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August 11, 2020

Ms. 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. 1156, *In the Matter of the Application of the 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:

Attached for filing in the above-referenced proceeding please find *The Office of the People's Counsel for the District of Columbia, the Apartment & Office Building Association of Metropolitan Washington, the General Services Administration, the District of Columbia Water and Sewer Authority, Baltimore Washington Construction and Public Employees Laborers' District Council, the Maryland DC Virginia Solar Energy Industries Association, and the Small Business Utility Advocates Joint Protest of Pepco's July 31, 2020 Motion to File Supplemental Testimony and Joint Motion to Dismiss MRP Enhanced Proposal, to Direct Withdrawal of Pepco's Rate Case Application, and for Additional Relief*. The Joint Movants request that the PSC suspend the procedural schedule in the case pending a decision on this motion.

If there are any questions regarding this matter, please contact me at 202.727.3071.

Sincerely,

/s/ Anjali G. Patel

Anjali G. Patel  
Senior 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 the Potomac  
Electric Power Company for  
Authority to Implement a  
Multiyear Rate Plan for Electric  
Distribution Service in the District  
of Columbia**

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**Formal Case No. 1156**

**THE OFFICE OF THE PEOPLE’S COUNSEL FOR THE DISTRICT OF  
COLUMBIA, THE APARTMENT & OFFICE BUILDING ASSOCIATION OF  
METROPOLITAN WASHINGTON, THE GENERAL SERVICES  
ADMINISTRATION, THE DISTRICT OF COLUMBIA WATER AND  
SEWER AUTHORITY, BALTIMORE WASHINGTON CONSTRUCTION  
AND PUBLIC EMPLOYEES LABORERS’ DISTRICT COUNCIL, THE  
MARYLAND DC VIRGINIA SOLAR ENERGY INDUSTRIES  
ASSOCIATION, AND THE SMALL BUSINESS UTILITY ADVOCATES  
JOINT PROTEST OF PEPCO’S JULY 31, 2020 MOTION TO FILE  
SUPPLEMENTAL TESTIMONY**

**AND**

**JOINT MOTION TO DISMISS MRP ENHANCED PROPOSAL, TO DIRECT  
WITHDRAWAL OF PEPCO’S RATE CASE APPLICATION, AND FOR  
ADDITIONAL RELIEF**

August 11, 2020

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Pursuant to Rule 105.8 of the Public Service Commission of the District of Columbia's ("Commission" or "PSC") Rules of Practice and Procedure and the directive of the PSC General Counsel, Mr. Christopher Lipscombe, at the July 31, 2020 Status Conference, the Office of People's Counsel ("Office" or "OPC"), the statutory representative of District of Columbia ratepayers with respect to utility matters,<sup>1</sup> the Apartment & Office Building Association of Metropolitan Washington ("AOBA"), the General Services Administration ("GSA"), the District of Columbia Water and Sewer Authority ("DC Water"), Baltimore Washington Construction and Public Employees Laborers' District Council ("BWLDC"), the Maryland DC Virginia Solar Energy Industries Association ("MDV-SEIA"), and the Small Business Utility Advocates ("SBUA") (collectively, "Joint Movants") respectfully file the following comments requesting that the PSC reject Pepco's July 31, 2020 Motion to File Supplemental Testimony, and joint motion to dismiss Pepco's MRP Enhanced Proposal and direct Pepco to withdraw its entire application. The parties request further that the Commission suspend the procedural schedule pending a decision on this motion.

The PSC's mission "is to serve the public interest"<sup>2</sup> by balancing the interests of the utilities that it regulates with the interests of the ratepayers that fund the costs of running that utility.<sup>3</sup> The Potomac Electric Power Company ("Pepco" or "Company") has had fourteen months and multiple opportunities to present and justify its application to change its ratemaking methodology and

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<sup>1</sup> D.C. Code § 34-804 (Lexis 2019).

<sup>2</sup> Public Service Commission of the District of Columbia, Mission and Goals, <https://dcpsc.org/About-PSC/About-the-Commission/Mission-and-Goals.aspx>, last accessed June 3, 2020.

<sup>3</sup> *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *see also Office of the People's Counsel v. PSC of the Dist. of Columbia*, 797 A.2d 719, 727 (2002) ("The Commission's duty to require that utility charges be nondiscriminatory, see D.C. Code §§ 1-204.93, 34-911 (2001), 'is deliberately broad and gives the Commission authority to formulate its own standards and to exercise its ratemaking function free from judicial interference, provided the rates fall within a zone of reasonableness which assures that the Commission is safeguarding the public interest - that is, the interests of both investors and consumers.'") (citing *Metro. Washington Bd. of Trade v. Pub. Serv. Comm'n*, 432 A.2d 343, 350 (D.C. 1981)).

increase its rates. Yet, despite having over a year to do so, Pepco's application does not conform with the Commission's requirements for requests to implement an alternative ratemaking methodology. Moreover, the Company only recently identified what it has characterized as errors in its billing determinants for demand metered customers<sup>4</sup>—errors that trace back to well-before this rate case was filed and that permeate more aspects of the case than Pepco acknowledged. Pepco's failure to submit an application, not only at the outset but over a year into the procedural schedule, that uses data on which the parties can reasonably rely to litigate this case, has resulted in, at best, a muddled record that continues to compromise the parties and District ratepayers' due process rights.

These latest events compound an already difficult situation in which the impacts of the COVID-19 pandemic on the District and District ratepayers have greatly undermined the credibility of the cost and usage projections on which Pepco's request for a multi-year rate plan is premised. Moreover, had the Company's multi-year rate plan been implemented on the time schedule that Pepco initially envisioned, it would undoubtedly have already been subject to termination or "re-opening" of litigation based on the substantial economic upheaval resulting from the COVID-19 pandemic.

Pepco has far exceeded the bounds of reasonableness. In order to serve the public interest and protect ratepayers from additional harm, the Joint Movants respectfully request that the Commission:

- (1) reject Pepco's July 31, 2020 additional supplemental testimony as untimely and prejudicial,

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<sup>4</sup> Pepco uses volumetric (kWh), demand (kW), and customer count "billing determinants" to calculate the specific rate that will be charged to each class of customer. Pepco forecasts the numbers of customers, kWh and kW that it believes it will experience in the projected year.

- (2) dismiss Pepco's Enhanced MRP as not in accordance with DC law and the Commission's rules,
- (3) direct Pepco to withdraw its rate case in its entirety because the Company's public characterization of the case and underlying support proffered by the Company is unreliable, misleading, and prejudicial to the parties' due process rights, and
- (4) provide for additional relief as requested below.

Based on the Company's own statements and filings, the Joint Movants' requested relief would not harm the Company, and may actually benefit the Company by obviating the need to offset a rate increase and therefore eliminating any purported negative cash-flow. More importantly, it would facilitate the PSC's ability to reach a sound and rationale decision based on verifiable, accurate, and timely data.

## **I. EXECUTIVE SUMMARY AND BACKGROUND**

On May 30, 2019, Pepco filed an application requesting a change in its ratemaking methodology from rates set on a traditional test year based on historic, known and verifiable, costs, to a multiyear rate plan ("MRP") that would raise rates by \$162 million over three years.<sup>5</sup> Since the filing of their initial application, Pepco has repeatedly sought to curb the parties substantive and procedural due process rights. Prior to Pepco filing its Application, the Commission had warned Pepco that if it sought approval of an alternative form of ratemaking, such as an MRP, it would need to add additional time to the schedule to allow the parties to review and respond to the application.<sup>6</sup> Despite the Commission's advanced warning, Pepco's MRP application proposed a

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<sup>5</sup> *Formal Case No. 1156, In the Matter of the Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia* ("Formal Case No. 1156"), Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service, filed May 30, 2017 ("Application").

<sup>6</sup> *See, Formal Case No. 1139, In the Matter of the Application of the Potomac Electric Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service* ("Formal Case No. 1139"), Order

schedule, in contravention of Order No. 18846, that provided for only seven months of litigation during which parties were to review the filing, submit data requests, file testimony, hold hearings, and file briefs, and for rates to be implemented within 11-months of the filing.<sup>7</sup> In rejecting Pepco's proposed schedule the Commission made "clear that Pepco's initial eleven month consolidated schedule was overly abbreviated."<sup>8</sup> Instead, the Commission adopted an 18-month schedule proffered by certain parties on the mutual understanding that the information Pepco had filed in its application was true, correct, and consistent with prior Commission orders and approved settlement agreements, and that the parties would be litigating one MRP proposal and one traditional test year case.

Since that time, and as the Commissioners' have recognized several times during the proceeding, this case has taken several highly unusual, unforeseen turns<sup>9</sup> that have involved not only Pepco's failure to abide by prior settlement agreements,<sup>10</sup> but also an unprecedented pandemic with devastating economic impacts for District of Columbia residents, businesses, and

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No. 18846, ¶ 594, rel. July 25, 2019 ("Order No. 18846") (stating that if Pepco includes in its next rate case a multiyear rate proposal, then "in addition to those [conditions] stated in Commission Rules 200.1, 200.2, 200.3, and 200.5. . . additional time must be allowed for the first examination of the new paradigm; thus, we foresee that and advise Pepco that the schedule for any rate case that includes a fully forecasted test year for the first time will require an appropriate extension of time to ensure that the Commission and all participants have the necessary time to fully examine any new proposal.")

<sup>7</sup> *Formal Case No. 1156*, Pepco Application at 12-13 and Appendix C. Typical rate case applications are normally completed within 12 months.

<sup>8</sup> *Formal Case No. 1156*, Order No. 20204 ¶ 27, rel. Aug. 9, 2019.

<sup>9</sup> See e.g. *Formal Case No. Order No. 20375*, *Statement of C. Beverly*, rel. July 8, 2020 ("Order No. 20375") ("The Commission's decision to allow Pepco to introduce an Enhanced Multiyear Rate Plan ('MRP') Proposal in surrebuttal is certainly a 'flexible' approach to litigation and, although it's highly unusual, I permitted it as long as it didn't unfairly prejudice the cases of the opposing parties.").

<sup>10</sup> *Formal Case No. 1150*, *In the Matter of the Application of Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service* ("Formal Case No. 1150"), *Formal Case No. 1151*, *In the Matter of the Impact of the Tax Cuts and Jobs Act of 2017 on the Existing Distribution Service Rates and Charges for Potomac Electric Power Company and Washington Gas Light Company*, and *Formal Case No. 1156*, Order No. 2029, rel. Feb. 5, 2020 (granting Joint Motion for Partial Summary Judgment and directing Pepco to revise its Application and workpapers to conform to the Settlement Agreement approved by the Commission in Order No. 19433.)

government coffers.<sup>11</sup> Despite this proceeding’s unusual nature, the Joint Movants, each of whom represents ratepayers that are impacted by Pepco’s request to increase rates,<sup>12</sup> continued to invest significant resources in diligently reviewing, probing, and seeking expert advice and input on several iterations of Pepco’s initial application.<sup>13</sup>

***A. Pepco Adds Another MRP Proposal to the Docket***

On June 1, 2020, Pepco threw another curveball into the proceeding by filing what it has labeled an “MRP Enhanced Proposal” as part of its “Surrebuttal Testimony.”<sup>14</sup> Despite the fact that Pepco’s MRP Enhanced Proposal is substantially different from the Company’s Original MRP Proposal, Pepco did not propose commensurate due process protections for the parties. Rather, the Company claimed that under the then current procedural schedule the “parties [would] have an adequate opportunity to address the MRP Enhanced Proposal”<sup>15</sup> and further asserted that “in light of the MRP Enhanced Proposal and given the present circumstances, the parties could resolve this matter without the need for evidentiary hearings.”<sup>16</sup> In discovery, the Company claimed audaciously that with the submission of the MRP Enhanced Proposal the proceeding could be resolved on a faster

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<sup>11</sup> See, e.g. *Formal Case No. 1156*, Order No. 20340, ¶¶ 7-8 rel. May 7, 2020 (noting the extraordinary circumstances and that “this unplanned and unexpected global crisis that has had a tremendous impact on all of us.”)

