

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

**ORDER**

**August 21, 2020**

**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, Order No. 20617**

**I. INTRODUCTION**

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) accepts the Potomac Electric Power Company’s (“Pepco” or “Company”) Supplemental Testimony in this proceeding<sup>1</sup> and holds in abeyance the Joint Petition filed in response to Pepco’s Motion.<sup>2</sup> The Commission hereby directs Pepco to convene a virtual Technical Conference to be held no later than September 15, 2020, to discuss Pepco’s corrected billing determinants Errata.

**II. BACKGROUND**

2. On May 30, 2019, Pepco filed its Application requesting authority to increase rates and charges for electric service through the implementation of a Multiyear Rate Plan (“MRP”) for its electric distribution service in the District of Columbia (“District”) for the years 2020 through 2022 (“Application”).<sup>3</sup> On April 8, 2020, and June 1, 2020, Pepco filed witness Blazunas’s Rebuttal Testimony, Surrebuttal Testimony, and exhibits for the MRP, and an alternative

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<sup>1</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*”), Motion of Potomac Electric Power Company to File Supplemental Testimony Regarding the Company’s July 28, 2020 Errata, filed July 31, 2020 (“Pepco’s Motion”).

<sup>2</sup> *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 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, filed August 11, 2020 (“Joint Response”).

<sup>3</sup> *Formal Case No. 1156, Application of the Potomac Electric Power Company to Implement a Multi-Year Rate Plan for Electric Distribution Service in the District of Columbia*, filed May 30, 2019.

Enhanced Multiyear Rate Plan (“EMRP”).<sup>4</sup> On July 28, 2020, Pepco filed an Errata to its previously filed Rebuttal Testimony.<sup>5</sup> On July 31, 2020, Pepco filed a Motion to File Supplemental Testimony regarding the Company’s July 28, 2020, Rebuttal Errata, accompanied with Supplemental Testimony and exhibits of Company Witnesses Wolverton, Blazunas, and Schafer.<sup>6</sup> On August 11, 2020, the Office of the People’s Counsel for the District of Columbia (“OPC”) OPC/Intervenors’ filed a petition in response to Pepco’s Motion to reject Pepco’s July 31, 2020, Motion to File Supplemental Testimony, and a 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 District of Columbia Government and International Brotherhood of Electrical Workers, Local Union 1900 filed letters in support of the relief requested in the Joint Response.<sup>7</sup> On August 18, 2020, Pepco filed a response to OPC/Intervenors’ Petition.<sup>8</sup> On August 19, 2020, OPC filed a request for leave to reply and reply to Pepco’s response.<sup>9</sup> The District of Columbia Government filed a letter in support of OPC’s reply.<sup>10</sup>

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<sup>4</sup> *Formal Case No. 1156*, Potomac Electric Power Company’s Rebuttal Testimony, filed April 8, 2020; *Formal Case No. 1156*, the Potomac Electric Power Company’s Surrebuttal Testimony, filed June 1, 2020.

<sup>5</sup> *Formal Case No. 1156*, the Potomac Electric Power Company’s Errata to Rebuttal Testimony, filed July 28, 2020 (“Errata”).

<sup>6</sup> *Formal Case No. 1156*, Motion of Potomac Electric Power Company to File Supplemental Testimony Regarding the Company’s July 28, 2020, Errata, filed July 31, 2020 (“Pepco’s Motion”).

<sup>7</sup> *Formal Case No. 1156*, the District of Columbia Government’s Letter in Support of the Relief Requested by 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 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, filed August 12, 2020 (“DCG Letter”); and *Formal Case No. 1156*, International Brotherhood of Electrical Workers, Local 1900’s Letter of Support for the 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, filed August 13, 2020 (“IBEW Letter”).

<sup>8</sup> *Formal Case No. 1156*, Response of Potomac Electric Power Company in Opposition to the Joint Protest and Joint Motion to Dismiss, filed August 18, 2020 (“Pepco’s Response”).

<sup>9</sup> *Formal Case No. 1156*, Office of the People’s Counsel for the District of Columbia’s Reply to the Potomac Electric Power Company’s Response to Joint Protest and Motion to Dismiss (“OPC’s Reply”), filed August 19, 2020. OPC filed the reply on behalf of the Apartment & Office Building Association of Metropolitan Washington, the General Services Administration, and the Baltimore Washington Construction and Public Employees Laborers’ District Council.

