

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

**ORDER**

**November 9, 2017**

**FORMAL CASE NO. 1145, IN THE MATTER OF APPLICATIONS FOR APPROVAL OF  
BIENNIAL UNDERGROUND INFRASTRUCTURE IMPROVEMENT PROJECTS  
PLANS AND FINANCING ORDERS, Order No. 19167**

**Before the Commission:**

Betty Ann Kane, Chairman  
Willie L. Phillips, Commissioner  
Richard A. Beverly, Commissioner

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DISTRICT OF COLUMBIA  
PUBLIC SERVICE COMMISSION

**Appearances:**

Peter E. Meier, Esq., Kim F. Hassan, Esq., and Andrea H. Harper, Esq. for Potomac Electric Power Company; Frann G. Francis, Esq., Excetral K. Caldwell, Esq., Keith Townsend, Esq., and Nicola Y. Whiteman, Esq. for Apartment & Office Building Association; Brian R. Caldwell, and Cheri Hance Staples for DC Office of the Attorney General on behalf of the D.C. Department of Transportation; Richard R. Butterworth, Jr., Esq. for the United States General Services Administration; Sandra Mattavous-Frye, Esq. for the Office of the People's Counsel;; Michael R. Engleman, Esq., and Meena Gowda, Esq. for the District of Columbia Water & Sewer Authority; Leslie T. Thorton, Esq., Donald R. Hayes, Esq., and Cathy Thurston-Seignious, Esq. for Washington Gas Light Company.

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## **I. INTRODUCTION**

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) **GRANTS** the Joint Application of Potomac Electric Power Company (“Pepco” or “Company”) and the District of Columbia Department of Transportation (“DDOT”) (together referred to as the “Joint Applicants”) for Approval of the First Biennial Underground Infrastructure Improvement Projects Plan (“Biennial Plan”) and the Financing Order Application.<sup>1</sup> To facilitate compliance and consistency with applicable statutory provisions, this Order adopts the definitions set forth in the “Electric Company Infrastructure Improvement Financing Amendment Act” (“2017 ECIIFAA” or “New Act”) (except to the extent such terms are otherwise defined herein). This Order also accepts the 2014 and 2016 Joint Stipulations filed by the Office of the People’s Counsel (“OPC”), Pepco, and DDOT with respect to certain technical aspects of system design, construction, and operation of the Biennial Plan and the D.C. Power Line Undergrounding (“DC PLUG”) Education Plan. With respect to the DC PLUG Education Plan and Undergrounding Project Consumer Education Task Force (“UPCE Task Force”), this Order adopts the additional provisions outlined in Order No. 17697, as clarified by Order No. 17770. The United States General Services Administration’s (“GSA”) Motion to reject or suspend the current Application and plan and/or to waive or hold in abeyance the filing of future biennial plans is **DENIED**.<sup>2</sup> Finally, the Joint Applicants are directed to comply with all other directives included in this Order in the manner and time periods set forth herein.

## **II. BACKGROUND**

2. On May 17, 2017, the Mayor of the District of Columbia signed into law temporary legislation titled the Electric Company Infrastructure Improvement Financing Emergency Amendment Act of 2017 (D.C. Act 22-56) (“Emergency Act”). On May 19, 2017, the Mayor signed the New Act. The New Act is identical to the Emergency Act and was intended to be the permanent Act. The New Act was subject to a 30-day congressional review period before it could become effective. The Emergency Act became effective during the congressional review period, which expired on July 10, 2017, without any congressional action. The New Act, therefore, became effective on July 11, 2017.<sup>3</sup>

3. The 2017 ECIIFAA amends the Electric Company Infrastructure Improvement Financing Act of 2014 (“2014 ECIIFA” or “Original Act”)<sup>4</sup> and authorizes the collection and use

<sup>1</sup> *Formal Case No. 1145, In the Matter of Applications for Approval of Biennial Underground Infrastructure Improvement Projects Plans and Financing Orders* (“*Formal Case No. 1145*”), Joint Application of Potomac Electric Power Company and the District of Columbia Department of Transportation for Approval of the First Biennial Underground Infrastructure Improvement Projects Plan and Financing Order Application, filed July 3, 2017 (“Joint Application” or “Biennial Plan”).

<sup>2</sup> *Formal Case No 1145, Protest and Objections of the United States General Services Administration to the Joint Application for Approval of Biennial Underground Infrastructure Improvement Projects Plan and Financing Order Application*, at 7, filed September 12, 2017 (“GSA’s Protest”).

<sup>3</sup> Citations in this Order are to the permanent law.

<sup>4</sup> The Original Act required a jointly filed Triennial Plan and Financing Application. The Commission considered the Joint Applicants’ Triennial Plan and Financing Application in *Formal Case No. 1116* and *Formal Case*

by the District of Columbia and Pepco of certain charges to finance the undergrounding of certain electric power lines and ancillary facilities. The 2017 ECIIFAA governs Pepco's and DDOT's public-private partnership to bury overhead primary power lines to improve electric service reliability and reduce the impact of storm-related outages in the District of Columbia. The New Act also changes a portion of the funding structure for the DC PLUG project from bonds issued by the District, and securitized by ratepayers required under the Original Act, to a pay-as-you-go structure with the cost imposed on Pepco and recovered by Pepco through a tariff rider.

4. Section 307(a) of the New Act requires Pepco and DDOT to jointly file, every two (2) years, an application for the Commission's approval of a biennial Underground Infrastructure Improvement Projects Plan consisting of plans for DDOT's Underground Electric Company Infrastructure Improvement Activity and Pepco's Infrastructure Activity that are to be undertaken in the two-year period.<sup>5</sup> The New Act allows Pepco to include an application for a Financing Order ("Financing Application") as part of its application for each Biennial Plan.<sup>6</sup> The 2017 ECIIFAA also authorizes an annually adjusted surcharge to recover costs associated with the Electric Company Infrastructure Improvement Costs approved by the Commission.<sup>7</sup> Section 309(d) of the 2017 ECIIFAA requires the Commission to expedite its consideration of an application to approve a Biennial Plan and a Financing Order.<sup>8</sup>

5. In Order No. 18801, issued June 15, 2017, the Commission: (1) opened this proceeding ("*Formal Case No. 1145*") to consider applications for approval of Biennial Plan filed pursuant to the New Act; (2) approved the Consensus Expedited Discovery Schedule and Process filed by Pepco,<sup>9</sup> as required by Section 309 (b)(1) of the New Act;<sup>10</sup> and (3) directed that any parties may file comments on or before July 13, 2017, and reply comments on or before July 18, 2017, addressing whether the Commission should incorporate into the record of *Formal Case No. 1145* all, part, or none of the records from *Formal Case Nos. 1116 and 1121*.<sup>11</sup>

6. On July 3, 2017, pursuant to Sections 302 and 307 (a) of the 2017 ECIIFAA, the Joint Applicants filed an application for the approval of the first Biennial Plan and an application

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No. 1121, respectively. See *Formal Case No. 1116, In the Matter of the Application for Approval of Triennial Underground Infrastructure Improvement Projects Plan*, Application filed June 14, 2014 ("*Formal Case No. 1116*"); and *Formal Case No. 1121, In the Matter of the Application of the Potomac Electric Power Company for a Financing Order*, Application filed August 1, 2014 ("*Formal Case No. 1121*") (jointly "*Formal Case Nos. 1116 and 1121*").

<sup>5</sup> D.C. Code § 34-1313.07 (a) (2017).

<sup>6</sup> D.C. Code § 34-1313.02(a) (b) (2017).

<sup>7</sup> D.C. Code § 34-1313.01 (2017).

<sup>8</sup> D.C. Code § 34-1313.09 (d) (2017).

<sup>9</sup> *Formal Case No. 1145*, Consensus Expedited Discovery Schedule and Process ("Expedited Schedule"), filed June 9, 2017.

<sup>10</sup> D.C. Code § 34-1313.09 (b)(1) (2017).

<sup>11</sup> *Formal Case No. 1145*, Order No. 18801, rel. June 15, 2017 ("Order No. 18801").

for a financing Order.<sup>12</sup> The Commission issued a Public Notice on July 6, 2017, directing that any person desiring to submit petitions for intervention on the Joint Application do so before July 28, 2017. The Public Notice also directed that any person desiring to comment on the Joint Application may do so on or before September 13, 2017.

7. Four petitions for intervention were filed by: (1) GSA; (2) Washington Gas Light Company (“WGL”); (3) the Apartment and Office Building Association of Metropolitan Washington (“AOBA”); and (4) the District of Columbia Water and Sewer Authority (“DC Water”).<sup>13</sup> No objections were filed to any of these petitions, and the Commission granted the Petitions to Intervene in Order No. 19086.<sup>14</sup> By statute, the District, DDOT, and OPC are parties of right in this proceeding.<sup>15</sup> In Order No. 19086, the Commission also addressed comments filed by the parties, both for and against, regarding incorporation of the prior records in *Formal Case Nos. 1116 and 1121*<sup>16</sup> and determined to incorporate those records into the record of this new proceeding.<sup>17</sup>

8. On September 8, 2017, Athena Power, Inc. (“Athena Power”) filed an objection to the first Biennial Plan.<sup>18</sup> On September 12, 2017, Nina Dodge, on her own behalf, filed Comments on the Joint Application,<sup>19</sup> and the GSA filed a Protest and Objection to the Joint Application.<sup>20</sup> On September 13, 2017, OPC filed Comments regarding the Joint Application<sup>21</sup> and AOBA filed

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<sup>12</sup> *Formal Case No. 1145*, Joint Application, filed July 3, 2017.

<sup>13</sup> *Formal Case No. 1145*, United States General Services Administration’s Petition to Intervene and Notice of Appearance, filed July 12, 2017 (“GSA’s Petition to Intervene”); Washington Gas Light Company’s Petition for Leave to Intervene and Notice of Appearance, filed July 21, 2017 (“WGL’s Petition to Intervene”); Petition to Intervene of the Apartment and Office Building Association of Metropolitan Washington in Response to the Commission’s July 6, 2017 Public Notice, filed July 21, 2017 (“AOBA’s Petition to Intervene”); and District of Columbia Water and Sewer Authority Petition to Intervene, filed July 28, 2017 (“DC Water’s Petition to Intervene”).

<sup>14</sup> *Formal Case No. 1145*, Order No. 19086, rel. September 6, 2017 (“Order No. 19086”).

<sup>15</sup> See D.C. Code §§ 34-1313.03 (a)(2) (2017), 1313.09(a)(2) (2017).

<sup>16</sup> See generally, *Formal Case Nos. 1116 and 1121*.

<sup>17</sup> *Formal Case No. 1145*, Order No. 19086, ¶¶ 31-32, 34.

<sup>18</sup> *Formal Case No. 1145*, Objection to the first biennial Underground Infrastructure Improvement Projects Plan, filed September 8, 2017 (“Athena Power’s Objection”).

<sup>19</sup> *Formal Case No. 1145*, Comments of Nina Dodge, filed September 12, 2017 (“Dodge’s Comments”). We note that neither Athena Power nor Nina Dodge requested intervention in this proceeding, and, as a result, will not have the same rights to participate in this case as those who have been granted party status. We will, however, treat Athena Power’s and Nina Dodge’s filings as comments by interested persons.

<sup>20</sup> *Formal Case No. 1145*, Protest and Objections of the United States General Services Administration to the Joint Application for Approval of Biennial Underground Infrastructure Improvement Projects Plan and Financing Order Application, filed September 12, 2017 (“GSA’s Protest”).

<sup>21</sup> *Formal Case No. 1145*, Comments of the Office of the People’s Counsel for the District of Columbia Regarding the Joint Application of the Potomac Electric Power Company and the District Department of

a Protest and Request for Hearing.<sup>22</sup> DDOT and Pepco filed a Response to the Protests, Comments and Request for Hearing on September 25, 2017.<sup>23</sup>

9. In Order No. 19144, issued on October 20, 2017, the Commission denied AOBA's Request for Hearing.<sup>24</sup> The Commission held that AOBA did not identify any contested issues of material fact requiring an evidentiary hearing and that, in any event, all issues identified by AOBA could be resolved on the pleadings and discovery responses.<sup>25</sup>

### **III. STATUTORY OVERVIEW – 2017 ECIIFAA REQUIREMENTS**

#### **A. Applicable Requirements for the First Biennial Plan Application**

10. D.C. Code § 34-1313.08 sets forth the requirements for both the application and the plan. Broadly, D.C. Code § 34-1313.08 (a)(1) – (3) and (c) provides how the ranking of reliability performance of individual feeders should be conducted; establishes the primary selection criteria; and delineates additional content that the electric company and DDOT should include in the plan.

##### *i. Section 34-1313.08 (a)(A) and (B)*

11. Section 34-1313.08 (a)(1)(A) requires that the first Biennial Plan include “a measurement and ranking of the reliability performance of the electric company's overhead and combined overhead-underground mainline primary and lateral feeders in the District of Columbia since January 1, 2010 through the most recently completed calendar year, using the primary selection criteria set forth in paragraph (2) of this subsection.”<sup>26</sup>

12. Section 34-1313.08 (a)(1)(B) requires “on the basis of the foregoing rankings, an identification of the electric company's recommended selection of mainline primary and lateral feeders that will utilize the DDOT Underground Electric Company Infrastructure Improvements identified in the plan.”<sup>27</sup>

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Transportation for Approval of the Biennial Underground Infrastructure Improvement Projects Plan and Financing Order Application, filed September 13, 2017 (“OPC's Comments”).

<sup>22</sup> *Formal Case No. 1145*, Protest and Request for Hearing of the Apartment and Office Building Association of Metropolitan Washington, filed September 13, 2017 (“AOBA's Protest”).

<sup>23</sup> *Formal Case No. 1145*, Response of the District Department of Transportation and Potomac Electric Power Company to Protests and Comments Filed in Formal Case No. 1145, filed September 25, 2017 (“Joint Applicants' Response”).

<sup>24</sup> *Formal Case No. 1145*, Order No. 19144, rel. October 20, 2017 (“Order No. 19144”).

<sup>25</sup> Order No. 19144, ¶ 15.

<sup>26</sup> D.C. Code § 34-1313.08(a)(1)(A) (2017).

<sup>27</sup> D.C. Code § 34-1313.08 (a)(1)(B) (2017).



*ii. Section 34-1313.08 (a)(2)*

13. Section 34-1313.08 (a)(2) requires a showing of certain enumerated metrics based on “all sustained interruptions that affect the public welfare (inclusive of major service outages and District major event days) occurring on each overhead and combined overhead-underground mainline primary and lateral feeder circuits in the District of Columbia from January 1, 2010 through the most recently completed calendar year, averaged using the following data, weighted equally: (A) Number of outages per feeder; (B) Duration of the outages occurring on the feeder; and (C) Customer minutes of interruption per cost of undergrounding on the feeder.”<sup>28</sup>

*iii. Section 34-1313.08 (a)(3)(A)-(I)*

14. Section 34-1313.08 (a)(3)(A) requires that the plan “[i]n addition to the measurements, rankings, and selections required by paragraphs (1) and (2) of this subsection, the . . . Plan shall include for each mainline primary and lateral feeder recommended by the electric company to be placed underground an identification and description of the feeder number and feeder location (by street address, ward, and neighborhood).”<sup>29</sup>

15. Section 34-1313.08 (a)(3)(B) requires that the plan include “[o]verhead electrical cables, fuses, switches, transformers, and ancillary equipment, including poles, to be relocated underground or removed.”<sup>30</sup>

16. Section 34-1313.08 (a)(3)(C) requires that the plan include “[o]verhead primary and lateral feeders that are currently located parallel to the selected primary and lateral feeders that the electric company recommends [ ] be placed underground.”<sup>31</sup>

17. Section 34-1313.08 (a)(3)(D) requires that the plan include “[o]verhead secondary feeder circuits and ancillary facilities, and telecommunications and cable television cables and ancillary aboveground equipment, including poles, that will not be relocated underground or removed.”<sup>32</sup>

18. Section 34-1313.08 (a)(3)(E) requires that the plan identify the “[p]roposed Electric Company Infrastructure Improvements and DDOT Underground Electric Company Infrastructure Improvements funded by the Underground Project Charge and the DDOT Underground Electric Company Infrastructure Improvements Charges.”<sup>33</sup>

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<sup>28</sup> D.C. Code § 34-1313.08 (a)(2) (2017).

<sup>29</sup> D.C. Code § 34-1313.08 (a)(3)(A) (2017).

<sup>30</sup> D.C. Code § 34-1313.08 (a)(3)(B) (2017).

<sup>31</sup> D.C. Code § 34-1313.08 (a)(3)(C) (2017).

<sup>32</sup> D.C. Code § 34-1313.08 (a)(3)(D) (2017).

<sup>33</sup> D.C. Code § 34-1313.08 (a)(3)(E) (2017).



19. Section 34-1313.08 (a)(3)(F) requires that the plan identify “[n]ew distribution automation devices and segmentation capability to be obtained” through the DC PLUG initiative.<sup>34</sup>

20. Section 34-1313.08 (a)(3)(G) requires that the plan identify “[i]nterties that will enable the feeder to receive power from multiple directions or sources.”<sup>35</sup>

21. Section 34-1313.08 (a)(3)(H) requires that the plan identify “[t]he capability to meet current load and future load projections.”<sup>36</sup>

iv. *Section 34-1313.08 (c)(1)–(10) (Projected Plans and Costs)*

22. Section 34-1313.08 (c)(1) requires that the plan include “[a]n itemized estimate of the project plan’s Electric Company Infrastructure Improvement Costs and the proposed Underground Project Charges for the costs that correspond with an itemized list of the Electric Company Infrastructure Investment Activity shown.”<sup>37</sup>

23. Section 34-1313.08 (c)(2) requires that the plan include “[a]n itemized estimate of the DDOT Underground Electric Company Infrastructure Improvement Costs that correspond with an itemized list of the DDOT Underground Electric Company Infrastructure Improvement Activity.”<sup>38</sup>

24. Section 34-1313.08 (c)(3) requires that the plan include “[a]n assessment of potential obstacles to timely completion of a project, including, but not limited to, the need to obtain environmental or other permits or private easements, the existence of historically sensitive sites, required tree removal, and significant traffic disruptions.”<sup>39</sup>

25. Section 34-1313.08 (c)(4) requires that the plan include “[a] description of the efforts taken to identify District residents to be employed by the electric company and DDOT contractors during the construction of the DDOT Underground Electric Company Infrastructure Improvements and the Electric Company Infrastructure Improvements contained in the biennial Underground Infrastructure Improvement Projects Plan.”<sup>40</sup>

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<sup>34</sup> D.C. Code § 34-1313.08 (a)(3)(F) (2017).

<sup>35</sup> D.C. Code § 34-1313.08 (a)(3)(G) (2017).

<sup>36</sup> D.C. Code § 34-1313.08 (a)(3)(H) (2017). The Commission notes that D.C. Code § 34-1313.08 (a)(3)(I), which requires a status report and an explanation of the reasons why DDOT and Pepco undergrounding activity approved in a previous biennial plan “have not been completed and the dates upon which the projects are expected to be completed,” is not applicable to the First Biennial Plan, and; therefore, is not addressed in this Order.

<sup>37</sup> D.C. Code § 34-1313.08 (c)(1) (2017).

<sup>38</sup> D.C. Code § 34-1313.08 (c)(2) (2017).

<sup>39</sup> D.C. Code § 34-1313.08 (c)(3) (2017).

<sup>40</sup> D.C. Code § 34-1313.08 (c)(4) (2017).

26. Section 34-1313.08 (c)(5) requires that the plan include “[a]n explanation of the availability of alternate funding sources, if any, for relocation of the overhead equipment and ancillary facilities that will utilize DDOT Underground Electric Company Infrastructure Improvements, such as contributions in aid of construction, the grant of federal highway or economic development funds, and other sources.”<sup>41</sup>

27. Section 34-1313.08 (c)(6)(A) requires that the plan include “[a]n exhibit setting forth the proposed Underground Project Charges, work papers calculating the derivation of these charges, the proposed allocation of billing responsibility among the electric company’s distribution service customer classes for the Underground Project Charges.” The section also requires a worksheet depicting the: “(i) [p]rojected total expenses, (ii) [c]apital costs, (iii) [d]epreciation expenses, (iv) [a]nnual revenue requirement and rate of return on equity, as set by the Commission in the most recently decided base rate case [*Formal Case No. 1139*]; and (v) [a]llocation of billing responsibility utilized in these calculations.”<sup>42</sup>

28. Section 34-1313.08 (c)(6)(B) requires that the aforementioned exhibit in Section 308(c)(6)(A) “include the proposed accounting treatment for the costs to be recovered through these charges, which shall provide that no costs recovered through the Underground Project Charges shall also be afforded rate base or other treatment that would incorporate recovery of the Underground Project Charges into the design of the electric company’s base tariff rates until such time as the electric company shall request the transfer of these costs into rate base and the discontinuance of the costs being recovered in the Underground Project Charge.”<sup>43</sup>

29. Section 34-1313.08 (c)(7) requires that the plan include any “[o]ther information the electric company and DDOT considers material to the Commission’s consideration of the application.”<sup>44</sup>

30. Section 34-1313.08 (c)(8) requires that the plan include “[i]dentification and contact information of one or more individuals who may be contacted by the Commission with formal or informal requests for clarification of any material set forth in the application or requests for additional information.”<sup>45</sup>

31. Section 34-1313.08 (c)(9) requires that the plan include “[a] proposed form of public notice of the application suitable for publication by the Commission.”<sup>46</sup>

32. Section 34-1313.08 (c)(10) requires that the plan include “[a] protocol to be

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<sup>41</sup> D.C. Code § 34-1313.08 (c)(5) (2017).

<sup>42</sup> D.C. Code § 34-1313.08 (c)(6)(A) (2017).

<sup>43</sup> D.C. Code § 34-1313.08 (c)(6)(B) (2017).

<sup>44</sup> D.C. Code § 34-1313.08 (c)(7) (2017).

<sup>45</sup> D.C. Code § 34-1313.08 (c)(8) (2017).