<sup>12</sup> E.g., As the statutory advocate, OPC represents all DC ratepayers; AOBA represents the interests of the commercial (82.4 million sq. ft) and multifamily (77,000 apartment units) industries in the District of Columbia and whose members either pay, and/or tenants pay, Pepco electric distribution bills; GSA represents the federal executive agencies which own and operate extensive property in the District and annually purchase millions of dollars in electricity; DC Water provides retail water and wastewater services to more than 600,000 District residents, 17.8 million annual visitors to the District, and 700,000 people who are employed in the District of Columbia and not only serves many of the same residents, business, and governmental entities served by Pepco, but is also one of Pepco’s largest customers; LiUNA represent employees of Pepco contractors, many of whom live in the District and pay Pepco utility bills; MDV-SEIA represents the interests of the solar energy industry in the District, including solar generation facility developers and owners, and the commercial and residential customers they serve; and the Small Business Utility Advocates represents the interests of small and microbusiness owners in the District.

<sup>13</sup> And the Commission steadfastly endeavored to retain its original 18-month schedule.

<sup>14</sup> Though Pepco labeled the testimony “surrebuttal,” only a limited portion of the testimony (less than 1/5 of the entire filing) responded to the parties’ rebuttal submissions.

<sup>15</sup> *Id.* at 35:20-22.

<sup>16</sup> *Id.* at 36:8-10.

timetable than under the original procedural schedule.<sup>17</sup> The Company's procedural claims completely sidestepped the fact that the parties had already spent the previous 12 months reviewing a completely different proposal with a substantially different foundation for its revenue requirements.<sup>18</sup> The parties were only provided the new "Enhanced" proposal after having filed what would have been their final set of testimony on June 1, 2020. Despite several of the parties objecting to Pepco's late submission of a drastically different MRP proposal,<sup>19</sup> Joint Movants, nonetheless, followed the Commission's directives<sup>20</sup> and, yet again, invested considerable resources to review and respond expeditiously to Pepco's new proposal that is seeking to raise rates by \$135.9 million over three years and that does not forego, but rather defers to future years, substantial cost recovery.

While the Joint Movants have made every effort to respond to Pepco's changing application, Pepco has not bothered to meet the Commission's minimum standards for multiyear rate plan applications. The PSC made clear years ago that if Pepco were to file an application for an alternative form of ratemaking ("AFOR"), then the Commissions "focus" in considering such a proposal would "include a review of the benefits that accrue to customers as opposed to solely focusing on the utility."<sup>21</sup> And in this case the Commission took the further step of establishing a

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<sup>17</sup> See Exhibit OPC (3B)-20 (Pepco Response to Staff Data Request No. 17-7).

<sup>18</sup> Pepco's revised its initial request for a \$162 million increase in its Original MRP application multiple times before submitting its MRP Enhanced Proposal. On September 16, 2019, in an update to actuals, Pepco revised its request to \$160 million; in supplemental testimony submitted on February 20, 2020 by Order of the Commission, Pepco revised its request to \$157.9 million increase, and in rebuttal testimony submitted on April 8, 2020, Pepco again revised its Original MRP request to a \$147.2 million increase.

<sup>19</sup> *Formal Case No. 1156*, Joint Emergency Motion to Strike Pepco's Surrebuttal Testimony Pertaining to the Company's New MRP Proposal and for Summary Judgment on Pepco's Multiyear Rate Plan Application, filed June 8, 2020 ("Joint Motion to Strike"); see also District of Columbia Government's Response to "Joint Emergency Motion to Strike Pepco's Surrebuttal Testimony and for Summary Judgement on Pepco's Multiyear Rate Plan" and Motion for Relief in the Alternative, filed June 16, 2020.

<sup>20</sup> *Formal Case No. 1156*, Order No. 20368, rel. June 18, 2020 ("Order No. 20368"); Order No. 20375, rel. July 8, 2020 ("Order No. 20375").

<sup>21</sup> *Formal Case No. 1139*, Order No. 18846, ¶ 594.

ten criteria framework that must be addressed by any utility seeking approval of an AFOR.<sup>22</sup> In Order No. 20273, the Commission emphasized that “AFOR Principle (1) tracks the language of D.C. Code § 34-1504 (d) (2001), and AFOR Principle (2) tracks the language of D.C. Code § 34-808.02 (2019 Supp.) **and must be addressed.**”<sup>23</sup> Indeed, in issuing Order No. 20273, the PSC kept the 18-month case schedule but revised the testimony submission schedule to allow Pepco to address the AFOR framework with respect to its Original MRP proposal. By June 1, 2020, Pepco was on notice that any MRP proposal in this case must address the PSC’s AFOR framework, but Pepco’s surrebuttal testimony, which presented the Company’s MRP Enhanced Proposal, is entirely silent on the issue.

Furthermore, though Section 34-909(a) of the DC Code requires that notice to ratepayers be issued within one billing period following the filing of any proposed rate change with sufficient detail that rate payers can understand the filing and their respective “specified affected interest,”<sup>24</sup> there has been no such notice issued on the MRP Enhanced Proposal. Rather than deal honestly with the public, Pepco issued a press release on June 1, 2020 claiming the MRP Enhanced Proposal is a “rate freeze.”<sup>25</sup> Despite this public pronouncement, Pepco simultaneously asserts in filings before this Commission that the “Enhanced” proposal does not include a rate freeze.<sup>26</sup> As such,

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<sup>22</sup> *Formal Case No. 1156*, Order No. 20273 ¶ 94, rel Dec. 20, 2019 (in “adopt[ing an] overarching framework principles for a utility seeking AFOR treatment” directing that the “utility’s AFOR application shall provide information” on the ten AFOR criteria.) The first of the ten criteria is comprised of the statutory requirements for Commission approval of alternative ratemaking proposals in the District.

<sup>23</sup> *Id.* ¶ 96, n. 199 (emphasis added).

<sup>24</sup> D.C. Code § 34-909.

<sup>25</sup> Pepco, *Pepco Proposes to Freeze DC Customer Energy Delivery Rates Until 2022 and Assist Customers with Pandemic Economic Recovery*, rel. June 1, 2020, available at <https://www.pepco.com/News/Pages/PepcoProposestoFreezeDCCustomerEnergyDeliveryRatesUntil2022andAssistCustomerswithPandemicEconomicRecovery.aspx> (last accessed August 11, 2020)(Pepco Press Release). A copy of the press release is provided as Attachment A.

<sup>26</sup> Exhibit OPC (3B)-2 (Pepco Response to OPC Data Request No. 56-20)(stating that “The MRP Enhanced Proposal does not propose the deferral of rate increases until January 1, 2022, rather the Company proposes rate offsets.”).

the Company knowingly mischaracterized the MRP Enhanced Proposal and its impacts on customers to the public. Several parties have asked Pepco to withdraw its press release, but it has not done so, nor has the Company issued a correction. Between the misleading press release and the lack of notice, Pepco has sown confusion in the minds of ratepayers as to the financial impacts of its MRP Enhanced Proposal on customer bills – a particularly egregious act during this time of widespread economic uncertainty wrought by the pandemic.<sup>27</sup>

As a result of fourteen months’ effort and only one opportunity to respond to Pepco’s Enhanced MRP proposal, OPC and the Intervenor Parties have prepared and filed four rounds of testimony on Pepco’s application and the multiple revisions that Pepco has made of its application—an application that now *includes two different MRPs as well as a traditional test year revenue requirement*.<sup>28</sup> Pepco claimed from the outset of this proceeding that its MRP proposal would reduce the regulatory burden on parties.<sup>29</sup> But the Joint Movants’ efforts to address Pepco’s proposal, collectively, have amounted to thousands of pages of testimonies and exhibits from fourteen expert witnesses and millions of dollars in cumulative litigation expenses—expenses, which in addition to the expenses incurred by Pepco and the PSC, are paid for by District ratepayers.<sup>30</sup> And while some of the Intervenor Parties chose to participate only minimally in this

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<sup>27</sup> Indeed, consumers think that Pepco is offering no change to the Pepco bills they will pay until January 1, 2022, but in reality if Pepco’s MRP Enhanced Proposal is approved, certain classes will be paying substantially increased rates immediately upon the conclusion of this rate proceeding.

<sup>28</sup> Pepco has taken the position that its traditional test period compliance filing is not part of the Company’s “proposal.” See, e.g. *Formal Case No. 1156*, Response of Potomac Electric Power Company in Opposition to the Joint Emergency Motion to Strike at 14-15, filed June 12, 2020. However, this Commission’s Public Notice of June 13, 2019 clearly recognized the Company’s traditional test period filing as an alternative for the public to consider.

<sup>29</sup> See, e.g. Exhibit Pepco (B) (McGowan) at 21:4-8.

<sup>30</sup> E.g., Pepco’s rate costs and the funds assessed to the PSC and OPC during the proceeding are collected from ratepayers as part of the Company’s cost of service. AOBA’s members pay its litigation fees. The federal and District government’s expenses are paid through taxes and other governmental revenues.

case, their decision to do so was based on the information that Pepco provided in its initial applications and the earlier revisions that were made thereto.<sup>31</sup>

***B. Pepco's Data Errors and Last Minute "Corrections"***

Notwithstanding all of this work, on July 24, 2020, at the eleventh hour and nearly fourteen months after it filed its original application and two months after filing its second MRP proposal, Pepco suggested through a discovery response to Commission Staff that the forecasted billing determinants the Company had used in its Original, Rebuttal, and Surrebuttal Testimonies were computed incorrectly.<sup>32</sup> This means that the billing determinants the Company has been using from the start of the case to determine its proposed charges for multiple commercial classes were incorrect.<sup>33</sup> Pepco is trying to portray these errors as minimal, and offers minor supplementary procedures to the parties (e.g. limited discovery and an additional round of testimony). Pepco asserts that the evidentiary hearing scheduled to start on September 10, 2020 should remain.<sup>34</sup> Pepco's position again ignores the Joint Movants substantive and procedural due process rights and the monetary and resource burden that this case has increasingly imposed on the parties. Pepco effectively shifts the burden to the parties (and the ratepayers that they represent) to determine the contours of the application and the supporting data that is currently before the Commission.

