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October 24, 2020

Ms. Brinda Westbrook-Sedgwick  
Commission Secretary  
Public Service Commission  
of the District of Columbia  
1325 G Street N.W., Suite 800  
Washington, DC 20005

**Re: 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.**

Dear Ms. Westbrook-Sedgwick:

On behalf of the Baltimore Washington Construction and Public Employees Laborers' District Council (BWLDC), I enclose for filing the BWLDC's Proposed Table of Proposed Exhibits with accompanying Exhibits for use at the evidentiary hearings in the case referenced above. If you have any questions regarding this filing, please contact me.

Very truly yours,

Brian J. Petruska

cc: Service List

**Before the  
District of Columbia Public Service Commission**

**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**

**Proposed Table of Proposed Exhibits of the Baltimore Washington Construction and Public Employees Laborers' District Council**

Proposed Exhibit No.	Document	Date Filed
BWLDC-1	Pepco Response to BWLDC Data Request 1 - Letter of Peter Meier to Commission Secretary in Formal Case No. 1139 (Oct. 23, 2017).	October 28, 2019

POTOMAC ELECTRIC POWER COMPANY  
DISTRICT OF COLUMBIA FORMAL CASE NO. 1156  
RESPONSE TO BWLDC DATA REQUEST NO. 1

QUESTION NO. 1

Consistent with the Commission's concerns about wage complaints from employees of third-party Pepco contractors (Order No. 18846 in Formal Case No. 1139 at 29), please detail all actions Pepco has taken to ensure that employees of construction contractors are paid wages equal to what Pepco employees are paid for comparable work.

RESPONSE:

See FC 1156 BWLDC DR 1-1 Attachment.

SPONSOR: Kevin M. McGowan

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October 23, 2017

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Public Service Commission  
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1325 G Street N.W., Suite 800  
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**Re: Formal Case No. 1139**

Dear Ms. Westbrook-Sedgwick:

In Order No. 18846 (P 29), the Public Service Commission of the District of Columbia (“Commission”) stated that it “will consider whether it would or would not be appropriate for our utility code of conduct to be amended to address the employee wage complaints of third-party Pepco contractors.” The Commission directed Potomac Electric Power Company (“Pepco” or the “Company”) to “submit a written report, within 90 days from the date of this Opinion and Order, advising the Commission on how this issue can best be addressed, including fully explaining its position on establishing wage and benefit standards for its outside contractor workforce or a procurement policy ensuring equitable wages.” The Commission’s directive was in response to comments regarding the wages and benefits that were provided by employees of contractors that may perform work for Pepco at the April 12, 2017 Commission Community Hearing in Formal Case No. 1139 (“Community Hearing”).<sup>1</sup> This report provides Pepco’s response to the Commission’s directive.

Pepco appreciates this opportunity to provide information regarding the Company’s policies and practices that impact contractor wage compensation. Pepco takes the issue of equitable wages seriously, recognizing that equitable wages help to ensure quality construction and improve the lives and skill levels of Pepco’s contractors’ employees. Pepco’s contractors play an important part in the Company’s capital investment projects, as they perform a significant amount of the construction. In addition, they serve as valuable partners in providing Pepco’s customers safe and reliable service.

However, Pepco respectfully submits that it is not appropriate to amend the utility code of conduct—the affiliate transactions code of conduct<sup>2</sup>—to address the employee wage

<sup>1</sup> Order No 18846 at n. 30.

<sup>2</sup> Chapter 39 of Title 15, District of Columbia Municipal Regulation.

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complaints of third-party contractors because the code of conduct was not intended to apply to Pepco's third-party contractors. The affiliate transaction code of conduct specifically relates to utility transactions with affiliates.<sup>3</sup> As such, amending the affiliate transactions code of conduct to cover wage complaints between unaffiliated contractors and their employees is not appropriate. Furthermore, it is unnecessary for the Commission to amend its affiliate transactions code of conduct to address the wage complaints of third-party contractors because: 1) Pepco has contract terms and conditions in place that require contractors to follow the applicable wage and benefit laws for workers they employ and include enforcement provisions; and 2) local and federal agencies currently regulate contractors' obligations to comply with wage and hour laws as well as labor relations. In addition, Pepco intends to engage with Laborers' International Union of North America ("LIUNA") and North America's Building Trades Unions ("NABTU") on this issue.<sup>4</sup>

**A. Pepco's Procurement Practices Include Provisions that Address Wages and Benefits**

Pepco's commitment to equitable wages has been strengthened through its merger with Exelon and is reflected in Pepco's procurement practices. When seeking contractor bids, Pepco seeks the best-qualified contractor to perform a particular job. Pepco's bidding qualification requirements take into account the contractor's record of prior service, ability to perform the work, diversity, price, and alignment with Pepco's corporate values, including compliance with all employment laws. Pepco awards a significant percentage of its contracts for third-party labor on a total-cost basis. With respect to this type of contracting, the bidder promises to perform the scope of work for a set, flat price, and the bid is awarded to the most reasonably priced, qualified bidder that meets the contract requirements.

