

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

October 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**

STATEMENT OF COMMISSIONER RICHARD BEVERLY

When this case began, I expressed concern about it moving forward with an integrated proposal for a multiyear rate plan (“MRP”). My concern was that it would slow down the traditional rate case and move the multiyear aspect of the case too quickly for meaningful stakeholder participation. I was also concerned that the MRP proposal may not adequately address the statutory criteria for alternative form of regulation. I suggested that interested persons think about separating the MRP from the traditional rate case and handling them separately. If the cases were separated, then I had hoped that the traditional rate case portion could be settled quickly and the MRP portion could be handled in *Formal Case 1130*, our grid of the future proceeding, as part of a collaborative approach with widespread community involvement. There was no Commission consensus for that approach and now we have an inordinately slow moving and expensive rate case coupled with an outcry expressed in both verbal and written comments that the parties and community have not had adequate time to fully consider the complicated aspects of a MRP proposal. The whole thing has been further impacted by a tight schedule and errors in the Potomac Electric Power Company (“Pepco” or “Company”) filing that, in the parties’ view, essentially creates a moving litigation target that prejudices their case.

Although some parties tried to get this case dismissed under D.C. Superior Court Rule of Civil Procedure 41(b)(1)(A), that rule is a sanction provision for conduct that is not present in this case. If the parties had conceded that there are no material issues of fact in dispute, then they could have filed a motion for summary judgment, which would have been a ruling on the merits of Pepco’s MRP proposal. However, the parties would not concede the absence of material issues of fact so a motion for summary judgment was not appropriate.

The opposing parties now make the astonishing assertion that they have 372 material issues of fact. Pepco has countered that it sees no material issues of fact at all, and I agree with Pepco. What I see are issues of policy spread over hundreds of questions. Issues of policy do not lend themselves to an evidentiary hearing, because we end up debating opinions which are inherently not objectively provable as true or false. The D.C. Court of Appeals long ago opined that there is no need for an evidentiary hearing, even if the statute requires it, when there are no material issues of

fact.¹ We could have a legislative style hearing to address the policy issues, but I do not think that is necessary, at least with regard to the MRP. On that issue, I am prepared to consider whether we should grant partial summary judgment *sua sponte*. I acknowledge the Commission's obligation to provide notice of its intention to consider summary judgment and an adequate opportunity for the parties to present affidavits or other matters appropriate to a ruling on such a motion.² To be clear, I am not prejudging the issue. Instead, I am simply saying that the matter is ripe for determination.

My reasons are as follows.

D.C. Code § 34-1504 (d) governs our consideration of alternative forms of regulation.³ Pepco's MRP proposals, which are also forms of performance-based regulation, are the subject of litigation in *Formal Case No. 1156*. As I indicated in my statement appended to Order No. 20375, nothing in D.C. Code § 34-1504 (d) requires us to consider alternatives to regulation exclusively within the confines of a rate case and exclusively at the behest of the Pepco. A more appropriate course of action is to make the rate case flexible enough so that all interested stakeholders have a meaningful opportunity to propose alternative regulation schemes of their own for our consideration.

While Pepco has indicated that its MRP Enhanced Proposal balances the interests of all parties over multiple years and allows for flexibility and options simply not available in a traditional rate case, the Company also maintains that the MRP Enhanced Proposal is an integrated package with interdependent elements designed to operate as a whole such that the individual elements are not severable, as they all need to operate in unison if the MRP Enhanced Proposal is to work. Thus, according to Pepco, while the proposal allows for flexibility it is not flexible enough to change its elements without disrupting the plan.

Whether we are considering the original MRP proposal, the MRP Enhanced Proposal, or both, the Commission has an obligation to review any proposed alternative form of regulation to ensure it meets the requirements of D.C. Code §§ 34-1504 (d) and 34-808.02.⁴ A question we must consider is whether the proponent of an alternative form of regulation has demonstrated whether and how its proposal aligns with *and* advances the District of Columbia's climate and energy goals. In Order No. 20273, we indicated that any MRP that is adopted should be accompanied by performance incentive mechanisms ("PIMs"). In the Joint Report on the two PIMs meetings held earlier this

¹ See *Office of the People's Counsel v. Public Service Commission of the District of Columbia*, 797 A.2d 719, 726 (D.C. 2002). We took this position in Order No. 20615 and I believe we should be consistent in our approach here.

² *Francis v. Rehman*, 110 A.3d 615, 619 (D.C. 2015).

