *Formal Case No. 1144, Mara Affidavit* ¶ 68.

<sup>49</sup> *Formal Case No. 1144, Mara Affidavit* ¶ 157.

<sup>50</sup> *Formal Case No. 1144, Order No. 20274* ¶ 88.

The only other criticism of the Mara alternative identified in Order No. 20274 is Pepco's claim that "Mr. Mara does not explain whether he is referring to radial feeders, spot network feeders, or a networked feeder group" which, according to Pepco, have "distinct requirements to ensure reliability on an underground distribution system."<sup>51</sup> To the extent these criticisms are valid, they are, at best, issues of fact which should have been addressed through a hearing or additional procedures, as requested by the Office. Importantly, however, it is not the Office's obligation to demonstrate what exact configuration works best to alleviate the projected overloading condition on the SW LVAC. To the extent Pepco failed to consider these alternatives, it is Pepco that has failed to meet its burden to demonstrate the need for the Mt. Vernon Substation as well as the Commission's directive that the Company consider alternatives in Order No. 19274.<sup>52</sup> The Commission should reverse this error on reconsideration and find that Pepco has failed to demonstrate the reasonableness and need for the Mt. Vernon Substation.

**D. The Commission Erred in Rejecting the Office's Motion for Additional Procedures.**

As discussed herein, there are many instances in which there is not adequate evidence in the record to support the reasonableness of and need for the Mt. Vernon Substation. Moreover, as was explained in the Office's November 1, 2019 *Motion for Additional Procedures*,<sup>53</sup> Pepco's evidentiary submission – filed more than a year-and-half before the Commission issued Order No. 20274 and based on data of an even older vintage – had become stale. The Office therefore requested additional procedures so the Commission could review evidence concerning, *inter alia*, how market conditions have affected plans, including the best data available concerning the

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<sup>51</sup> *Id.*

<sup>52</sup> *Formal Case No. 1144*, Order No. 19274 ¶ 12.

<sup>53</sup> *Formal Case No. 1144*, Office of the People's Counsel for the District of Columbia's Motion for Additional Procedures, filed November 1, 2019 ("OPC Motion").

timing for new development in the area surrounding the proposed Mt. Vernon Substation. The Commission rejected OPC's request, in large part based on the quantity of materials produced in discovery. For example, the Commission repeats Pepco's argument that no further procedures are necessary because Pepco responded to "nearly 850 data requests."<sup>54</sup> But the quantity of discovery produced is meaningless if its probative value has been diminished or eliminated by the passing of time. As Pepco notes in the NOC, "[d]evelopers frequently alter the use and scope of their future developments as market conditions warrant."<sup>55</sup> Moreover, as the Commission is aware, the CleanEnergy DC Omnibus Amendment Act of 2018,<sup>56</sup> which became effective on March 22, 2019, both changed the law and evidenced new policies which the District seeks to advance. Accordingly, there are material issues of disputed fact regarding whether Pepco's submission in this case remains relevant to the extent it ever demonstrated the need for the Mt. Vernon Substation. The Commission, however, has repeatedly ignored the Office's request for an evidentiary hearing in this case and has failed to act on that request since it was held in abeyance since Order No. 19274.<sup>57</sup> The Office submits the Company's submissions and witnesses should have been subjected to cross examination under oath before the Commission made its decision to commit hundreds of millions of ratepayer dollars to the CGP. The Commission's denial of OPC's request for additional procedures, including an evidentiary hearing, should be reversed on reconsideration.

**E. The Commission Erred in Failing to Find That This Proceeding Is a Contested Case.**

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<sup>54</sup> *Formal Case No. 1144*, Order No. 20274 ¶ 10.

<sup>55</sup> *Formal Case No. 1144*, NOC at p. 10.

<sup>56</sup> CleanEnergy DC Omnibus Energy Amendment Act of 2018, effective March 22, 2019 (D.C. Law 22-257).

<sup>57</sup> *Formal Case No. 1144*, Order No. 19274 ¶ 20, rel. February 14, 2019 ("Order No. 19274").

As demonstrated above, the Commission makes a series of findings, over the objection of OPC, DOEE, and the District Government, that go well beyond the question of whether Pepco's NOC complied with the requirements of section 2111.4, Title 15, of the DCMR. OPC and the District Government sought a hearing in this proceeding so that Pepco's submission could be subject to scrutiny in accordance with the contested case provisions of the D.C. Administrative Procedures Act ("DC APA").<sup>58</sup> In Order No. 20274, the Commission finds that there is no need for an evidentiary hearing because the issues raised by the District Government are "actually legal and policy arguments" and "are not material issues of fact in dispute when considered with the record evidence that we rely on in making this decision."<sup>59</sup> To the extent that the Commission's decision is limited to the specific issues raised in the District Government's pleading, the Office notes that it, too, requested a hearing in this proceeding. Moreover, as demonstrated above, there are several clear issues of disputed material fact that have effectively been decided in the Company's favor, without any opportunity for the parties to contest Pepco's evidentiary submission in an evidentiary hearing. The Commission should reverse this decision on reconsideration and grant the parties the rights specified for contested cases under the DC APA.

## **VII. REQUEST FOR RELIEF**

The errors identified in Sections V and VI above are fatal and must be cured. Therefore, OPC submits the Commission should: (1) grant reconsideration of Order 20274; (2) find that the Mt. Vernon Substation has not been shown to be needed or just and reasonable; and (3) order

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<sup>58</sup> D.C. Code § 2-509 (Lexis 2020).

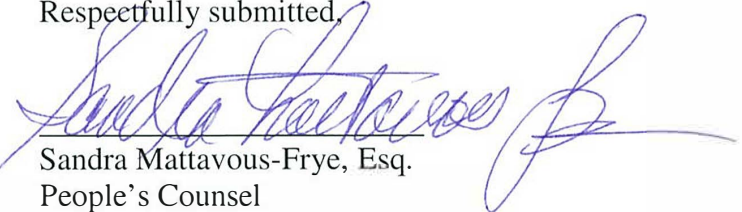
<sup>59</sup> *Formal Case No. 1144*, Order No. 20274 ¶ 11.

those additional procedures necessary, including a hearing during which the material issues of disputed fact can be tried.

### **VIII. CONCLUSION**

For the foregoing reasons, the Office respectfully submits the Commission should grant OPC's *Application for Reconsideration* of Order No. 20274.

Respectfully submitted,



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Dated: January 21, 2020

## **CERTIFICATE OF SERVICE**

**Formal Case No. 1144, In the Matter of the Application of the Potomac Electric Power Company's Notice to Construct Two 230kV Underground Circuits from the Takoma Substation to the Rebuilt Harvard Substation and from the Rebuilt Harvard Substation to the Rebuilt Champlain Substation (Capital Grid Project)**

I certify that on January 21, 2020, a copy of the "Office of the People's Counsel for the District of Columbia's Application for Reconsideration of Order No. 20274" (PUBLIC) was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

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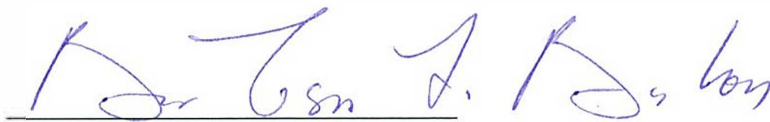
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