<sup>46</sup> D.C. Code § 34-1313.08 (c)(9) (2017).

followed by the electric company and DDOT to provide notice and to coordinate engineering, design, and construction work performed pursuant to this chapter with the gas company, water utility, and other utilities that own or plan to construct, as approved by the Commission where applicable, facilities that may be affected by DDOT Underground Electric Company Infrastructure Improvement Activity or Electric Company Infrastructure Improvement Activity.”<sup>47</sup>

v. *Remaining requirements of D.C. Code § 34-1313.10 (b)*

33. As discussed above, D.C. Code § 34-1313.10 (b) also requires that the Commission make specific findings that:

- a) The electric company’s application satisfies the applicable requirements of Section 308 of the New Act;
- b) The proposed Electric Company Underground Infrastructure Improvements are appropriately designed and located;
- c) The intended reliability improvements will accrue to the benefit of the electric company’s customers;
- d) The projected costs of associated with the proposed Electric Company Underground Infrastructure Improvement Activity are prudent;
- e) The projected DDOT Underground Electric Company Infrastructure Improvement Costs funded by DDOT Underground Electric Company Infrastructure Improvement Charges are prudent;
- f) The electric company’s proposed Underground Project Charges will be just and reasonable; and
- g) The grant of authorizations and approvals sought by the electric company and DDOT in their joint application is otherwise in the public interest.<sup>48</sup>

**B. Applicable Requirements for Financing Application and Order**

i. *Section 34-1313.01 (a)(1)-(c) (Commission Authorizations)*

34. Section 34-1313.01 sets out the financing order’s required provisions.

35. Section 34-1313.01 (a)(1) requires the Commission to “[d]escribe the DDOT Underground Electric Infrastructure Improvement Activities to be paid through the DDOT Underground Electric Company Infrastructure Improvement Charge for the next 2-year period.”<sup>49</sup>

36. Section 34-1313.01 (a)(2)(A) requires that the Commission “[a]ssess the DDOT Underground Electric Company Infrastructure Improvement Charge on the electric company for the next 2-year period sufficient to fully satisfy the DDOT Underground Electric Company Infrastructure Annual Revenue Requirement to enable DDOT Underground Electric Company Infrastructure Improvement Activity to be undertaken in the next 2-year period plus an amount

<sup>47</sup> D.C. Code § 34-1313.08 (c)(10) (2017).

<sup>48</sup> D.C. Code § 34-1313.10 (b)(1) – (7) (2017).

<sup>49</sup> D.C. Code § 34-1313.02 (a)(1) (2017).

necessary to recover any DDOT Underground Electric Company Infrastructure Improvement Costs incurred by DDOT but not reimbursed through prior collections of the DDOT Underground Electric Company Infrastructure Improvement Charge; provided, that the DDOT Underground Electric Company Infrastructure Charges approved by the Commission under this chapter shall not exceed \$187.5 million in the aggregate; provided further, that any amounts collected with respect to the DDOT Underground Electric Company Infrastructure Improvement Charge and not expended for DDOT Underground Electric Company Infrastructure Improvement Costs as contemplated by this chapter shall be refunded to the electric company and thereafter credited to customers as the Commission may direct.”<sup>50</sup>

37. Section 34-1313.01 (a)(2)(B) requires the Commission to direct the electric company to remit “by the 10th day of each month during the applicable 2-year period, . . . a payment equal to 1/24 of the DDOT Underground Electric Company Infrastructure Improvement Charges approved for the applicable 2-year period pursuant to the financing order to the DDOT Underground Electric Company Infrastructure Improvement Fund established pursuant to § 34-1313.03a.”<sup>51</sup>

38. Section 34-1313.01 (a)(3) requires the Commission to assess “the Underground Rider for the next 2-year period among the distribution service customer classes of the electric company in accordance with the distribution service customer class cost allocations approved by the Commission for the electric company and in effect pursuant to the electric company’s most recently decided base rate case in an amount sufficient for the electric company to recover the DDOT Underground Electric Company Infrastructure Charge; provided, that no such charges shall be assessed against the electric company’s residential aid discount customer class or any succeeding customer class approved by the Commission for the purpose of providing economic relief to a specified low-income customer class; provided further, that the Underground Rider shall be billed to customers by the electric company on a volumetric basis.”<sup>52</sup>

39. Section 34-1313.01 (a)(4) requires that the Commission “[d]escribe the true-up mechanism as provided in § 34-1313.14<sup>53</sup> to reconcile actual collections of the Underground Rider with forecasted collection on at least an annual basis to ensure that the collections of the Underground Rider are adequate for the electric company to recover an amount equal to the aggregate amount of the DDOT Electric Company Infrastructure Improvement Charges.”<sup>54</sup>

40. Section 34-1313.01 (a)(5) requires that the Commission “[p]rescribe the filing of billing and collection reports relating to the DDOT Underground Electric Company Infrastructure

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<sup>50</sup> D.C. Code § 34-1313.02 (a)(2)(A) (2017).

<sup>51</sup> D.C. Code § 34-1313.02 (a)(2)(B) (2017).

<sup>52</sup> D.C. Code § 34-1313.02 (a)(3) (2017).

<sup>53</sup> The Commission notes that a scrivener’s error exists in the New Act, the correct true-up mechanism section is D.C. Code § 34-1313.14 titled “Approval of schedule provisions applying the true-up mechanism to the Underground Rider,” not D.C. Code § 34-1313.12, as indicated D.C. Code §§ 34-1313.01 (a)(4) and 34-1313.01 (c).

<sup>54</sup> D.C. Code § 34-1313.01 (a)(4) (2017).

Improvement Charges and the Underground Rider.”<sup>55</sup>

41. Section 34-1313.01 (a)(6) gives the Commission authority to include in the financing order “such other findings, determinations, and authorizations as the Commission considers necessary or appropriate.”<sup>56</sup>

42. Section 34-1313.01 (b) requires that “[a]ll financing orders shall be operative and in full force and effect from the time fixed for them to become effective by the Commission.”<sup>57</sup>

43. Section 34-1313.01 (c) requires that the “financing order shall provide that except to implement any true-up mechanism as required by D.C. Code § 34-1313.14, the Commission may not reduce, impair, postpone, terminate, or otherwise adjust the Underground Rider approved in the financing order unless it has similarly adjusted the DDOT Underground Electric Company Infrastructure Improvement Charges by an equal amount.”<sup>58</sup>

ii. *Section 34-1313.02 (b)(1)–(2)(C) (Application for Financing Order)*

44. Section 34-1313.02 sets the specific contents Pepco should include in its Financing Application for approval of its Biennial Plan.<sup>59</sup>

45. Section 34-1313.02 (b)(1) requires: “[c]oncurrently with each application filed for approval of a biennial Underground Infrastructure Improvement Projects Plan, the electric company shall file for the Commission’s consideration and decision an application for a financing order for the 2-year period corresponding to the biennial Underground Infrastructure Improvement Projects Plan.”<sup>60</sup>

46. Section 34-1313.02 (b)(2)(A)–(C) requires that the “financing order application and all subsequent applications by the electric company for a financing order shall contain: (A) [t]he DDOT Underground Electric Company Infrastructure Improvement Charges for the next 2-year period; (B) [a] calculation by the electric company of the Underground Rider by distribution service customer class estimated to be sufficient to generate an amount equal to the DDOT Underground Electric Company Infrastructure Improvement Charges for the next 2-year period; and (C) [a] proposed form of public notice of the application suitable for publication by the Commission, which notice may be combined with the form of public notice for the application for

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<sup>55</sup> D.C. Code § 34-1313.01 (a)(5) (2017).

<sup>56</sup> D.C. Code § 34-1313.02 (a)(6) (2017).

<sup>57</sup> D.C. Code § 34-1313.02 (b) (2017).

<sup>58</sup> D.C. Code § 34-1313.02 (c) (2017).

<sup>59</sup> D.C. Code § 34-1313.02 (2017).

<sup>60</sup> D.C. Code § 34-1313.02 (b)(1) (2017).



approval of the biennial Underground Infrastructure Improvement Projects Plan.<sup>61</sup>

iii. *Section 34-1313.03 (b)(3)-(c) (Application Consideration)*

47. Section 34-1313.03 (b)(3) provides: “The Commission may not approve the DDOT Underground Electric Company Infrastructure Improvement Charges unless it shall have also approved the Underground Rider in an amount reasonably expected to generate sufficient revenues to permit the electric company to recover the DDOT Underground Electric Company Infrastructure Improvement Charges.”<sup>62</sup>

48. Section 34-1313.03 (c) states that the “Commission is authorized to issue a financing order if the Commission finds that the projected DDOT Underground Electric Company Infrastructure Improvement Costs to be funded by the DDOT Underground Electric Company Infrastructure Improvement Charges are prudent and that the amount of the DDOT Underground Electric Company Infrastructure Improvement Charges is reasonable and that the Underground Rider reasonably can be expected to generate sufficient revenues to permit the electric company to recover the DDOT Underground Electric Company Infrastructure Improvement Charges.”<sup>63</sup>

**IV. PARTIES’ POSITIONS**

**A. The Joint Applicants’ Position**

i. *The Application meets the requirements of the New Act*<sup>64</sup>

49. The Joint Applicants assert that the Joint Application and Financing Order Application “comply in all respects with the Undergrounding Act and provide extensive data and other information that support the undergrounding activities proposed and funded in the Joint Application and the Financing Order Application.”<sup>65</sup> In pages 10 to 20 of the Joint Application, the Joint Applicants walk through each provision of Section 308 of the New Act providing initial responses in support of their conclusion that the requirements of the New Act have been satisfied.<sup>66</sup> In response to the remaining requirements of D.C. Code § 34-1313.10 (b), the Joint Applicants generally assert that the Commission should find, based on the Application’s contents, that the: (1) Underground Infrastructure Improvements are appropriately designed and located; (2) intended reliability improvements for Pepco’s customers will accrue; (3) costs of Pepco’s infrastructure

<sup>61</sup> D.C. Code § 34-1313.02 (b)(2)(A)–(C) (2017).

<sup>62</sup> D.C. Code § 34-1313.03 (b)(3) (2017).

<sup>63</sup> D.C. Code § 34-1313.03 (c) (2017).

<sup>64</sup> The Commission notes that throughout the Application, the Joint Applicants reference sections of the 2017 ECIIFAA which were identified as 308-310, however, subsequent to the submission of the Application, the New Act was codified in the D.C. Code in Section 34-1313 (*i.e.*, ECIIFAA Section 308 became D.C. Code § 34-1313.08).

<sup>65</sup> Joint Application at 7.

<sup>66</sup> Joint Application at 10-20.



improvements are prudent; (4) costs of DDOT's Infrastructure improvements are prudent; (5) Underground Project Charges are just and reasonable; and (6) approval of the Joint Application is otherwise in the public interest.<sup>67</sup>

50. A complete discussion of the Joint Application's contents with respect to each of the requirements of Sections 308 and 310 of the New Act is provided in **Section VI (The Biennial Plan)** of this Order. A complete discussion of the Joint Application's contents with respect to Sections 301, 302, and 303 of the New Act is provided in **Section VII (The Financing Order)** of this Order.

#### **B. GSA's Position**

51. On September 12, 2017, GSA submitted its Protest and Objections to the Joint Application for Approval of the Biennial Underground Infrastructure Improvement Projects Plan and Financing Order Application ("Application") arguing that Pepco and DDOT have not met their burden of proof to demonstrate that the proposed projects in the Biennial Plan are prudent and in the public interest, and that the proposed rates are just and reasonable.<sup>68</sup> Therefore, GSA requests that the Application be rejected.<sup>69</sup> GSA asserts that the limited benefits from the proposed projects are simply not justified, and are in fact outweighed by the costs of the project, especially when considering the decrease of improvements affecting six underground feeders compared to the twenty-one feeders proposed by the Triennial Plan.<sup>70</sup> GSA asserts six main concerns why the Application should be rejected. GSA states that the Applicants failed to demonstrate: (1) that the DDOT Underground Infrastructure Improvement Charge is prudent; (2) the \$60 million DDOT Charge for the first Biennial Plan is just, reasonable, and prudent; (3) the proposed Electric Company Underground Infrastructure Improvements are appropriately designed and located; (4) the projected costs associated with the proposed Electric Company Underground Infrastructure Improvement Activity are prudent; (5) Pepco's proposed Underground Project Charges and Underground Rider are just and reasonable; and that (6) the intended reliability benefits will accrue to the benefit of any but a small number of Pepco's customers.<sup>71</sup>

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<sup>67</sup> Joint Application at 21.

<sup>68</sup> See generally, GSA's Protest. On page 3, n.7 of GSA's Protest, GSA broadly states that it is evaluating whether the Underground Rider proposed in the Application constitutes an impermissible tax on the federal government as a ratepayer and customer of Pepco. GSA did not, however, make any such argument in its Protest or otherwise raise the issue in the course of this proceeding. Therefore, the Commission does not address this matter in this Order.

<sup>69</sup> GSA's Protest at 1-2.

<sup>70</sup> GSA's Protest at 2-3.

<sup>71</sup> GSA's Protest at 3-4.

- i. *The Commission has Authority, and the Obligation, to Reject the Application if it cannot make all of the Findings Required by the New Act or if the Proposed Rates are not Just, Reasonable, and Non-Discriminatory*

52. GSA further maintains that the Commission is not required to approve the plan unless the Commission, per the District's Home Rule Act ("Home Rule Act" or "Charter"), determines that the services to be provided and the rates to be charged under the plan are just, reasonable, and non-discriminatory.<sup>72</sup> GSA also asserts that D.C. Code § 34-1313.07 (d), expressly addresses when the Commission may waive or hold in abeyance the requirement for Pepco and DDOT to file a Biennial Plan.<sup>73</sup> Therefore, with this new language, GSA contends that the Commission may invoke Section 34.1313.07 (d) on its own motion, but to the extent the Commission deems it necessary or preferable, the Commission may also treat GSA's Protest as a Motion to reject or suspend the current Application and plan and/or to waive or hold in abeyance the filing of future biennial plans.<sup>74</sup> GSA submits that the Commission should clearly recognize that the Applicants, carry the burden of proof.<sup>75</sup>

- ii. *The Commission Should Reject the Application*

- a. While Pepco and DDOT Seek Various Findings in Accordance with the Undergrounding Act, they do not Offer Specifics and Fail to Meet their Burden of Proof to Justify these Findings

53. Overall, GSA asserts that the Applicants fail to identify, either in the Application or in their response to discovery, the specific evidence that they rely upon to support each of the requested filings. GSA states that, despite their response to discovery, the Applicants simply point to the Application, vaguely asserting that "[t]he evidence to support each of the requested findings is found throughout the Application, the First Biennial Plan and the testimony, as well as the Appendixes forming the Application."<sup>76</sup> Therefore, given the lack of detail and support, GSA claims that the Applicants failed to meet and support their burden of proof.

- b. The Costs of the Biennial Plan are Excessive and the Applicants have not Demonstrated that the System Benefits Exceed the Costs or that the Plan is Prudent

54. Further arguing cost, GSA contends that the average \$22.3 million price tag per feeder and the \$2.75 million average cost per mile to underground the feeders, on their face, fail the reasonableness/prudence test. More specifically, GSA asserts that one would expect that the

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<sup>72</sup> GSA's Protest at 5.

<sup>73</sup> GSA's Protest at 6.

<sup>74</sup> GSA's Protest at 7.

<sup>75</sup> GSA's Protest at 7.

<sup>76</sup> GSA's Protest at 8.

projects would produce demonstrably significant enhanced reliability benefits for the system compared to the status quo, but in fact, given that the Applicants provide no evidence that this is the case, the Commission must rule on the available evidence showing just the opposite — that the reliability benefits associated with the projects will be limited almost exclusively to the few customers served by the selected feeders.<sup>77</sup> GSA states that Pepco's statement that the reliability improvements associated with the undergrounding projects proposed in the Biennial Plan will "be realized both by customers on the specific feeder being placed underground as well as on feeders that are not part of the DC PLUG initiative because having fewer overhead lines will result in less storm damage and associated restoration costs, faster restoration when outages do occur, and lower economic impact to customers from loss of electric power during major storms" is vague and unsupported.<sup>78</sup> Therefore, despite the fact that the New Act did not ask the Applicants to submit a cost/benefit analysis, absent such data, or reasonable alternative assessments, GSA submits that the proposed projects cannot be considered reasonable or prudent.<sup>79</sup>

55. GSA further asserts that, in response to discovery, the Applicants provided no estimate of the maintenance or restoration cost savings, that could be expected from undergrounding the feeders, nor did Pepco perform an analysis of the repair and restoration cost savings associated with the claimed improvement in system-wide reliability criteria performance as a result of the projects. GSA also states, in regard to the Joint Applicants' statement that "[d]ue to the nature of the underground system, troubleshooting and repair is a very time consuming process," the Applicants again fail to provide data or analysis on how these challenges associated with underground facilities might affect maintenance or restoration costs.<sup>80</sup>

56. Furthermore, GSA claims that though the Applicants provide data on the categories of causes of outages in the Feeder Summaries contained in the Biennial Plan, Pepco does not track maintenance and restoration costs by cause of outage; therefore, it would be impossible to even estimate from the record the benefit from the presumed reduction in tree and weather-related outages had the six feeders been undergrounded in the past, much less estimate any future benefits from future undergrounding.<sup>81</sup> GSA asserts that, even though the Applicants note the severe weather events that significantly impacted the District between 2010-2016, the Applicants failed to show that the costs associated with these storms justify the expenditure level proposed for the six feeders in the Biennial Plan. GSA asserts that though Pepco identifies its storm-restoration-related O&M costs for its entire system in the District: \$545,394 for the February 2010 winter storm; \$2,548,473 for the 2012 Derecho; and \$1,890,011 for the January 2016 blizzard, the roughly \$5 million in total system-wide storm restoration costs for the three storms combined pales in comparison to the \$134 million proposed to be spent on just six feeders in the Biennial Plan, suggesting that costs associated with the projects in the Biennial Plan are heavily disproportionate

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<sup>77</sup> GSA's Protest at 10.

<sup>78</sup> GSA's Protest at 11.

<sup>79</sup> GSA's Protest at 11.

<sup>80</sup> GSA's Protest at 11.

<sup>81</sup> GSA's Protest at 12.

compared to the expected benefits.<sup>82</sup>

- c. The Applicants have not Demonstrated that the Appropriate Group of Feeders to Upgrade were Selected, or that the Undergrounding Projects are the Best Way to Improve System Reliability and Resiliency

57. GSA states that the process used to rank, prioritize, and select the feeders included in the Biennial Plan and the results of that process raise several concerns. First, three of the six feeders selected were not among the projects included in the Triennial Plan, indicating that the selection of the feeders is not necessarily reflective of need and expected reliability benefit. GSA asserts that this further demonstrates that the prioritization of projects can change quickly over a short period of time, potentially based on subjective factors, all of which raises the question of the reasonableness and efficacy of the methodology used to select the feeders to underground.<sup>83</sup> Additionally, GSA points out that given the fact that “only one feeder in the Biennial Plan – Feeder 14900 – was considered by Pepco for undergrounding prior to the DC PLUG program,” the Application fails to consider reasonable and cost-effective measures to improve reliability/resilience.<sup>84</sup> GSA states that it does not endorse the model used as the appropriate approach to select feeders for undergrounding. GSA further questions why the Applicants did not prioritize and select the feeder projects based on the ranking of reliability impacts, as reflected in their own Feeder Ranking Model, but instead relegated the reliability ranking to just one among several considerations, noting that the top-ranked feeders according to the Feeder Ranking Model were not selected.<sup>85</sup> GSA also contends that, despite Applicants stating that their key reason for not selecting the top-ranked feeders was that they wanted to select one feeder each from Wards 3, 4, 5, 7, and 8 in order to identify “the most equitable distribution of DC PLUG initiative improvements across the District of Columbia,” the Applicants do not justify why it is necessary or appropriate to use this one feeder per-Ward approach; why this approach takes precedence over prioritizing the projects based on reliability impacts, cost-effectiveness and/or other considerations; and why there are no explanations as to the costs and reliability impacts.<sup>86</sup>

58. GSA submits that Pepco’s projected improvement calculations in the reliability indices on the selected feeders, as a result of undergrounding, should be looked at based entirely on past outages, including the effect of major storms on these specific feeders, not necessarily expected future performance. GSA notes that the improvement in the measurements for larger portions of the system is simply a result of how the calculation is made and does not mean that other parts of the system actually see any improvement.<sup>87</sup> GSA also states that part of the

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<sup>82</sup> GSA’s Protest at 13-14.

<sup>83</sup> GSA’s Protest at 15-16.

<sup>84</sup> GSA’s Protest at 16.

<sup>85</sup> GSA’s Protest at 16-17.

<sup>86</sup> GSA’s Protest at 16-17.

<sup>87</sup> GSA’s Protest at 17-18.

improvement in the reliability indices appears to be attributable to unrealistic assumptions used in the Feeder Ranking Model. For instance, GSA notes that the Applicants' concession that feeders that are underground are not immune to failures that might cause outages, brings into question the reasonableness of the Applicants' claimed reliability improvements.<sup>88</sup> GSA also notes that a large portion of the outages on the selected six feeders over the period of January 2010 through December 2016 are attributable to trees and weather, not necessarily related to storms or extreme weather, including equipment failure, animal, and other causes.<sup>89</sup>

59. GSA also questions the overreliance on feeder rankings reflecting the effects of past Major Service Outages ("MSOs") because, GSA asserts, feeder performance would change significantly if the effects of MSOs are removed/excluded from the reliability metrics.<sup>90</sup> GSA states, if the rankings in the model are recalculated using reliability metrics excluding MSOs, then five of the six selected feeders slide way down in the rankings and two of the feeders even drop below 50 in the rankings, ultimately showing that the MSO data drives the ranking and the selection of the feeders for this Application.<sup>91</sup> GSA further notes that the Feeder Ranking Model has all past MSOs "baked in," as though past MSO activity is expected to remain constant into the future, thus allowing MSO data to drive the choice of which feeders to underground, which according to GSA, is simply not logical.

60. GSA points out that the Applicants do not evaluate other alternatives to undergrounding each of the selected feeders, especially when an evaluation of alternatives, should be a critical part of the analysis in determining whether the undergrounding projects proposed in the Biennial Plan are the most cost-effective and whether the projects are prudent.<sup>92</sup> GSA asserts that undergrounding these feeders is no longer a priority; that other reliability enhancements could include the installation of automatic sectionalizing and reclosing ("ASR") schemes and looping the overhead system to increase redundancy; yet the Applicants dismiss these options when these improvements can strengthen the system in ways that will limit the impact of weather-related outages.<sup>93</sup>

d. The Projected DDOT Underground Electric Company Infrastructure Improvement Costs have not been Shown to be Prudent and the DDOT Charges have not been Shown to be Just and Reasonable and Should not be Approved

61. GSA states that the structure of the UPC results in unreasonable rates because the

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<sup>88</sup> GSA's Protest at 18.