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<sup>31</sup> At the July 31, 2020 meeting, for example, counsel for DC Water explained that because DC Water's ratepayers largely overlap with Pepco's, and bear the brunt of Pepco rate increases directly and through their water bills, but bear also the cost of DC Water litigating Pepco rate increases, after reviewing Pepco's application, the agency determined that it would take a "low-profile" approach to litigation.

<sup>32</sup> Pepco purportedly corrected errors in its billing determinants for the GT-LV and MGT-LV rate classes in its Rebuttal Testimony that was filed on April 8, 2020 that increased revenue at present rates from those classes by an average of roughly \$7.5 million per MRP rate year. See Pepco's response to AOBAs Data Request 2-9 and the attachment to that response.

<sup>33</sup> Unlike the changes to billing determinants presented in Pepco's Rebuttal Testimony that, while substantial, were limited to the MGT-LV and GT-LV rate classes, the billing determinants revisions presented in Pepco's July 24, 2020 response to Staff Data Request 24-24 (and now incorporated in the Company's July 31, 2020 CORRECTED Surrebuttal Testimony) also impact billing determinants for the GSD-LV, GS-3A, and GT-3A rate classes.

<sup>34</sup> Pepco Motion To File Supplemental Testimony Regarding The Company's July 28, 2020 Errata at 3.

Though Pepco alleges that the Company only recently became aware of the data “errors,” the facts do not match up with this claim. Moreover, the Company did not formally file its “corrected data” until the day after all parties submitted supplemental testimony to respond to Pepco’s MRP Enhanced Proposal. Like the Enhanced MRP proposal, the correction to the data error was filed at a point in the schedule where the Joint Movants had no procedural opportunity to respond. At no point prior to July 27, 2020 (the due date for supplemental testimony addressing Pepco’s MRP Enhanced Proposal) did Pepco attempt to contact all of the parties to inform them that significant changes in both the Company’s Original MRP and MRP Enhanced rate design proposals would be forth coming. Moreover, while any review of such important data would take time, the Company’s revised schedules also include information that has been altered, but not identified, in other categories (including changes to volumetric charges), and does not reflect all of the conforming changes that may be required to other elements of the Company’s rate filing (such as Pepco’s revenues). As such, Joint Movants would not only have to address the changes identified in the errata, but also retain experts to determine what other aspects of Pepco’s proposals were changed or should have changed.

Despite this being the fourth time Pepco has revised its numbers in this proceeding,<sup>35</sup> they are still not reliable indications of the levels of usage that can be expected for any of the Company’s projected rate years. The COVID-19 pandemic has had massive impacts on the size and profile of the District of Columbia’s load—which in turn impacts the determination of billing determinants, but Pepco’s proposals have yet to account for the pandemic impacts in its rate calculations.

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<sup>35</sup> Pepco did not use the correct demand billing determinants in the creation of its original application, and it first revised them as part of its rebuttal testimony. Pepco Response to Follow-up to Staff Data Request No. 19-6. In Witness Blazunas’ September Supplemental Testimony, he did not file a rate design, and no corrections to billing determinants were provided. In Witness Blazunas’ Second Supplemental Testimony filed February 20, 2020, he only provided bill impacts for the residential class, and no corrections to billing determinant were provided.

Additionally, Pepco plans to change the billing determinants in its compliance filing at the conclusion of this proceeding and annually thereafter. As such, Pepco is asking that the parties continue to invest their resources (and the resources of ratepayers) in litigating information that won't even be used to set the actual rates that customers will pay. Rather, Pepco plans to re-set at various stages the actual base rates that will be charged to District ratepayers, including in its compliance filing and annually during the term of the plan. The Joint Movants will have little time and minimal procedural opportunity to overcome the information asymmetry that would allow the parties to identify and protest data errors or miscalculations that might be included in the Company's determinations. This presents an insurmountable burden for stakeholders to review new information in a short period of time before the Company's new rates would be implemented and during the course of the MRP term where there is no process to comment on or protest the changes.

Furthermore, while Pepco claims that the errata affects only customers with demand charges, all classes are prejudiced. Parties actively involved in litigation relied on earlier-provided data responses that are now moot as all numbers supplied by Pepco are now in question, and less actively involved parties relied on Pepco's original filing when determining their level of participation. It is also unclear whether calculation errors in one class could impact the reconciliations that Pepco has proposed to recover from all classes as part of its MRP proposal. If they do, that could cause further harm to the parties and the ratepayers they represent.

In short, Pepco's proposal is riddled with errors, missteps, and false information. These failures constitute substantive due process harms that cannot be cured with additional process. Continuing to litigate Pepco's application and proposals that are so fundamentally flawed will force OPC and the Intervenor parties to continue expending their limited resources in an effort to

protect their rights and the rights of the ratepayers they represent—resources that will be expended in vain in the face of continued uncertainty as to both: (1) the reliability of Pepco’s data, (2) the impacts of the COVID-19 pandemic on the District’s economy, and (3) the reasonableness of Pepco’s rate calculations in light of the foregoing. The Commission has made clear throughout this proceeding that the burden is on Pepco to prove its case,<sup>36</sup> and Pepco has had multiple bites at the apple to do so. But with each additional bite that Pepco has been given by the Commission to cure the Company’s deficient application, it has become clear that this case is **rotten at its core**.

The constituent base of the parties to this proceeding is diverse. While they are all Pepco ratepayers, each party has offered its own views on the issues in this proceeding. Notably, however, every party that submitted testimony on Pepco’s proposed MRPs has recommended that the Commission reject both Pepco’s Original and Enhanced MRP proposals because, among other things, they could harm ratepayers and do not advance the Commission’s or the District’s policy goals.<sup>37</sup> Pepco’s errata filing underscores the fact that not only are its proposed MRP policies harmful, but that the Company’s data underlying its rate requests are not reliable.

Rather than continuing to litigate a case that is fundamentally flawed beyond repair, the Joint Movants request that the Commission dismiss the MRP Enhanced Proposal and direct Pepco to withdraw its application. If Pepco wishes to re-file a new application, then it should file one that relies on accurate, reasonable, verifiable data and appropriately meets the criteria laid out in the PSC’s AFOR framework, should the Company seek to implement an AFOR. In directing

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<sup>36</sup> E.g., *Formal Case No. 1156*, Order No. 20375, ¶ 10 (“the burden remains squarely on Pepco for approval of its Original or MRP Enhanced Proposal”); *see also* Order No. 20273, ¶¶ 7, 98 (“As the proponent of a rate increase, Pepco has the burden of proof to demonstrate that its MRP/PIM proposal can be approved and adopted at this time.”); *see id.* ¶ 107 (“as Pepco indicated, the burden of proof under AFOR should remain on the utility.”)

<sup>37</sup> *See generally*, Exhibit OPC (C) (DeCoursey) at 2:15-3:17; Exhibit AOBA (A) (B. Oliver) at 21:14 to 23:11; Exhibit DCG (A) (Lane) at 5:8-11; and Exhibit GSA (A) (Goins) at 10:7 to 11:3; Exhibit OPC (4A) (Dismukes) at 5:8 to 9:7; Exhibit OPC (3C) (DeCoursey) at 2:3-12; Exhibit AOBA (4A) (B. Oliver) at 2:16 to 4:7; Exhibit DCG (4A) (Lane) at 2:1 to 4:4; and Exhibit GSA (3A) (Goins) at 5:1-18.

Pepco to withdraw its pending application, the parties further request that the Commission grant any additional relief necessary, including:

- Directing Pepco to remove all costs associated with this rate case—including the Company’s own costs, as well as costs incurred by OPC and the PSC—from any future rate case proceeding as ratepayers should not be held to shoulder the burden of the Company’s numerous calculation errors and deficient filings.<sup>38</sup>
- Convening a task force expeditiously to consider ratepayer relief proposals in Formal Case No. 1164 so that District ratepayers can benefit from much needed COVID-relief.
- Requiring any future MRP proceeding—whether a separate non-rate case proceeding as Commissioner Beverly has discussed, or a new rate case—to address and resolve the concerns that OPC and the Intervenor Parties have raised with respect to both of Pepco’s instant MRPs in this proceeding. The Commission should not throw the baby out with the bathwater, but instead should ensure that the time and effort that the PSC and parties have expended over the past year in considering Pepco’s proposal, and the learnings that have derived from this proceeding, are utilized when shaping any future MRP proceeding.

Pepco’s failure to abide by the Commission’s orders and rules has forced the parties to continue litigating an ever moving target, and waste limited resources. While the Joint Movants urge the Commission to direct Pepco to withdraw its case, the PSC staff requested that the motion, nevertheless, address the procedural schedule if the Commission decides not to grant the relief that

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<sup>38</sup> Joint Movants further submit that the Company should reimburse other parties for the costs they have incurred to date litigating this case.

the Joint Movants are requesting. As such, if the Commission does not dismiss the Enhanced MRP and direct Pepco to withdraw its application, but instead allows Pepco to continue moving forward with its MRP proposals, then the parties respectfully request that the PSC suspend the current schedule and provide a minimum of three months for the parties to issue and review discovery, issue follow-up discovery, and hold a technical conference(s) on Pepco's errata filing and supplemental testimonies.<sup>39</sup> At the end of that three month period, the parties propose that the PSC hold a status conference to determine: (1) the extent of the impact of Pepco's errata filings on the case, (2) whether the defect caused by the error is curable, and if so, has the defect been cured, (3) the going-forward procedural schedule that would preserve the parties due process rights, and (4) whether Pepco should be able to recover any of the costs expended in this rate case.

## II. COMMENTS AND MOTION

***A. Pepco's MRP Enhanced Proposal should be dismissed as the Company failed to meet its burden to follow the Commission's rules and explain how its proposal meets either the statutory standards for an AFOR or the PSC's other AFOR criteria.***

The law is clear, while the PSC may authorize alternative forms of ratemaking, it may only do so if it finds that the proposed mechanism:<sup>40</sup>

(A) Protects consumers;

(B) Ensures the quality, availability, and reliability of regulated electric services; and

(C) Is in the interest of the public, including shareholders of the electric company.

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<sup>39</sup> It took PSC Staff issuing a follow-up data request to its July 8, 2020 Data Request No. 19-6 to get the Company to provide the corrected information that resulted in Pepco's July 31, 2020 response to Staff Data Request 24-24 and Pepco's errata.

<sup>40</sup> D.C. Code § 34-1504 (d); *accord* Order No. 20273, ¶¶ 8, 84, 107.

