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December 18, 2020

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

Re: RM36-2020-02-E

Dear Ms. Westbrook-Sedgwick:

Enclosed please find Potomac Electric Power Company's Comments regarding Reliability Standards and Reporting Guidelines in the referenced proceeding.

Please contact me if you have any further questions.

Sincerely,

s/Dennis P. Jamouneau
Dennis P. Jamouneau

Enclosure

cc: All Parties of Record

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

IN THE MATTER OF	**)**	
	)	
NOTICE OF PROPOSED	**)**	
RULEMAKING	**)**	**RM36-2020-02-E**
ELECTRICITY QUALITY OF	**)**	
SERVICE STANDARDS	**)**	

POTOMAC ELECTRIC POWER COMPANY'S COMMENTS REGARDING RELIABILITY STANDARDS AND REPORTING RULEMAKING

On October 9, 2020, the Public Service Commission of the District of Columbia ("Commission") issued a Notice of Proposed Rulemaking ("NOPR") regarding certain portions of Chapter 36 of the Commission's regulations, the Electricity Quality of Service Standards ("EQSS"). These regulations, which for the purpose of this NOPR pertain to electric distribution system reliability, are some of the most important measures of Pepco's performance and service quality in the District of Columbia. Pepco commends the Commission for taking bold action to follow up on the significant strides in reliability that have been achieved and maintained since the EQSS reliability standards were adopted in 2011.

Pepco recommends that the Commission convene a legislative-style hearing to allow for a more robust discussion of the reliability standards as well as the policy issues surrounding reliability and the modernizing grid, all of which will allow the creation of a full record on which to base the Commission's ultimate decision. Notwithstanding Pepco's request for a legislative-style hearing and to the extent this request is denied, Pepco recommends that the Commission adopt the regulations proposed in this NOPR, as modified herein.

I. PEPCO'S REQUEST FOR A LEGISLATIVE-STYLE HEARING

Reliability standards and the future of the modernizing grid are important matters to the District, Pepco's customers, and the Company itself. Pepco is proud to serve the District of Columbia and takes great pride in the deliberate and steady reliability increases it has made over the last several years. The standards set forth in the NOPR would not have been imaginable ten years ago but even now merit careful consideration. Thus, Pepco appreciates the opportunity to submit comments on the NOPR.

However, and as discussed in Section II(C), it is not clear how the Commission arrived at the reliability standards it has proposed and testimony by the parties in the current Pepco rate case, Formal Case No. 1156, signals that there exists some disagreement about the path forward as it relates to Pepco's reliability. While Pepco is providing its comments and, in some instances, recommended changes to the NOPR in this filing, Pepco posits that now is the time to have a more detailed conversation about the future. This conversation should include, at least, the following issues:

- Reliability Standards
  - What level of reliability is reasonably achievable?
  - What are the most appropriate metrics?
  - When should reliability metrics begin and for what number of years?
  - Should the "MSO" exclusion criteria be maintained or should the District shift to the IEEE standard 2.5 Beta methodology for excluding major events?
- Emphasis on Local or Neighborhood Reliability
  - What is the definition of "neighborhood"?
  - Does the definition of neighborhood cover the right scope or is it too broad or too narrow?
  - Is there a need to continue the 2% (Priority Feeder) program?
  - Should any Neighborhood Reliability (CEMIx) indices include exclusion criteria, such as the IEEE standard 2.5 Beta methodology?
- Cost of Achieving Reliability Standards
  - What is the appropriate level of spending to achieve the standards?
  - What is the expected cost to Pepco customers?

Accordingly, Pepco respectfully recommends further discussion and the opportunity to be heard in a legislative-style hearing in order to more fully explain its position and afford the Commission a more robust record upon which to make its decision.