<sup>89</sup> GSA's Protest at 18

<sup>90</sup> GSA's Protest at 18. GSA provides a table to show the comparison of including and excluding MSO' in SAIFI, SAIDI, and CMI reliability readings. See Table 2 and 3.

<sup>91</sup> GSA's Protest at 19-20.

<sup>92</sup> GSA's Protest at 23.

<sup>93</sup> GSA's Protest at 23-24.



amounts recovered bear no relationship to actual costs incurred. GSA mentions that the Applicants make no showing, or even provide an estimate, of how much cost DDOT will actually incur during any given year on its share of the DC PLUG project, but based on the amounts Pepco projects to spend, Pepco states that it is reasonable to assume that DDOT's figure will be much lower than \$60 million. Therefore, GSA claims that without data on what DDOT expects to spend during the period, it is impossible to determine whether \$60 million in proposed recovery is prudent.<sup>94</sup> Furthermore, GSA states, despite Applicants' claim that the Commission will have the authority to review the reasonableness and prudence of DDOT's actual expenditures, citing Section 301 of the New Act, that the Application fails to include a proposal or mechanism to conduct this review or any mechanisms to give money paid by customers through the Underground Rider back to customers if DDOT expenditures are found to be imprudent, or if DDOT does not spend all of the money.<sup>95</sup> Lastly, GSA requests that the Commission state, in the case it approves the Application, that it clearly limits cost recovery to DDOT and Pepco (for DDOT costs) to the dollars expected to be spent during the next two years. GSA also requests that the Commission specify that DDOT's cost recovery and Pepco's recovery of costs charged by DDOT, are contingent on the adoption of a mechanism for prudence review, disallowance of any imprudent dollars, and the return to ratepayers of any dollars unspent on the DDOT projects approved by the Commission.<sup>96</sup>

e. The Proposed Rates are not Just and Reasonable and Discriminate Against Commercial Class Customers

62. GSA argues that the rates proposed in the Application are unjust, unreasonable, and discriminatory. GSA explains that the Residential class (excluding RAD) is being allocated only 8.58% of the revenue requirement recovered through each of the surcharges, while the GS and GT classes alone will collectively provide more than ten times as much.<sup>97</sup> GSA further claims that in the last two Pepco base rate cases, the entire rate increase was assigned to the customer charge for residential customers, meaning that the allocation of DC PLUG costs does not reflect any increase to the residential classes from these cases. Thus, GSA contends, the result is that even more DC PLUG costs will be shifted away from residential customers and loaded onto commercial customers.<sup>98</sup> Therefore, according to GSA, the proposed allocation methodology produces rates that simply bear no reasonable relationship to cost causation. GSA claims that rates that require the commercial class customers to face as much as a 10% distribution rate increase and pay over 90% of the undergrounding cost of six feeders, which are heavily devoted to serving a small number of residential and commercial customers, are unjust, unreasonable, and discriminatory.<sup>99</sup>

63. In conclusion, GSA notes that although the plan makes a nod toward cost causation

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<sup>94</sup> GSA's Protest at 24.

<sup>95</sup> GSA's Protest at 24-25.

<sup>96</sup> GSA's Protest at 25.

<sup>97</sup> GSA's Protest at 25-26.

<sup>98</sup> GSA's Protest at 26.

<sup>99</sup> GSA's Protest at 27-28.



when it explains that “customer charge revenues were excluded from the allocation on the basis that the DC PLUG initiative does not include infrastructure, such as meters and services, that would normally be recovered through a customer charge,” it falls flat because in each of the last two base rate cases, the entire residential rate increase was required to be recovered through the customer charge, rather than only those costs normally associated with customer charges. Therefore, GSA asserts the Applicants cannot rationalize the removal of customer charge revenues from the allocation of DC PLUG costs on the basis of cost causation when all of the increased revenue required from residential customers due to the last two rate cases was assigned to the customer charge.<sup>100</sup> Lastly, GSA asserts that a straight per kWh volumetric charge will produce intra-class subsidies and will result in substantial rate impacts for high usage and high load factor commercial customers. Therefore, the costs for undergrounding the six selected feeders are simply not caused by customer per kWh usage and do not vary by customer usage in the commercial customer classes. Given this, GSA contends that the Joint Applicants should consider alternative volumetric rate designs that would somewhat reduce the impact on high usage and high load factor customers and result in a more equitable sharing of these costs on an intra-class basis.<sup>101</sup>

### C. AOBA’s Position

#### i. *The New Act is Void Under the Home Rule Act and Constitutionally Infirm.*

64. On September 13, 2017, AOBA filed its Protest and Request for Hearing in response to the Joint Application submitted by Pepco and DDOT.<sup>102</sup> AOBA states that the New Act is void; therefore, the Commission cannot proceed, and that the expedited and compressed procedures mandated by the 2017 ECIIFAA, in combination with the Commission’s recent decision to incorporate the separate records in *Formal Case No. 1116* and *Formal Case No. 1121* into this proceeding, violates procedural due process by depriving AOBA of a meaningful opportunity to be heard in opposition to the requested approval of the Biennial Plan and Financing Order.<sup>103</sup> AOBA asserts that the proposals and requests put forth by the Applicants are inappropriate and unreasonably discriminatory, as explained by its witness Bruce Oliver, and, therefore, should be rejected.<sup>104</sup>

65. AOBA’s protest centers around the intersection of the 2017 ECIIFAA and the Home Rule Act. In discussing why the 2017 ECIIFAA is void, AOBA asserts, that, as established by the Home Rule Act, the Commission is cloaked with independent and exclusive authority to establish reasonable, just, and nondiscriminatory rates to be charged by public utilities, and; therefore, any attempt by the Council of the District of Columbia (“DC Council” or “Council”) to

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<sup>100</sup> GSA’s Protest at 28-29.

<sup>101</sup> GSA’s Protest at 29-30.

<sup>102</sup> *Formal Case No. 1145*, Apartment and Office Building Association of Metropolitan Washington Protest and Request for Hearing, filed September 13, 2017 (“AOBA’s Protest”).

<sup>103</sup> AOBA’s Protest at 2.

<sup>104</sup> AOBA’s Protest at 2.

amend or otherwise materially affect the Commission's rate-setting independence and exclusive obligation, would be contrary to the Charter and void unless presented as an amendment to the Home Rule Act and for voter approval.<sup>105</sup> AOBA claims that the 2017 ECIIFAA both eliminates and impairs the Commission's independent and exclusive authority in rate-setting obligations and does so without benefit of a voter referendum, thus the 2017 ECIIFAA is void.<sup>106</sup>

ii. *The New Act Usurps the Commission's Chartered, Independent and Exclusive Obligation to Establish Reasonable, Just, and Nondiscriminatory Rates.*

66. AOBA asserts that the 2017 ECIIFAA makes it mandatory that the Commission adopt the factual findings from Pepco's last base rate proceeding. For instance, with respect to the Financing Order, the Commission shall include "the distribution service customers class cost allocations approved . . . and in effect pursuant to the electric company's most recently decided base rate case" and, with respect to the Biennial Plan, the Commission's order "shall include . . . the distribution service customer class cost allocations approved . . . in the electric company's most recent base rate case."<sup>107</sup> Also, AOBA states that under the 2017 ECIIFAA, "recovery for the under-collection . . . shall be allocated to each customer class in proportion to which the customer class contributed to the under-collection." Additionally, AOBA points out that the Commission is also prohibited from including a customer charge in the calculation of customer class cost allocations; the 2017 ECIIFAA providing: "[d]istribution service customer class cost allocations means . . . minus the customer charge revenue."<sup>108</sup> Given the effect of the mandatory directives and restrictions, AOBA alleges that the legislation alters the very function and operation of the Commission by overturning both the jurisdiction deliberately conferred upon the Commission by the Home Rule Act and the delicate balancing of facts and regulatory policy employed by the Commission to allocate costs between and within rate classes.<sup>109</sup>

67. AOBA claims that the 2017 ECIIFAA reaches unambiguously, and modifies materially, the very core of the Commission's purpose and responsibilities. The mandates and limitations imposed by the 2017 ECIIFAA, in sum, impermissibly usurp the chartered, independent and exclusive obligation of the Commission to establish reasonable, just and nondiscriminatory rates.<sup>110</sup> Lastly, AOBA notes that the "prudent" provisions set out in the 2017 ECIIFAA offer no defense or "safe harbor" against the improper interference and material compromise of the Commission's independent and exclusive obligations. In other words, AOBA claims that the provisions that require that the Commission: (i) issue a Financing Order if the charges are "prudent" and "reasonable;" and (ii) authorize the recovery "all prudent and

<sup>105</sup> AOBA's Protest at 8.

<sup>106</sup> AOBA's Protest at 8.

<sup>107</sup> AOBA's Protest at 9, citing D.C. Code Section 34-1313.01(a)(3) and 34-1313.10(c)(1).

<sup>108</sup> AOBA's Protest at 9 (emphasis in original), citing D.C. Code Section 34-1313.14(f)(1) and 34-1311.01(8A).

<sup>109</sup> AOBA's Protest at 10.

<sup>110</sup> AOBA's Protest at 11.

reasonable” expenses and costs related to the Biennial Plan, do not (and cannot) negate the fact that it is the Commission that has the chartered, independent and exclusive authority to establish public utility rates in the District of Columbia. Thus, AOBA concludes that without proper conferred jurisdiction, the Council cannot limit or alter the Commission’s exclusive authority over the establishment and design of rates by enacting legislation that conflicts.<sup>111</sup>

iii. *By Usurping the Chartered, Independent and Exclusive Jurisdiction of the Commission to Establish Rates, the New Act Effectively – and Impermissibly Amends the D.C. Home Rule Act.*

68. To further support its position, AOBA states that 2017 ECIIFAA overreaches and cannot alone amend the Charter. AOBA cites *Price v. District of Columbia Bd. of Elections and Ethics*, 645 A.2d 594 (D.C. 1994), in which AOBA claims that the Court invalidated legislation which changed the number of signatures required to place a measure on the ballot as inconsistent with the Home Rule Act. AOBA asserts that the D.C. Court of Appeals agreed with the petitioner that the “legislation implementing the Charter Amendments is valid only if it does not conflict with the Charter Amendments.”<sup>112</sup> Essentially, AOBA states that the Court concludes that “the Council had no authority to enact a provision that was in conflict with the Charter Amendments.”<sup>113</sup> AOBA also cites *District of Columbia v. Potomac Electric Power Company*, 402 A.2d 430 (D.C.1979), wherein the Court held that “legislation, standing alone, cannot override or otherwise abridge the Commission’s chartered, independent and exclusive authority to establish rates in the District of Columbia” and that Commission had “unqualified authority to fix and maintain ‘reasonable, just and nondiscriminatory’ rates for electric service,” further explaining that the congressional limitation “cannot be construed to affect the jurisdiction of the PSC.”<sup>114</sup> AOBA also cites the *Cajun Electric Power Cooperative, Inc. v. Louisiana Public Service Commission*, 544 So. 2d 362 (La. 1989) ruling that a state constitution provision cloaking the Louisiana Public Service Commission with full authority over all public utilities prevented the state legislature from altering the Commission’s jurisdiction over such utilities.<sup>115</sup> According to AOBA, given the precedent set by the courts and “because the effect of the undergrounding legislation is to interfere materially with duties and functions of the Commission, the New Act is void.”<sup>116</sup>

iv. *The New Act Violates Due Process*

69. AOBA also notes that the Fifth Amendment to the U.S. Constitution prevents federal, state, or local governments from depriving any individual of, *inter alia*, property rights

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<sup>111</sup> AOBA’s Protest at 12.

<sup>112</sup> AOBA’s Protest at 13.

<sup>113</sup> AOBA’s Protest at 13.

<sup>114</sup> AOBA’s Protest at 13-14.

<sup>115</sup> AOBA’s Protest at 14.

<sup>116</sup> AOBA’s Protest at 15.

“without due process of law” and procedural due process is generally (and succinctly) defined as an adequate “opportunity to be heard at a meaningful time and in a meaningful manner.”<sup>117</sup> Thus, according to AOBA, there is a procedural due process violation “when an official deprives an individual of a liberty or property interest without providing appropriate procedural protections.”<sup>118</sup> AOBA claims that the expedited procedural schedule adopted by the Commission in Order No. 18801, coupled with Order No. 19806, wherein the Commission incorporated the extensive records of *Formal Case Nos. 1116 and 1121* into this proceeding, was prejudicial and deprived AOBA of a meaningful opportunity to be heard in violation of the Due Process clause.<sup>119</sup> AOBA alleges that adoption of *Formal Case Nos. 1116 and 1121* have no application to this proceeding because the related records were based on different statutes with different funding mechanisms. AOBA asserts that the record data from the prior proceedings is stale; and if used in any way to calculate or design a rate in this proceeding would be prejudicial to both the Commission and AOBA.<sup>120</sup> AOBA further claims that the incorporation of the prior records is being used to “saddle” AOBA with the “forced examination and evaluation of records” which will materially compromise its ability to put forth an informed, substantive opposition to the cost recovery requests submitted by the Applicants. AOBA contends that this deprives it of a meaningful opportunity to be heard in this proceeding.<sup>121</sup>

#### D. OPC’s Position

70. On September 13, 2017, OPC filed Comments regarding the Joint Application.<sup>122</sup> Overall, OPC concludes that the Application “compl[ies] with the statutory requirements of the Undergrounding Act and that the calculations and cost allocation underlying Pepco’s Underground Project Charge also comply with the Undergrounding Act.”<sup>123</sup> OPC states that it remains committed to the DC PLUG initiative as a cost-effective means of improving the reliability and resiliency of the distribution system in the District.<sup>124</sup> OPC concludes that following its review of the Application it “determined that it includes all the materials required under the applicable statutory provisions for the Commission, the Office, and interested stakeholders to assess the

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<sup>117</sup> AOBA’s Protest at 15.

<sup>118</sup> AOBA’s Protest at 15.

<sup>119</sup> AOBA’s Protest at 16-17.

<sup>120</sup> AOBA’s Protest at 18.

<sup>121</sup> AOBA’s Protest at 18-19.

<sup>122</sup> *Formal Case No. 1145*, Comments of the Office of the People’s Counsel for the District of Columbia Regarding the Joint Application of the Potomac Electric Power Company and the District Department of Transportation for Approval of the Biennial Underground Infrastructure Improvement Projects Plan and Financing Order Application, filed September 13, 2017 (“OPC’s Comments”).

<sup>123</sup> OPC’s Comments at 2.

<sup>124</sup> OPC’s Comments at 4.

merits of the Application.”<sup>125</sup> In its review, OPC identifies “limited concerns with certain technical aspects of the Biennial Plan” but it “believes it can work with the [ ] Applicants to address those concerns without delaying the commencement of undergrounding activity in the District.”<sup>126</sup>

71. OPC has four overarching recommendations concerning the Application. First, OPC recommends that “due to its inferior reliability and resiliency, Feeder 15707, not Feeder 368, should be undergrounded in Ward 7.” Second, OPC recommends that if the “Applicants initiate a design change that utilizes dry-type transformers[, then] they should be required to submit with the Commission reliability data for dry-type transformers similar to data Pepco provides for submersible transformers[, and] the submission of this data should also include a comment period.”<sup>127</sup> Third, OPC recommends that “[p]rior to completion of the final design by DDOT and Pepco of the DC PLUG feeders, stakeholders—such as, OPC—should be given an opportunity to comment on those sections of overhead primary line that are to remain overhead.”<sup>128</sup> Lastly, OPC recommends that the “Applicants [ ] allow for a review of the underground design to ensure that a proper balance is struck between system flexibility (high number of switches) and prudent utility practice for single contingency criteria; a comment period should accompany this review.”<sup>129</sup>

*i. System Design and Feeder Selection*

72. In order to “assess the system design and feeder-selection process utilized in the Biennial Plan, OPC retained Mr. Kevin J. Mara, an engineer with more than 35 years of experience designing and planning electric distribution systems.”<sup>130</sup> OPC states that Pepco’s selection of six circuits for undergrounding in the first Biennial Plan is a “substantial change from the former regulatory scheme in which 21 feeders were to be undergrounded over a 3-year period.”<sup>131</sup> Therefore, OPC states that it is “keenly focused on feeder selection because . . . the selection of a particular feeder within a Ward is now more critical to the success of the program as envisioned by the Undergrounding Act and as expected by electric customers in the District.”<sup>132</sup>

73. In regards to Section 308 (1)(A)’s requirement of a measurement and ranking of the reliability performance of each feeder, OPC’s review of that material and the application of the selections raised questions “regarding the reasonableness of one of the feeders selected for

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<sup>125</sup> OPC’s Comments at 5.

<sup>126</sup> OPC’s Comments at 2.

<sup>127</sup> OPC’s Comments at 3.

<sup>128</sup> OPC’s Comments at 3.

<sup>129</sup> OPC’s Comments at 3.

<sup>130</sup> OPC’s Comments at 5.

<sup>131</sup> OPC’s Comment at 6.

<sup>132</sup> OPC’s Comments at 6.



undergrounding.”<sup>133</sup> OPC asserts that in Wards 4 and 7, the least resilient feeders were not selected for undergrounding and that it understands and agrees with the reasons provided by the Applicants for their selection of Feeder 15009 in Ward 4, but OPC believes that additional explanation is needed with respect to the Joint Applicants’ decision to underground Feeder 368 in Ward 7.<sup>134</sup> OPC notes, “that of the five ranked feeders of Ward 7, Feeder 368 is the only one that hasn’t ever been selected as a Priority Feeder in accordance with the Commission’s regulations requiring remediation for the 2% lowest performing feeders.”<sup>135</sup> OPC asserts that “when compared to other short-listed feeders in Ward 7, Feeder 368 has a relatively low number of customers interrupted during major service outages.”<sup>136</sup>

74. Furthermore, Mr. Mara “concludes that ‘it does not appear that undergrounding Feeder 368 will greatly improve reliability or resiliency as envisioned by the Underground Act.’”<sup>137</sup> He explains further that the “inferior reliability and resiliency of Feeders 15707 and 15705 would appear to make these feeders better candidates for undergrounding in Ward 7,”<sup>138</sup> and bases his conclusion on “the fact that [the Customer Minutes of Interruption per dollar (“CMI/\$”)] metric... clearly favors undergrounding Feeder 15707.”<sup>139</sup> OPC also noted that the Joint Applicants selected Feeder 15707 for undergrounding for many of the same reasons identified by Mr. Mara when it filed its first Triennial Plan in Formal Case No. 1116.”<sup>140</sup> OPC recognizes that Pepco is expending considerable funds in connection with the Benning Area Reliability Plan (“BARP”); however, “further explanation is needed to determine whether the costs and benefits of the Benning ARP justify not including Feeder 15707 or 15705 for undergrounding in this Biennial Plan.”<sup>141</sup> OPC Asserts that the Commission “must carefully scrutinize any future effort to underground feeders that previously have been the subject of other forms of remediation to ensure that ratepayers do not unnecessarily pay twice for reliability and resilience.”<sup>142</sup>

75. OPC contends that discussions at the June 23, 2017, prefiling meeting indicated that Pepco may use dry-type transformers on the feeders to be undergrounded.<sup>143</sup> However, in

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<sup>133</sup> OPC’s Comments at 6.

<sup>134</sup> OPC’s Comments at 6.

<sup>135</sup> OPC’s Comments at 7.

<sup>136</sup> OPC’s Comments at 8-9.

<sup>137</sup> OPC’s Comments at 9.

<sup>138</sup> OPC’s Comments at 9.

<sup>139</sup> OPC’s Comments at 9.

<sup>140</sup> OPC’s Comments at 9.

<sup>141</sup> OPC’s Comments at 10.

<sup>142</sup> OPC’s Comments at 12.

<sup>143</sup> OPC’s Comments at 12.



response to OPC DR 2-15, OPC asserts that Pepco clearly states that its “current plans do not call for the use of dry-type transformers.”<sup>144</sup> OPC expressed concern “that changes in design or circumstances may lead Pepco to use dry-type transformers.”<sup>145</sup> If this is the case, OPC “believes that Pepco should provide reliability data similar to the data it has agreed to provide for submersible transformers for any dry-type transformers or any alternative transformer type included in the final feeder designs used to underground the feeders selected in the Biennial Plan.”<sup>146</sup>

76. OPC contends that it has previously advocated for keeping certain sections of feeders identified for undergrounding above ground where there was little or no tree conflicts and the reliability history of the section of the feeder was good.<sup>147</sup> In the current Biennial Plan, OPC asserts that Pepco and DDOT are proposing to allow a section of overhead primary line located along Blue Plains Drive to remain overhead on Feeder 14758.<sup>148</sup> OPC states that “Pepco has reported that there were few outages along the route of the overhead primary line and that there are no trees below the line.”<sup>149</sup> Mr. Mara recommends that, “prior to completion of the final design by DDOT and Pepco of the DC PLUG feeders, stakeholders, such as OPC, be given an opportunity to comment on those sections of primary line that are to remain overhead.”<sup>150</sup> OPC believes that “data similar to that provided for the Blue Plains Drive section of primary overhead line would suffice for the stakeholders.”<sup>151</sup>

77. OPC witness Mara further explains that because “overhead tie switches are [generally] low cost units (less than \$5,000), whereas underground switches are very expensive and require a large vault, which further increases the cost of an underground switch (with a total cost approaching \$100,000).”<sup>152</sup> OPC recommends that “Pepco allow for a review of the underground design to ensure that a proper balance is struck between system flexibility (high number of switches) and prudent utility practice for single contingency criteria.”<sup>153</sup>

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<sup>144</sup> OPC’s Comments at 12.

<sup>145</sup> OPC’s Comments at 12-13.

<sup>146</sup> OPC’s Comments at 13.

<sup>147</sup> OPC’s Comments at 13.

<sup>148</sup> OPC’s Comments at 13.

<sup>149</sup> OPC’s Comments at 13.

<sup>150</sup> OPC’s Comments at 14.

<sup>151</sup> OPC’s Comments at 14.

<sup>152</sup> OPC’s Comments at 14.