<sup>10</sup> *Formal Case No. 1156*, District of Columbia Government’s Letter in Support for the August 19, 2020, Letter from the Office of the People’s Counsel in Reply to the Potomac Electric Power Company’s Response filed on August 20, 2020.

### III. DISCUSSION

3. Pepco requests leave to file the Supplemental Testimony and exhibits of Witnesses Wolverton, Blazunas, and Schafer regarding the Company's Rebuttal Errata.<sup>11</sup> Pepco asserts that the Supplemental Testimony and exhibits provide additional information explaining the correction to the forecasted demand billing determinants that were used to design rates for commercial classes in the MRP and EMRP.<sup>12</sup> Pepco states that the Testimony is being filed, in part, due to Parties' request that the Company provides additional testimony related to the July 28<sup>th</sup> Rebuttal Errata.<sup>13</sup> Pepco claims that the Supplemental Testimony has a limited impact and only affects the rate design for commercial classes that have demand rate components.<sup>14</sup> Pepco proposes that, if necessary, the Parties should be given additional time to conduct discovery regarding the Supplemental Testimony and to submit additional testimony. Due to the limited impact of Pepco's Errata, the Company states there is no need to modify the current procedural schedule and that the Company is available to discuss any questions regarding the Supplemental Testimony.<sup>15</sup>

4. OPC/Intervenors state that Pepco's Errata filing and Motion to file Supplemental Testimony is prejudicial to the Parties.<sup>16</sup> OPC/Intervenors argue that Pepco's original application changed on June 1, 2020, when the Company filed Surrebuttal Testimony which added the EMRP to the case.<sup>17</sup> OPC/Intervenors assert that Pepco's data errors and last-minute corrections to the forecasted billing determinants affect the MRP and EMRP and came at a point in the procedural schedule where the Joint Respondents' have no opportunity to respond. OPC/Intervenors contend that allowing the Supplemental Testimony essentially shifts the burden to the ratepayers to determine the contours of the application.<sup>18</sup> OPC/Intervenors state that because of Pepco's numerous changes to date, OPC/Intervenors are concerned that Pepco's revised schedules put forward in its proposed Supplemental Rebuttal Testimony do not identify or reflect all of the conforming changes to components of the Company's rate filing.<sup>19</sup> OPC/Intervenors maintain that "it is 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."<sup>20</sup>

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<sup>11</sup> Pepco's Motion at 1-3.

<sup>12</sup> Pepco's Motion at 1.

<sup>13</sup> Pepco's Motion at 1-2.

<sup>14</sup> Pepco's Motion at 2.

<sup>15</sup> Pepco's Motion at 2 and 3.

<sup>16</sup> Joint Response at 24.

<sup>17</sup> Joint Response at 5.

<sup>18</sup> Joint Response at 9-10 and 24-26.

<sup>19</sup> Joint Response at 10 and 27-29.

<sup>20</sup> Joint Response at 11 and 32-34.

5. OPC/Intervenors request that the Commission: (1) reject Pepco's July 31, 2020, additional supplemental testimony as untimely and prejudicial; (2) dismiss Pepco's Enhanced MRP as not in accordance with D.C. law and the Commission's rules; and (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. In the alternative, OPC/Intervenors request that the Commission, among other things: (1) suspend the procedural schedule and allow three (3) months for the Parties to conduct discovery and to convene a technical conference on Pepco's July 28<sup>th</sup> Errata filings; (2) direct Commission Staff and the Parties to convene a technical conference to review and determine what impact Pepco's Errata filing has on both the case and the already-completed discovery; and (3) hold a status conference at the end of the three (3) month period to determine how best to proceed.<sup>21</sup>

6. In response, Pepco states OPC/Intervenors' motions should be denied because the motions are baseless and unsubstantiated and are a regurgitation of previous motions that the Commission has previously denied.<sup>22</sup> Pepco argues the Errata filed on July 28, 2020, and additional supplemental testimony filed on July 31, 2020, provides detailed information and work papers which demonstrate the limited scope and impact of the correction on the forecasted demand billing determinants.<sup>23</sup> Pepco contends that the correction to the forecasted billing determinants does not affect the revenue requirements or customer class cost of service, or any future MRP reconciliation process and that it only impacts individual components within the commercial class with demand rates.<sup>24</sup> Pepco has noted the Company's willingness to respond to additional discovery on the billing determinant issue and to be available to discuss the demand billing determinants Errata.<sup>25</sup>

7. Pepco states that it would be arbitrary and capricious to terminate this proceeding, that it is in the public interest to move forward and proceed to a hearing and decision on the merits of the Company's application because "the MRP [and EMRP] structure provides the flexibility for Pepco to continue to make the necessary investments in the critical infrastructure that powers the District's hospitals and healthcare facilities, supports essential businesses, and serves all customers safely during this emergency as well as to provide relief to customers."<sup>26</sup> In addition, because the Parties have been litigating for over 15 months a robust record has been amassed.<sup>27</sup> Pepco asserts that it is contrary to law that the Company be required to pay the costs of litigation of the Parties,

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<sup>21</sup> Joint Response at 38-39.