II. PEPCO'S COMMENTS ON RELIABILITY NOPR

A. Background

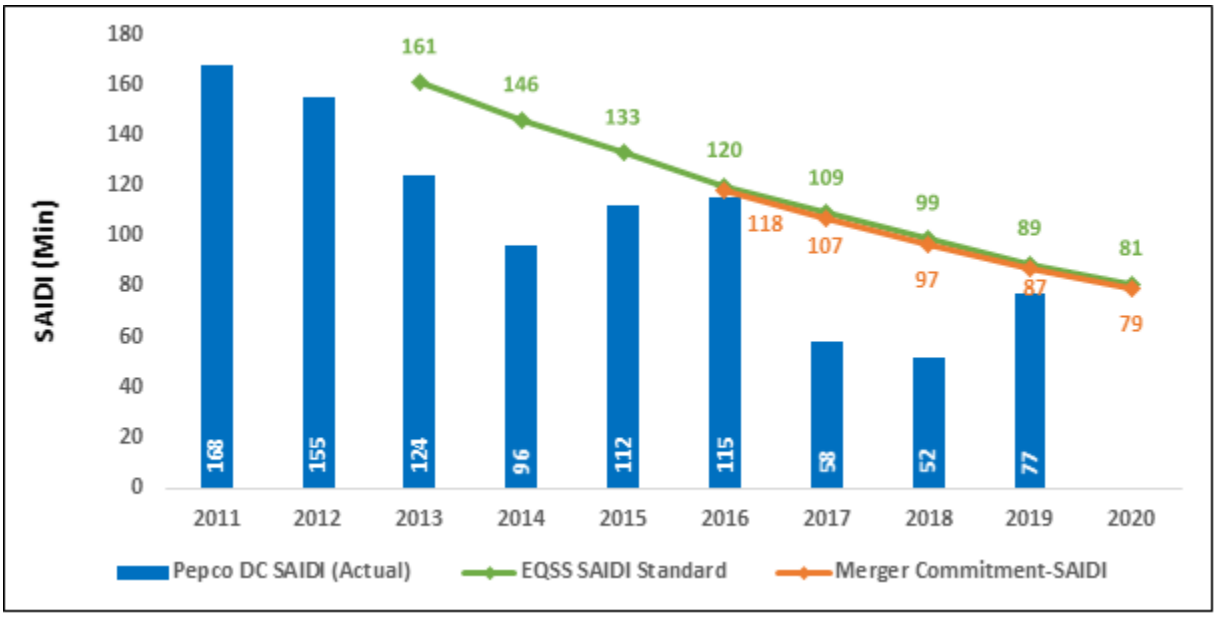
Pepco supports aggressive System Average Interruption Duration Index ("SAIDI") and System Average Interruption Frequency Index ("SAIFI") standards and, in particular, supports the Commission's emphasis on neighborhood reliability, which is evident from the proposed standards with respect to Customers Experiencing Multiple Interruptions ("CEMI"). CEMI has grown in importance and focus as smaller, discrete areas of the District have not uniformly matched the reliability gains seen systemwide in the District. The first section of Pepco's comments, Section II(B), addresses the proposed CEMI metrics.

Following the discussion of CEMI, Part II(C) in these comments addresses the NOPR provisions regarding SAIDI and SAIFI. This new iteration of reliability standards in the District will build off the gains Pepco has achieved since EQSS was adopted in 2011 and made more stringent by commitments included in the Pepco-Exelon merger in March 2016. Having strong reliability standards fosters the environment for Pepco to continue meaningful outage reductions while also allowing the Company to have the necessary reliability and resiliency to enable and support its modernizing grid.

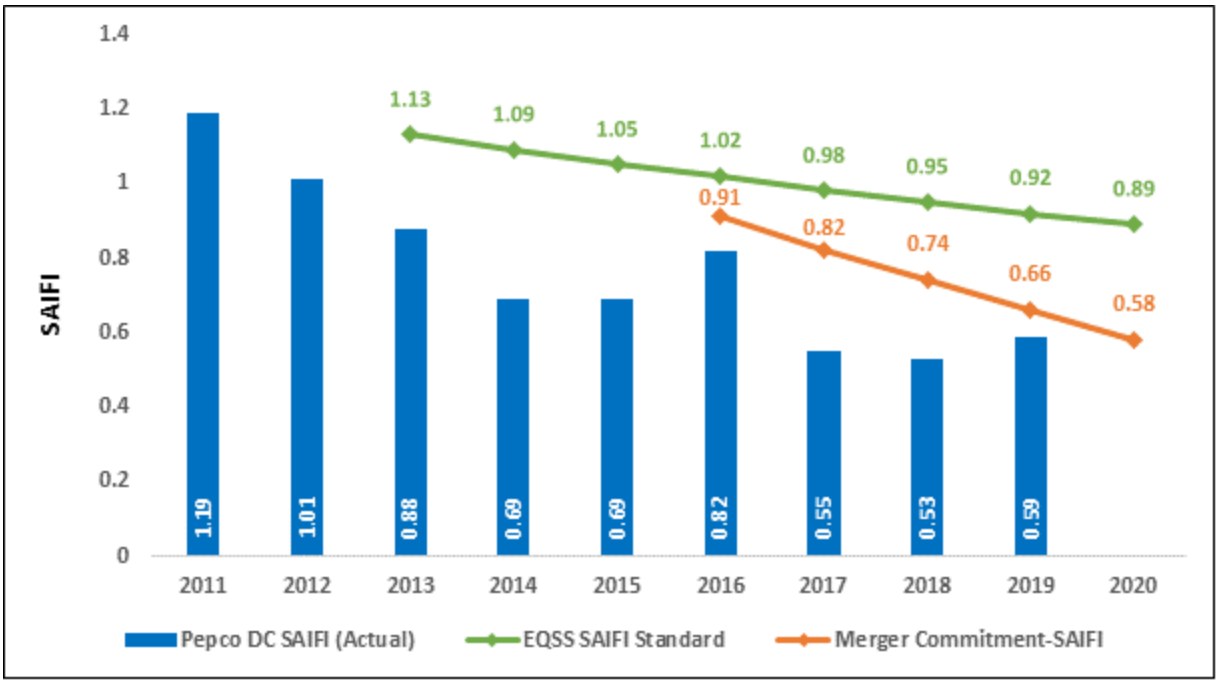
As explained in the NOPR, the current reliability standards were adopted in 2011 and provide certain reliability standards up to and through the year 2020. The NOPR states that the current EQSS "began with Pepco's 2009 first quartile Institute of Electrical and Electronics Engineers (IEEE) Benchmarking results for SAIDI and SAIFI, considered 2020 as the year when