<sup>153</sup> OPC’s Comments at 15, 16-17.

ii. *UPC Calculation and Cost Allocation*

78. OPC concluded that the proposed UPC submitted by the Joint Applicants was developed based on Pepco's projected capital cost data, and a projected level of operating and maintenance expenses.<sup>154</sup> OPC confirmed that this approach will align the revenues received by the Company through the UPC with the base revenues received from each rate class as approved in *Formal Case No. 1139* and that "no portion of the revenue requirement is allocated to customers served under the RAD program in the proposed allocation."<sup>155</sup> OPC, therefore, supports Pepco's calculation and proposed allocation of the UPC as consistent with the requirements of the Undergrounding Act.<sup>156</sup>

**E. Athena Power's Position**

79. On September 8, 2017, Athena Power, a machine-to-machine data analytics, smart-sensing, and services company focused on critical power infrastructure automation, filed an objection to the first Biennial Plan.<sup>157</sup> Athena Power objects to the Application as submitted claiming that it lacks a detailed explanation on how Distribution Automation assets will be incorporated in the design phase of the proposed construction.<sup>158</sup> Athena Power reiterates that "Section 308 (3)(F) of the Electric Company Infrastructure Improvement Financing Act of 2014 law states that the undergrounding effort will include '[n]ew distribution automation devices and segmentation capability to be obtained thereby.'"<sup>159</sup> Athena Power asserts that "by statute, the Company is obligated to comprehensively deploy distribution automation assets that will assist the District of Columbia's electrical infrastructure to become increasingly resilient."<sup>160</sup>

80. Athena Power requests that the Commission direct Pepco to provide a detailed plan on the implementation of Distribution Automation capabilities in the proposed first Biennial Plan. Athena Power believes that if the Company is not able to demonstrate that it will fully comply with Section 308 (3)(F), then this non-compliance is grounds for disapproval of the application. Athena Power notes that "Commonwealth Edison [ ], the Exelon electric distribution company serving the Chicago service territory[,] boasts one of the best reliability performance in the US;" which Athena Power asserts is "mainly a result of significant deployment of Distribution

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<sup>154</sup> OPC's Comments at 16.

<sup>155</sup> OPC's Comments at 16.

<sup>156</sup> OPC's Comments at 16-17. The Commission acknowledges that OPC asserted that the DC PLUG UPC and Rider constitute fees and not taxes as alluded to by GSA. However, because this issue was not litigated in this proceeding, we will not address it. OPC's position can be reviewed at pages 17-18 of its Comments.

<sup>157</sup> *Formal Case No. 1145*, Objection to the first biennial Underground Infrastructure Improvement Projects Plan, ("Athena Power's Objection"), filed September 8, 2017. See also, Athena Power, About Us, <http://www.athena-power.com/> (last visited Oct. 20, 2017).

<sup>158</sup> Athena Power's Objection at 1.

<sup>159</sup> Athena Power's Objection at 1.

<sup>160</sup> Athena Power's Objection at 1.

Automation functionality throughout their electrical network.”<sup>161</sup>

#### F. Nina Dodge’s Position

81. On September 12, 2017, Nina Dodge, on her own behalf, filed Comments on the Application,<sup>162</sup> as a “long term resident of Ward 4 in the District and clean and affordable energy policy advocate with numerous years of direct involvement in regulatory casework in the District,”<sup>163</sup> largely through DC Climate Action.<sup>164</sup> Ms. Dodge presented oral testimony in *Formal Case No. 1145* at the July 25, 2017, Public Meeting, and submitted written comments as a more comprehensive follow-up to her testimony.<sup>165</sup> Ms. Dodge submits three recommendations for the Commission’s consideration related to the Joint Application. First, that “the Commission carry over to FC1145 its requirement regarding Distribution Automation in its final Order No. 17697 in FC1116,”<sup>166</sup> “namely the language contained under the section on ‘Underground Infrastructure Design and Location.’”<sup>167</sup> Ms. Dodge asserts that “the rationale for the Commission’s decision based on resiliency at the time still holds” and that DA is “considered now as best practice in electricity distribution planning nationwide for resiliency in the face of threats caused by nature or cyber-attacks,” but is also necessary to “remain healthy and resilient in the face of new demands placed upon it by putting significant local generation onto the grid.”<sup>168</sup> Ms. Dodge further states that deploying DA “underground additively at a later date would require major work, expense and disruption at the customer’s expense” which would “constitute predictable unreasonable incremental cost and harm to the public.”<sup>169</sup>

82. Second, Ms. Dodge recommends “that the Commission carry over to FC 1145 its decision regarding on-going design review process in its final Order No. 17697 in FC 1116,”<sup>170</sup> namely the language contained under the section on “Underground Infrastructure Design and Location.”<sup>171</sup> Ms. Dodge states that the Commission’s review of the current plan is an expedited process and, therefore, as with the Triennial Plan under *Formal Case 1116*, it is important that an on-going review process be put into place by which lessons are learned that will facilitate the

<sup>161</sup> Athena Power’s Objection at 1.

<sup>162</sup> *Formal Case No. 1145*, Comments of Nina Dodge, filed September 12, 2017 (“Dodge’s Comments”).

<sup>163</sup> Dodge’s Comments at 1.

<sup>164</sup> DC Climate Action is a local civic organization dedicated to advocacy and education

<sup>165</sup> Dodge’s Comments at 2.

<sup>166</sup> Dodge’s Comments at 2.

<sup>167</sup> *Formal Case No. 1116*, Order No. 19086, ¶¶ 193, 226.

<sup>168</sup> Dodge’s Comments at 2.

<sup>169</sup> Dodge’s Comments at 2-3.

<sup>170</sup> Dodge’s Comments at 4.

<sup>171</sup> *Formal Case No. 1116*, Order No. 19086, ¶¶ 195.

planning in the future biennial plans.<sup>172</sup> Furthermore, Ms. Dodge asserts that the Commission was explicit about the need for an on-going review process in Final Order No. 17697 and that a similar review process should be instated and adapted to the current Plan.<sup>173</sup>

83. Lastly, Ms. Dodge recommends that “the Commission expand its criteria for equitable selection and prioritization of feeders to make the benefits of undergrounded Distribution Automation available across economic and social sectors in the District.”<sup>174</sup> Ms. Dodge asserts that DA is the “key to overall reliability and functionality in this new era of distributed generation and the need to reduce emissions” and helps protect the grid against voltage disruption.<sup>175</sup> Furthermore, given the “intensive deployment of solar distributed generation mandated for the District across all neighborhoods under the Solar For All legislation of 2016, and the reduction of the cost of electricity to residential customers provided by distributed solar,” Ms. Dodge asserts that it is key that DA be deployed equitably across the District to allow for interconnection.<sup>176</sup>

### G. Community Comments

84. The Commission convened four community hearings seeking input from the public on the Joint Application. The hearings were held between July 21, 2014, and July 25, 2017, at various times in the wards in which the first undergrounding activity will take place in the District of Columbia.<sup>177</sup> During the course of the four (4) community hearings, three (3) residents submitted written testimony, and a total of 10 residents and organizations presented oral testimony. A wide range of concerns were expressed in the community comments related to the way in which the implementation of the Biennial Plan will affect the everyday lives of District residents, the environmental impact of construction, the financial impact on residents, as well as the sufficiency of public engagement.

#### i. *Karrye Y. Braxton, ANC4A Commissioner, SMD4A06*

85. Karrye Braxton, Commissioner from Advisory Neighborhood Commission (“ANC”) 4A, Single Member District (“SMD”) 4A06, testified before the Commission at the Public Hearing held on July 25, 2017.<sup>178</sup> Ms. Braxton represents approximately 3,000 residents, including over 1300 voters in her single member district. Ms. Braxton began by commending the

<sup>172</sup> Dodge’s Comments at 4.

<sup>173</sup> Dodge’s Comments at 4.

<sup>174</sup> Dodge’s Comments at 5.

<sup>175</sup> Dodge’s Comments at 5.

<sup>176</sup> Dodge’s Comments at 5.

<sup>177</sup> See *Formal Case No. 1145*, Notice of Community Hearings, issued June 22, 2017; see also, 64 D.C. Reg. 68166 (2017). Note that the Commission amended the Community Hearing schedule on June 23, 2017, adding a fourth hearing location, St. John’s United Baptist Church located in Ward 4.

<sup>178</sup> *Formal Case No. 1145*, Testimony of Karrye Braxton, the ANC4A Commissioner from SMD4A06, filed July 25, 2017 (“Braxton’s Testimony”).

collective efforts of the Council and various agencies in developing the DC PLUG project and expressing her support for the New Act while also proffering some recommendations.<sup>179</sup>

86. Ms. Braxton first asserts that “the costs for undergrounding must be affordable” and recommends that “the Commission must ensure the charges for DC PLUG are spread in the most cost-effective manner given the near annual rate increases from Pepco.”<sup>180</sup> Ms. Braxton suggests that “with the exception of Residential Aid Discount customers, the cost for undergrounding should be paid by all ratepayers” and “to be consistently fair, consumers in areas that are currently underground now should pay for other areas of the city to have lines placed underground.”<sup>181</sup>

87. Ms. Braxton further suggests that Pepco continue its outreach, education, and ongoing communication to ensure the success of DC PLUG.<sup>182</sup> Furthermore, Ms. Braxton states that customers need to know when construction will start in their neighborhood; when construction will end in their neighborhood, and whom to contact should residents have issues or questions.”<sup>183</sup> Ms. Braxton suggests that Pepco maintain updated information about construction on its website and that all contractors and staff working on this project at a neighborhood level should know whom at Pepco or DDOT to contact in the event there are issues with the construction.<sup>184</sup>

88. Ms. Braxton also asserts that “the construction must be of high quality” and that the streets need to be restored to at least pre-construction condition or better so parking and traffic flow without restrictions. She goes on to state that “Pepco, DDOT, and any contractors must take every effort to prevent damage to residents’ personal property,” “in the event there is damage, Pepco and DDOT must respond quickly and restore the damage” and that “the contractors should have a flyer to hand out that explains the process to address property damage.”<sup>185</sup>

*ii. Testimony of Robert Robinson, Chair, DC Consumer Utility Board*

89. Robert Robinson, (“Mr. Robinson”) the Chair of the DC Consumer Utility Board, testified before the Commission at the Public Hearing held on July 25, 2017.<sup>186</sup> Mr. Robinson

<sup>179</sup> Braxton’s Testimony at 1.

<sup>180</sup> Braxton’s Testimony at 1.

<sup>180</sup> Braxton’s Testimony at 1.

<sup>181</sup> Braxton’s Testimony at 1.

<sup>182</sup> Braxton’s Testimony at 1.

<sup>183</sup> Braxton’s Testimony at 1.

<sup>184</sup> Braxton’s Testimony at 2.

<sup>185</sup> Braxton’s Testimony at 2.

<sup>186</sup> *Formal Case No. 1145*, Testimony of Robert Robinson, the Chair of the DC Consumer Utility Board, filed July 25, 2017 (“Robinson’s Testimony”).



begins by expressing “concerns ratepayers, residents and taxpayers have about [the Commission’s] failures to engage the public in a constructive fashion.”<sup>187</sup> Mr. Robinson raised the following concerns: (1) “the public is not given sufficient advance notice;” (2) “the days, times and locations selected may defeat public participation;” and (3) “that what’s at stake for the public in the cases, the impact PSC decisions could have on them, and the broad regulatory role the PSC is expected to play are presented in legalese that is opaque to most whose business is not legal or regulatory.”<sup>188</sup>

90. Furthermore, Mr. Robinson states that he is “concerned that because the PSC has failed for years to take action to make plans for the distribution system in collaboration with ratepayers and other stakeholders, there are no incentives for the utility to do things differently.”<sup>189</sup> Mr. Robinson concludes by stating that “because both Pepco and the PSC keep ratepayers and other stakeholders at arm’s length from planning processes, we keep paying to patch up a grid at the end of its lifecycle, rather than investing in one capable of meeting the needs of the community and the ratepayers going forward into the 21st century.”<sup>190</sup>

#### **H. The Joint Applicant’s Response to Parties Comments on the Application**

91. On September 25, 2017, the Applicants filed their response to the protests filed by GSA and AOBA, and the comments filed by OPC, Athena Power, and Ms. Nina Dodge.<sup>191</sup> The Applicants state that assertions provided by the protesters fail to identify any material facts at issue in this proceeding and fail to provide any basis for the Commission to disapprove the Biennial Plan or deny issuing a Financing Order requested in the Application.<sup>192</sup> The Joint Applicants state that the New Act provides a clear framework for the scope of the Commission’s review and outlines the requisite findings for the approval of the first Biennial Plan and the issuance of a Financing Order. Furthermore, the Joint Applicants state that, while the protests allege several deficiencies in the Application, they fail to identify any manner in which the Applicants fail to carry their burden in order for the Commission to make the findings necessary to approve the Plan and issue a Financing Order.<sup>193</sup>

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<sup>187</sup> Robinson’s Testimony at 1.

<sup>188</sup> Robinson’s Testimony at 1.

<sup>189</sup> Robinson’s Testimony at 1.

<sup>190</sup> Robinson’s Testimony at 1.

<sup>191</sup> *Formal Case No. 1145*, Response of the District Department of Transportation and Potomac Electric Power Company to Protests and Comments Filed in Formal Case No. 1145, filed September 25, 2017 (“Joint Applicants’ Response”).

<sup>192</sup> Joint Applicants’ Response at 3.

<sup>193</sup> Joint Applicants’ Response at 4.

- i. *The Feeders in the Biennial Plan were Selected as Prescribed in the Undergrounding Act and the Task Force Report and as Approved in Order No. 17697*

92. Responding to challenges made by OPC and the Protests regarding the feeder selection, the Applicants maintain that they adhered to the requirements of the New Act, the recommendations of the Mayor's Power Line Undergrounding Task Force, Findings & Recommendations (the "Task Force Report"), and the methodology approved in Order No. 17697.<sup>194</sup> As required by Section 308 (a)(2) of the New Act, the Applicants state that they ranked the overhead and combined overhead/underground mainline primary and lateral feeders on the basis of an equal weighting of the number of outages per feeder per the System Average Interruption Frequency Index ("SAIFI"), the duration of the feeder per the System Average Interruption Duration Index ("SAIDI"), and CMI/\$ of undergrounding the feeder.<sup>195</sup> Furthermore, the Joint Applicants state that they used all sustained outage data (including MSOS) from January 1, 2010 through "the most recently completed calendar year" or December 31, 2016.<sup>196</sup>

93. The Joint Applicants then state that they used secondary evaluation criteria to further optimize the selection, prioritization and sequence of feeders, which included an evaluation of other reliability enhancement programs in the District of Columbia, value of service to customers, coordination with other District projects, and community and customer impact. Also, the Joint Applicants contend that they considered selecting feeders in each eligible Ward in order to moderate the level of construction being performed at any one time within a Ward and maximize the benefit of the first Biennial Plan to each of the eligible Wards.<sup>197</sup> Therefore, the Joint Applicants assert, given this robust process, the selection of the feeders to be included in this first Biennial Plan are in compliance with the New Act and should be approved.<sup>198</sup>

- a. The Use of Secondary Evaluation Criteria in the Ranking, Prioritization and Selection of Feeders in the First Biennial Plan is Consistent with the Undergrounding Act, the Task Force Report and Order No. 17697.

94. The Joint Applicants claim that the Protesters' challenge about the process used to rank, prioritize, and select feeders, which call into question the use of secondary criteria in the process, is misplaced.<sup>199</sup> The Joint Applicants point out that the Task Force Report was specific that the selection of feeders for undergrounding relies on primary and secondary selection criteria which provides that "[o]nce the list of feeders to be considered has been identified, a series of

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<sup>194</sup> Joint Applicants' Response at 5.

<sup>195</sup> Joint Applicants' Response at 5-6.

<sup>196</sup> Joint Applicants' Response at 6.

<sup>197</sup> Joint Applicants' Response at 6.

<sup>198</sup> Joint Applicants' Response at 6-7.

<sup>199</sup> Joint Applicants' Response at 7.

secondary criteria are used to prioritize the feeders by the order in which they will be selected for undergrounding.”<sup>200</sup> Additionally, the Applicants assert that in response to AOBA’s Data Request No. (“DR”) 2-8, the Task Force Report also directed that the secondary criteria include “an evaluation . . . regarding the level of overall construction activities being performed within a Ward.”<sup>201</sup> Therefore, given the fact that the feeder selection process used in the first Biennial Plan was the same methodology previously approved in Order No. 17697, the Protesters’ challenges to the use of secondary criteria should be rejected.<sup>202</sup>

b. The Feeder Ranking Model and the Data Used are Consistent with the Undergrounding Act

95. The Joint Applicants address GSA’s challenges regarding the results of the Feeder Ranking Model that were used to rank the feeders using the primary selection criteria. The Applicants state that Section 308 (a)(1)(A) of the Undergrounding Act requires “[t]he ranking reliability performance of individual feeders as follows: A measurement and ranking of the reliability performance of the electric company’s overhead and combined overhead-underground mainline primary and lateral feeders in the District since January 1, 2010 through the most recently completed calendar year, using the primary selection criteria set forth in paragraph (2) of this subsection.”<sup>203</sup> Furthermore, the Joint Applicants also state that the primary selection criteria under Section 308 (a)(2) of the Undergrounding Act includes: (1) the number of outages per feeder (SAIFI); (2) duration of the outages occurring on the feeder (SAIDI); and (3) customer minutes of interruption per cost of undergrounding on the feeder (CMI/\$). Thus, as discussed in the plan, the Feeder Ranking Model ranked all overhead and combined overhead/underground feeders in accordance with Section 308 (a).<sup>204</sup>

96. Additionally, the Joint Applicants address the challenges concerning the inclusion of MSOs and the use of historical data in the Feeder Ranking Model.<sup>205</sup> Applicants allege that Section 308 (a)(2) of the New Act requires the primary selection criteria to include “all sustained interruptions that affect the public welfare (inclusive of MSOs and District major event days) occurring on each overhead and combine overhead-underground mainline primary and lateral feeder circuits in the District since January 1, 2010 through the most recently completed calendar year.”<sup>206</sup> Meaning the New Act requires the use of historical data since 2010, including major service outages. Therefore, the Joint Applicants assert that the arguments that the plan should exclude MSOs and used data, other than historical data, are contrary to the specific requirements

<sup>200</sup> Joint Applicants’ Response at 7.

<sup>201</sup> Joint Applicants’ Response at 7.

<sup>202</sup> Joint Applicants’ Response at 7.

<sup>203</sup> Joint Applicants’ Response at 8.

<sup>204</sup> Joint Applicants’ Response at 8.

<sup>205</sup> Joint Applicants’ Response at 8.

<sup>206</sup> Joint Applicants’ Response at 8.

of the New Act.<sup>207</sup>

c. The Feeder Ranking Model takes into Account Other Reliability Work Performed on the Feeders

97. The Joint Applicants claim that the Protests are mistaken that the historical outage data does not account for enhanced maintenance, design enhancements, or capital improvement projects. The Joint Applicants state that the Feeder Ranking Model, provided as a confidential workpaper to Company witness Clark's testimony and resulting in the ranking of feeders in Appendix A in the first Biennial Plan, gives an aggregate account for reliability improvements of the feeders.<sup>208</sup> The Joint Applicants state that the model provides the outage type and frequency dating back to 2010, and it shows the differences in reliability indices for the outage periods of 2010-2016. The Applicants state that the shift in rankings of the feeders reflected in the first Biennial Plan since the filing of the first Triennial Plan, or even between the 2010-2016 and 2014-2016 periods are attributable primarily to: (1) the additional years of outage data since 2012; and (2) the work that has been done to maintain system reliability since that time.<sup>209</sup>

98. As a response to AOBA's DR 26 (b), the Applicants state that two factors contributed to the differences in the feeders selected for the first Triennial Plan and those selected for the first Biennial Plan.<sup>210</sup> Lastly, the Joint Applicants state that the Protests' assertions that the model does not consider reliability improvements outside of the DC PLUG initiative or since the filing of the first Triennial Plan are incorrect.<sup>211</sup>

99. Addressing challenges to resiliency, the Joint Applicants state that resiliency is the focus of the first Biennial Plan feeder selection process. The Joint Applicants state that they looked at SAIDI and SAIFI data that included MSO data from 2010 through 2016. The Joint Applicants allege that the outages during the major storm events reflect the resiliency of the feeder.<sup>212</sup> Thus, the Joint Applicants contend that by focusing on the 2014-2016 timeframe, in addition to ignoring the requirements of the New Act, AOBA's Protest wrongfully focuses on a timeframe that would not accurately depict resiliency because there were no major storms. Therefore, according to the Joint Applicants, the data would look more like a strict reliability ranking.<sup>213</sup>

100. The Joint Applicants also address OPC's Comments which question the reliability of the work being performed on feeders that are subsequently placed Underground. The Joint

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<sup>207</sup> Joint Applicants' Response at 8-9.

<sup>208</sup> Joint Applicants' Response at 9.

<sup>209</sup> Joint Applicants' Response at 9.

<sup>210</sup> Joint Applicants' Response at 9-10.

<sup>211</sup> Joint Applicants' Response at 10.

<sup>212</sup> Joint Applicants' Response at 10.

<sup>213</sup> Joint Applicants' Response at 10.

Applicants submit that Pepco has ongoing programs to maintain the system and provide reliable service to Pepco's customers.<sup>214</sup> Furthermore, the Joint Applicants state that Pepco considers the feeders that are selected in the DC PLUG initiative when planning and executing future reliability projects on the system.<sup>215</sup> Overall, the Joint Applicants state that the reliability work on feeders selected to be placed underground is generally complimentary to the undergrounding effort.<sup>216</sup>

d. Feeder 368 is Appropriately Selected

101. The Joint Applicants state that, even though OPC's comments challenge the selection of Feeder 368 instead of Feeder 15707 for Ward 7, its selection was warranted and proper. The Joint Applicants note that Feeder 368 is the fourth least resilient feeder in Ward 7, and after a review of the three less resilient feeders, it was shown that Feeder 368 is the prudent choice. The Joint Applicants state that the feeder selection also considered other reliability enhancement work being performed on the feeder, for instance, Feeders 15707 and 15705 were not selected because they are currently part of the BARP.<sup>217</sup> The Joint Applicants maintain that under this program, they look at multiple repeat priority feeders and the drivers of outages on these feeders and target the most cost-effective remediation that will have the greatest impact on feeder reliability for those feeders identified.<sup>218</sup>

102. Furthermore, the Joint Applicants assert that, as a result of being part of the BARP, Feeders 15707 and 15705 will undergo significant changes over the next two years to improve reliability; therefore, providing a better understanding of whether the feeders need to be considered for placement underground in the next biennial plan.<sup>219</sup> Therefore, given the fact that in Order No. 17697 the Commission also accepted Pepco's rationale and its exclusion of higher feeders that were part of recent activated automatic sectionalizing and reclosing schemes, the Applicants argue that the Commission should likewise accept the selection of the lower-ranked Feeder 368 that is not part of the BARP over feeders that are.<sup>220</sup> Given this explanation, the Joint Applicants contend that Feeder 368 was appropriately selected for placement underground.<sup>221</sup>

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<sup>214</sup> Joint Applicants' Response at 10.