<sup>22</sup> Pepco's Response at 2 and 4.

<sup>23</sup> Pepco's Response at 2 and 13-19.

<sup>24</sup> Pepco's Response at 3 and 19-24.

<sup>25</sup> Pepco's Response at 3.

<sup>26</sup> Pepco's Response at 7.

<sup>27</sup> Pepco's Response at 8.

other than the Commission's and OPC's costs.<sup>28</sup> In addition, Pepco maintains that the Commission should reject the request to convene a "Task Force" to address the negative impact of the COVID-19 pandemic since the Commission opened *Formal Case No. 1164* to address the impact of COVID-19 crisis on public utilities.<sup>29</sup>

8. Lastly, Pepco argues that starting another MRP proceeding would be fruitless and inefficient and that this matter has been pending since May 2019 and all that is left is the hearings and briefings.<sup>30</sup> Pepco proposes continuing this proceeding and provides a procedural schedule including a technical conference, additional discovery and hearings starting September 28, 2020.

9. On August 19, 2020, OPC on behalf of the Joint Petitioners, filed leave to reply contending Pepco has made inaccurate assertions and misleading claims which need to be clarified.<sup>31</sup> OPC states that contrary to Pepco's claim, the Office is not seeking summary judgment but is requesting that the Commission dismiss Pepco's EMRP and direct Pepco to withdraw the rate case entirely.<sup>32</sup> OPC states that Pepco's proposed procedural schedule is unworkable and equates to a denial of due process and that: (1) it may need to procure additional resources before it can review the Errata; (2) the Parties have pre-existing professional and personal commitments over the next few weeks; and (3) the proposed hearing dates fall on religious holidays that impact several counsel and experts in the case.<sup>33</sup> OPC concludes that the Parties' due process rights should not be abrogated in pursuit of concluding the case by a specific date, that Pepco's schedule should be rejected, and, alternatively a status conference should be convened before setting the remainder of the schedule.<sup>34</sup>

#### IV. DECISION

10. The Commission has before it a request by Pepco to allow supplemental testimony to support its billing determinant Errata and the OPC/Intervenors' opposition to that request. Pepco contends that its Errata has a limited impact only affecting the rate design for certain commercial customers with demand components and not, among other things, the overall revenue requirement or the Company's proposed offsets to rate increases for 2020, 2021, and 2022 as outlined in the EMRP.<sup>35</sup> The OPC/Intervenors have no confidence in Pepco's representations that the Errata identifies all of the conforming changes to components of the Company's entire rate filing primarily because they have not had time to address the changes identified in the Errata, or

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<sup>28</sup> Pepco's Response at 31.

<sup>29</sup> Pepco's Response at 32-33.

<sup>30</sup> Pepco's Response at 33.

<sup>31</sup> OPC's Reply at 1.

<sup>32</sup> OPC's Reply at 2.

<sup>33</sup> OPC's Reply at 5-6.

<sup>34</sup> OPC's Reply at 7.

<sup>35</sup> Pepco's Motion at 2.

determine what other aspects of Pepco's proposals were changed or should have changed.<sup>36</sup> The OPC/Intervenors assert that Pepco's proffer is unreliable and prejudicial to the Parties' due process rights and request as before that the Commission reject Pepco's MRP proposals,<sup>37</sup> and further direct Pepco to withdraw its entire rate application.

11. Like the OPC/Intervenors, the Commission has concerns regarding the late-filed Errata. In our view, allowing Pepco to correct its rate application at this juncture without any of the process that applied to its original filing, would be both unfair and prejudicial to the opposing Parties. However, the Commission has routinely allowed parties to correct their filings by Errata.<sup>38</sup> Moreover where parties assert due process infirmities, we believe our first obligation is to provide Parties the process that is due.<sup>39</sup> Both Pepco and OPC/Intervenors recommend an assessment of what impact Pepco's Errata filing has on both the case and the already-completed discovery. Because the Commission would also like to better understand the impact of Pepco's billing determinants Errata on the overall rate application, we will direct Pepco to immediately convene a technical conference to allow all parties and the Commission Staff to fully examine the underlying data and workpapers associated with the billing determinant Errata.<sup>40</sup> Given the passage of time and the extensive resources that have been expended by all Parties in adjudicating which was predicated on an 18-month examination (now at month 15), we think a technical conference is the more judicious course of action at this juncture.