Pepco could reasonably be expected to meet the goal of top quartile performance."[1] The first year of the reliability-related EQSS was 2013 and since that time Pepco's SAIDI and SAIFI has seen steady improvement:

Tables 1 and 2: Pepco's District of Columbia SAIDI and SAIFI Results (2011-19) (Major Service Outage Excluded)



[1] NOPR at 1.



The actual results, shown in Tables 1 and 2, translate to top quartile performance the past five years according to IEEE benchmark data and Pepco's goal is to remain in the top quartile or better performance in both SAIDI and SAIFI.

The results in Tables 1 and 2, which show a positive trend, are not linear. Nor can reliability results expect to be linear. Rather, Tables 1 and 2 clearly demonstrate the variable nature of a complex distribution system that contains significant overhead and underground components and that, like other utilities, is subject to extreme weather. Thus, some years (*e.g.*, 2016, 2019) have higher, or less positive, SAIFI and SAIDI values than others (*e.g.*, 2017, 2018) that have lower, or more positive, results. Often, just one or two larger-scale outages that do not rise to the level of a Major Service Outage ("MSO"), as defined by Commission regulations, can mean a significant difference in reliability performance.

These events, and other similar factors, reinforce the importance of focusing on the multi-year trend in reliability rather than a simple comparison of one year to the next. For this reason, and while Pepco is confident in the overall trajectory for reliability in the District, Pepco uses

what it refers to as a "planning margin," or range, and aims to meet the SAIDI and SAIFI values within that range. Having a range of acceptable reliability values is a best practice in the industry and allows for extreme events that are not within the control of the Company.

To be clear, the Company's positive SAIDI and SAIFI trends are no accident. The results stem directly from reliability spending, a safe and focused workforce, and careful planning. The Company's behind-the-scenes planning process is critical to system performance. Pepco plans proactively and, from 2012 to 2020, Pepco has formulated its capital plan to meet and exceed regulatory standards and merger commitments. Accordingly, Pepco plans and develops its budgets years in advance and tailors its budgets to meet and, if possible, exceed the reliability standards that are required.

However, it all starts with knowing the reliability standards or targets that must be met. Once the Commission defines or approves reliability targets, Pepco uses those standards—often a year or more in advance—to develop the capital plan and slate of projects to meet those targets, with an appropriate planning margin.

Table 3: Pepco's District of Columbia Capital and Reliability Expenditures (2014-19)

PEPCO DISTRICT OF COLUMBIA CAPITAL CONSTRUCTION SUMMARY						
PEPCO DC 2014 - 2019 Capital Actuals (Dollars in Millions)						
Distribution Construction	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**
Customer Driven	$57.3	$56.8	$67.5	$83.2	$93.6	$73.6
Reliability[1]	$111.7	$111.1	$117.8	$119.4	$121.9	$164.5
Load	$27.8	$52.1	$50.3	$37.6	$71.5	$62.4
TOTAL	$196.8	$220.0	$235.6	$240.2	$287.0	$300.5
1/ In addition, the reliability actuals include capital emergency expenditures and the District of Columbia Powerline Undergrounding (DC PLUG) initiative expenses.						