<sup>215</sup> Joint Applicants' Response at 10-11.

<sup>216</sup> Joint Applicants' Response at 11.

<sup>217</sup> Joint Applicants' Response at 11.

<sup>218</sup> Joint Applicants' Response at 11.

<sup>219</sup> Joint Applicants' Response at 12.

<sup>220</sup> Joint Applicants' Response at 12-13.



ii. *The Undergrounding Act Prescribes the Contents of the Biennial Plan and the Findings that the Commission must make in Approving the Biennial Plan*

103. The Joint Applicants state that, even though the Protests seek to impose obligations beyond those established by Sections 308 and 310 of the New Act, the contents of the first Biennial Plan provide the information required by Section 308, including a clear road map of the Plan's compliance with the requirements of that section. Therefore, the Joint Applicants assert, the first Biennial Plan provides the necessary information for the Commission to make its findings as required by Section 310.<sup>222</sup>

a. The Undergrounding Act Requires Submission of a Schedule After the Approval of the Biennial Plan, not as Part of the Joint Application

104. The Joint Applicants claim that GSA's Protest makes vague assertions that the Joint Application does not meet the burden set forth in Section 308 of the New Act; more specifically, that the Application failed to "provide any estimated timeline for any of the projects."<sup>223</sup> The Joint Applicants rebut this assertion by stating that, as required by Section 308 (b) of the New Act, it is given 90 days after the approval of the Biennial Plan to identify the estimated start date and projected end date for each project approved in the plan.<sup>224</sup> Thus, absent such approval, the schedule for design and construction of each feeder is unnecessary at this time, and the Commission should similarly follow the directives of the first Triennial Plan and allow the Applicants the flexibility to provide credible and persuasive explanation in case they cannot meet the 90-day directive subsequent to the approval of the plan.<sup>225</sup> The Joint Applicants further allege that GSA's assertion is not a valid basis for rejecting the first Biennial Plan.<sup>226</sup>

b. The Undergrounding Act does not Require a Cost-Benefit Analysis

105. The Joint Applicants address GSA's request that the Commission reject the first Biennial Plan because "the proposed projects are extremely expensive, have not been shown to be cost effective, other potentially lower cost alternatives have not been fully evaluated, and Pepco and DDOT provide no evidence that the projects will significantly benefit the vast majority of Pepco customers who are not served by one of the six feeders proposed to be undergrounded."<sup>227</sup> The Applicants argue that the standard GSA attempts to impose is not consistent with the New Act, as no cost-benefit analysis is required. The Applicants note that the requirements for the first

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<sup>222</sup> Joint Applicants' Response at 13.

<sup>223</sup> Joint Applicants' Response at 14.

<sup>224</sup> Joint Applicants' Response at 14.

<sup>225</sup> Joint Applicants' Response at 14.

<sup>226</sup> Joint Applicants' Response at 15.

<sup>227</sup> Joint Applicants' Response at 15.

Biennial Plan are explicitly stated in Section 308 of the New Act and, as discussed above, the Joint Applicants have satisfied each of those statutory requirements.<sup>228</sup> The Joint Applicants state that they have complied with the required feeder selection process, the same process approved in Order No. 17697, and provided itemized cost information for each of the selected feeders in Appendix H of the first Biennial Plan, as required in the New Act.<sup>229</sup>

106. Ultimately, the Joint Applicants see GSA's claim as a fundamental issue with the concept of placing the feeders underground. The Joint Applicants state that, while the funding source in the Original Act was amended by the New Act, the fundamental purpose of placing certain Pepco overhead power lines underground remain the same. Therefore, according to the Joint Applicants, in passing the New Act, the Council, and the Mayor, decided that the benefits of placing the feeders underground outweighed the expense.<sup>230</sup>

107. Addressing GSA's argument that the cost per customer of placing the selected feeders underground shows that the selections are not reasonable, highlighting in particular the high cost per customer of Feeder 308, the Joint Applicants point to their response to OPC DR 1-11 that Feeders 308 and 368 have a higher cost per customer because 4 kV feeders generally have fewer customers and often have the same amount of infrastructure.<sup>231</sup> Therefore, Feeders 308 and 368, also have a higher cost per mile because the length of the feeder is typically shorter than a typical 13 kV feeder.<sup>232</sup> The Joint Applicants note that these feeders were specifically contemplated in the Task Force Report and were identified as potentially good choices for placement underground. The Joint Applicants assert that their consideration and selection of Feeders 308 and 368 as prudent investments for undergrounding is consistent with the Task Force Report.<sup>233</sup>

iii. *The UPC and Underground Rider Charges were Determined in Accordance with the Undergrounding Act, are Just and Reasonable, and Should Be Approved by the Commission*

108. The Joint Applicants state that, despite the challenge to the proposed charges, both the UPC and the Underground Rider charges were determined in accordance with the New Act. Therefore, the contrary arguments of the Protesters inappropriately challenge the New Act and should be rejected.<sup>234</sup>

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<sup>228</sup> Joint Applicants' Response at 15.

<sup>229</sup> Joint Applicants' Response at 15.

<sup>230</sup> Joint Applicants' Response at 16.

<sup>231</sup> Joint Applicants' Response at 16.

<sup>232</sup> Joint Applicants' Response at 17.

<sup>233</sup> Joint Applicants' Response at 17.

<sup>234</sup> Joint Applicants' Response at 18.

iv. *The UPC and Underground Rider Charges were Calculated in Accordance with the Requirements of the Undergrounding Act*

109. The Joint Applicants dispute the Protesters' claims that neither the UPC nor the Underground Rider charges were determined in a manner inconsistent with the New Act. In fact, the Joint Applicants note that OPC's Comments confirmed that the calculation and cost allocation of the UPC comply with the requirements of the New Act.<sup>235</sup> On the other hand, the Joint Applicants contend that GSA's assertion that the UPC and the Underground Rider charges proposed in the Application are "unjust, unreasonable and discriminatory," as the percentage amounts allocated to the residential and commercial classes are markedly different, is unsupported.<sup>236</sup> The Joint Applicants point out that the method of calculating the charges was prescribed by the statute and addressed by the Commission in its decisions in *Formal Case Nos. 1116 and 1121*, both of which were subsequently upheld by the District of Columbia Court of Appeals. However, the Joint Applicants assert that GSA's Protest asks the Commission to disregard the language of the Undergrounding Act and allocate DC PLUG initiative costs in a manner that is inconsistent with the legislation's requirements.<sup>237</sup> The Joint Applicants contend that contrary to GSA's arguments, the Commission is not free to disregard the allocation methodology that the New Act mandates.<sup>238</sup>

v. *The Commission Already Considered the Rate Impact of the UPC and Underground Rider Charges*

110. Addressing AOBA's argument that implementation of the charges as proposed would expose commercial customers to rate shock if one also considers the Commission's recent decision in *Formal Case No. 1139*, the Joint Applicants state that AOBA's bottom line is that the Commission should have reached a different decision in *Formal Case No. 1139*. The Joint Applicants retort that this is not the forum in which to challenge that decision — rate equity issues are properly raised in a base rate proceeding, which AOBA did in *Formal Case No. 1139*. The Joint Applicants also assert that not only is the rate design used consistent with the New Act, it is also consistent with *Formal Case No. 1139* (Pepco's most recent base rate case), and the Commission's prior decisions in *Formal Case Nos. 1116 and 1121*.<sup>239</sup> Furthermore, the Applicants state that the Commission was keenly aware of the methodology by which costs were to be assigned under the Joint Application, as AOBA unsuccessfully challenged the Commission's determination on the issue in *Formal Case Nos. 1116 and 1121*.<sup>240</sup> Also, the Joint Applicants state that the Commission should take note of the fact that the New Act rejected AOBA's position that

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<sup>235</sup> Joint Applicants' Response at 18.

<sup>236</sup> Joint Applicants' Response at 18.

<sup>237</sup> Joint Applicants' Response at 18.

<sup>238</sup> Joint Applicants' Response at 19.

<sup>239</sup> Joint Applicants' Response at 22.

<sup>240</sup> Joint Applicants' Response at 22.

the DC PLUG initiative was “ill-advised and fatally flawed.”<sup>241</sup>

vi. *The Amendment Act’s Change to a “Pay-As-You-Go” Financing Structure does not Increase the Cost to Customers*

111. The Joint Applicants contend that AOBA fails to cite to anything in the record for this its assertion that the New Act’s use of a “pay-as-you-go” mechanism “magnifies the size of the DDOT charges imposed on Pepco’s customers.”<sup>242</sup> The Applicants state that, contrary to AOBA’s claim, the DDOT Charge Pepco will pay to the District and the amount that will be collected through the Underground Rider, is approximately the same as the amount that was approved in *Formal Case No. 1121* to be funded by bonds.<sup>243</sup> Therefore, the amount collected through the Underground Rider will be equal to the DDOT Underground Electric Company Infrastructure Improvement Costs and will avoid millions of dollars of interest payments that would have been required had debt been used to fund the DDOT Underground Electric Company Infrastructure Improvements.<sup>244</sup>

112. Furthermore, the Joint Applicants allege that GSA’s claims that the projected DDOT Underground Electric Company Infrastructure Improvement Cost have not been shown to be prudent and the DDOT Charge has not been shown to be just and reasonable are contrary to evidence.<sup>245</sup> The Joint Applicants point out that DDOT witness Williams detailed how these itemized estimates were developed and explained why the projected DDOT Underground Electric Company Infrastructure Improvement Cost are prudent. Furthermore, the Commission previously approved the use of a similar approach for the first Triennial Plan.<sup>246</sup> Thus, the Joint Applicants request that the Commission reject GSA’s assertions and concerns as baseless<sup>247</sup>

113. The Joint Applicants also aver that GSA’s claims that the collection of \$60 million over the two-year period of the Biennial Plan must be consistent with the amount to be spent by DDOT on the projects within the same two-year period in order to be deemed reasonable, is not required by the statute, nor is it the standard for determining whether the DDOT Charge is reasonable.<sup>248</sup> Applicants claim that GSA’s assertion fails to recognize that although the feeder projects included in the first Biennial Plan may begin within the two-year planning period of the

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<sup>241</sup> Joint Applicants’ Response at 23-24.

<sup>242</sup> Joint Applicants’ Response at 25.

<sup>243</sup> Joint Applicants’ Response at 25.

<sup>244</sup> Joint Applicants’ Response at 25.

<sup>245</sup> Joint Applicants’ Response at 25.

<sup>246</sup> Joint Applicants’ Response at 26.

<sup>247</sup> Joint Applicants’ Response at 26.

<sup>248</sup> Joint Applicants’ Response at 26.

first Biennial Plan, their program schedules will extend beyond two years.<sup>249</sup> Thus, the Joint Applicants assert that given the fact that DDOT's costs are incurred at the time a contractual obligation is made, not as payments are made over time under a particular contract, as GSA claims, GSA's assertion should be rejected.<sup>250</sup>

vii. *The AOBA Protest's Recommendation to Track Movement of Customers Between Rate Classes is Contrary to the Undergrounding Act*

114. The Joint Applicants address AOBA's allegations that the Joint Application "fails to address the influence of movements of customers between rate classes during the biennial period" and that "Pepco should be required to track all commercial class customer transfers between rate classifications and adjust the targeted monthly revenues by class to reflect those transfers."<sup>251</sup> Applicants state that this is contrary to the plain language of the Undergrounding Act which requires the Commission to "[a]ssess the Underground Rider . . . among the distribution service customer classes of the electric company in accordance with the distribution service customer class cost allocations approved by the Commission for the electric company and in effect pursuant to the electric company's most recently decided base rate case," and that any true-up of the Underground Rider be similarly allocated among customer classes not individual customers.<sup>252</sup> The Joint Applicants further claim that the heart of AOBA's argument is the notion that once the amount of the Underground Rider surcharge is calculated, a customer should never be re-classified despite whether the tariff may require or permit otherwise. They say this has never been the Commission's approach and would be untenable. The Joint Applicants contend that a customer's rate classification is not carved in stone but, rather, is governed by the terms of the tariff that dictate reclassification of customers based on specific criteria approved by the Commission in establishing individual rate schedules.<sup>253</sup> Therefore, the Joint Applicants contend that adopting AOBA's tracking request is not required by the statute and would place an excessive administrative burden on the Company.<sup>254</sup>

viii. *The Protest's Remaining Arguments Regarding the Underground Rider, the DDOT Charge and the UPC Should be Rejected*

115. GSA faults the Joint Applicants for not specifying the details of the Commission's

<sup>249</sup> Joint Applicants' Response at 26.

<sup>250</sup> Joint Applicants' Response at 26. The Commission notes that the Joint Applicants respond to AOBA's claim that the Joint Application should have addressed GSA's assertion that the Underground Rider may constitute an impermissible tax. However, as stated previously, this issue was not raised by GSA in this proceeding or litigated before the Commission. Therefore, it will not be addressed in this Order. The Joint Applicants' position is presented at pages 27-28 of their Response.

<sup>251</sup> Joint Applicants' Response at 32-33.

<sup>252</sup> Joint Applicants' Response at 33.

<sup>253</sup> Joint Applicants' Response at 33.

<sup>254</sup> Joint Applicants' Response at 33-34.



reviews of the prudence of DDOT's expenditures under the DC PLUG initiative and how residual amounts paid through the Underground Rider charges would be returned to customers if any DDOT expenditures were found by the Commission to be imprudent or if DDOT did not spend all the money it received from Pepco through the DDOT Charge. Likewise, AOBA asserts that the failure to specify how any residual funds would be flowed back to customers could exacerbate rate shock.<sup>255</sup> The Joint Applicants respond that nothing in the New Act or Commission Orders require that these matters be addressed. Nevertheless, the Joint Applicants acknowledge that these matters are within the Commission's purview and authority.<sup>256</sup> The Joint Applicants state that while Pepco would support a true-up that would return the funds to the classes in the same manner they were collected, the flow-back of residual funds would ultimately be determined by the Commission.<sup>257</sup>

116. The Joint Applicants refer to AOBA's recommendation that, "if the impacts on residential customer rates are to be limited as proposed by the Joint Applicants, then the scope and costs of the filed first Biennial Plan must likewise be limited."<sup>258</sup> The Joint Applicants state that this suggestion reflects a blatant mischaracterization of the Joint Application. More specifically, the Joint Applicants note that the Joint Application does not propose to limit the impact on residential customer rates, but rather, follows the requirements of the Undergrounding Act to calculate the charges that are the result of the projects proposed in the first Biennial Plan. Therefore, AOBA's suggestion should be rejected.<sup>259</sup>

117. Furthermore, the Joint Applicants assert that neither of the Protests has shown that either the UPC or the Underground Rider charges have been calculated in a manner that is inconsistent with the statutory requirements. This is because the charges were appropriately determined, as demonstrated in the Joint Application.<sup>260</sup> The Applicants claim that, while GSA and AOBA may not like the charges that result from using the methodology required by the Undergrounding Act, that is not a basis for ignoring or disregarding the statute. Therefore, the Joint Applicants assert their arguments should be rejected, and the Commission should find that the UPC and Underground Rider charges proposed have been determined in accordance with the Undergrounding Act and are just and reasonable.<sup>261</sup>

ix. *The Undergrounding Act is a Proper Exercise of the Council's Authority and is not Void Under the Home Rule Act*

118. The Joint Applicants disagree with AOBA's assertion that the New Act intrudes

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<sup>255</sup> Joint Applicants' Response at 34.

<sup>256</sup> Joint Applicants' Response at 34.

<sup>257</sup> Joint Applicants' Response at 34-35.

<sup>258</sup> Joint Applicants' Response at 35.

<sup>259</sup> Joint Applicants' Response at 35.

<sup>260</sup> Joint Applicants' Response at 35.

<sup>261</sup> Joint Applicants' Response at 36.

upon the Commission's independent and exclusive authority to set rates, as reserved by the Home Rule Act. The Joint Applicants maintain that nothing in the New Act abrogates the Commission's independent and exclusive authority to set rates; thus, AOBA's assertion is based on a flawed interpretation of the Home Rule Act.<sup>262</sup> Furthermore, the Joint Applicants assert that AOBA's reliance on *Potomac Electric Power Company v. District of Columbia* for support is misplaced. The Joint Applicants assert that a closer reading of that case suggests the contrary conclusion; that nothing in the New Act fundamentally affected the nature of the Commission or how it operates.<sup>263</sup> Additionally, the Joint Applicants contend that recent decisions of the District of Columbia Court of Appeals have indicated that the powers conferred on the Council should be interpreted broadly, and conversely, that exceptions to the Council's authority should be interpreted narrowly. Thus, the Council's authority to enact the Undergrounding Act should be construed as a permissible legislative action, rather than an impermissible charter amendment.<sup>264</sup>

x. *The AOBA Protest's Due Process Arguments are without Merit*

119. The Joint Applicants, in addressing AOBA's claims that the Commission's incorporation of the records from *Formal Case Nos. 1116 and 1121* together with the expedited schedule established for this proceeding deny it procedural due process, assert that AOBA's argument requires a tortured interpretation of the concept of procedural due process.<sup>265</sup> The Joint Applicants note that nothing in the Commission's order incorporating the records from *Formal Case Nos. 1116 and 1121* has in any way abridged AOBA's opportunity to be heard.<sup>266</sup>

xi. *The Joint Applicants do not Object to Carrying Forward Certain Obligations from Formal Case No. 1116 and Creating Certain Opportunities for OPC to Comment to the Commission*

120. The Joint Applicants acknowledge Ms. Dodge's and OPC's request that the Commission carry forward certain obligations that were imposed on the Joint Applicants in *Formal Case No. 1116*. Ms. Dodge's Comments request that the obligations originating in Order No. 17697 regarding information on DA, holding semi-annual meetings, and filing the associated 30-day report; while OPC requests that the Joint Applicants carry forward the requirement to report on reliability of submersible transformers in the Consolidated Report and the Service Outage Report set forth in the 2016 Stipulation even if the Joint Applicants ultimately use dry-type submersible transformers in final designs for any of the DC PLUG initiative feeders.<sup>267</sup> The Joint Applicants note that OPC also seeks: (1) the opportunity to comment on portions of the overhead system that the Joint Applicants determine should be left overhead; and (2) the number of

<sup>262</sup> Joint Applicants' Response at 36.

<sup>263</sup> Joint Applicants' Response at 38.

<sup>264</sup> Joint Applicants' Response at 38-39.

<sup>265</sup> Joint Applicants' Response at 39.

<sup>266</sup> Joint Applicants' Response at 39.

<sup>267</sup> Joint Applicants' Response at 39-40.

underground switches included in the final design.

121. Overall, the Joint Applicants do not object to continuing to comply with the obligations regarding reporting requirements from the 2016 Stipulation and the obligations set forth in Order No. 17697, as clarified in Order No. 17770. The Joint Applicants also do not object to providing OPC the opportunity to comment on portions of the overhead feeders left overhead and the number of underground switches in the final design as long as the opportunity to comment will not result in delay to the program schedule.<sup>268</sup> The Joint Applicants do not object to continuing the obligation to provide DA information in the detailed design drawing submission as long as the clarifications regarding timing of the submissions and deployment are likewise applicable.<sup>269</sup> The Joint Applicants agree with the Ms. Dodge's comments that the semi-annual meetings are productive and should be continued as they provide a forum for the Joint Applicants to update the parties on the progress of the DC PLUG initiative and discuss lessons learned. Therefore, the Joint Applicants do not object to the continuation of the semi-annual meeting and 30-day reporting obligations in Order No. 17697.<sup>270</sup> The Joint Applicants also do not object to continuing to report the data in the Annual Consolidated Report and the Service Outage Report, as agreed, for any type of Pepco-approved submersible transformer (dry-type or otherwise) that is used in the final designs for the initiative.<sup>271</sup>

xii. *The Biennial Plan sets forth a Comprehensive Plan to Deploy Distributed Automation to Benefit all Customers*

122. To conclude, the Joint Applicants also address the comments of Athena Power and Ms. Dodge relating to DA and the DC PLUG initiative. More specifically, Athena Power requests that the Commission ask the Joint Applicants for a plan for implementing DA, asserting that the DA information provided in the first Biennial Plan does not comply with the Undergrounding Act.<sup>272</sup> Furthermore, Ms. Dodge discussed consideration of the equitable deployment of DA on the system.<sup>273</sup> The Joint Applicants state that, contrary to the assertions in the Athena Power Comments, they already have a specific plan for implementing DA and have fully complied with the Undergrounding Act. More specifically, the Joint Applicants mention that Section 308 (a)(3)(F) of the Undergrounding Act provides: "[a]dditional content to be included in the plan by the electric company or DDOT, as applicable, as follows . . . (F) [n]ew distribution automation devices and segmentation capability to be obtained thereby."<sup>274</sup> Thus, the Joint Applicants contend that the first Biennial Plan, under the paragraph entitled "Incorporation of Innovative Methods and

<sup>268</sup> Joint Applicants' Response at 41.

<sup>269</sup> Joint Applicants' Response at 42.

<sup>270</sup> Joint Applicants' Response at 42.

<sup>271</sup> Joint Applicants' Response at 43.

<sup>272</sup> Joint Applicants' Response at 43-44.

<sup>273</sup> Joint Applicants' Response at 44.

<sup>274</sup> Joint Applicants' Response at 44.

Advanced Technology,” and the associated testimony already fulfill this requirement.<sup>275</sup>

123. Lastly, the Joint Applicants state that they agree with Dodge’s comment asserting that it is important that the benefit of DA inure to all customers, including low-income customers. Yet, as discussed in the first Biennial Plan, the Joint Applicants state that Pepco must deploy underground DA through systematic assessment, which will maximize the benefit of the underground DA to all customers, including low-income customers.<sup>276</sup> In conclusion, the Joint Applicants state that Pepco continues to assess new technology and will deploy new DA technology on the underground system as it becomes proven and is reasonably incorporated into Pepco’s system.<sup>277</sup> Therefore, given all its responses to parties’ protests and comments, the Joint Applicants respectfully request that the Commission reject the Protests and approve the Joint Application as filed.<sup>278</sup>

## **V. THRESHOLD MATTERS**

### **A. Constitutionality of the New Act and Due Process Violation**

124. As a threshold matter, the Commission will address two arguments raised by AOBA in its Protest. The first being that the New Act is unconstitutional<sup>279</sup> because it removes the Commission’s independent authority to establish just and reasonable rates; and the second, that the New Act violates AOBA’s due process rights because the expedited procedural schedule required by the New Act coupled with the Commission’s decision to incorporate the records of *Formal Case Nos. 1116 and 1121* into this proceeding’s record “is prejudicial and deprives AOBA of a meaningful opportunity to be heard in violation of the Due Process clause.”<sup>280</sup>

125. To AOBA’s first argument, it is well-established law that state agencies do not have the jurisdiction to review the constitutionality of statutes and that the judiciary alone possesses the inherent power to resolve constitutional questions.<sup>281</sup> Indeed, the Supreme Court has determined that “state statutes, like federal ones, are entitled to the presumption of constitutionality until their invalidity is judicially declared [and that] no power to adjudicate Constitutional issues is conferred

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<sup>275</sup> Joint Applicants’ Response at 44.