In addition, since its merger with Exelon, Pepco has adopted Exelon's Master Terms and Conditions for the Purchase of Products and Services ("Exelon T&Cs") in the contracts with its third-party contractors.<sup>5</sup> The Exelon T&Cs expressly require that the contractor and any subcontractors:

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<sup>3</sup> Formal Case No. 1009, Order No. 16189 at ¶ 2 (the affiliate transaction code of conduct establishes "a single set of rules addressing issues related to restructuring of the District of Columbia's retail electricity and natural gas markets by the universal application of a single set of rules addressing the relationship and conduct of regulated energy utilities and their unregulated affiliates.")

<sup>4</sup> LIUNA is a union that represents employees working in the building and construction trades, including employees in job classifications related to underground utility work. NABTU is an umbrella labor federation comprised of 14 North American unions, including LIUNA, that all represent employees working in the building and construction trades.

<sup>5</sup> All of Pepco's contracts will adopt the Exelon T&Cs no later than January 2018. For any contracts that are currently under the PHI Master Terms and Conditions, Section 30.1 has a general requirement to comply with applicable laws: "Contractor shall comply with all applicable international, federal, state and local laws, rules, and regulations including, without limitation and incorporated by reference herein, Section 202 of Executive Order 11246 (41 CFR Part 60), Section 503 of the Rehabilitation Act of 1973 (41 CFR Part 741), the Vietnam Era

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[S]trictly adhere, and [] continue throughout the term of these Terms and Conditions to strictly adhere, to all applicable Laws in the jurisdictions in which the Work is performed and with respect to the operation of their production and manufacturing facilities and their other business and labor practices, including Laws governing the working conditions, wages, hours and minimum age of the workforce; (ii) the Work will not have been, and will not be, performed, in whole or in part, by child labor or by convict or forced labor; and (iii) the Materials will not have been transshipped for purposes of avoiding compliance with labor Laws.<sup>6</sup>

As defined in the Exelon T&Cs, the term “Laws” with which contractors must comply includes all “labor and employment laws.”<sup>7</sup> Therefore, the contractors and subcontractors are required as a matter of contract to comply with all applicable District and Federal laws that relate to the benefits that their employees must receive.

The Exelon T&Cs give Pepco substantial tools to enforce contractors’ compliance with these obligations. For example, they require the contractor “promptly upon Pepco’s request to furnish such documentation as may be required by [Pepco] to evidence compliance with”<sup>8</sup> the obligations set forth above. The Exelon T&Cs also give Pepco the right to “audit Contractor’s files and records regarding the utilization of Contractor Personnel hereunder, including, without limitation all . . . wage and hour records.”<sup>9</sup>

## **B. Local and Federal Agencies Regulate Wage and Labor Issues**

Wage matters relating to third-party labor contractors are already regulated at the District and Federal level. District and Federal agencies enforce wage and other labor standards and give contractor employees the right to complain about wages and other labor issues and also give the employers the right to defend themselves against such complaints. Specifically, the Labor Standards Bureau of the District Department of Employment Services:

[A]dministers and enforces the District of Columbia labor laws. The office investigates wage complaints, evaluates employee and employer safety/health in the workplace and adjudicates compensation/medical care claims for private-

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Veterans’ Readjustment Assistance Act of 1974 (41 CFR Part 60-250), Public Law 95-507 (15 USC 637(d)), and all immigration laws pertaining to employment. . . .”

<sup>6</sup> Exelon T&Cs, Section 22.4.1.

<sup>7</sup> Exelon T&Cs, Article I (Definitions), “Law” or “Laws” means all laws, statutes, codes, ordinances, rules, regulations, lawful orders, applicable guidance documents from regulatory agencies, judicial decrees and interpretations, standards, requirements, permits and licenses; including Cyber Security Laws, Environmental Laws, Health and Safety Laws, tax laws and applicable tax treaties, building, labor and employment laws; as amended from time to time, of all Governmental Authorities that are applicable to the Work and any of Contractor’s obligations under the Contract Documents.