Table 3 demonstrates that Pepco has invested significantly in its system in the District, and Pepco employees have dedicated themselves to improving the customer experience while continuing to keep the lights on. And, while the Company is proud of its achievements, Pepco must continue

to invest efficiently, intelligently, and prudently so that the reliability gains are maintained and improved.

B. Comments on Neighborhood Reliability (CEMI) and Reporting

The NOPR continues to require annual reporting related to SAIDI, SAIFI, and the Customer Average Interruption Duration Index ("CAIDI"), which is a function of SAIDI and SAIFI. Pepco has been including these indices in its Annual Consolidated Report ("ACR")—or by separate reporting—since the EQSS was adopted and supports continuing these reporting statistics. In addition, the NOPR, for the first time, adds a reporting requirement relating to neighborhood reliability through CEMI. Specifically, proposed 15 D.C.M.R. § 3603.16 requires Pepco to report annually on the number of customers experiencing 3 or more outages per year ("CEMI-3"). The proposed CEMI-3 regulation would require Pepco to report CEMI-3 statistics for the District as a whole, by Ward, and by neighborhood. Currently, Pepco's ACR reports CEMI-3 by neighborhood for any neighborhoods in which 250 or more customers experience 3 or more outages per year.[2]

Table 4 shows the CEMI results in the District since 2012.[3] Each 1.0% shown in the table below represents approximately 2,900 customers, such that for the year 2019, approximately 12,000 customers experienced 3 or more outages (CEMI-3) and approximately 2,700 experienced four or more (CEMI-4) outages.

[2] *See* 2020 ACR at page 177. In this section of the ACR, Pepco also provides the associated Ward, number of customers affected, and feeders serving that neighborhood.
[3] Table 4 includes all outages, even those stemming from MSOs.

Table 4: CEMIx (2012-2019) (MSO Inclusive)

CEMIn Including Storms (MSO)

Year	CEMI3	CEMI4	CEMI5	CEMI6	CEMI7	CEMI8	CEMI9	CEMI10
2012	25.73%	16.12%	10.94%	6.30%	3.01%	1.51%	0.45%	0.19%
2013	10.93%	5.93%	3.21%	1.21%	0.54%	0.21%	0.12%	0.02%
2014	7.15%	1.74%	0.68%	0.16%	0.03%	0.01%	0.00%	0.00%
2015	6.75%	2.77%	1.28%	0.63%	0.40%	0.20%	0.07%	0.07%
2016	8.73%	4.46%	2.82%	0.51%	0.08%	0.03%	0.00%	0.00%
2017	5.11%	2.80%	0.86%	0.14%	0.05%	0.05%	0.00%	0.00%
2018	7.44%	3.80%	1.91%	0.93%	0.11%	0.00%	0.00%	0.00%
2019	3.99%	0.82%	0.07%	0.02%	0.01%	0.01%	0.00%	0.00%

CEMI less or equal to 0.5%
CEMI between 0.51% and 10% inclusive
CEMI greater than 10%

Similar to the reliability standards proposed in this NOPR, Pepco applauds the Commission's commitment to ensure that reliability gains achieved on a systemwide basis are also experienced at the neighborhood level—a commitment that Pepco shares. To that end, over the last several years Pepco has executed several programmatic initiatives, including "Area Plans," in addition to other efforts like the comprehensive feeder program, with the aim of decreasing the "pockets" of customers that experience multiple interruptions annually. These programs build on the systemwide reliability gains the Company has achieved by analyzing discrete areas that have experienced more frequent outages and remediating smaller portions of the distribution system at the neighborhood level. While these programs may not necessarily contribute significantly to overall system reliability, they do provide significant benefits to the affected neighborhood and customers and constitute an important part of Pepco's broader mission. This broader mission must include enhancing reliability to all areas of the District.

Although Pepco shares the Commission's concern on neighborhood reliability and although the proposed regulation would only "track" performance at the CEMI-3 level, the Company nonetheless disagrees on the use of CEMI-3 as the starting point for measuring neighborhood reliability. Rather, Pepco proffers that CEMI-4 is the more appropriate metric to measure systemic, neighborhood-level outages. Pepco further proffers that the goal of measuring "neighborhood" reliability is to reduce systemic, recurring outages.