<sup>276</sup> Joint Applicants’ Response at 45.

<sup>277</sup> Joint Applicants’ Response at 45.

<sup>278</sup> Joint Applicants’ Response at 45.

<sup>279</sup> See AOBA’s Protest at 8-15.

<sup>280</sup> See AOBA’s Protest at 15-19.

<sup>281</sup> See *Pantiz v. District of Columbia*, 112 F.2d 39 (D.C. Cir. 1940); and see *Public Utilities Commission v. United States*, 355 U.S. 534 (1958); *Oestereich v. Selective Service Board*, 393 U.S. 233 (1968).



on the Administrator.”<sup>282</sup> Therefore, the Commission will not render a decision on this issue as it is outside the scope of our jurisdiction.

126. Regarding AOBA’s second argument, AOBA concedes in its Protest that as “a signatory to the Consensus Schedule,” AOBA “does not allege that the expedited procedural schedule, standing alone, is a violation of procedural due process.”<sup>283</sup> Indeed, as the incorporation issue was known at the outset of the proceeding, AOBA could have insisted on the procedural schedule providing additional time to review the records if the Commission decided to incorporate them.<sup>284</sup> AOBA did not make such a request. Therefore, as a signatory to the expedited consensus schedule, AOBA has improperly framed its argument here by asserting that the New Act violates its due process rights. In fact, what AOBA appears to be arguing is that the Commission violated its due process rights by incorporating the records from *Formal Case Nos. 1116 and 1121* into this proceeding. AOBA’s arguments against incorporating the records, which are reiterated in its Protest, were fully considered in Order No. 19086. The Commission notes that AOBA is therefore essentially requesting that we reconsider our decision in Order No. 19086; an inappropriate request considering that Order is not a final order ripe for reconsideration.<sup>285</sup>

127. In any event, in Order No. 19086, the Commission clearly reasoned that: (1) it was administratively efficient to incorporate the records and that control of the agency calendar is a matter fully within the Commission’s discretion; (2) *Formal Case Nos. 1116 and 1121* are “so closely linked” to *Formal Case No. 1145* that not incorporating the records could “simply foster confusion and delay;” and that our decision “has no prejudicial effect on the parties because . . . ‘it will still be the burden of the party that seeks to rely on the records . . . to argue the relevance and weight to be given to that evidence.’”<sup>286</sup> Here, AOBA offers no credible example of how it has been prejudiced. Instead, AOBA blanketly states that the decision to incorporate the records “materially compromises [its] ability to put forth an informed, substantive opposition to the cost recovery requests submitted by the Joint Applicants.”<sup>287</sup> The Commission remains unpersuaded,

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<sup>282</sup> *Davis Warehouse Co. v. Bowles*, 321 U.S. 144, 153 (1944); accord *State ex rel. New Orleans Canal Banking Co. v. Heard*, 18 So. 746, 752 (La. 1895) (holding that subordinate agencies must treat statutes as constitutional until a court determines otherwise.).

<sup>283</sup> See AOBA’s Protest at 17.

<sup>284</sup> See *Formal Case No. 1145*, Order No. 18801, Attachment A, rel. June 15, 2017. The Commission notes that the parties made a schedule accommodation related to the release of the rate case order in *Formal Case No. 1139*. AOBA could have requested a similar accommodation for additional time if the records were incorporated or filed a opposition to the schedule requesting additional time to review the record be built-in in the event that the records from FC1116 and FC1121 were incorporated. AOBA did neither.

<sup>285</sup> 15 District of Columbia Municipal Regulations (“DCMR”) § 140 states that “[a]ny person affected by any final order or decision of the Commission may, within thirty (30) days after the publication of the order or decision, file with the Commission an application in writing requesting a reconsideration or modification of the matters involved.”

<sup>286</sup> See *Formal Case No. 1145*, Order No. 19086, ¶ 32.

<sup>287</sup> See AOBA Protest at 18-19.



and it, therefore, rejects AOBA's arguments.

**B. The 2014 and 2016 OPC, PEPCO and DDOT Joint Stipulations**

128. In 2014, OPC, Pepco and DDOT ("Stipulating Parties") filed a Joint Stipulation to the Triennial Plan resolving protests raised by OPC related to technical and other aspects of system design, construction, and operation as well as certain aspects of the proposed communications plan. In Order No. 17697, the Commission reviewed and fully summarized the Joint Stipulation (see Order No. 17967, ¶¶ 129–137). We now incorporate by reference that discussion of the 2014 Joint Stipulation into this Order. Ultimately, the Commission found "the terms of the Stipulation to be a just and reasonable compromise between the parties" and accepted "the Joint Stipulation in full without modification to any of the existing terms."<sup>288</sup>

129. In the Biennial Plan Application, the Joint Applicants represent that the "2014 Stipulation, *inter alia*, required DDOT and Pepco to evaluate opportunities to place padmounted transformers on the feeders placed underground as part of the DC PLUG initiative." The Joint Applicants contend that they "filed applications to place padmounted transformers in public space in the District of Columbia, all of which were denied [and a]s a result, in March 2016, [the Stipulating Parties] entered into the 2016 Stipulation in which they agreed, *inter alia*, that the obligation of DDOT and Pepco to evaluate locations for padmounted transformers within the District is terminated unless the Commission issues an order reinstating the obligation."<sup>289</sup> The Joint Applicants represent that they "incorporated the agreements set forth in the 2014 Stipulation and the 2016 Stipulation by reference or explicitly into the First Biennial Plan and continue to be committed to fulfilling the applicable obligations."<sup>290</sup>

130. In Order No. 18154, issued on March 24, 2016, the Commission granted the Joint Applicant's Motion to approve the 2016 Joint Stipulation which removed the obligation that the Joint Applicants evaluate locations for placing padmounted transformers.<sup>291</sup> Additionally, as there have been no other material changes to the 2014 Stipulation, the Commission finds that accepting both the 2014 and 2016 Stipulations in this proceeding is a just and reasonable compromise between the parties on the recommendations made by OPC related to D.C. Code § 34- 313.08 along with other issues. Therefore, the Commission accepts the 2014 and 2016 Joint Stipulations in full without modification to any of the existing terms.<sup>292</sup>

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<sup>288</sup> Order No. 17697, ¶ 149.

<sup>289</sup> Joint Application at 5. See *Formal Case No. 1116*, Motion to Approve Joint Stipulation and Joint Stipulation of the Office of the People's Counsel, Potomac Electric Power Company and the District Department of Transportation Regarding Consideration of Pad-Mounted Transformers for DC Plug Initiative Feeders in *Formal Case No. 1116*, filed March 8, 2016 ("2016 Stipulation").

<sup>290</sup> Joint Application at 5.

<sup>291</sup> See *Formal Case No. 1116*, Order No. 18154, rel. March 24, 2016.

<sup>292</sup> As discussed in **Section VII.A.xix** of this Order, the Commission adds terms and conditions to the Education Plan as reflected in Order Nos. 17697 and 17770, ¶¶ 25-28.

## VI. THE BIENNIAL PLAN

### A. The Application Satisfies the Applicable Requirements of D.C. Code § 1313.10 (b)(1)

131. The Commission has reviewed the Application submitted by the Joint Applicants in its entirety and has determined that the Application, supplemented in some instances by explanations in data responses, contains all of the basic elements required by the New Act. In this Section, we conduct the review required by D.C. Code § 34-1313.10 (b)(1)<sup>293</sup> which serves as the basis for our findings that on this record, the Application satisfies the applicable requirements of Section 34-1313.08 and allows the Commission to affirmatively make each of the other findings required by Section 34-1313.10(b). Sections 34-1313.08 (a) and (c) set out the contents that must be included in the Application.

#### i. *Ranking of Overhead Feeders (Section 1313.08 (a)(1)(A))*

132. Section 308 (a)(1)(A) of the New Act requires that the first Biennial Plan include “a measurement and ranking of each overhead and combined overhead-underground mainline primary and lateral feeder in the District since January 1, 2010 through the most recently completed calendar year, using the primary selection criteria set forth in [Section 308 (a)(2) of the New Act].”<sup>294</sup>

133. The Joint Applicants explain in the Biennial Plan that they began the feeder selection process by ranking each of Pepco’s overhead (and combined overhead/underground) feeders according to SAIFI, SAIDI, and CMI/\$. The feeder ranking presented in Appendix A of the Application is based on reliability performance data from January 1, 2010, through December 31, 2016, pursuant to Section 308 (a)(2) of the Undergrounding Act, and includes MSOs. Pepco witness Clark states that the Joint Applicants used a seven (7) year (2010-2016) quantitative model to rank its overhead feeders based on customer interruptions that occurred on the overhead primary mainline and overhead lateral portions SAIFI, SAIDI, and CMI/\$.<sup>295</sup>

134. GSA rejects the Feeder Ranking Model as an appropriate basis for feeder selection,<sup>296</sup> complaining that the feeder ranking is based on past performance rather than future performance.<sup>297</sup> GSA is also concerned with the over-reliance on feeder rankings reflecting the

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<sup>293</sup> D.C. Code § 34-1313.10 (b)(1) providing “[f]or the electric company to recover expenses and costs pursuant to subsection (a) of this section, the Commission shall find that: (1) The electric company’s application satisfies the applicable requirements of § 34-1313.08.”

<sup>294</sup> D.C. Code § 34-1313.08 (a)(1)(A) (2017).

<sup>295</sup> Testimony of Pepco witness Clark at 4:22-5:10.

<sup>296</sup> GSA’s Protest at 16.

<sup>297</sup> GSA’s Protest at 17.

effects of past MSOs.<sup>298</sup> AOBA also attacks the use of historical data in the feeder ranking, contending that each storm is unique in terms of its impact on the system.<sup>299</sup> Pepco responds that “[t]he Protests’ suggestion that the first Biennial Plan data should have excluded MSOs and used data other than historical data is contrary to the specific requirements of the Undergrounding Act.”<sup>300</sup>

135. GSA’s contention that a ranking of feeders based on MSO-excluded outage data confuses the difference between reliability and resiliency. Reliability, which the Commission regulates under the Commission’s Electricity Quality of Service Standards (“EQSS”), aims to evaluate the performance of the distribution system under “blue-sky” conditions, and so major storm outages are excluded. Resiliency, on the other hand, is concerned with how the distribution system responds during major storms, not blue-sky conditions. The DC PLUG is intended to reduce both the number and duration of outages during major storms. Therefore, it would be illogical to rank and identify feeders for undergrounding by excluding outages during major storms.

136. No party has presented sufficient evidence that the feeder ranking included in the Joint Application is incomplete, erroneous, or non-compliant with the New Act. Additionally, Pepco witness Clark provides a good and reasonable explanation regarding the feeder selection which conforms to Section 308(a)(1)(A) of the New Act. Thus, we conclude that the challenges by GSA and AOBA are without merit and that the Application complies with Section 308 (a)(1)(A) of the Undergrounding Act.

*ii. Selection of Feeders to be Undergrounded (Section 1313.08 (a)(1)(B))*

137. Section 308 (a)(1)(B) requires that the first Biennial Plan use the feeder rankings to identify which of Pepco’s mainline and lateral feeders will utilize the DDOT Underground Electric Company Infrastructure Improvements.<sup>301</sup> Appendices B and C of the Joint Application identify the selected mainline primary and lateral feeders, and the section of the first Biennial Plan entitled “Feeder Selection” discusses the process used to select the feeders for the first two years of the DC PLUG initiative. Company witness Clark also addresses the feeder selection process in his testimony.<sup>302</sup>

138. The first Biennial Plan explains the four steps the Joint Applicants went through to select feeders for undergrounding. Step One ranked all overhead feeders based on SAIDI, SAIFI, and CMI/\$, as required by the New Act and shown in Appendix A (as discussed above). Step Two used the feeder ranking to identify the “least resilient” feeders in Wards 3, 4, 5, 7, and 8, which

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<sup>298</sup> GSA’s Protest at 18.

<sup>299</sup> Testimony of AOBA witness Oliver at 27:3-5.

<sup>300</sup> Pepco’s Response at 9.

<sup>301</sup> D.C. Code § 34-1313.08 (a)(1)(B) (2017).

<sup>302</sup> Joint Application at 11.

are the wards that suffer the most outages during major storms. In Step Three, the Joint Applicants reviewed planned reliability work for the highest ranked feeders in each Ward.<sup>303</sup> Step Four involves identification of “opportunity project” feeders – Feeder 14900 is the only one identified.<sup>304</sup> The Biennial Plan also explains the Secondary Evaluation Criteria which include value of service,<sup>305</sup> coordination with other District projects, community impact and customer impact. Six feeders were selected for undergrounding as a result of the four-step process.<sup>306</sup>

139. GSA is concerned that the selection process can give very different results within a short period of time as illustrated by the fact that three of the six selected feeders were not among the 21 feeders selected in the first Triennial Plan.<sup>307</sup> GSA asserts that the reason the Joint Applicants provided for why the highest ranked feeders in Appendix A were not selected is the need to spread the work across the affected Wards; however, GSA complains that the Joint Applicants do not explain why the “one-per-Ward” rationale should take precedence over other concerns like cost effectiveness.<sup>308</sup> AOBA complains that the feeder selection process did not consider reliability work performed on feeders over the years.<sup>309</sup> AOBA also contends that the selection process “fails to reasonably maximize the value gained per dollar spent on undergrounding activities.”<sup>310</sup> OPC asserts that the inferior reliability and resiliency of Feeder Nos. 15705 and 15707 appear to make them better candidates for undergrounding than the feeder chosen in Ward 7 (Feeder 368).<sup>311</sup>

140. We reviewed the Biennial Plan, the testimony of Company witness Clark, Intervenor’s Petitions and data responses, and conclude that the Joint Applicants are in compliance with the requirements of Section 308 (a)(1)(B). The Commission finds that Pepco’s rationale for spreading feeder work across the effected wards is reasonable as discussed further in ¶ 159 *infra*. The Commission also finds reasonable and persuasive the Joint Applicants’ explanation that the feeder selection process considered years of outage data since 2012 and reliability work done to maintain system reliability since that time. In response to OPC’s specific argument that there are better feeder candidates for undergrounding in Ward 7, we note that according to Pepco witness Clark, “[w]hile the DC PLUG initiative has been delayed since DDOT and Pepco filed the first Triennial Plan, Pepco has continued to proactively and aggressively improve the reliability and

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<sup>303</sup> Joint Application at 7-8.

<sup>304</sup> Opportunity projects “take advantage of existing or planned DDOT roadway reconstruction projects to place an adjacent highly-ranked feeder underground.” Testimony of Pepco witness Clark at 8:7-9.

<sup>305</sup> Joint Application at 6. Value of Service represents the economic benefits of reduced outages to customers.

<sup>306</sup> Joint Application at 13.

<sup>307</sup> GSA’s Protest at 15.

<sup>308</sup> GSA’s Protest at 16-17.

<sup>309</sup> Testimony of AOBA witness Oliver at 7:7-10.

<sup>310</sup> Testimony of AOBA witness Oliver at 5:19-20.

<sup>311</sup> OPC’s Comments at 9.

resilience of its system through projects like the Benning Area Reliability Plan – a holistic program to improve the reliability and resilience of feeders fed from the Benning Substation.”<sup>312</sup> Witness Clark goes on to assert that “[t]hrough this program, Feeders 15707 and 15705 will undergo significant changes over the next two years aimed at improving reliability and resilience.”<sup>313</sup> Therefore, the Joint Applicants chose to identify a separate feeder in Ward 7 (Feeder 368) that would benefit from placement underground.<sup>314</sup> We find this rationale to be reasonable. Therefore, we reject OPC’s arguments against the selection of Feeder 368 in Ward 7.

141. Based on the above, we conclude that the Joint Applicants have exercised appropriate judgment and flexibility consistent with the Undergrounding Act and previous decisions by the Commission in *Formal Case No. 1116* in selecting the feeders to be underground. However, we see a need to not only keep a close eye on the condition of Feeders 15705 and 15707 in Ward 7, but also a need to require action from Pepco to improve the reliability and resiliency of those feeders as quickly as possible. Accordingly, we direct the Joint Applicants to file a report on the status of the BARP, which must include Feeders 15705 and 15707, within 30 days from the date of this Order. This report must also contain the details of the current condition of Feeders 15705 and 15707 as well as details as to what specific improvements Pepco will be making to those feeders and a timeline for completion of those improvements. The Joint Applicants are further directed to report on the progress of the BARP, including Feeders 15705 and 15707, in the 90-day Compliance Filing as well as in the Annual Update and Semi-Annual Meetings.

iii. *Outage Metrics (Section 1313.08 (a)(2))*

142. Section 308 (a)(2) of the New Act requires a showing of certain enumerated metrics based on all sustained interruptions that affect the public welfare (inclusive of MSOs) on each overhead and combined overhead-underground mainline primary and lateral feeder circuits in the District of Columbia from January 1, 2010 through the most recently completed calendar year.<sup>315</sup> Appendix A of the Joint Application includes a weighted average for 2010-2016, of the: (1) number of outages per feeder, (2) duration of the outages per feeder, and (3) cost per customer minutes of interruption per feeder. Company witness Clark addresses the weighting based on the required criteria.<sup>316</sup> None of the other parties addressed this requirement.

143. We reviewed the Joint Applicants’ feeder selection process which is based on a 10- year historical record of reliability performances of all feeders in the District which includes SAIFI, SAIDI and CMI/\$. This selection results in reliability performances which included MSOs Days during that 7-year period as dictated in Section 308 (a)(2) of the New Act. Therefore, we

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<sup>312</sup> Testimony of Pepco witness Clark at 8:17-21.

<sup>313</sup> Testimony of Pepco witness Clark at 8:21-23.

<sup>314</sup> Testimony of Pepco witness Clark at 9:3-5.

<sup>315</sup> D.C. Code § 34-1313.08 (a)(2) (2017).

<sup>316</sup> Joint Application at 12.



conclude that the Joint Applicants are in compliance with Section 308 (a)(2) of the New Act.

iv. *Feeder Descriptions (Section 1313.08 (a)(3)(A))*

144. Section 308 (a)(3)(A) of the New Act requires that the Biennial Plan describe each mainline primary and lateral feeder that the Joint Applicants selected to be placed underground, and identify and describe the feeder number and feeder location, including street address, neighborhood and Ward.<sup>317</sup> The section of the Biennial Plan entitled “Feeder Descriptions” and Appendices C, D, E, F, and G identify and describe the feeder number and feeder location, including street address, neighborhood and Ward for the selected mainline primary and lateral feeders. This is supported by Pepco witness Clark’s testimony.<sup>318</sup> No other party addressed this requirement.

145. Although we conclude the Joint Application is in compliance with this section of the New Act, we note that the design for Feeder 308 has changed since the first Triennial Plan. We, therefore, direct the Joint Applicants to provide a detailed explanation of the changes in the design for Feeder 308 made since the first Triennial Plan in their 90-day Compliance Filing.

v. *Equipment to be Undergrounded or Removed (Section 1313.08 (a)(3)(B))*

146. Section 308 (a)(3)(B) of the New Act requires that the first Biennial Plan include overhead electrical cables, fuses, switches, transformers, and ancillary equipment, including poles, that will either be placed underground or removed.<sup>319</sup> Appendices E and F of the Plan identify overhead electrical cables, fuses, switches, transformers, and ancillary equipment that will either be placed underground or removed, as discussed in the “Feeder Descriptions” section of the Joint Application and supported by the testimony of Company witness Clark.<sup>320</sup> Witness Clark testifies:

Only overhead secondary lines and associated ancillary equipment and poles will remain overhead. All overhead equipment associated with the primary lines that are placed underground such as overhead fuses, switches, transformers and other ancillary equipment associated with the primary lines, will be removed and placed underground. . . . DDOT and Pepco do not intend to bury telecommunications or other lines that may be on the poles from which Pepco removes the primary or lateral line that will be placed underground. . . . In most cases DDOT and Pepco expect the poles to remain in place. DDOT and Pepco will only remove poles if they have only primary feeder cable on them.<sup>321</sup>

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<sup>317</sup> D.C. Code § 34-1313.08 (a)(3)(A) (2017).

<sup>318</sup> Testimony of Pepco witness Clark at 20:6-11.

<sup>319</sup> D.C. Code § 34-1313.08 (a)(3)(B) (2017).

<sup>320</sup> Joint Application at 13.

<sup>321</sup> Testimony of Pepco witness Clark at 20:20-21 and 21:1-12.

147. No other parties address whether the Application meets the requirements of Section 308 (a)(3)(B). We have reviewed the cited portions of the Application, Biennial Plan, and testimony, and conclude that the Joint Application is in compliance with the requirements of Section 308 (a)(3)(B) of the New Act.

148. We note here that OPC requests that prior to completion of the final design by DDOT and Pepco of the DC PLUG feeders, stakeholders, such as OPC, be given: (1) the opportunity to comment on portions of the overhead system that the Joint Applicants determine should be left overhead; and (2) the number of underground switches included in the final design.<sup>322</sup> The Joint Applicants responded that they do not object to providing OPC the opportunity to comment regarding those matters as long as the opportunity to comment will not delay to the program schedule.<sup>323</sup>

149. The Commission is open to allowing OPC an opportunity to comment on the portions of the overhead feeders left overhead and the number of underground switches in the final design, although it is uncertain, at this point in time, whether any such comments may delay the program schedule. We also encourage the Joint Applicants to consider the comments and enter into discussions with OPC to determine whether the comments will impact the Joint Applicants' final determination on the feeders to be left overhead and the number of underground switches in the final design. We believe adopting this informal process is reasonable, will allow OPC a voice on these two matters, and will prevent any delays accruing as a result of OPC comments.

vi. *Parallel Feeders (Section 1313.08 (a)(3)(C))*

150. Section 1313.08 (a)(3)(C) of the New Act requires that the first Biennial Plan include overhead primary and lateral feeders that are currently located parallel to the primary and lateral feeders selected to be placed underground.<sup>324</sup> Appendices B and F to the first Biennial Plan identify overhead primary and lateral feeders that are currently located parallel to the primary and lateral feeders selected to be placed underground. This is discussed in the section of the first Biennial Plan entitled "Feeder Descriptions" and supported by the testimony of Company witness Clark.<sup>325</sup> No other parties address this requirement.