In Formal Case No. 1139, the Commission additionally made clear that if Pepco were to file an alternative ratemaking mechanism that the proposal would be reviewed both for “the benefits that accrue to customers as opposed to solely focusing on the utility[. . .] and the ability of Pepco to demonstrate and the parties to discover, how budgeted data was used to derive the forecasted amounts in the test year.”<sup>41</sup> At the outset of the proceeding, the Commission recognized that it had not yet established a framework for how it would consider and evaluate alternative forms of ratemaking.<sup>42</sup> Consequently, the PSC held a two-day technical conference and invited post-technical conference comments from Pepco, all of the parties, and other interested stakeholders to determine what such a framework would look like. These measures culminated in the issuance of Order No. 20273, the AFOR Order, in which the PSC adopted “overarching framework principles for a utility seeking AFOR treatment.” The PSC mandated that “utility’s AFOR application shall provide information as to how:

- (1) The AFOR: (A) protects consumers; (B) ensures the quality, availability, and reliability of regulated utility services; and (C) is in the interest of the public, including shareholders of the utility;
- (2) The AFOR advances the public safety, the economy of the District, the conservation of natural resources, and the preservation of environmental quality, including effects on global climate change and the District’s public climate commitments;
- (3) The AFOR’s ratemaking mechanisms advance or otherwise align with the District’s public policy goals;
- (4) The AFOR identifies baseline revenue and cost information, and clearly explains what process or mechanism the utility used to project revenues and expenses;
- (5) The AFOR provides benefits that are measurable, quantitative, and qualitative to customers, as opposed to solely focusing on the AFORs benefits to the utility;

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<sup>41</sup> *Formal Case No. 1139*, Order No. 18846, ¶ 594.

<sup>42</sup> *Formal Case No. 1156*, Order No. 20204, ¶ 17.

- (6) The AFOR impacts the operational incentives of the utility with respect to maintaining a high level of customer service, while fostering productivity and cost control; maintains the financial strength, credit ratings, and financial flexibility of the utility; and helps ensure a consistently high level of energy delivery system reliability, while promoting safe and reliable operations over time;
- (7) The revenue requirements will be allocated across customer classes over time, and how rate design issues within customer classes will be handled over time, in a just and reasonable manner;
- (8) The risk of over-earning a utility's authorized return will be mitigated during the duration of AFOR for the benefit of the customers, while also preserving the Commission's ability to conduct cost prudence reviews as needed;
- (9) The AFOR provides an appropriate level of transparency and reporting into the utility's operational and capital plans ensuring that the plans will be maintained during the duration of the AFOR; and
- (10) The AFOR avoids any unreasonable shifting of risk to utility customers.

The Commission made clear that “AFOR Principle (1) tracks the language of D.C. Code § 34-1504(d) (2001), and AFOR Principle (2) tracks the language of D.C. Code § 34-808.02 (2019 Supp.) and must be addressed” and that “the remaining principles should be considered when presenting a well-designed/properly constructed AFOR.”<sup>43</sup> The Commission also made clear that “The framework adopted in this Order will be used to evaluate Pepco’s proposed MRP/PIMs proposal in this proceeding.”

Because the AFOR framework was issued after Pepco had submitted its initial application, the PSC provided the Company with an opportunity to file additional testimony addressing how and whether the Original MRP met the AFOR terms. In so doing, the PSC set a procedural schedule that directed the Company to file this testimony before the OPC and the Intervenor Parties direct testimony deadline. Availing itself of the opportunity, the Company filed supplemental

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<sup>43</sup> Order No. 20273, ¶ 95, n. 199.

testimony on January 21, 2020 setting forth its position on how its Original MRP fit into the AFOR framework.

When Pepco filed its MRP Enhanced Proposal on June 1, 2020, the Company entirely altered its MRP design. Among other things, the Original MRP Proposal proposed to set rates based on forecasted costs and revenues, but the MRP Enhanced proposal sets rates based on escalating costs and maintaining flat revenues; and the MRP Enhanced Proposal incorporates a different ROE and a different reconciliations mechanism than the Original MRP. The justness and reasonableness of AFOR mechanisms depends on its design details, but Pepco provided no information as to how its MRP Enhanced Proposal meets any of the PSC's AFOR criteria.

Every AFOR proposal must stand on its own legs. As such, Pepco cannot rely on the January 21, 2020 testimony as an explanation for how its June 1, 2020 Enhanced MRP proposal meets the AFOR criteria. Moreover, there can be no argument that Pepco was not aware that it needed to address the AFOR criteria in its application. The AFOR order was issued in this proceeding before Pepco submitted its MRP Enhanced Proposal. There is no compelling reason that would justify Pepco's failure to follow the PSC's rules.

While the Commission does not have specific regulations governing a utility's failure to follow the agency's filing rules and policies, the PSC has broad plenary authority to enforce its rules and determine appropriate relief. Moreover, the D.C. Superior Court Rules of Civil Procedure provide strong guidance on how the PSC should deal with this situation.<sup>44</sup> Specifically, Superior Court Rule 41(b)(1)(A) states that:

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<sup>44</sup> The PSC oft-looks to the D.C. Superior Court Rules of Civil Procedure for guidance throughout this proceeding. For example, in Order No. 20368, the Commission looked to Superior Court Rule 12(f) when reviewing a motion to strike. *Formal Case No. 1156*, Order No. 20368 at ¶ 8. In *Formal Case No. 1051*, the Commission reviewed the D.C. Rules of Civil Procedure with respect to motions to dismiss noting that "While the Commission has its own rules of practice and procedure, these rules do not address the treatment of motions to dismiss in as much detail as the D.C. Rules of Civil Procedure. Thus, by analogy, the Commission uses the analysis provided under the D.C. Rules of Civil Procedure to address the issues involved in Verizon DC's Motion to Dismiss." *Formal Case No. 1051, In the Matter*

In General. If the plaintiff fails to prosecute or to comply with these rules or a court order: (i) a defendant may move to dismiss the action or any claim against it; or (ii) the court may, on its own initiative, enter an order dismissing the action or any claim.

Pepco's Enhanced MRP should be dismissed because the Company has failed to comply with the Commission's rules governing AFOR applications. Joint Movants recognize that Rule 41(b) is an extreme remedy, but such remedy is required here in the interest of justice. The obligation that Pepco has to demonstrate that each of its MRP proposals meets the AFOR framework, especially the first two Principles, is an essential element of its case. This demonstration is not waivable nor is it discretionary. By staying silent on the matter, Pepco not only failed to meet its burden of proof it openly flouted the Commission's minimum requirements for submitting an MRP proposal. It would not be fair to the parties, and would impose an undue burden, if Pepco were allowed to supplement the record yet again to cure a defect of its own making. The Company had the opportunity to submit the necessary evidence, it failed to do so, and accordingly, it should bear the consequences of that decision.

***B. Pepco has misled customers as to the nature of its MRP Enhanced Proposal.***

The foundation of utility regulation is balancing the ratepayer and utility's interests. As such, D.C. law makes clear that ever ratepayer has a right to be given notice and to understand how a utility application will impact its respective interest. Moreover, fundamental fairness requires that the utility deal honestly with its customers. Pepco has failed on both fronts.

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*of the Investigation of Verizon Washington DC, Inc.'s Weather Forecast Service*, Order No. 14157, ¶ 9, rel. Dec. 21, 2006.

1. Pepco has failed to meet the statutory requirements to provide notice to customers of the impacts of its proposed rate change.

The law is clear. Pepco must provide ratepayers with detailed notice of any proposed rate change. D.C. Code Section 34-909(a) provides specifically that:

Notice of every rate application or change in condition of service proposed and filed with the Public Service Commission shall be given by the utility to each residential or commercial rate payer affected by the proposed rate application or change. The notice shall be available for viewing at a utility's website, and either by electronic notice to those ratepayers who have registered for electronic billing with the utility or by written notice in the affected ratepayer's billing envelope. The notice shall be sent in not later than the next billing period following the filing; no filing may be approved by the Commission without adequate time for rate payer response. Each notice shall be sufficiently accurate and detailed for the rate payer to understand the filing, including the rate payer's specified affected interest.

The Code further states that: "the notice shall provide the specific rate or service change affecting the rate payer, including the proposed percentage and dollar increase for the rate and rider category of the customer."

After Pepco first filed its Initial Application, on June 21, 2019, the Commission issued a detailed Public Notice on Pepco's Original MRP and traditional test year filing, stating, in part that:<sup>45</sup>

The Public Service Commission of the District of Columbia ("Commission") hereby gives notice, pursuant to D.C. Code Sections 34-901 and 34-909, that on May 30, 2019, Potomac Electric Power Company ("Pepco") filed an Application requesting authority to increase existing distribution rates by \$162 million through the implementation of a Multiyear Rate Plan ("MRP") for the years 2020 through 2022. Pepco requests authority to earn an 7.81% rate of return, including a return on common equity of 10.30%. Pepco represents that its application would translate to an increase in distribution rates of approximately \$8.57 in 2020, \$3.69

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<sup>45</sup> *Formal Case No. 1156*, Public Notice, rel. June 21, 2019, available at: <https://edocket.dcpsc.org/apis/api/filing/download?attachId=85575&guidFileName=0c99584f-06dc-4a41-bf38-4e838134bf19.pdf>.

in 2021, and \$3.19 in 2022 for a typical residential customer who uses 692 kWh per month.

Should the Commission reject Pepco's MRP, Pepco's Application request authority to increase existing distribution rates by \$88.6 million using the test period ending June 30, 2019 that includes six months of actual data and six months of forecasted data, which would translate to an increase in distribution rates of approximately \$9.55 for a typical residential customer who uses 692 kWh per month.

The Commission further provided tables by rate class detailing both what the proposed distribution rate would be and what the average monthly effects of the proposed rates would be if Pepco's proposal was granted in full.

The PSC has held that Pepco's MRP Enhanced Proposal is an amendment to its original filing<sup>46</sup> or could be viewed as a supplemental proposal,<sup>47</sup> and more than one billing cycle has passed since the June 1, 2020 submission of the MRP Enhanced Proposal. However, no notice has yet been issued to ratepayers on the new proposal. There can be no argument that notice is required where, as in this case, the proposed distribution rates and the average monthly effects of the proposed rates are completely different under the MRP Enhanced Proposal as compared to under the Original MRP.

Moreover, the Commission's past precedent affirms that ratepayer notice is required for the MRP Enhanced Proposal. In Formal Case No. 1016, the Commission's April 25, 2003 Order No. 12715, Order and Report and Prehearing Conference, discussed the application of Public Notice directives in D.C. Code Section 34-909 to an amended rate case application. Therein the Commission stated that:

Finally, the Commission denied OPC's motion to direct WGL to refile its application and direct testimony. We denied OPC's motion

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<sup>46</sup> *Formal Case No. 1156*, Order No. 20368, ¶ 9.