It is axiomatic that, the lower number chosen for CEMI-x, the less likely it is that the outages will be systemic, as opposed to random causes such as car accidents or lightning strikes. In the Company's view, the same could be said for CEMI-3, and Pepco experts have testified that CEMI-4 is a more appropriate metric to gauge and track neighborhood reliability.[4] Accordingly, if the purpose of the CEMI reporting standard is to prevent or minimize repetitive problems at the neighborhood level, Pepco respectfully submits that CEMI-4 is the more appropriate standard. Improvements in CEMI often require the utility to address issues that may only impact a small subset of customers and Pepco strives to invest in the most efficient and prudent way possible. Reducing the CEMI level to CEMI-3 will cause a more granular response from Pepco and the Commission and parties should understand that this more granular response will be incremental to the Company's current capital plan.

C. Comments on Proposed SAIDI and SAIFI Standards

Choosing to improve electric distribution system reliability is a policy decision, and choosing the appropriate levels of reliability, as measured by SAIDI and SAIFI, is an even more difficult policy decision that must weigh many factors, including the ability of the utility to meet the standards, customer reliability expectations, the requirements for modernizing the electric grid

[4] Surrebuttal Testimony of Pepco Witness Bryan Clark, Pepco (3I) at 3-4, Formal Case No. 1156.

and, of course, the cost to achieve the standards. For these reasons, Pepco recommends convening a legislative-style hearing to further explore these and related issues.

Nonetheless, and even if the Commission schedules the requested legislative-style hearing, Pepco can say definitively that it supports the broad policy in the NOPR – namely, strong reliability standards. However, these important policy decisions do not operate in a vacuum. Rather, from the perspective of the utility, there are at least three threshold issues that must be considered when setting appropriate standards, particularly when those standards impact its customers and are subject to financial penalty or enforcement. These threshold issues are: (1) timing, or the ability of the utility to adequately plan and implement those plans to meet the standards; (2) reasonableness, or the ability of the utility to meet the standards; and (3) capital costs, or the expenditures the utility requires—and customers pay—to achieve the standards.

From a timing perspective, the Company cannot reasonably be expected to meet higher reliability standards in 2021 above what the Company is currently targeting, as proposed in Formal Case No. 1156. More importantly, the standards proposed in this NOPR for 2021 will not be adopted until sometime in 2021 and the Company will have little, if any, time to make necessary system changes to achieve a higher reliability standard. From that standpoint alone, imposing 2021 SAIDI and SAIFI standards on Pepco above what it has proposed in Formal Case No. 1156 is unreasonable. Similarly, from a reasonableness perspective, Pepco should not be required to meet or exceed the standards set forth in the NOPR, which are in many cases first decile or even best in class performance (or nearly so) in each of the three years. Finally, there is the issue of cost. That is, when formulating these policies, there are attendant trade-offs, and a chief consequence of deciding to maintain and improve system-wide reliability is increased investment in the distribution system. Each of these three issues is discussed in more detail below.

1. Timing: The Commission cannot approve new reliability standards without providing the necessary time for Pepco to plan and execute on its plans.

The Commission issued the NOPR on October 9, 2020 and comments were originally due by November 9.[5] Since the NOPR's issuance, OPC (with Pepco's assent) has requested an extension until December 18, 2020 to file comments,[6] which the Commission granted.[7] Moreover, while the NOPR does not explicitly provide for reply comments or other responsive pleadings, given the import of the issues at hand and past history, it is not unreasonable to expect additional filings from Pepco or other stakeholders. For example, should the Commission require substantive changes to the NOPR, the Commission will be required to issue a second NOPR for comment.[8] Accordingly, the NOPR will not become final until some date in 2021.

The timing of the effective date of the final rules presents serious challenges to Pepco from an operational and planning perspective and, therefore, is unreasonable. Although the Company's SAIDI target in 2021 exceeds the NOPR SAIDI target, it is important to explain that in order to achieve the NOPR SAIFI target of .57, which slightly exceeds the Company's SAIDI target, the Company must include a planning margin to ensure it meets the reliability level and avoid civil penalties. While the sheer magnitude of the change from the current EQSS and applicable merger commitments is itself an issue that will be discussed in the next section, the threshold issue concerns the fact that the NOPR would adopt reliability standards well into the first year those standards would become effective. For a regulated utility that will be subject to civil penalties, having new SAIDI and SAIFI standards in place that exceed what the Company

5 Notice of Proposed Rulemaking, RM36-2020-02-E (Oct. 9, 2020).
6 "Office of People's Counsel's Unopposed Motion for Enlargement of Time to Submit Comments Pursuant to the District of Columbia Public Service Commission's Notice of Proposed Rulemaking," RM36-2020-02-E (Oct. 20, 2020).
7 Notice of Extension of Public Comment Period, RM36-2020-02-E (Nov. 6, 2020).
8 2 D.C. Code Section 505 and 34 D.C. Code Section 802.

is already targeting, coincident with and even after the beginning of 2021 is unreasonable, arbitrary, and capricious.