151. Upon review of Appendices B and F to the Plan, we conclude that the Joint Applicants are in compliance with Section 1313.08 (a)(3)(C) of the New Act. We note that OPC filed a data request asking whether all of the listed parallel feeders will be undergrounded (on each of the four feeders that are reported to have parallel feeders). In response, Pepco stated that they have not completed analysis on their preliminary designs, only the identification of parallel feeders is noted.<sup>326</sup> Before the Joint Applicants begin construction, they will perform physical field

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<sup>322</sup> OPC's Comments at 14-15.

<sup>323</sup> Joint Applicants' Response at 41-43.

<sup>324</sup> D.C. Code § 34-1313.08 (a)(3)(C) (2017).

<sup>325</sup> Joint Application at 13.

<sup>326</sup> Pepco Response to OPC DR 1-11.

surveys of each feeder along with any parallel feeder and further analyze each feeder to be placed underground and use the results of those surveys and analysis to update the preliminary design schematics and produce construction plans. Therefore, we direct the Joint Applicants to report on plans for undergrounding any portion of the identified parallel feeders, including details of any additional costs, in the 90-day Compliance Filing.

vii. *Equipment Remaining Overhead (Section 1313.08 (a)(3)(D))*

152. Section 308 (a)(3)(D) of the New Act requires that the first Biennial Plan identify the overhead secondary feeder circuits and ancillary facilities, and telecommunications and cable television cables and ancillary above-ground equipment that will not be placed underground.<sup>327</sup> The section of the first Biennial Plan entitled “Remaining Overhead Power Lines and Associated Equipment” discusses the fact that all overhead secondary feeder circuits and ancillary facilities, telecommunications and cable television cables, and ancillary aboveground equipment will remain above ground, as supported by the testimony of Company witness Clark. Moreover, from the time that the Joint Applicants file the first Biennial Plan to the time that the civil and electrical engineering designs are finalized, DDOT and Pepco will look for opportunities to allow certain limited portions of DC PLUG initiative feeders to remain overhead, potentially reducing costs for the selected feeder, without impacting the anticipated reliability and resilience gains associated with placing the feeder underground. This will allow DDOT and Pepco to apply the cost of placing that section of the feeder underground to a future DC PLUG feeder.<sup>328</sup>

153. We have reviewed the equipment remaining overhead section in the Biennial Plan and Pepco witness Clark’s testimony. Each portion of each feeder to remain overhead has not yet been identified, and the Preliminary Electrical Schematics do not show details about which poles and sections of each feeder are to remain overhead. Pepco states that before the construction begins, the Joint Applicants will perform physical field surveys of each feeder and further analyze each feeder to be placed underground and use the results of those surveys and analysis to update the preliminary design schematics and produce the final schematics and civil engineering designs.<sup>329</sup> There is more than enough information provided by the Joint Applicants to conclude that Section 308(a)(3)(D) of the New Act has been complied with. Once Pepco provides the final drawings and schematics, the Commission will review all the equipment remaining overhead.<sup>330</sup>

viii. *Planned Improvements (Section 1313.08 (a)(3)(E))*

154. Section 308 (a)(3)(E) of the New Act requires that the first Biennial Plan identify

<sup>327</sup> D.C. Code § 34-1313.08 (a)(3)(D) (2017).

<sup>328</sup> Joint Application at 13-14.

<sup>329</sup> Testimony of Pepco witness Clark at 18:1-5.

<sup>330</sup> We note again here that OPC requests that prior to completion of the final DC PLUG feeders’ designs by the Joint Applicants, stakeholders, such as OPC, be given an opportunity to comment on those sections of overhead primary lines that are to remain overhead and the number of underground switches. We reiterate our determination on this matter as set forth in ¶ 149 *supra*, that the stakeholders enter informal discussions with the Joint Applicants concerning these two matters with the objective of not delaying the program schedule.

the proposed Electric Company Infrastructure Improvements funded by the UPC and the DDOT Underground Electric Company Infrastructure Improvements funded by DDOT Charges. Appendices C, F, and G to the first Biennial Plan identify those matters, and they are discussed in the sections of the first Biennial Plan entitled “Feeder Descriptions” and “Interties, Future Load, and Feeder Conversions.” The appendices are also supported by the testimonies of Company witness Clark and DDOT witness Williams.<sup>331</sup> No other parties address this matter. We have reviewed these items and conclude that they are in compliance with Section 308 (a)(3)(E) of the New Act.

ix. *New Technology and Distribution Automation (Section 1313.08 (a)(3)(F))*

155. Section 308(a)(3)(F) of the New Act requires that the first Biennial Plan identify new DA devices and segmentation capability to be obtained through the DC PLUG initiative.<sup>332</sup> The section of the first Biennial Plan entitled “Incorporation of Innovative Methods and Advanced Technology,” as supported by the testimony of Company witness Clark, discusses new DA devices and segmentation capability that may be obtained through the DC PLUG initiative.<sup>333</sup>

156. This matter was addressed in the Comments of Nina Dodge, wherein she cites the Order in *Formal Case No. 1116* which states: “The Commission is also aware that communicating DA functions over fiber optic cable instead of wirelessly adds a layer of security against an attack and would also help address the issue of limited wireless bandwidth. . . . [t]he Commission directs the Joint Applicants to provide information on the inclusion of distribution automation included in the detail design drawing submission required by this Order.”<sup>334</sup> Ms. Dodge requests that this requirement be “carried over” into *Formal Case No. 1145*.<sup>335</sup> In support of her position, Ms. Dodge asserts, among other things, that DA “is considered now as best practice in electricity distribution planning nationwide for resiliency in the face of threats caused by nature or cyber-attacks, but also to remain healthy and resilient in the face of new demands placed upon it by putting significant local generation onto the grid – which in the District includes fulfillment of the District’s new ‘Solar for All’ legislated mandate, *inter alia*.”<sup>336</sup>

157. The Company addressed Ms. Dodge’s concerns about Pepco’s plan for communicating with DA devices in response to Staff DR 1-10, which asked the Company whether its proposed radio mesh system could operate underground devices successfully, Pepco replied:

To minimize latency, the Pepco radio mesh network is engineered for coverage to underground devices with security. Communication

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<sup>331</sup> Joint Application at 14.

<sup>332</sup> D.C. Code § 34-1313.08 (a)(3)(E) (2017).

<sup>333</sup> Joint Application at 15.

<sup>334</sup> *Formal Case No. 1116*, Order No. 17697, ¶ 193, rel. November 12, 2014 (“Order No. 17697”).

<sup>335</sup> Dodge Comments at 2.

<sup>336</sup> Dodge Comments at 2.



paths are between end point devices and the System Operations Energy Management System and include the radio mesh network as well as Pepco's fiber optics backbone transport network. Pepco developed specific communication standards for its wireless communication infrastructure to ensure reliable communications. Included in the communication standard are metrics, such as relative received signal strength, number of hops to get to a network take-out-point, round trip time, and transmit and receive percentages for success rate. After the communication devices and infrastructure are field installed, performance testing is completed on the radio networks to ensure that the communication standards are met.<sup>337</sup>

158. The Joint Applicants also addressed Ms. Dodge's concerns about ongoing updates in the Annual Update and Semi-annual Meeting commitments. The Joint Applicants state that "pursuant to the 2014 Stipulation, DDOT and Pepco will continue to hold the semi-annual meetings and will continue to file the thirty-day reports on those meetings."<sup>338</sup>

159. The Joint Applicants have also provided sufficient explanation of how DC PLUG work was allocated across the affected Wards to avoid over-burdening any single Ward with construction. The Joint Applicants analyzed ongoing reliability work as well as current and planned system work on the most highly-ranked feeders in each Ward. The Joint Applicants identified the highest-ranked feeders in Wards 3, 4, 5, 7 and 8 which are characterized by a large concentration of overhead power lines and susceptibility to overhead outages. By limiting the number of concurrent projects in a Ward at any one time, the Joint Applicants can minimize the burden of construction. Finally, the evaluation of customers supplied by each feeder allows DDOT and Pepco to consider the special needs of customers as feeders are scheduled to be placed underground.<sup>339</sup>

160. Athena Power objects to the Application because it lacks a detailed explanation on how DA assets will be incorporated in the design phase of the construction.<sup>340</sup> Pepco witness Clark says that final civil and engineering designs will "reflect DA devices and the corresponding civil infrastructure to house and support them."<sup>341</sup> In the Biennial Plan, the Joint Applicants provide a very limited discussion of the use of "fault current analysis" in the design of DA for the DC PLUG feeders as well as Pepco's continuing search for "acceptable non-oil 40kA automated switches for tie points."<sup>342</sup> To ensure completeness, the Commission directs the Joint Applicants to provide the following information about its DC PLUG Distribution Automation plans in the informal review

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<sup>337</sup> *Formal Case No. 1145*, Response to Staff DR 1 of Potomac Electric Power Company at 10, filed August 31, 2017.

<sup>338</sup> Biennial Plan at 23.

<sup>339</sup> Biennial Plan at 6-7.

<sup>340</sup> Athena Power's Objection at 1.

<sup>341</sup> Testimony of Pepco witness Clark at 26:10-12.

<sup>342</sup> Biennial Plan at 19.



sessions regarding switches and interrupters on the 13 kV feeders: (a) whether the devices are gas or oil insulated; (b) the type of device and device interrupting withstand ratings; and (c) control schematic showing the DA operations layout that includes substation communication. With this additional requirement, we find that the Joint Application satisfies the requirements of Section 1313.08(a)(3)(F).

*x. Interties (Section 1313.08 (a)(3)(G))*

161. Section 308 (a)(3)(G) of the New Act requires that the first Biennial Plan identify interties that will enable the feeder to receive power from multiple directions or sources. The section of the First Biennial Plan entitled “Interties, Future Load and Feeder Conversions” and Appendices B, E, and F identify such interties here.<sup>343</sup>

162. We have reviewed the relevant sections of the first Biennial Plan and Appendices. Appendix B (Feeder Prioritization) shows the list of the intertie feeders for each of the six feeders to be placed underground (308, 14758, 14007, 15009, 14900 and 368). We found that the intertie points have been marked for Feeders 14758, 14007 and 15009 on Preliminary Electrical Schematics (Appendix F). However, Feeders 308, 368, and 14900 are missing intertie point markings on the Preliminary Electrical Schematics (Appendix F). For Feeders 308 and 368 feeds “[t]o substation” (two power sources coming from two different substations) are shown on both ends of the feeder. In response to a question raised by OPC, Pepco responded that Feeder 14900 has six existing interties (4 in DC, 2 in MD) not shown on the preliminary schematics as they are not part of the portion to be placed underground.<sup>344</sup> As a result, and as a condition to our approval of the Joint Applicants’ compliance with the requirements of this section of the New Act, we direct the Joint Applicants to include feeder intertie point markings for all six DC PLUG feeders in the Final Schematics.

*xi. Load Analyses (Section 1313.08 (a)(3)(H))*

163. Section 308 (a)(3)(H) of the New Act requires that the first Biennial Plan identify the capability to meet current load and future load projections. The section of the first Biennial Plan entitled “Interties, Future Load and Feeder Conversions” and Appendix C discuss the capability to meet current load and future load projections.<sup>345</sup> Pepco prepared the Preliminary Electrical Schematics in Appendix F according to its standard methodology for designing the 4kV and 13kV electric distribution system. This methodology provides capacity for future load increases as well as limited additional conduit space for replacement of failed cables and additional feeder expansion.<sup>346</sup> No other parties address this requirement.

164. Upon our review of the Plan, we conclude that it is in compliance with the requirement of Section 308 (a)(3)(H). In order to evaluate the impact of DC PLUG on the overall

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<sup>343</sup> Joint Application at 15.

<sup>344</sup> Joint Applicants’ Response to OPC DR 1, Question 11.

<sup>345</sup> A Revised Appendix C was filed on August 9, 2017 (“Appendix C ERRATA”).

<sup>346</sup> Biennial Plan at 16-17.

distribution system as the project moves into implementation, the Joint Applicants should provide more information about the substations serving these DC PLUG feeders. The Joint Applicants have described the selected feeders in Appendix C ERRATA. However preliminary electrical drawings and documentation merely identify the substations that will be supplying each of the DC PLUG feeders. The Commission believes that without additional information about the capability to meet current load and future load projections for the substations connected to the DC PLUG feeders, the impact of the undergrounding project on the overall distribution system cannot be fully evaluated. We, therefore, direct the Joint Applicants to provide the following information for all substations that each of the DC PLUG feeders are connected to: (1) firm capacity, (2) summer rating, and (3) present and forecasted load in the informal review sessions for Commission Staff and OPC.

*xii. Project Costs and Cost Recovery (UPC) (Section 1313.08 (c)(1))*

165. Section 308 (c)(1) of the New Act requires that the first Biennial Plan include an itemized estimate of the Electric Company Infrastructure Improvement Costs and the proposed UPCs.<sup>347</sup> The section of the first Biennial Plan entitled “Project Cost” and Appendix H provide the itemized estimates of the Electric Company Infrastructure Improvement Costs, and is supported in the testimony of Company witness Clark. The section of the first Biennial Plan entitled “Cost Recovery” and Appendix K discuss the proposed UPC, and is supported by the testimony and exhibits of Company witness Janocha.<sup>348</sup> The Biennial Plan provides that Pepco’s cost estimates are calculated using Pepco’s Work Management Information System (“WMIS”), consistent with Pepco’s standard method for estimating its cost for constructing new distribution facilities. The price of each unit includes: (1) labor, (2) materials, (3) administrative and general, and (4) miscellaneous.<sup>349</sup> No other party addressed the issue of whether the Plan complied with the Section 308(c)(1). We have reviewed the relevant documents and conclude that the Plan complies with the Section 308 (c)(1) requirements.

*xiii. DDOT Cost Estimates (Section 1313.08 (c)(2))*

166. Section 308 (c)(2) of the New Act requires that the first Biennial Plan include itemized estimates of the DDOT Underground Electric Company Infrastructure Improvement Costs.<sup>350</sup> The section of the first Biennial Plan entitled “Project Cost” and Appendix H provide the itemized estimates of the DDOT Underground Electric Company Infrastructure Improvement Costs, as supported by the testimony of Company witness Clark and DDOT witness Williams.<sup>351</sup> Upon review of the cited documents, we conclude that the Plan is in compliance with 308 (c)(2)

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<sup>347</sup> D.C. Code § 34-1313.08 (c)(1) (2017).

<sup>348</sup> Joint Application at 16.

<sup>349</sup> Biennial Plan at 27-28.

<sup>350</sup> D.C. Code § 34-1313.08 (c)(2) (2017).

<sup>351</sup> Joint Application at 16.

of the New Act.

xiv. *Assessment of Potential Obstacles (Section 1313.08 (c)(3))*

167. Section 308 (c)(3) of the New Act requires that the first Biennial Plan include an assessment of potential obstacles to timely completion of a project, including, but not limited to, the need to obtain environmental or other permits, or private easements, the existence of historically sensitive sites, required tree removal, and significant traffic disruptions.<sup>352</sup> The section of the first Biennial Plan entitled “Obstacles to Timely Completion” provides an assessment of potential obstacles to timely completion for any of the projects in the DC PLUG initiative, and is supported by the testimony of Company witness Clark who asserts that as of the filing of the Joint Application, the Joint Applicants have not encountered any specific obstacles to the design or construction of the feeders selected for placement underground in the first Biennial Plan.<sup>353</sup> No other parties have addressed this requirement. We reviewed the assessment of potential obstacles provided in the Plan and determine it to be compliant with the statutory requirement. However, we direct the Joint Applicants to provide regular updates on existing and potential obstacles to timely completion of any of the DC PLUG projects in their Annual Update and Semi-Annual Meetings.

xv. *Employment Opportunities (Section 1313.08 (c)(4))*

168. Section 308 (c)(4) of the New Act requires that the first Biennial Plan include a description of the efforts taken to identify District of Columbia residents to be employed by DDOT and Pepco contractors during the planned construction of the DDOT Underground Electric Company Infrastructure Improvements and the Electric Company Infrastructure Improvements in the first Biennial Plan. The section of the first Biennial Plan entitled “Focus on District of Columbia Businesses and Residents” provides a description of the such efforts.<sup>354</sup> The testimony of Company witness Clark and DDOT witness Williams also address this requirement.<sup>355</sup> No other parties address this section of the statute.

169. Pepco witness Clark asserts that the Company, in determining “its hiring and contracting needs,” may have direct hiring opportunities for “journey electrical workers, electrical apprentices, skilled laborers and engineers.”<sup>356</sup> Pepco asserts that it “it will make every practical effort to identify and hire qualified local residents for all of these positions.” Witness Clark further asserts that there may be hiring opportunities related to employment and contracting, including “the installation of cable and other electrical equipment and engineering design.”<sup>357</sup> Pepco states

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<sup>352</sup> D.C. Code § 34-1313.08 (c)(3) (2017).

<sup>353</sup> Joint Application at 17; Testimony of Pepco witness Clark at 19:6-8.

<sup>354</sup> Joint Application at 17; Biennial Plan at 39-42.

<sup>355</sup> Testimony of Pepco witness Clark at 31:5-33:10; Testimony of DDOT witness Williams at 9:12-10:9.

<sup>356</sup> Testimony of Pepco witness Clark at 31:21-24.

<sup>357</sup> Testimony of Pepco witness Clark at 32:1-3.

that in an effort to provide these opportunities to local qualified candidates, it has jointly hosted, with DDOT, “forums for contractors during the planning stages of the First Triennial Plan, during which DDOT and Pepco familiarized contractors with the DC PLUG initiative, the work that would be required, the Pepco procurement process, and explained how to register as an approved Pepco supplier or Certified Business Enterprise in the District of Columbia.”<sup>358</sup> Pepco also commits to providing “training and internships to prepare additional local candidates to be qualified [and to] work with local universities to recruit interns for engineering and other roles.” Pepco asserts that the Joint Applicants “will retain a consultant to track and report on local hiring and contracting throughout the course of the DC PLUG initiative.”<sup>359</sup> With regard to engaging D.C. businesses, Pepco asserts that it “created a Capability & Capacity Building (“C&C”) Program to expand and develop the pool of qualified CBE construction contractors.” Pepco asserts that the Joint Applicants are committed to making “every effort to procure materials from and award engineering design contracts to [qualified] District of Columbia businesses for the DC PLUG initiative work.”<sup>360</sup>

170. For its part, DDOT commits to “assist with the identification of District of Columbia businesses to be employed during this initiative, [it] will solicit and hire the services of a Pre-Program Management Consultant” to: “(1) provide an economic assessment of the market capacity of businesses and firms located, and licensed to do business, in the District of Columbia; (2) provide an assessment of the District of Columbia resident labor market to determine the availability of [ ] District of Columbia residents to fill newly created jobs; (3) develop a methodology to determine excess market capacity; and (4) provide recommendations for meeting the local hiring goals under the Undergrounding Act.”<sup>361</sup>

171. The Commission notes that in the New Act the Council clearly stated that “the Mayor and the electrical company should make every practical effort to ensure that District residents are hired for newly created jobs funded by any mechanism wherein costs of such funding are paid by the District from the DDOT Underground Electric Company Infrastructure Improvement Charge or recovered by the electric company through the Underground Project Charge, with a goal being that at least 100% of all related jobs are filled by District residents and 100% of construction contracts are awarded to [qualified] District businesses.” The Council added, “the Mayor and the electric company should make every practical effort to increase the use of District apprentices when executing contractor and subcontractor agreements to implement electric system modernization.”<sup>362</sup>

172. The Commission is encouraged by the hiring and training efforts described in the Biennial Plan as well as those already undertaken by the Company, like the C&C Program to

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<sup>358</sup> Testimony of Pepco witness Clark at 32:4-9.

<sup>359</sup> Testimony of Pepco witness Clark at 32:13-17.

<sup>360</sup> Testimony of Pepco witness Clark at 32:19-23 and 33:1-10.

<sup>361</sup> Testimony of Pepco witness Clark Williams at 9:18-21 and 10:1-5.

<sup>362</sup> D.C. Code § 34-1311.02 (7) (2017).

expand the pool of CBE construction candidates and the fact that Pepco has engaged a District of Columbia-based, woman-owned agency to manage all education, paid media, and media planning contained in the Education Plan.<sup>363</sup> As the increase in job opportunities for District residents and business was a key consideration in the Council's decision to enact the New Act, as well as a constant focal point of this Commission, we will be closely monitoring the Joint Applicants' hiring practices through its commitment to regularly report on local hiring and contracting throughout the course of the DC PLUG initiative. The Commission will also review the Joint Applicants' hiring and contracting performance in future Biennial Plan Applications, as the performance will factor into future public interest determinations. However, with regard to the first Biennial Plan, we conclude that the information provided in the Plan and Joint Applicants' testimony satisfies Section 308 (c)(4) of the New Act.

*xvi. Alternative Funding (Section 1313.08 (c)(5))*

173. Section 308 (c)(5) of the New Act requires that the first Biennial Plan include an explanation of the availability of alternate funding sources, if any, for relocation of the overhead equipment and ancillary facilities.<sup>364</sup> The section of the first Biennial Plan entitled "Alternate Funding Sources" and the testimonies of Company witness Clark and DDOT witness Williams explain that neither the Company nor DDOT is aware of any alternate sources of funds. No other party addresses this provision. We find that the requirements of Section 308 (c)(5) are satisfied.<sup>365</sup>

*xvii. Underground Project Charges (Section 1313.08 (c)(6)(A))*

174. Section 308 (c)(6)(A) of the New Act requires that the first Biennial Plan include an exhibit setting forth the proposed UPCs, workpapers calculating the derivation of these charges, the proposed allocation of billing responsibility among the Pepco's distribution service customer classes for the UPCs, and a worksheet showing various costs and allocations.<sup>366</sup> The exhibits providing this information can be found in Appendices I, J, K, and M of the first Biennial Plan.<sup>367</sup> Further discussion of the contents can be found in the section of the first Biennial Plan entitled "Cost Recovery."<sup>368</sup> We note that OPC "supports Pepco's calculation and proposed allocation of the Underground Project Charges as consistent with the requirements of the Undergrounding Act."<sup>369</sup> Upon our review of the Plan, we also conclude that it is in compliance with Section 308 (c)(6)(A).