³ The Commission may adopt an alternative form of regulation if it finds that it (1) protects consumers; (2) ensures the quality, availability, and reliability of regulated electric services; and (3) is in the interest of the public, including Pepco's shareholders.

⁴ D.C. Code § 34-808.02 reads: "In supervising and regulating utility or energy companies, the Commission shall consider 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."

year, the participants asked that the Commission provide a deadline for and accept into the record comments from any participant in the first two PIMs meetings that is not a party to *Formal Case No. 1156*, so that these participants also have an opportunity to provide their own specific views on Pepco's proposed PIMs, and their organization's desired outcomes, proposed metrics, potential performance incentive mechanisms, and supporting justification. The merits of the request have not been addressed.⁵

Although the MRP Enhanced Proposal is attractive, I do not think it is worth surrendering our normal oversight over public utilities at a time when our involvement is increasingly important to ensuring that the District can meet its climate and energy goals. I continue to believe that any PIMs should accompany a MRP, and that both should be designed to ensure that Pepco is doing its part to help the District of Columbia meet its climate and energy goals--reduce the city's GHG emissions by 50% below 2006 levels by 2032; achieve carbon neutrality by 2050; reduce energy use by 50% by 2032; and, increase the use of renewable energy to 100% of the supply by 2032. Pepco has not demonstrated, in the plan as filed, whether and how the MRP and the PIMs it proposed effectively help the District achieve its climate and energy commitments. Proposing trackers for the pursuit of an undertaking does not, in and of itself, demonstrate that it will help the District achieve its climate and energy commitments merely by tracking what it does.

I note that although Pepco wants a MRP, it does not actually "need" one, and having it without thoughtful conditions may be contrary to the public interest. In order to eliminate the incentive for Pepco to sell more electricity, the Commission approved a Bill Stabilization Adjustment ("BSA") that adjusts Pepco's rates frequently to ensure that Pepco's revenue is neither more nor less than what is needed to cover its costs and a fair return. The BSA sets the revenue needed to cover known costs, then allows rates to change with consumption to meet the revenue target and adds a "true-up" mechanism, which automatically adjusts rates more frequently based on consumption. Absent a push from the Commission on PIMs, the BSA and the MRP may have the unintended consequence of effectively insulating Pepco from having to do anything to help meet the District's climate and energy commitments.

I recognize that a MRP will likely improve Pepco's credit rating and allow it to borrow money at lower rates. Maintaining a healthy utility is certainly an important consideration. However, even more important is the fact that the District has set ambitious goals to improve our climate, and it is going to take bold steps to get there. Quite frankly, Pepco's MRP is underwhelming in this regard.

Pepco has reason to be frustrated that its MRP has been before us since 2019, but the world literally changed in the interim.⁶ We are now faced with a global pandemic that has impacted not only the

⁵ The Commission has pending before it the Grid 2.0 Working Group and DC Consumer Utility Board Request for Clarification and Modification of PSC Order No. 20364 filed on July 2, 2020 asserting that the efforts to advance discussion of performance incentive mechanisms within a rate case have not yielded recommendations that would result in productive use of PIMs or performance based regulation. No action has been taken on that request.

⁶ It is worth noting that while Pepco was asked to file a MRP in 2017, the Commission is obligated to follow the directives of the CleanEnergy DC Omnibus Amendment Act of 2018 in this proceeding. Specifically we are to consider the effects on global climate change and the District's public climate commitments, along with the public

health of many District residents but also the District's economy. Indeed, the impact that the pandemic is having on Pepco's residential and commercial customers is so severe that the situation may not stabilize for some time. Given the significant change that the MRP is likely to have on how the Commission will regulate Pepco in the future, I see no reason to rush forward with such a paradigm shift right now. We can issue a decision on the traditional aspect of Pepco's rate case and move the MRP and PIMs into a separate proceeding that provides greater stakeholder involvement. With regard to Pepco's traditional rate case, nothing precludes us from suspending the effective date of any approved rates and/or considering a plan that gradually phases in rates over time so that customers are not crushed by a sudden increase. I am not only concerned with the impact on residential customers, but I am also concerned with the impact on the small commercial class who, with the rest of the commercial class, carries the lion's share of the allocation of distribution service costs, and is the engine for the economy on which we all depend.

safety, the economy of the District, the conservation of natural resources, and the preservation of environmental quality, in our supervision and regulation of utility or energy companies.