<sup>8</sup> Exelon T&Cs, Section 22.4.1.

<sup>9</sup> Exelon T&Cs, Section 22.4.6.

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sector employees injured in the course of employment. In addition, the office provides administrative and semi-judicial proceedings to assist in resolving disputes that may arise in connection with claims filed for workers' compensation benefits.<sup>10</sup>

At the Federal level, the Wage and Hour Division of the U.S. Department of Labor "enforces Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act," enforces the Family and Medical Leave Act, and enforces the prevailing wage requirements of the Davis Bacon Act and the Service Contract Act and other statutes applicable to Federal contracts for construction and for the provision of goods and services.<sup>11</sup> These agencies are focused specifically on enforcing wage and other labor laws and the complaints and disputes that arise between employees and employers under those laws. Moreover, the National Labor Relations Board is vested with the authority and has the specialized expertise to regulate labor relations and relationships between employers, such as Pepco and their contractors, and labor organizations.<sup>12</sup> Accordingly, these agencies currently have District and Federal jurisdiction (and the specialized knowledge) to address any potential wage and other employment disputes that may arise with respect to contractors and their employees.

### C. Other Communications

Pepco is planning to meet with both LIUNA and NABTU regarding their employees' wage concerns raised during the Community Hearing. Pepco anticipates that these discussions with LIUNA and NABTU will be productive and address the concerns raised at the Community Hearing. Moreover, some contractors have taken the affirmative step of filing public comments with the Commission to reassure the Commission of their commitment to their employees. For example, on August 1, 2017, Anchor Construction Corporation ("Anchor Construction") filed with the Commission a public letter signed by the Vice President clarifying certain information regarding compensation and the company cultures and confirming their commitment to their employees.<sup>13</sup> The letter from Anchor Construction states unequivocally that "all Anchor field workers are paid well above the D.C. minimum wage, regardless of the work they perform and regardless of the type of job on which they work."<sup>14</sup> The letter further clarified that the field

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<sup>10</sup> <https://does.dc.gov/service/labor-standardsworker-protection>

<sup>11</sup> <https://www.dol.gov/whd/about/mission/whdmiss.htm>.

<sup>12</sup> The United States Supreme Court has recognized the risk of conflict between state and local regulation of labor relations and the integrated scheme that Congress created as embodied in Sections 7 and 8 of the National Labor Relations Act. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244 (1959) ("Garmon"). *Wisconsin Dept. of Industry v. Gould Inc.*, 475 U.S. 282, 286 (1986). To limit this conflict, Congress chose to have a specialized body the National Labor Relations Board, regulate the labor relations of private companies such as Pepco and its contractors under the National Labor Relations Act. *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 748-49 and n.26 (1985).

<sup>13</sup> Formal Case No. 1139, Letter from Wen Liang, Vice President of Anchor Construction Corporation to The Honorable Betty Ann Kane (Aug. 1, 2017) ("Anchor Letter").

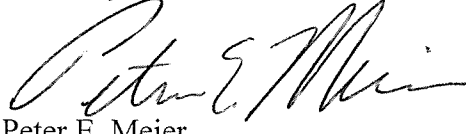
<sup>14</sup> Anchor Letter at 1.

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workers receive paid time off and two paid holidays as well as other benefits.<sup>15</sup> On April 26, 2017, BF Joy's Chief Executive Officer also filed a letter with the Commission expressing its commitment to "fair and equitable treatment" of its employees.<sup>16</sup> These affirmative statements reinforce Anchor Construction's and BF Joy's commitment to their employees.

For all the reasons stated above, Pepco submits that there is no need for the Commission to modify the affiliate transactions code of conduct to address contractor wage issues. This issue is best addressed through Pepco's existing contracting process that promotes compliance with wage and benefit standards by its contractors and by the ability of contractor employees to enforce applicable legal protections and to seek relief from the Federal and District agencies created expressly to administer employment laws. Please feel free to contact me if you have any questions regarding this matter.

Sincerely,



Peter E. Meier

Enclosure

cc: All Parties of Record

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<sup>15</sup> *Id.*

<sup>16</sup> Formal Case No. 1139, Letter from Melissa Koehler, President & CEO of BF Joy to Brinda Westbrook-Sedgwick (Apr. 26, 2017).



**CERTIFICATE OF SERVICE**  
**Formal Case No. 1156**

I certify that on October 24, 2020, copies of the Proposed Table of Proposed Exhibits with accompanying Exhibits filed on behalf of the Baltimore Washington Construction and Public Employees Laborers' District Council was served via electronic mail on the following parties:

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