12. Therefore, we will accept Pepco's supplemental testimony and hold in abeyance OPC/Intervenors' motion to dismiss the MRPs and withdraw Pepco's rate application.<sup>41</sup> We believe that it would be helpful if the Parties can discuss this in an informal setting before we act.<sup>42</sup>

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<sup>36</sup> Joint Response at 10 and 27-29.

<sup>37</sup> See *Formal Case No. 1156*, Order No. 20368, ¶ 5, rel. June 18, 2020.

<sup>38</sup> See *Formal Case No. 1093, In the Matter of the Investigation Into the Reasonableness of Washington Gas Light Company's Existing Rates and Charges for Gas Service* ("*Formal Case No. 1093*"), Order No. 16806, rel. June 7, 2012 ("Order No. 16806") (WGL allowed to file two successive Errata and the Commission directed additional limited discovery and the filing of supplemental testimony on the issues covered in the Errata).

<sup>39</sup> See, e.g., *Formal Case No. 1093*, Order No. 16806, ¶¶ 7-12 (Parties were allowed to conduct additional discovery to avoid any potential disadvantage); *Formal Case No. 1103, In the Matter of the Potomac Electric Power Company's Application for Authority to Increase Retail Rates and Charges for Electric Distribution Service*, Order No. 17317, rel. December 9, 2013 ¶ 10, n. 32 ("Due process is flexible and calls for such procedural protections as the particular situation demands), citing *Morrisey v. Brewer*, 408 U.S. 471, 481 (1972).

<sup>40</sup> See Pepco's Motion at 2 ("the Company will make itself available to meet with Parties and Commission Staff, at their time and convenience, should Parties have any questions once the Parties have reviewed Pepco's supplemental testimony.")

<sup>41</sup> See, e.g., *Formal Case No. 712, In the Matter of the Investigation of the Public Service Commission's Rules of Practice and Procedure*, Order No. 17708, rel. November 21, 2014 (the Commission on its own motion held in abeyance a ruling on a motion and a ruling on a petition to intervene).

<sup>42</sup> See, e.g., *Formal Case No. 1149, In the Matter of the Investigation Into the Structure and Application of an Experimental Rate Class for Both Senior Citizens and Disabled Residents in the District of Columbia*, Order No. 19146, issued on October 19, 2017 (the Commission directed a technical conference be convened to address new rate classes); see also *Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings,*

Accordingly, in order to avoid further unnecessary delay in the already lengthy proceeding, the Commission concludes it is appropriate to provide the parties and Commission staff with an opportunity to review and address the billing determinants Errata in this manner. We direct Pepco to convene a virtual technical conference for all Parties to be held by September 15, 2020, to discuss Pepco's corrected billing determinants Errata and workpapers associated with Pepco's Supplemental Testimony. Specifically, Pepco should be prepared to provide detailed explanations: (1) to address any revenue requirement impact as a result of the Errata, including any impact on class revenue requirement; (2) on any impact on class cost of service as a result of the Errata; (3) on all rate design effects arising from Pepco's corrections noted in its Errata, including all price component rate design changes for all affected commercial classes, as well as the process for determining all required rate design corrections; and (4) any impact of the Errata on residential classes billing determinants.

**THEREFORE, IT IS ORDERED THAT:**

13. The Potomac Electric Power Company is **DIRECTED** to convene a virtual Technical Conference no later than September 15, 2020, to fully consider the Company's workpapers associated with its Supplemental Rebuttal Testimony and exhibits in support thereof;

14. The Commission **ACCEPTS** the Potomac Electric Power Company's Supplemental Testimony; and

15. The Office of the People's Counsel for the District of Columbia and Intervenors' Motion to Dismiss the Enhanced Multiyear Rate Plan Proposal and to Direct Withdrawal of the Potomac Electric Power Company's Rate Case Application is **HELD IN ABEYANCE**.

**A TRUE COPY:**

**BY DIRECTION OF THE COMMISSION:**



**CHIEF CLERK:**

**BRINDA WESTBROOK-SEDGWICK  
COMMISSION SECRETARY**