<sup>47</sup> *Formal Case No. 1156*, Order No. 20375, ¶ 10, n. 28.

requiring WGL to start its rate application anew because WGL indicated at the prehearing conference that it would amend its application consistent with the Commission's order denying in part, and granting in part, WGL's reconsideration application in Formal Case No. 989. ***The submission date for WGL's amended testimony is set forth in the procedural schedule. However, we concluded that D.C. Code Section 34-909 requires that WGL issue a new notice of its application and directed WGL to provide the notice in its next customers' billing insert on or around May 3, 2003. We also stated that the Commission would publish a new public notice in the D.C. Register which provides the public at least 45 days to present its views regarding WGL's proposed rates as also required by D.C. Code Section 34-909.***<sup>48</sup>

Similarly, the Commission's September 25, 2005 Order No. 13764, in Formal Case No. 988, reaffirmed the importance of prior customer Public Notice to ratepayers of proposed utility rate changes and the Commission's legal obligation to ensure that those rights are protected:

Verizon's request would ... violate D.C. Code § 34-909(a), which requires Verizon to give ratepayers notice of changes in rates, terms and conditions of service and prohibits the Commission from approving changes without first giving ratepayers an opportunity to respond. Finally, it would make a mockery [of the Commission's process] ... and eliminate public comment ... and effectively render our review of such increases little more than a rubber stamp, all in the name of simplicity. Although simplicity can be a virtue, it cannot supplant the law or relieve the Commission of its statutory obligations.<sup>49</sup>

Pepco's failure to comply with the statutory Public Notice provisions of Sections 34-909 of the D.C. Code is unfair and prejudicial to Pepco's 312,000 District of Columbia customers who have been deprived the opportunity to understand how their rights will be affected by Pepco's proposal. Moreover, the lack of notice impedes the public's ability to participate in a fully informed manner in the PSC's community hearings. The lack of public notice for MRP Enhanced

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<sup>48</sup> Formal Case No. 1016, Order No. 12715 at 7, ¶13 (April 25, 2013)(emphasis added).

<sup>49</sup> Formal Case No. 988, Order No. 13764 at 9, ¶20, footnote 57 (September 27, 2005)(emphasis added).

Proposal has been raised earlier by certain of the Joint Movants,<sup>50</sup> yet, despite the clear statutory requirement, the Company has not remedied this deficiency.

2. Pepco has published false and misleading information about its MRP Enhanced Proposal.

Rather than complying with the law, Pepco chose to publish false and misleading information about its MRP Enhanced Proposal. On June 1, 2020 Pepco issued a press release under the headline that “*Pepco Proposes to Freeze DC Customer Energy Delivery Rates Until 2022 and Assist Customers with Pandemic Economic Recovery.*”<sup>51</sup> The first line of the press release declares that “In support of its customers, Pepco has made several enhancements to its multiyear plan, which is pending with the Public Service Commission of the District of Columbia, to 'freeze' energy delivery rates for all customers until January 2022.” By the Company’s own admission, the press release is false—the Company *is not freezing rates*, it is offsetting them,<sup>52</sup> primarily by money the Company already owes to customers or amounts that District ratepayers will still be required to pay to Pepco in the future.<sup>53</sup> Moreover, as discussed above, Mr. Blazunas’ schedules make clear that some rate classes will indeed see a rise in their delivery rates even under the MRP Enhanced Proposal.

Unaware that the Company has played it false, community members have relied on the Company’s misleading words. Immediately after the press release was issued, several community

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<sup>50</sup> See *Formal Case No. 1156*, The Office of the People’s Counsel and the Apartment & Office Building Association of Metropolitan Washington’s Joint Response in Support of the District of Columbia Government’s Motion for Relief in the Alternative at 3, filed June 26, 2020.

<sup>51</sup> Pepco Press Release

<sup>52</sup> Exhibit OPC (3B)-2 (Pepco Response to OPC Data Request No. 56-20)(stating that “The MRP Enhanced Proposal does not propose the deferral of rate increases until January 1, 2022, rather the Company proposes rate offsets.”)

<sup>53</sup> See, e.g. Exhibit OPC (3B) (Ramas) at 3:18 to 10:10.

members wrote to the Commission in support of Pepco's MRP, but, unfortunately, the majority of these comments relied on the nonexistent rate freeze.<sup>54</sup>

Pepco's press release not only misinforms customers, it prejudices the Joint Movants case to the Commission. The rates will impact the community and it is important that the Commission take community views into account when determining what is just and reasonable. Many of the community filings in the docket make it appear as if there is large widespread public support for Pepco's proposal; however, because community members have been misinformed, the proposal that many of these community members are supporting is fictitious and not the one that is before the Commission or the parties. Neither the Commission nor the parties have an easy way to parse those community members who support the actual details of the MRP Enhanced Proposal from those that support the illusion that Pepco is selling to the public.

Several of the Joint Movants have requested that Pepco withdraw the misleading press release, but the Company has refused to do so. Given the length of time the June 1, 2020 press

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<sup>54</sup> See, e.g. *Formal Case No. 1156*, Comments of Ms. Maria S. Gomez on behalf of Mary's Center (stating that "Creative ways to mitigate these hardships are needed now. . . Our participants could also benefit from the next 18 months of freezing electric distribution rates"), filed in the docket on June 8, 2020; Comments of Ms. Nicole Quiroga on behalf of the Greater Washington Hispanic Chamber of Commerce (stating that "The impacts of COVID-19 on the Latino community are both real and profound. . . That is why it is so critical that for costs such as electricity, businesses not only understand what they may have to pay, but also have opportunities to manage bills, defer payments and reduce energy use. Toward that end, the proposal filed by Pepco in proceeding FC 1156 on June 1, 2020 includes some elements that we think are critical to helping small business recover and support the broader Latino community. For example, the plan proposes to 'freeze' electric distribution rates for all customers for the next 18-months"), filed in the docket on June 8, 2020; Comments of Ms. Jousett Service (stating that "[W]e want to ensure that our local energy company is positioned to provide these serves at a rate that senior citizens can afford. . . In the modified version, the plan will freeze rates until 2022 and extend the rate credit."), filed in the docket on June 8, 2020; Mr. Gilbert G. Campbell III on behalf of Volt Energy (stating that "I'm writing to comment that I strongly believe that Pepco's proposed plan to 'freeze' energy delivery rates for all customers until January 2022, will positively benefit District of Columbia residents and businesses and should not be delayed. The COVID-19 pandemic has had severe negative impacts on the DC businesses community and DC residents."), filed in the docket on June 9, 2020; Comments of Ms. L. Jeannette Mobley on behalf of the JPM Group, LLC (stating that "after initially filing a multi-year plan with the Public Service Commission of the District of Columbia in May of 2019, Pepco is now modifying its proposal to add enhancements, which will further address the impacts of Covid-19 and this proposal deserves our attention. Basically, the company is proposing to freeze rates until 2022.")

release has been publicly available, and the number of community members that have relied on the information therein, the harm wrought by Pepco's false press is irreparable.

***C. Pepco's July 28, 2020 Errata Filing and Motion to File Supplemental Testimony Regarding the Company's July 28, 2020 Errata is Prejudicial to the Parties***

On July 24, 2020, one business day before Joint Movants were to file supplemental testimony on Pepco's MRP Enhanced proposal, Pepco buried in a supplemental data response to a staff follow-up data request of July 8, 2020, a statement that it had:

determined that the correction made [in Pepco's Rebuttal Testimony] to actual demand (kW) billing determinants for its traditional test period compliance filing affected the forecasted demand (kW) billing determinants utilized for both the Original MRP Proposal rate design (PEPCO (4F)-14 and the MRP Enhanced Proposal (Pepco (5F)-6) rate design.<sup>55</sup>

Pepco continued to try to explain that:

- The Company's forecasted demand (kW) billing determinants are derived using load factor calculations to compute kW billing demand determinants for the traditional test period;
- The Company's Original MRP and MRP Enhanced proposals in the docket at the time had "failed to reflect this change"; and
- Pepco witness Blazunas was incorrect in his Rebuttal testimony that the issue addressed by updating the actual demand (kW) billing determinants in the traditional test year compliance filing did not affect the forecasted demand (kW) billing determinants.

Although Pepco identified these claimed errors in a data request response that was filed at 5:28 PM, the close of business, on Friday, July 24, 2020, the Company did not inform the PSC and

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<sup>55</sup> Pepco Amended Response to Staff Data Request No. 24-24.

all parties transparently of its errors and did not move to extend the deadline for the Joint Parties' July 27, 2020 supplemental testimony. Rather, on July 28, 2020, after the parties had filed their supplemental testimony in good faith and based upon the data that had been supplied by the Company in prior testimonies and data responses, Pepco filed two pages of redlined errata to witness Blazunas' rebuttal and surrebuttal testimony and over 250 pages of non-redlined revised schedules.<sup>56</sup> This filing was accompanied by a letter from Pepco counsel asserting that the identified errors would have no impact on the Company's Original and Enhanced MRP proposals.

1. Pepco has not been upfront about the errors, when the errors were discovered, or whether the purported correction is sufficient to fully remedy the problems identified.

Although Pepco claims in its Response to Staff Data Request No. 24-24 that the errors it made in calculating billing determinants was not discovered until the preparation of that response, other filings that Pepco has made in this case to date belie that claim:

- Pepco's April 23, 2020 response to AOBA Data Request No. 2-10a and Pepco's subsequent Response to Staff Data Request No. 19-2 make clear that Pepco's purported miscalculations trace back to Formal Case Nos. 1139 and 1150.<sup>57</sup> As such, Pepco was aware, or should have been aware, of problems associated with its estimation of billing demands for commercial rate classes prior to commencing the case, but did not provide revised billing demand estimates for its traditional test year until the filing of its rebuttal testimony.;

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<sup>56</sup> *Formal Case No. 1156*, Pepco July 28, 2020 Letter and Errata, and July 28, 2020 Revised Exhibits Pepco (4F)-6, Pepco (5F)-3, Pepco (5F)-5, Pepco (5F)-6 Pepco (5F)-7, Pepco (5F)-8, Pepco (5F)-18, Pepco (5F)-19.

<sup>57</sup> *Formal Case No. 1156*, Pepco Original Response to Staff Data Request No. 24-24, July 22, 2020. Pepco Response to Staff Data Request Nos. 19-2 and 19-6, July 8, 2020. Pepco's April 23, 2020 Response to AOBA Data Request No. 2-10a.

- Though Pepco allegedly revised the billing determinants with respect to the traditional test year in its rebuttal testimony, Pepco, nevertheless, now claims it did not realize those errors impacted the Original or Enhanced MRP rates until its preparation of its July 24, 2020 Amended Response to the Commission. However, that claim is on its face inconsistent with the Company’s introduction in its Rebuttal Testimony of its MRP RMA 25 which adjusted its overall revenue request for each MRP year to reflect what it called “Billing Determinant Synchronization;”<sup>58</sup> and
- Pepco’s claim that the Company was neither aware at the time it submitted its rebuttal testimony nor by June 1, 2020 when it presented its MRP Enhanced Proposal, has a rather hollow ring. AOBA and the PSC Staff brought concerns regarding the Company’s derivation of its demand billing determinants to the Company’s attention several times in discovery well in advance of Pepco’s submission of its July 24, 2020 “Amended Response” to Staff Data Request 24-24.

Pepco is playing a shell game. When Staff or parties express concern about an issue, it claims there is nothing there. The Company then changes its position to purportedly address these issues, but only at points in the proceeding where the procedural schedule offers Joint Parties no right to respond.<sup>59</sup>

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<sup>58</sup> See Exhibit Pepco (4F) (Blazunas) at 26:2 to 27:5. Given that adjustments to Pepco billing determinants in Rebuttal Testimony impacted its revenue requirements to the tune of roughly \$7.5 million per year, it is hard to believe that a similar adjustment to billing determinants presented in Pepco’s Amended Response to Staff Data Request 24-24 has no impact on its MRP revenues at present rates.