As stated previously in these Comments, Pepco requires the opportunity to plan its projects and develop its capital plan in advance with an eye towards meeting predetermined reliability benchmarks or standards. The planning process is thoughtful and time consuming and culminates in the development of a budget and schedule for capital work. For example, when Pepco filed its current rate case in Formal Case No. 1156 in May 2019, it included its proposed budget and capital plan through 2023. The NOPR standards, however, far exceed the standards used to develop the capital plans (and budget) currently in place, and, as a result, additional capital and O&M costs will be incurred over the Company's current capital plans to achieve the higher standards.

To be clear, Pepco does not view the development of new EQSS rules and the Commission approval of Pepco's proposed reliability targets from Formal Case No. 1156 as in conflict. In fact, the ability to respond to policy changes and Commission directives is a positive feature of a multiyear rate plan ("MRP"), which permits the utility to be more nimble in response to things like changing regulatory requirements and would permit Pepco to present its costs for review and approval in a reconciliation process. Given the dynamic nature of the energy field in the District of Columbia, it is expected that new obligations will be imposed on Pepco in the next several years, including the period covered by the MRP. The NOPR, whatever its outcome, represents such an obligation if it changes Pepco's reliability standards.

However, as previously discussed, Pepco cannot reasonably develop, approve, or execute new capital plans in the few weeks remaining in 2020, particularly given the uncertainty that the

NOPR standards will be approved as proposed. Accordingly, it is unreasonable to adopt the standards for 2021, as proposed.

2. Standards: The proposed reliability standards lack adequate foundation and fail to provide an appropriate planning margin.

Pepco supports adopting aggressive reliability standards in the District, as is evident in the Company's merger commitments as well as the target levels the Company proposed in Formal Case No. 1156. Pepco also has the goal of achieving first quartile performance annually for SAIDI and SAIFI and often performing well within the top quartile of utilities across the country in both indices. However, the NOPR SAIDI and SAIFI standards are not appropriate for two reasons. First, the NOPR does not explain how the Commission derived the standards it proposes. Second, the NOPR would require Pepco to reach reliability levels well in excess of those it has planned for as early as 2021, and the standards provide no planning margin in the event that one or more large-scale outages occur. As such, the standards are unreasonable.

a. The NOPR SAIDI and SAIFI Standards Lack Adequate Foundation.

As the Commission is aware, in Pepco's current rate case, the Company has proposed the SAIDI and SAIFI targets for the years 2020-2022. Comparing Pepco's proposal to the proposal included in the NOPR yields drastic differences.

Table 5 – Comparison of NOPR Reliability Standards and Pepco Proposed Standards

Year	NOPR SAIDI	Pepco SAIDI	NOPR SAFI	Pepco SAIFI
2021:	1.01	69 min. (1.15 hrs)	0.57	0.58
2022:	0.92	69 min. (1.15 hrs)	0.54	0.58
2023:	0.83	69 min. (1.15 hrs)	0.50	0.58

Aside from the obvious differences in the comparison in Table 5, it is unclear how the Commission derived the reliability standards. For example, in Formal Case No. 1156, the Company detailed the process it used for proposing its SAIDI and SAIFI proposals, which would extend the merger commitment SAIFI standard of 0.58 interruptions from 2020 through 2022, with a range (or "deadband") from 0.54 to 0.62. The Company also proposed a SAIDI of 69 minutes (or 1.15 hours), which was proposed by calculating the average of Pepco's best three years of SAIDI over the last five years.[9] Like SAIFI, Pepco's SAIDI proposal allowed a range of performance, in this case it was from 59 to 79 minutes. These two proposals would likely maintain the Company's SAIFI and SAIDI well within the top quartile through 2022.[10] The Company continues to support the reasoning behind these proposed reliability thresholds, which allow Pepco to continue strong reliability performance within an achievable budget and the Company will strive to achieve results near the most favorable edge of the deadbands by 2022.

In contrast, the NOPR's SAIDI and SAIFI proposals *appear* to be a straight-line decrease year-over-year, both for SAIDI and SAIFI. But, the NOPR does not explain the derivation, nor is it evident whether or not the Commission relied on Pepco data or industry sources to formulate the values. Absent that explanation or support, these standards are unreasonable, arbitrary and capricious.

b. <u>The proposed SAIDI and SAIFI standards are unreasonable because they do not include any planning margin.</u>

Notwithstanding the derivation, the standards themselves represent a level of outage reduction that will be difficult and not something the Company could commit to achieve on an annual basis. As Pepco has explained, Pepco's proposed SAIDI and SAIFI targets (Table 5,

9 Direct Testimony of Pepco Witness Clark, Pepco (I), Formal Case No. 1156 at 26-27.
10 *Id*.

above) are directly tied to the Company's capital budget and the projects included in its Construction Report, which provide detailed explanations of the projects that the Company has selected to meet the reliability targets. These projects were selected to allow Pepco to meet the SAIDI and SAIFI targets it proposed with a reasonable level of confidence and include a planning margin that acts as a buffer in case unexpected events occur that adversely affect reliability. The planning margin is particularly important given the likelihood of increasing numbers of unexpected events due to the anticipated effects of climate change.[11]

The importance of including a planning margin cannot be overstated. Tables 1 and 2 show, and the Company has explained, that reliability results are not linear. Numerous factors account for the variability of reliability, but the most obvious cause is weather. In addition, the significant extent of the underground system in the District can contribute to prolonged outages given the difficulty in remediating underground outages. This all means that, as the system has improved, the impact of one or two non-major but significant outages is magnified. Take, for example, one outage that occurred in 2019 but did not rise to the level of an MSO. It affected over 20,000 customers, contributed approximately 0.07 to the system SAIFI (12% of the year's SAIFI) and approximately 15 minutes of SAIDI (19% of the year's SAIDI) for the year. It is true that outages of this scale are rare and Pepco seeks to minimize them to the extent they do occur. But, as proposed, the NOPR SAIDI and SAIFI shrinks any planning margin that exists, with little or no time to correct, to a level that the Company cannot commit to at this time.

In addition, it must be understood that better performance, year-over-year, becomes more difficult as reliability systemwide has improved. That is, the difference between Pepco's

[11] The Climate Ready DC Plan recognizes the increasing threat of climate change, for example, citing to the increase numbers of heat emergency days over the coming years (Climate Ready DC Plan at 2) and extreme rainfall events (Climate Ready DC Plan at 3). These are examples of the types of climate impacts that cause unexpected events on the system.

proposed SAIFI of 0.58 for 2023 and the NOPR's 2023 standard of 0.50 may not appear drastic to the naked eye. There is less of an issue in distinguishing the difference in Pepco's proposed 2023 SAIDI of 1.15 hours (69 minutes) and the NOPR's 2023 SAIDI of 0.83 hours. However, as the Company responsible for meeting the standards as reliability has improved so drastically, the nearly 15% reduction that would be required for the NOPR's SAIFI standard does represent a significant difference. For these reasons, Pepco proposes that the Commission adopt the SAIDI and SAIFI targets of 69 minutes (or 1.15 hours) for SAIDI and 0.58 interruptions for SAIFI [for the years 2021-2023].

The above proposal by Pepco should be adopted for three reasons. First, it is reasonable, in that Pepco's proposal is already included within its current capital plan. Second, Pepco's proposed standards are aggressive, as they represent top quartile performance for SAIDI and SAIFI. Third, the Pepco's proposed standards are achievable, a perhaps obvious but critical consideration in adopting standards that are reasonable. Otherwise, the standards would be nothing more than arbitrary and capricious goals that would unreasonably subject the Company to enforcement if those goals are not met. The standards, as proposed in the NOPR, seem to rely on an overly optimistic view of Pepco's reliability that presupposes that the Company can outperform its best reliability results on an annual basis. As explained above, reliability gains are not, and have not been, linear, and assuming linear gains is unreasonable and not based in fact. Accordingly, the Commission must adopt standards that are achievable annually, such as those Pepco has proposed herein.

3. Capital Expenditures

As discussed in the previous section, the budget Pepco proposed in the MRP and the projects that comprise the budget are meant to meet the reliability targets proposed in that case

within a reasonable planning margin. Those reliability targets are also discussed in the previous sections. To the extent that the Commission adopts regulations in excess of the standards Pepco proposes, the Company will have to plan and execute reliability projects whose budgets exceed those Pepco already proposed, which Pepco is committed to do; however, it is important for the Commission to know that there will be incremental costs.