<sup>59</sup> Pepco attempted to play a similar shell game with respect to the parties’ positions on its Original MRP. Pepco should have addressed the concerns that OPC and Intervenor raised in their Direct Testimony in the Company’s Rebuttal Testimony. Instead, the Company chose to double down on its initial MRP proposal and offered no meaningful changes to ameliorate the parties’ concerns. When it filed its supplemental testimony, Pepco tried to sandbag the parties, claiming that its MRP Enhanced Proposal was merely a reflection of the parties’ recommendations. See, e.g. Exhibit Pepco (McGowan) at 13:1 to 15:16 (noting that “the Company has crafted the MRP Enhanced Proposal, which incorporates a number of recommendations other parties have made regarding the Original MRP Proposal and on which there is the potential for alignment..”) Notably, the Company did not want to extend the proceeding in order to offer the parties any opportunity to respond to its claimed acquiescence. *Id.* at 22:15

2. Pepco has failed to acknowledge the full impacts of its billing determinants errors on Joint Movants and ratepayers.

Both Pepco's July 28, 2020 letter and July 31, 2020 supplemental filings stress that the billing determinants errors have no impact on its revenue requirement or the overall class revenue requirements. Overall revenue requirements are only one part of the ratemaking calculus that determines the Company's required revenue increase for each year. The rate increase is a function of the difference between the revenues Pepco can expect to collect under current rates for each projected rate year and the overall revenues it claims it will need in each rate year to cover its projected costs. To customers the revenue requirement is secondary to the charges that each individual customer will be billed on a monthly basis. It is without question that those charges have changed as a result of Pepco's late hour revisions to its rate proposals that are presented in its July 31, 2020 revised exhibits. Furthermore, Pepco has been even less transparent about other changes resulting from its revised billing determinants. In its July 31, 2020 motion requesting leave to submit supplemental testimony Pepco asserts, "the supplemental testimony also addresses the limited impacts of this correction which only affects the design of rates for commercial customers with demand rate components."<sup>60</sup> But the Parties have not had an opportunity to fully vet Pepco's errata, and Pepco's newest supplemental testimony omits key details

For example, the GT-LV schedule for Rate Year 1 that Witness Blazunas presented as part of his surrebuttal testimony is as follows (Pepco (5F)-6 at 51-52):

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to 23:11.

Additionally, when the parties requested to suspend the schedule in order to have time to address the impact of the COVID-19 pandemic on Pepco's proposal; Pepco objected. Instead of working with the parties to develop a workable solution, Pepco unilaterally submitted its MRP Enhanced Proposal again at point in the schedule where OPC and the Intervenor Parties did not have any opportunity to meaningfully respond.

<sup>60</sup> Pepco's July 31, 2020, Motion to File Supplemental Testimony Regarding the Company's July 28, 2020, Errata, page 2.

Pepco - District of Columbia  
Development of Distribution Rates  
Billing Data for 12 Months Forecasted Ending December 2020

Schedule Time Metered General Service Low Voltage - General Service ("GT-LV") - Rate Year 1  
MRP Enhanced Proposal Rate Design

	(A)	(B)	(C)	(D)	(E)
	Rate Year 1: Revenue at Current Rates				
	RY1 Forecasted Billing Determinants	Current Rate	5 Year EDIT Credit	10 Year EDIT Credit	Revenue at Current Rates
Monthly Customer Charge	3,295	\$ 456.76	\$ -	\$ -	\$ 1,505,024
Kilowatt-hour charge					
Summer	781,415,497	\$ 0.00958	\$ (0.00015)	\$ (0.00051)	\$ 6,970,226
Winter	977,856,938	\$ 0.00958	\$ (0.00015)	\$ (0.00051)	\$ 8,722,484
Total kWh Charge	1,759,272,435				
Kilowatt charge					
Summer	1,958,420	\$ 11.88	\$ (0.19)	\$ (0.64)	\$ 21,640,545
Winter	2,434,006	\$ 11.88	\$ (0.19)	\$ (0.64)	\$ 26,895,763
Total kW Charge	4,392,426				
Bill Stabilization Adjustment					\$ 10,290,296
					\$ 76,024,339

Pepco - District of Columbia  
Development of Distribution Rates  
Billing Data for 12 Months Forecasted Ending December 2020

Schedule Time Metered General Service Low Voltage - General Service ("GT-LV") - Rate Year 1  
MRP Enhanced Proposal Rate Design

	(F)	(G)	(H)	(I)	(J)	(K)	(L)
	Rate Year 1: Revenue at Proposed Rates					Proposed Change in Revenue	
	RY1 Forecasted Billing Determinants	Proposed Rate	5 Year EDIT Credit	10 Year EDIT Credit	Revenue at Proposed Rates	Change in Base Revenue (\$)	Change in Base Revenue (%)
Monthly Customer Charge	3,295	\$ 456.76	\$ -	\$ -	\$ 1,505,024	\$ -	0%
Kilowatt-hour charge							
Summer	781,415,497	\$ 0.01543	\$ (0.00015)	\$ (0.00051)	\$ 11,540,864	\$ 4,570,638	66%
Winter	977,856,938	\$ 0.01543	\$ (0.00015)	\$ (0.00051)	\$ 14,442,142	\$ 5,719,658	66%
Total kWh Charge	1,759,272,435						
Kilowatt charge							
Summer	1,958,420	\$ 11.88	\$ (0.19)	\$ (0.64)	\$ 21,640,545	\$ -	0%
Winter	2,434,006	\$ 11.88	\$ (0.19)	\$ (0.64)	\$ 26,895,763	\$ -	0%
Total kW Charge	4,392,426						
Bill Stabilization Adjustment					\$ -	\$ (10,290,296)	-100%
					\$ 76,024,339	\$ (0)	

In July 31, 2020 supplemental testimony, Mr. Blazunas presented the following revised schedule for the same class (Exhibit (6F)-27 at 51-52):

**Pepco - District of Columbia**  
**Development of Distribution Rates**  
**Billing Data for 12 Months Forecasted Ending December 2020**

**Schedule Time Metered General Service Low Voltage - General Service ("GT-LV") - Rate Year 1**  
**MRP Enhanced Proposal Rate Design - Revised**

	(A)	(B)	(C)	(D)	(E)
	<b>Rate Year 1: Revenue at Current Rates</b>				
	<b>RY1 Forecasted Billing Determinants</b>	<b>Current Rate</b>	<b>5 Year EDIT Credit</b>	<b>10 Year EDIT Credit</b>	<b>Revenue at Current Rates</b>
Monthly Customer Charge	3,295	\$ 456.76	\$ -	\$ -	\$ 1,505,024
Kilowatt-hour charge					
Summer	781,415,497	\$ 0.00958	\$ (0.00015)	\$ (0.00051)	\$ 6,970,226
Winter	977,856,938	\$ 0.00958	\$ (0.00015)	\$ (0.00051)	\$ 8,722,484
Total kWh Charge	1,759,272,435				
Kilowatt charge					
Summer	1,833,778	\$ 11.88	\$ (0.19)	\$ (0.64)	\$ 20,263,245
Winter	2,411,554	\$ 11.88	\$ (0.19)	\$ (0.64)	\$ 26,647,671
Total kW Charge	4,245,332				
Bill Stabilization Adjustment					\$ 11,915,688
					\$ 76,024,339

**Pepco - District of Columbia**  
**Development of Distribution Rates**  
**Billing Data for 12 Months Forecasted Ending December 2020**

**Schedule Time Metered General Service Low Voltage - General Service ("GT-LV") - Rate Year 1**  
**MRP Enhanced Proposal Rate Design - Revised**

	(F)	(G)	(H)	(I)	(J)	(K)	(L)
	<b>Rate Year 1: Revenue at Proposed Rates</b>					<b>Proposed Change in Revenue</b>	
	<b>RY1 Forecasted Billing Determinants</b>	<b>Proposed Rate</b>	<b>5 Year EDIT Credit</b>	<b>10 Year EDIT Credit</b>	<b>Revenue at Proposed Rates</b>	<b>Change in Base Revenue (\$)</b>	<b>Change in Base Revenue (%)</b>
Monthly Customer Charge	3,295	\$ 456.76	\$ -	\$ -	\$ 1,505,024	\$ -	0%
Kilowatt-hour charge							
Summer	781,415,497	\$ 0.01635	\$ (0.00015)	\$ (0.00051)	\$ 12,262,814	\$ 5,292,588	76%
Winter	977,856,938	\$ 0.01635	\$ (0.00015)	\$ (0.00051)	\$ 15,345,585	\$ 6,623,101	76%
Total kWh Charge	1,759,272,435						
Kilowatt charge							
Summer	1,833,778	\$ 11.88	\$ (0.19)	\$ (0.64)	\$ 20,263,245	\$ -	0%
Winter	2,411,554	\$ 11.88	\$ (0.19)	\$ (0.64)	\$ 26,647,671	\$ -	0%
Total kW Charge	4,245,332						
Bill Stabilization Adjustment					\$ -	\$ (11,915,688)	-100%
					\$ 76,024,339	\$ (0)	

Pepco identified the revised billing determinants with boxes, and Pepco is correct that on these schedules the proposed *overall* revenue does not change. However, Pepco fails to explain that the Company made additional changes to the schedules besides the billing determinants amounts. Specifically: (1) the proposed volumetric rates under Column G were raised from \$.01543/kWh to \$0.01635/kWh; (2) the amount labeled as "Bill Stabilization Adjustment" (on the

last line on the schedule) went up from \$10,290,296 to \$11,915,688; and (3) the change in base revenue from kWh charges (Column L) grew from a 66% increase to a 76% increase.

As the Company has admitted in discovery, the function of the line labeled Bill Stabilization Adjustment has changed.<sup>61</sup> Pepco is now using the BSA adjustment line to simply balance the revenue it would generate at present rates with its forecasted billing determinants with its “target revenue” for each rate class. The Company provides no explanation to tie this line with the actual BSA amounts that have been or will be billed to customers in a class for any annual period. The entry on the Bill Stabilization Adjustment line for each rate class of Witness Blazunas MRP Enhanced rate design exhibits (both as presented on June 1, 2020, and as revised in the Company’s July 31, 2020) filing represents a fictitious adjustment that customers will not see on their bills and has no influence on the Company’s accounting for BSA deferred balances.

Moreover, under both of the examples provided above Rate GT-LV customers will see large immediate rate increases for comparable levels of usage when compared to the Company’s current rates. And although the Company’s adjustment to GT-LV rates is premised on changes in kW demand estimates, Pepco has chosen (**without explanation**) to recover all of its calculated revenue adjustment through its kWh charges. That effectively shifts costs responsibilities from low load factor users to higher load factor users within the GT-LV class. Similar observations can be made with respect to Pepco’s other demand-metered rate classes.

The burden should not be shifted to the parties to hunt through Pepco’s eleventh-hour filing and determine what changes have been made and the impact of those changes on our clients and District ratepayers. Nor is it the parties’ burden to prove Pepco’s case. The Joint Movants aver

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<sup>61</sup> Pepco’s Response to AOBA Data Request No. 6-2.

that additional time and resources will not cure the deficiencies that have plagued this filing since the beginning.

Pepco wants the PSC and the parties to trust that the Company's numbers have been fixed, but the Company has given no reason to trust their information. Rather, the Company's miscalculations and omissions have compromised other parties' participation and substantive due process rights.

3. The billing requirements presented are not the final numbers

Even if the parties were to take Pepco at its word that the billing determinants have been corrected, that is not the end of the story. Pepco plans to file revisions to billing determinants as part of the compliance filing it will file after the Commission issues an Order on the rates and make annual revisions to the billing determinants thereafter.<sup>62</sup> These revisions are not limited to the billing determinants for demand charges either. Pepco's own presentation, as demonstrated through the Company's request to be able to change its forecasted billing determinants on an annual basis, demonstrates that even Pepco does not have confidence in its ability to forecast billing determinants with sufficient accuracy for ratemaking determinations even as little as 1-3 years into the future.

Moreover, this rate case is not occurring in a vacuum. It is undisputed that the COVID-19 pandemic has influenced the load size and profile in the District of Columbia. Though some load has shifted between commercial and residential classes, there has been an overall decrease in usage. Moreover, the commercial sector has been hit hard by the economic impacts of the pandemic which could potentially impact the number and rate class of Pepco's commercial

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<sup>62</sup> See, generally Exhibit Pepco (5F) (Blazunas) at 5:1-12 and 6, n.4; see also Pepco's Updated Response to Staff Data Request No. 2-23. See generally, Exhibit Pepco (2F) at Section H Multiyear Billing Determinant Updates, and Exhibit AOB (4A) (B. Oliver) at 7- 8.

customers over the next few years. Any changes to load profile and customer counts would impact the reasonableness of the billing determinants. But, to date, Pepco has not accounted for any of these potential changes.

4. The errors that Pepco identified impact more than just the demand charges.

Pepco's motion to submit supplemental testimony, and the proposed supplemental testimony, minimize the impact of the Company's errors to solely the calculation of the demand charges. That is incorrect, as the harm extends well beyond the demand charge data.

First and foremost, as counsel for DC Water explained at the July 31, 2020 status conference, it chose to participate only minimally in this case on the basis of Pepco's initially proffered schedules. DC Water counsel further explained that had the agency known the extent of the rate increase per class at the outset of the proceeding, it may have chosen a different level of participation. However, no party could evaluate Pepco's case fully in the six week timeframe before the hearing, let alone within the abbreviated time frame offered by Pepco in its motion to submit supplemental testimony.<sup>63</sup>

Parties have already invested millions of dollars into reviewing the case, and collectively, have issued more than 85 sets of data requests on the Company. Pepco's data errors question the veracity of all of the information the Company has provided to date. While the Company provided supplemental responses to a few of the parties' data requests on August 7, 2020,<sup>64</sup> it is not clear—and highly unlikely—that only six questions required updating.

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<sup>63</sup> *Formal Case No. 1156*, Motion of Potomac Electric Power Company to File Supplemental Testimony Regarding the Company's July 28, 2020 Errata at 2 (proposing that parties have until August 28, 2020 to conduct such discovery and submit any additional testimony in response to the Company's supplemental testimony)("Pepco Supplemental Motion").

<sup>64</sup> Pepco Updated Response to Staff Data Request No. 2-23; Pepco Updated Response to Staff Data Request No. 19-3; Pepco Updated Response to AOBA Data Request No. 8-5; Pepco Updated Response to AOBA Data Request Nos. 2-10 and 2-11; Pepco Updated Response to OPC Data Request No. 54-7.

Additionally, in the July 31, 2020 proposed supplemental testimony of Witness Wolverton, the Company appears to claim that the billing determinants errors will have no impact on either the Original MRP Proposal's annual reconciliation mechanism or the MRP Enhanced Proposal's annual reconciliation mechanism. But Pepco again asks the Commission and parties to take the Company at its word. The parties submit that Pepco's claimed level of revenue collection is based on schedules that contain a fictitious "Bill Stabilization Adjustment" amount (see schedules provided above as an example). The BSA was designed to ensure that the Company was not disincentivized to support energy efficiency mechanisms, it was not intended to protect the Company from its own forecasting mistakes at the expense of ratepayers.<sup>65</sup> Moreover, the Company is subject to a cap with its BSA calculations.<sup>66</sup> As such, there is no guarantee that Pepco will collect all of the revenue shortfall for any one class through the BSA within a fixed time period. Thus, it is premature for Pepco to blithely claim that forecasted billing determinants errors would have no impact during the MRP reconciliation process.

Additionally, the Joint Movants assert that the Company's bill impact analyses is highly deceptive. The current and proposed rates shown by class and by charge within each class in Attachment C to the Company's Amended Response to Staff Data Requests 24-24 (which is a REVISED version of Pepco (F5)-5) clearly shows that kWh charges for nearly every rate class are changing from present rates to the Revised Proposed Rate Year 1 rates and from the Company's

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<sup>65</sup> Nor was it intended to make the Company whole due to the operation of extrinsic economic forces such as the impacts of the COVID-19 pandemic. See *Market St. R. Co. v. Railroad Comm'n of California*, 324 U.S. 548, 567 (1945) ("The due process clause has been applied to prevent governmental destruction of existing economic values. It has not and cannot be applied to insure values or to restore values that have been lost by the operation of economic forces."), but see, Exhibit OPC (4A)-7 (Pepco Response to OPC Data Request No. 59-42 (stating that "The monthly calculation of the Company's BSA mechanism does not distinguish between increases or decreases in billed distribution revenue due to increases or decreases in usage that result from energy efficiency/modernization measures or exogenous circumstances such as COVID-19.")).

<sup>66</sup> Pepco Rider BSA, Third Revised Page No. R-49.

proposed rates to Pepco's proposed Rate Year 2 rates. Yet, Pepco's Bill Impact analyses show no increases in either Rate Year 1 or Rate Year 2. This is nothing more than sleight of hand. The detail of the Company's Rate Year 1 Bill Impact Analysis simply compares **current rates to current rates**, even though Pepco's REVISED rate design exhibits show the development of proposed Rate Year 1 charges that are different than the Company's current charges for each rate class.

The Rate Year 2 Bill Impacts are computed by comparing the Company's **proposed Rate Year 1 charges** (which are increased from current charges for most classes) with its **proposed Rate Year 1 charges** as if the Company has not computed and does not propose **Rate Year 2** charges that are different from both current charges and its proposed Rate Year 1 charges. This portrayal in the Company's bill impact analyses is a clear example of the Company's efforts to deceive the parties, the Commission and District ratepayers.

***D. The Commission should require Pepco to withdraw its entire application.***

At the July 31, 2020 status conference, the PSC Staff inquired whether parties wanted additional procedures in order to address Pepco's errata filing. The short answer is that no additional procedures are sufficient to cure the harm. While no party in this proceeding wants to start over after fourteen months of litigation, this case is so devoid of merit that it has become frivolous. It would be a gross miscarriage of justice to continue litigating this case. Every one of Pepco's major filings contains errors; and there are too many versions of testimony and Pepco's MRP proposals to understand what is actually before the Commission for consideration. Pepco has manipulated the data to such an extent that parties cannot easily verify whether the information is correct. In light of these deficiencies and complications, it would be an undue burden on the

parties, a violation of the Joint Movants substantive due process rights, and against the public interest to continue this case further.

While wasting public resources is unreasonable under any situation, it is even more inexcusable to do so now when residents, businesses, and the government are all suffering due to the economic impacts that the COVID-19 pandemic has had on the District of Columbia's economy. The District of Columbia's ratepayers already pay for the costs of the litigation, through Pepco's rates, taxes, member fees, and should not bear the burden of continuing to litigate a frivolous case with no tangible benefits to anyone but Pepco and its shareholders.

It is unreasonable to give Pepco additional opportunities to cure its deficient application. The evidence that Pepco submitted to meet its burden to prove its case was "within its own discretion,"<sup>67</sup> and as the owner of the data that goes into determining rates, only Pepco has the ability to provide sound information. However, Pepco obfuscated that information, and requiring the parties to continue to litigate against a moving and unsettled target would be highly prejudicial to those parties. Moreover, even if the errata and motion to supplement the record were to be granted, the target will not be static. In addition to the planned revisions to billing determinants (as discussed above), Pepco has still not accounted for changes that may be needed due to the COVID-19 pandemic. As part of its MRP Enhanced proposal, Pepco plans to provide the budgets

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<sup>67</sup> *Formal Case No. 1087, In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service* ("Formal Case No. 1087"), Order No. 16570, ¶ 28, rel. Oct. 3, 2011. In Formal Case No. 1087, the Commission was considering, among other things, Pepco's Reliability Investment Recovery (RIM) proposal and a prospective rule changes to allow utilities to use fully forecasted costs. *Id.* ¶ 3. Though the Commission later issued an order rejecting the RIM proposal, in this initial order, the Commission stated that ("As the Company recognizes, Pepco, as the proponent of an order approving its proposed RIM has the burden to prove that approval of the RIM 'in principle' is warranted. In this regard, the Commission does not direct how a party puts on its case in meeting its evidentiary burden." The Commission further rejected an OPC motion to dismiss Pepco's rate application in its entirety as the case had just started and Pepco there had not yet been public hearings on the matter. This case is in a completely different posture as the parties are requesting the Commission direct Pepco to withdraw its application as we have been litigating Pepco's application for over a year on ever changing and yet to be proven reliable information.

that it will use for reconciliation purposes after the rates in this case have been implemented,<sup>68</sup> and though Pepco claims it reduced its capital budget by \$60 million dollars, it has not identified which “projects will be eliminated or deferred until future periods.”<sup>69</sup> Rather, it plans to do so “in the future.”<sup>70</sup> The parties should not be asked to continue expending their (and ratepayers’) limited resources on addressing a rate case where the inputs are not yet known and that Pepco plans to unilaterally determine in the future.

Though OPC and several of the parties recommended in testimony that the Commission reject both Pepco’s Original and Enhanced MRP proposals, even that option is no longer viable. Parties have been given no reason to believe that the traditional test year filing does not require additional corrections. Moreover, it is the Company’s own stance that the historic test year portion of the filing was not part of its “proposal.” If the proponent of the filing does not believe that the traditional test year portion of the application is a proposal, then it would not be appropriate at this time for the Commission to continue solely on that portion of the case.<sup>71</sup>

A directive to withdraw the case is in the best interest of all parties. Rather than providing piecemeal corrections to its application, Pepco should take a step back and develop a new rate case proposal that is based on accurate, reasonable, and verifiable data. Moreover, withdrawal provides an opportunity to develop a better potentially more viable MRP design than the two proposals that are in the proceeding and that every party has recommended be rejected. Pepco claims that under its Enhanced MRP no rate class will be subject to a rate increase until the end of 2022 and that it will incur negative cashflow in order to offset rates. While Pepco’s claim is incorrect (as explained

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<sup>68</sup> See, e.g. Exhibit Pepco (6C) (Wolverton) at 17:13 to 18:2.

<sup>69</sup> Exhibit Pepco (5B)(McGowan) at 24:15-17.

<sup>70</sup> Exhibit Pepco (5B) (McGowan) at 24:17-19.