Similarly, if the Commission adopts the CEMI-3 tracking metric, as proposed in the NOPR and discussed in greater detail above, meaningfully decreasing CEMI-3 in the District will require additional spending given that Pepco's capital plans were structured to meet the CEMI-4 standard. Accordingly, if the standards required in the new EQSS are more stringent than those Pepco proposed in Formal Case No. 1156 or the Commission adopts the CEMI-3 standard, Pepco would require additional capital spending that would be subject to additional recovery.

D. Comments on Enforcement Regulations

The NOPR, if adopted, would explicitly include statutory enforcement mechanisms in Chapter 36 of the Commission's regulations. As a general matter, Pepco supports adopting regulations that clarify its roles and responsibilities as a regulated utility. Thus, Pepco supports including the Commission's enforcement mechanisms in the EQSS chapter. However, the Commission should adopt minor modifications to the proposed regulations. Pepco's clarifications to the proposed regulations would more closely match the statutory language and also provide Pepco important due process rights in the event that the Company did not meet the reliability standards.

For example, proposed Section 3698.1 states that the enforcement provisions in Section 3698 are in accordance with D.C. Code § 34-706(e)(1) and failure to comply may result in a penalty. As written, Section 3698.1 suggests that **all** of Section 3603—reliability standards as

well as reporting requirements—can subject Pepco to penalties. This language does not track the cited statute. In addition, NOPR Section 3698.2 provides three criteria that the Commission would use in assessing the amount of any civil penalty it would impose if the utility does not meet the standards proposed in Section 3603.11. However, proposed Section 3698.2 appears to presuppose the imposition of a penalty rather than using the permissive language included in proposed Section 3698.1 and the statute.

Accordingly, Pepco would propose clarifying or revising this section in three ways. First, to take a step back, D.C. Code §34-706(e)(1) states that "Any public utility that fails to comply **with regulations establishing reliability performance standards** may be subject to a civil penalty of up to $100,000 for each violation" (emphasis added). Thus, it is clear that the civil penalties are tied directly to performance standards (SAIDI and SAIFI) and not the whole of Section 3603 of which the performance standards are only a part. Pepco would revise Section 3698 to tie directly to proposed Section 3603.11, which are the 2020-22 SAIDI and SAIFI standards and not to Section 3603 broadly.

Second, proposed Section 3698.2 should include another factor to emphasize that civil penalties may not in all cases be warranted. The intent of the law is clear that penalties are not mandatory because it says that penalties "may" be warranted. While proposed Section 3698.1 repeats the word "may" verbatim from the law, Section 3698.2 is less clear. For that reason, Pepco proposes adding a subsection (d) that would clarify that penalties are discretionary and not mandated, depending on the context and explanation the utility provides. Pepco proposes that the Commission add section 3698.2(d), as follows:

> (d). As appropriate and taking into consideration the circumstances and justification provided by the utility and context in which the reliability performance standards have not been met, the Commission may decline to require

civil penalties for any year in which the standards included in Section 3603.11 are not met.

Third, and related to the second proposed change, Pepco proposes that the Commission add another section, § 3698.6, that would be similar to the regulations provided with respect to the natural gas utility and/or gas operators in determining probable violations and establishing a process to determine the propriety of assessing a fine.[12] Such a provision, which can be inferred from the proposed regulations, makes explicit Pepco's due process rights and could be included as follows:

> 3698.6 If the Electric Utility fails to comply with any requirement stated in Subsection 3603.11, the Electric Utility shall provide the reason(s) for not meeting the requirement(s), a proposed remedy to prevent a similar occurrence(s), and show cause as to why a penalty(s) shall not be imposed. The Electric Utility shall file a report with the Commission, with a copy provided to OPC, within fifteen (15) days following receipt of the Notice of Probable Violation.

III. CONCLUSION

For the reasons discussed above, Pepco respectfully requests that the Commission convene a legislative-style hearing to discuss these important matters. To the extent that the Commission declines to convene a legislative-style hearing, Pepco requests that the Commission consider these comments and adopt the NOPR as modified herein.

Respectfully submitted,
POTOMAC ELECTRIC POWER COMPANY

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[12] See, e.g., 15 DCMR 3707.3 and 2312.2.

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December 18, 2020

CERTIFICATE OF SERVICE

I hereby certify that a copy of Potomac Electric Power Company's Comments regarding Reliability Standards and Reporting Guidelines were served this 18th day of December 2020 on all parties in Case No. RM36-2016-01-E by electronic mail.

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