<sup>71</sup> The parties do not agree with Pepco on this issue. If despite the opposition, the Commission decides to continue moving this case forward, the statements made herein should not be construed to concede this contested issue.

above), taking the Company at its word means that a withdrawal of the current rate application would not impact the Company's revenues and would prevent the Company from incurring a negative cashflow. Moreover, by withdrawing its application, Pepco can better determine the impacts of the COVID-19 pandemic on its operations and the District's load profile—two issues which the Company has claimed it plans to address later this year and in 2021.

### **III. ADDITIONAL RELIEF REQUESTED**

In directing Pepco to withdraw its application, the parties further request the PSC provide the following relief:

First, the Commission should direct Pepco to bear all costs of this litigation—including its own, and OPC's and the PSC's expenses—not ratepayers. While the D.C. Code allows for "[a]ny deposits made through th[e] special franchise tax to each agency fund by any public utility" to fund agency "expenses arising from any investigation, valuation, revaluation, or proceeding of any nature by the Commission of or concerning any public utility operating in the District of Columbia" to be charged for in the utility's rates,<sup>72</sup> it cannot be the case that the Council meant for ratepayers to bear the burden of paying for Pepco's mistakes and attempts to obfuscate in its filings.<sup>73</sup> At minimum, the Commission should require Pepco to bear its own costs which are not addressed in the statute.

Second, the Commission should expeditiously convene a task force consisting of leaders from the D.C. Council, various DC agencies (including DC OPC, Department of Energy &

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<sup>72</sup> D.C. Code § 34-912.

<sup>73</sup> See, e.g. Formal Case No. 715, *In the Matter of the Application of Potomac Electric Power Company for an Increase in its Retail Rates for the Sale of Electric Energy*, Order No. 7156 at 15-16, rel. June 27, 1980 (in rejecting a coalition's request to charge Pepco's stockholders the cost of rate proceedings, the Commission noted that "We are unaware of any application for a rate increase filed in recent memory that was found to be so devoid of merit as to be frivolous. . . . In the event that a pattern of baseless and unreasonable applications were to develop, this Commission would seriously consider the adoption of a rule along the lines of the Coalition's proposal. But we have not seen such a pattern as yet.") This case meets that pattern.

Environment, Department of Human Services), the utilities, and energy burden relief-oriented community members (e.g. The Greater Washington Urban League) to review what programs are needed to assist DC consumers and ratepayers with addressing the economic impacts of the COVID-19 pandemic on their ability to pay their utility bills and maintain regular service. The programs that Pepco offered as part of its Enhanced MRP, were not developed in conjunction with any other party, did not account for the scope or duration of the pandemic, and were based on ratepayers funding the costs. It would be much more beneficial and efficient if COVID programs were developed collaboratively through an expert task force that has knowledge both of the programs that already exist and additional needs of the DC Community.

Third, the parties have expended copious resources in reviewing and addressing Pepco's multiple MRP proposals. That knowledge should not be wasted. To the extent Pepco determines in the future that it would like to submit a new AFOR proposal, it should be directed to meet with the parties and ensure that the concerns the parties have raised during the course of this proceeding are resolved in the next application. Otherwise, the parties will be forced to relitigate the same faulty proposals, and again waste ratepayer resources.

#### **IV. ALTERNATIVE RELIEF REQUESTED**

At the July 31, 2020 technical conference, the PSC's General Counsel asked the parties to address additional process that would be needed if the Commission did not grant the Joint Movants' requested relief. The Joint Parties submit that would be the wrong decision. However, if despite the widespread opposition to continuing this case and the negative impact of doing so on District ratepayers, the Commission determines that it will proceed with the case, the parties request that the Commission suspend the schedule and provide parties with a minimum of three months to review and issue discovery on the errata and determine what further processes are needed and how much time those processes will take. During that time, the Commission should

also hold a technical conference(s) with interested parties, Commission Staff, and the Company to review Pepco's errata filing and the impact of the filing on both the case and already-issued discovery. The parties further request that the Commission hold a status conference at the end of the three months to determine how to proceed. It is difficult, at this time, for the Joint Movants to determine how much time will be needed to draft testimony as the full impact of the error, and the changes that Pepco has made, are not yet known.

## **V. CONCLUSION**

WHEREFORE, for the foregoing reasons, the Joint Movants ask that the Commission: (1) reject Pepco's July 31, 2020 additional supplemental testimony, (2) dismiss Pepco's Enhanced MRP Proposal, and (3) direct Pepco to withdraw its Rate Case Application. Joint Movants further request that the Commission provide any and all additional relief deemed necessary as outlined above.

Respectfully submitted,

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**August 11, 2020**

## Attachment A

**FOR IMMEDIATE RELEASE****Contact**

Christina Harper  
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# Pepco Proposes to Freeze DC Customer Energy Delivery Rates Until 2022 and Assist Customers with Pandemic Economic Recovery

**WASHINGTON, D.C.** (June 1, 2020) – In support of its customers, Pepco has made several enhancements to its multi-year plan, which is pending with the Public Service Commission of the District of Columbia, to 'freeze' energy delivery rates for all customers until January 2022, including extending the Residential Customer Base Rate Credit, and offer new and expanded customer support and assistance programs for residential and business customers. With the COVID-19 pandemic disrupting many District residents' lives and livelihoods, Pepco's plan, originally filed with the Commission in May of 2019, will continue to provide for a smarter, stronger and cleaner energy future, while ensuring greater assistance and predictability for customers, accountability for the company, and assistance for those in need.

Pepco is proposing to extend several existing assistance and billing programs and will include several new proposed programs to help the company's residential, small business and nonprofit customers recover from the longer-term impacts of the pandemic. These changes also address questions by the Public Service Commission of the District of Columbia, Councilmember McDuffie, and other stakeholders to identify opportunities, that this plan allows, to expand support for our customers during this difficult time.

"We know these are extremely challenging times for District of Columbia residents. We want to help. Therefore, we are proposing to enhance our multi-year plan to help our customers, keeping energy rates affordable and supporting our local economy and workforce," said Donna Cooper, Pepco region president. "Each day we are at work modernizing the local energy grid in a safe and reliable manner for our customers and to support the District's clean energy, resiliency, and climate change goals. Pepco is here to help our customers through the current challenges and those ahead as the District begins responsible re-opening strategies for its residents and businesses and looks toward recovery. This updated plan will assist our customers and communities."

In addition to offsetting any increases to energy delivery rates until January 2022, Pepco proposes the following series of programs and funds to help customers during this unprecedented time:

- Extend the current company-funded Residential Customer Base Rate Credit, forecasted to expire in March 2021, for an additional nine-months through December 2021.
- Extend existing and create new payment plans to provide up-to 24 months for residential and small business customers to pay down any balances accrued during the pandemic.
- Propose an increase to the current cap on the Residential Aid Discount program to reflect that more District residents may now qualify for the program.
- Extend the company's Budget Billing program to small business customers.
- Apply any customer deposits on-hand to pay down accrued balances.
- Expand income eligibility limits for the existing Arrearage Management Program.
- Make a \$100,000 contribution using shareholder funds to create a Good Neighbor Energy Fund for the Pepco region. Pepco will match customer contributions to create additional energy assistance that will be distributed to District residents through an existing partnership.

These programs are in addition to the recent extension of Pepco's existing moratorium on disconnections and the waiving of late fees until at least July 1, 2020 for all customers.

The company also proposes temporary discounted rates for houses of worship and human services organizations, bill deferral programs for small businesses, including restaurants and small retail, and programs that accelerate energy efficiency programs for small businesses. For example, the company will also offer a zero percent interest loan program for small businesses on energy efficiency products, which can help them both reduce bills and lower their carbon footprint.

To achieve the rate freeze until 2022, the final year of the multi-year plan, and in recognition of potentially changing circumstances, the company will extend the company-funded Residential Customer Base Rate Credit and will forgo \$25 million in proposed rate increases. Pepco also will defer capital expenditures by \$60 million, defer recovery of previously approved items, reduce its requested return on equity, and accelerate the benefits associated with the Tax Cuts and Jobs Act of 2017.

During the final year of the multi-year plan, distribution rates will be adjusted upward for all customers so that over the period covered by the plan (2019 – 2022), rates will increase 1.5 percent on an average annual basis over the period. This will be the first energy delivery rate increase residential customers will have experienced since 2014. The bill for an average residential customer today is \$82.24, and in 2022 is expected to be \$89.34 under this modified plan, both of which are lower than the average bill paid by residential customers in 2010.

Because of the flexibility offered by a multi-year plan, Pepco is able to offer these innovative adjustments as a response to the impacts of the COVID-19 pandemic. The multi-year plan will not only provide certainty for customers during this period, but also allow Pepco to continue to make needed investments in the local energy grid to make it stronger, smarter, cleaner and better able to serve customers during this time and as the District recovers. The multi-year plan also allows Pepco to continue engaging the local business community through its CBE and diverse supplier programs, which comprised over 37 percent of Pepco's expenditures in 2019, as it performs the work necessary to modernize the grid, making it more resilient and secure for years to come.

Since the start of the pandemic, the company's shareholders have committed more than \$825,000 in support to the District of Columbia, Montgomery County and Prince George's County communities through its partnership with organizations like the United Way of the National Capital Area and the Restaurant Association of Metropolitan Washington, to help with needs such as food insecurity, rent and other financial assistance. The company also took steps to suspend disconnections and reconnect customers whose service was disconnected prior to the pandemic, to ensure healthy and safe environments for all District residents. The company also has important tips and information to help reduce their energy use at [pepco.com/waystosave](https://www.pepco.com/waystosave) or by calling 202-833-7500.

Pepco also worked with District leaders and a host of local organizations to launch the "Reduce Energy Use DC" initiative. Customers in the District are encouraged to take part in "Reduce Energy Use DC," to receive savings tips and learn about ways they can use energy more efficiently, take steps to reduce energy use at home or work, and save money while helping fight climate change. District residents can learn more at [ReduceEnergyUseDC.com](https://www.ReduceEnergyUseDC.com).

Readers are encouraged to visit visit [The Source](https://www.TheSource.com), Pepco's online newsroom. For more information about Pepco, visit [pepco.com](https://www.pepco.com). Follow us on Facebook at [facebook.com/pepcoconnect](https://www.facebook.com/pepcoconnect) and on Twitter at [twitter.com/pepcoconnect](https://twitter.com/pepcoconnect). Our mobile app is available at [pepco.com/mobileapp](https://www.pepco.com/mobileapp).

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## **CERTIFICATE OF SERVICE**

**Formal Case No. 1156, *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***

I certify that on August 11, 2020 a copy of the *Office of the People's Counsel for the District of Columbia, the Apartment & Office Building Association of Metropolitan Washington, the General Services Administration, the District of Columbia Water and Sewer Authority, Baltimore Washington Construction and Public Employees Laborers' District Council, the Maryland DC Virginia Solar Energy Industries Association, and the Small Business Utility Advocates Joint Protest of Pepco's July 31, 2020 Motion to File Supplemental Testimony and Joint Motion to Dismiss MRP Enhanced Proposal, to Direct Withdrawal of Pepco's Rate Case Application, and for Additional Relief* was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

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