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<sup>363</sup> See Biennial Plan at 12.

<sup>364</sup> D.C. Code § 34-1313.08 (c)(5) (2017).

<sup>365</sup> Biennial Plan at 25; Testimony of Pepco witness Clark at 30; Testimony of DDOT witness Williams at 11.

<sup>366</sup> D.C. Code § 34-1313.08 (c)(6)(A) (2017).

<sup>367</sup> Joint Application at 18.

<sup>368</sup> Biennial Plan at 28.

<sup>369</sup> OPC's Comments at 16-17.



*xviii. Accounting Treatment (Section 1313.08 (c)(6)(B))*

175. Section 308 (c)(6)(B) of the New Act requires that the aforementioned exhibit in Section 308 (c)(6)(A) include the proposed accounting treatment for the costs to be recovered through these charges.<sup>370</sup> It also requires that no costs recovered through the UPC be included in rate base or otherwise be incorporated in base tariff rates unless or until Pepco requests that these costs be transferred into rate base and discontinues recovery through the UPC. The section of the first Biennial Plan entitled “Cost Recovery” provides this information, as supported by the testimony and exhibits of Company witness Janocha.<sup>371</sup>

176. According to the Biennial Plan, the accounting treatment for the DC PLUG initiative will follow traditional regulatory accounting for capital projects and development of revenue requirements.<sup>372</sup> Witness Janocha describes how and when the Electric Company Infrastructure Improvement Costs will be transferred into rate base:

As part of the distribution rate case filing following completion of all Electric Company Infrastructure Improvement Activity and closing of all associated investment to electric plant, the investments will be incorporated into distribution rate base. At that point, the Company would file a final adjustment to Rider UPC to true up actual costs and collections for each class as of the effective date of the Company’s updated base rates, with refunds or surcharges to occur during the following rate period. At the end of that rate period, Rider UPC will be terminated.<sup>373</sup>

177. No other parties addressed these requirements. Upon reviewing the accounting treatment, we find the Plan to be in compliance with the New Act. However, when Pepco transfers DC PLUG improvements costs into rate base in a base rate case application, it shall include a separate ratemaking adjustment clearly indicating the date of transfer.

*xix. Education Plan (Section 1313.08 (c)(7))*

178. D.C. Code § 1313.08 (c)(7) requires that the first Biennial Plan include any other information that DDOT or Pepco considers material to the Commission’s consideration of the application.<sup>374</sup> The Joint Applicants provided the DC PLUG Education Plan (“Education Plan”)

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<sup>370</sup> D.C. Code § 34-1313.08 (c)(6)(B) (2017).

<sup>371</sup> Joint Application at 19.

<sup>372</sup> Biennial Plan at 29.

<sup>373</sup> Testimony of Pepco witness Janocha at 11:3-9.

<sup>374</sup> D.C. Code § 34-1313.08 (c)(7) (2017).

and accompanying budget in Appendix N as material parts of the first Biennial Plan.<sup>375</sup>

179. The Commission notes that in Order No. 17697, we found that the Joint Applicants' Proposed Integrated Communications Strategy for the DC PLUG Education Plan, submitted as Appendix N to the Triennial Plan," "coupled with representations made in the Joint Applicants' Statement in response to the Community Comments, and the Joint Stipulation, adequately addresses many of the concerns expressed by the parties and members of the community. . ."<sup>376</sup> However, the Commission expressed concern for the "lack of specificity provided in certain parts of the DC PLUG Education Plan" and, therefore, required "that the final plan include several additional items in addition to the information required by the Joint Stipulation."<sup>377</sup> Those additional requirements were described in paragraph 229 of Order No. 17697. The Commission concluded that "establishing these additional guidelines at the outset of the project will help mitigate problems that are likely to arise." However, the Commission, recognizing that "these guidelines do not address every concern raised related to the implementation of the Undergrounding project,"<sup>378</sup> ordered the formation of the UPCE Task Force, "comprised of Pepco, DDOT, OPC, AOBA, D.C. Climate Action, ANC Commissioners, Commission staff and residents from the affected wards in the District as well as any other governmental or non-governmental entity representing specific consumer interests that wants to participate."<sup>379</sup> The Commission recommended that the UPCE Task Force be chaired by the Office of the City Administrator.

180. The Commission explained that the purpose of the UPCE Task Force "is to monitor the Joint Applicants' performance as it relates to adhering to consumer education and outreach provisions outlined in the DC PLUG Education Plan and the Joint Stipulation" and "also make recommendations regarding ways to improve the undergrounding process based on consumer feedback and complaints filed with the participating entities."<sup>380</sup> The Commission fully outlined the role and duties of the UPCE Task Force in paragraphs 231-233 of Order No. 17697, which we incorporate by reference into this Order.

181. In Order No. 17770, issued on January 22, 2015, the Commission clarified matters related to the Education Plan and UPCE Task Force. Specifically, the Commission clarified that the weekly updates regarding the DC PLUG initiative ordered in paragraph 229 of Order No. 17697 should be made on the DC PLUG-dedicated website and directed that "the Joint Applicants include a link on their respective homepage websites that directs and transfers an Internet inquiry about the undergrounding project to the DC PLUG-dedicated website."<sup>381</sup> The

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<sup>375</sup> Biennial Plan at 38-39.

<sup>376</sup> Order No. 17697, ¶ 227.

<sup>377</sup> Order No. 17697, ¶ 228.

<sup>378</sup> Order No. 17697, ¶ 228.

<sup>379</sup> Order No. 17697, ¶ 230.

<sup>380</sup> Order No. 17697, ¶ 231.

<sup>381</sup> Order No. 17770, ¶ 25.

Commission also clarified that the Joint Applicants were not required to provide email notifications regarding the construction work to all Pepco customers “because the Joint Applicants do not have a complete list of email addresses for all customers who would be affected by the construction.” Instead, the Joint Applicants were required to provide “one direct notice per customer for each of the notices required prior to commencement of construction on each feeder.”<sup>382</sup> The Commission also clarified that the UPCE Task Force Kick-Off meeting could be held at any time during the first two quarters of 2015 “so as to allow the District Government adequate time to complete the process of selecting and appointing members to the UPCE Task Force.”<sup>383</sup> Lastly, the Commission clarified that with the creation of the UPCE Task Force, the Community Advisory Group (“CAG”) and Communications Coordination Committee (“CCC”) proposed in the Triennial Plan would be duplicative and were no longer needed.<sup>384</sup> The Commission incorporates by reference the findings of Order No. 17770, ¶¶ 25-28 into this Order.

182. In her testimony on the Education Plan included in the first Biennial Plan at Appendix N, Pepco witness McCabe asserted that the Education Plan filed with the Biennial Plan Application was the same as the plan filed with the Triennial Application except for certain changes that were “necessitated by Order Nos. 17697 and 17770, and the Mayor’s Order Nos. 2015-162 and 2015-166.”<sup>385</sup> Witness McCabe also asserted that the Education Plan had been modernized to include “mobile, pop-up community outreach stations in place of brick-and-mortar facilities, updated digital activities including removal of a District-operated listserv and outdated Facebook features, and refreshed key messages to be used for public communication on the benefits of the DC PLUG initiative” as well as messaging updates “to reflect the DC PLUG initiative’s focus on resiliency against storms.”<sup>386</sup>

183. Based on the discussion provided above, and considering the fact that no other parties address this requirement, we conclude that the Joint Applicants have provided other material information in compliance with the New Act. Furthermore, the Commission finds that the Education Plan provided at Appendix N to the Biennial Plan, in conjunction with the 2014 and 2016 Joint Stipulations, as modified by Order No. 17697 and clarified in Order No. 17770, is reasonable and appropriate. The prudence of the Education Plan Budget is discussed in **Section VI.D., ¶ 207 *infra***.

*xx. Contact Information (Section 1313.08 (c)(8))*

184. Section 308 (c)(8) of the New Act requires that the plan include contact information of individuals who may be contacted by the Commission with formal or informal requests for

<sup>382</sup> Order No. 17770, ¶ 26.

<sup>383</sup> Order No. 17770, ¶ 27.

<sup>384</sup> Order No. 17770, ¶ 28.

<sup>385</sup> Testimony of Pepco witness McCabe at 7:3-4.

<sup>386</sup> Testimony of Pepco witness McCabe at 7:4-14.

clarification or additional information.<sup>387</sup> The required information is listed in Part II. of the Joint Application<sup>388</sup> and is in compliance with this section of the New Act.

*xxi. Form of Notice (Section 1313.08 (c)(9))*

185. The form of Notice suitable for publication by the Commission that is required by Section 308 (c)(9) of the New Act<sup>389</sup> was attached to the transmittal letter for the Joint Application and, therefore, the requirement is satisfied.

*xxii. Utility Coordination Plans (Section 1313.08 (c)(10))*

186. Section 308 (c)(10) of the New Act requires that the first Biennial Plan contain “[a] protocol to be followed by the electric company and DDOT to provide notice and to coordinate engineering, design, and construction work performed pursuant to this [act] with the gas company, water utility, and other utilities that own or plan to construct, as approved by the Commission where applicable, facilities that may be affected by DDOT Underground Electric Company Infrastructure Improvement Activity or Electric Company Infrastructure Improvement Activity.”<sup>390</sup> The “Utility Coordination” section of the first Biennial Plan describes the coordination measures, and Appendix O presents the utility coordination protocol. This is supported by the testimony of DDOT witness Williams.<sup>391</sup> No other parties address this matter.

187. In Appendix O, Pepco states that, throughout the construction of a particular DC PLUG initiative project and as soon as DDOT and Pepco are aware of any changes in the DC PLUG initiative work or schedule, the Joint Applicants will promptly inform the utility companies regarding any changes in the DC PLUG initiative work or schedule that may affect the facilities of a utility company.<sup>392</sup> Witness Williams states that the Joint Applicants have and will continue to jointly host utility coordination meetings with the gas company, water utility, and other utilities to discuss the planned work associated with the DC PLUG initiative.<sup>393</sup>

188. The Commission has reviewed Pepco’s utility coordination plans and Appendix O in the Biennial Plan. In a response to Staff DR 1, Pepco stated that the Joint Applicants will continue to convey all pertinent information regarding scope and timeline at the monthly scheduled utility coordination meetings held at DDOT headquarters. Pepco and DDOT are also required to submit estimated start and end dates for each project included in the first Biennial Plan 90 days

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<sup>387</sup> D.C. Code § 34-1313.08 (c)(8) (2017).

<sup>388</sup> Joint Application at 3.

<sup>389</sup> D.C. Code § 34-1313.08 (c)(9) (2017).

<sup>390</sup> D.C. Code § 34-1313.08 (c)(10) (2017).

<sup>391</sup> Joint Application at 20.

<sup>392</sup> Biennial Plan, Appendix O at 1.

<sup>393</sup> Testimony of DDOT witness Williams at 11:20-21.

after approval. Prior to finalizing the program schedule, the Joint Applicants will send electronic draft copies of the estimated start and end dates, request feedback, and if required, meet with the other utilities to coordinate and sequence work prior to finalizing the estimate program schedule.<sup>394</sup>

189. In confirming the Plan's compliance with Section 1313.08 (c)(10) of the New Act, the Commission directs the Joint Applicants to also provide a schedule of formal utility coordination meetings, state their plan for communicating ongoing updates when there is a change in DC PLUG initiative work or schedule, and further state their strategy to overcome the challenges with telecom coordination in their 90-day Compliance Filing.

**B. The Proposed Electric Company Underground Infrastructure Improvements are Appropriately Designed and Located (Section 1313.10 (b)(2))**

190. Pursuant to D.C. Code § 1313.10 (b)(2),<sup>395</sup> the Commission must find that the proposed Electric Company Underground Infrastructure Improvements are appropriately designed and located for the electric company to recover its expenses and costs for those improvements. Based on the testimony of Pepco witness Clark and Appendix D of the Biennial Plan, this Commission finds that the proposed Electric Company Underground Infrastructure Improvements are appropriately designed and located.<sup>396</sup> No other parties address this requirement.

191. The locations of the feeders are shown in the Feeder Locations and One-Line Drawings in Appendix D of the Biennial Plan. Witness Clark testifies that Pepco designed the proposed Underground Infrastructure Improvements based on Company standards that are in accordance with sound engineering principles and generally accepted principles of electric distribution system design.<sup>397</sup> Additionally, "DDOT and Pepco modified their designs to facilitate load increases as well as to accommodate changes in technology or operating conditions that may occur in the near future."<sup>398</sup> Finally, DDOT and Pepco have incorporated methods and technologies into their designs to minimize project costs and maximize reliability benefits.<sup>399</sup>

192. The preliminary schematics included in the Plan constitute a redesign of the overhead feeders that Pepco proposes to place underground. The designs call for a loop configuration to enhance reliability and resilience and to minimize the impact of faults. The overhead feeders do not include a loop. However, in performing detailed engineering analysis and field surveys, Pepco witness Clark asserts, some changes may be made to the feeders' designs and/or routes to avoid physical obstructions or to improve reliability, resilience and/or operational

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<sup>394</sup> Pepco's Response to Staff DR 1, Question 11.

<sup>395</sup> D.C. Code § 34-1313.10 (b)(2) (2017).

<sup>396</sup> Testimony of Pepco witness Clark at 16:11-18:17.

<sup>397</sup> Testimony of Pepco witness Clark at 16:14-17.

<sup>398</sup> Testimony of Pepco witness Clark at 16:23-17:2.

<sup>399</sup> Testimony of Pepco witness Clark at 17:2-4.



efficiency of the underground system.<sup>400</sup> In most cases, the final, constructed configuration of the underground feeders will closely resemble the preliminary schematics. However, before construction, the Joint Applicants will perform physical surveys and further analyze each feeder, the results to be used to modify the preliminary design schematics and produce final engineering designs and construction plans.<sup>401</sup>

193. The Joint Applicants also commit to continuing to “look for opportunities to allow certain limited portions of DC PLUG initiative feeders to remain overhead without impacting the anticipated reliability and resilience gains associated with placing the feeder underground.”<sup>402</sup> So, if a section of a feeder has not experienced or is not susceptible to overhead outages, that section of the feeder may remain overhead, which would allow the Joint Applicants to apply the cost of placing that particular section underground to a future DC PLUG initiative.<sup>403</sup>

194. Based on the above, the Commission finds that the proposed Electric Company Underground Infrastructure Improvements are appropriately designed and located.

**C. The Intended Reliability Improvements will Accrue to the Benefit of the Electric Company’s Customers (Section 34-1313.10 (b)(3))**

195. The Joint Applicants assert that District customers will realize reliability improvements as a result of placing the feeders underground. Based on seven years of historical reliability data included in a quantitative model used to rank overhead feeders, Pepco contends that customer interruptions that occurred on the overhead primary mainline and overheard lateral portions of the feeders scheduled to be placed underground in the first Biennial Plan will be significantly reduced and the total system reliability performance indices will be improved.<sup>404</sup> Pepco witness Clark asserts that “[t]he Feeder Ranking Model assumes that all of the outages associated with faults that occurred on the primary main lines and laterals will be avoided once those portions of the feeder are placed underground.”<sup>405</sup> Once the five feeders selected that do not represent opportunity projects are undergrounded, Pepco estimates an 84.0% improvement in SAIFI and an 83.6% improvement in SAIDI for the entire feeder, “including the sections that will remain overheard once the primary mainline and primary lateral lines are placed underground.”<sup>406</sup> Pepco’s model estimates a 4.79% improvement in SAIFI and a 4.81% improvement in SAIDI and CMI for the entire portion of Pepco’s DC system comprised of overhead and combined overhead/underground feeders once the feeders in the first Biennial Plan are placed

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<sup>400</sup> Testimony of Pepco witness Clark at 17:8-19.

<sup>401</sup> Testimony of Pepco witness Clark at 17:22-18:5.

<sup>402</sup> Testimony of Pepco witness Clark at 18:9-12.

<sup>403</sup> Testimony of Pepco witness Clark at 18:13-17.

<sup>404</sup> Testimony of Pepco witness Clark at 11:8-13.

<sup>405</sup> Testimony of Pepco witness Clark at 11:13-16.

<sup>406</sup> See Testimony of Pepco witness Clark at 12:4-14.

underground.<sup>407</sup> Pepco witness Clark concludes that the Application satisfies Section 310 (b)(3) of the New Act because the benefits to reliability and resiliency “will be realized both by customers on the specific feeder being placed underground as well as on feeders that are not part of the DC PLUG initiative because having fewer overhead lines will result in less storm damage and associated restoration cost, faster restoration when outages do occur, and lower economic impact to customers from loss of electric power during major storms.”<sup>408</sup>

196. GSA contends that Pepco’s position that the reliability improvements associated with the undergrounding projects proposed in the Biennial Plan will “be realized both by customers on the specific feeder being placed underground as well as on feeders that are not part of the DC PLUG initiative because having fewer overhead lines will result in less storm damage and associated restoration costs, faster restoration when outages do occur, and lower economic impact to customers from loss of electric power during major storms” is vague and unsupported.<sup>409</sup> GSA asserts that the Joint Applicants have provided no evidence that the completion of the projects in the first Biennial Plan will produce demonstrably significant enhanced reliability benefits for the system compared to the status quo; therefore, the Commission must rule on the available evidence showing just the opposite — that the reliability benefits associated with the projects will be limited almost exclusively to the few customers served by the selected feeders.<sup>410</sup>

197. After considering the full record before us, the Commission credits witness Clark’s testimony regarding the accruing of the intended reliability improvements that will benefit Pepco customers and finds that Pepco’s customers will benefit from the intended reliability improvements. As Joint Applicants’ witness Clark asserts, once these lines are placed underground, 100% of the outages associated with the overhead primary lines will be eliminated. That is a significant system reliability improvement.

198. The Commission disagrees with GSA’s contention that the Joint Applicants have provided *no* evidence that completion of the first Biennial plan will produce benefits for customers beyond those served directly by the feeders selected for undergrounding. As reflected in the testimony of Pepco witness Clark, Pepco’s model estimates a 4.79% improvement in SAIFI and a 4.81% improvement in SAIDI and CMI for the entire portion of Pepco’s DC system that is comprised of overhead and combined overhead/underground feeders once the feeders in the first Biennial Plan are placed underground. GSA provides no credible evidence to disprove Pepco’s model predictions. Furthermore, there is no dispute that there will be reliability improvements associated with the DC PLUG initiative which will accrue to the benefit of Pepco’s District of Columbia customers, even if those benefits do not inure to *every* Pepco DC customer.

199. The Commission finds that, as Joint Applicants’ witness Clark states, once the feeders are placed underground, Pepco customers and the residents of the District should experience less storm damage and associated restoration costs, faster electric service restoration

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<sup>407</sup> See Testimony of Pepco witness Clark at 13:15-18.

<sup>408</sup> Testimony of Pepco witness Clark at 13:15-22.

<sup>409</sup> GSA’s Comments at 12.

<sup>410</sup> GSA’s Comments at 12.

when outages do occur since fewer lines will be overhead, and lower economic impact to customers from loss of electric power during major storms. Furthermore, Pepco's representation is consistent with the overarching premise accepted by the Mayor's Task Force as well as the D.C. Council that undergrounding power lines would improve electric system reliability during a wide variety of weather conditions. The Commission finds that the first Biennial Plan will result in reliability enhancing improvements that will inure to the benefit of Pepco's customers resulting in the reduction of interruptions to D.C. customers. Accordingly, we find that the Application meets Section 310 (b)(3) of the New Act.

**D. The Projected Costs of Pepco's Undergrounding Infrastructure Improvements are Prudent (Section 34-1313.10 (b)(4))**

200. The New Act defines Electric Company Infrastructure Improvement Activity ("Pepco Activity"), which incorporates the definition of Electric Company Improvements ("Pepco Improvements").<sup>411</sup> Additionally, the New Act defines Electric Company Infrastructure Improvement Costs ("Pepco Costs").<sup>412</sup>

201. For the first 12-month rate period of the first Biennial Plan, the revenue requirement is \$3,990,710.<sup>413</sup> For the second 12-month rate period of the first Biennial Plan, the revenue requirement is \$1,612,230, subject to adjustment in the future pursuant to Section 315 of the Undergrounding Act.<sup>414</sup> The section of the first Biennial Plan entitled "Project Cost" and Appendix H provides the itemized estimates of the Pepco Costs, as supported by the testimony of Company witness Clark. The section of the first Biennial Plan entitled "Cost Recovery" and Appendix K discuss the proposed UPC, as supported by the testimony and exhibits of Company witness Janocha.<sup>415</sup>

202. The Biennial Plan projects the costs of Pepco Improvements' using Pepco's WMIS, consistent with Pepco's standard method for estimating its cost for constructing new distribution facilities. The price of each unit includes: (1) labor, (2) materials, (3) administrative and general, and (4) miscellaneous.<sup>416</sup>

203. Pepco witness McGowan asserts that Section 101 (21) of the New Act allows Pepco to recover the costs spent on the first Triennial Plan feeders. "Pepco performed preliminary design work on all 21 feeders. The designs for Feeders 308 and 14261 were 100% complete because

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<sup>411</sup> See D.C. Code § 34-1311.01 (20) (2017) (Electric Company Infrastructure Improvement Activity); D.C. Code § 34-1311.01 (19) (2017) (Electric Company Infrastructure Improvements). The development of the Underground Project Charge revenue requirement is provided in PEPCO (C)-1 which was updated August 24th.

<sup>412</sup> See D.C. Code § 34-1311.01 (20) (Electric Company Infrastructure Improvement Costs).

<sup>413</sup> Testimony of Pepco witness Janocha at 6:23-24.

<sup>414</sup> Testimony of Pepco witness Janocha at 6:24-7:2.

<sup>415</sup> Joint Application at 16.

<sup>416</sup> Biennial Plan at 27-8.

those two feeders were the inaugural feeders under the First Triennial Plan.”<sup>417</sup> Of these, only Feeder 14261 is not included in the first Biennial Plan; therefore, “DDOT and Pepco have included the cost of the preliminary design work and the costs associated with the engineering design of Feeder 14261 in the revenue requirement in the First Biennial Plan.”<sup>418</sup>

204. Witness Janocha explains that O&M expenses to be recovered through the UPC are the same categories that were approved in Order No. 17697, as clarified in Order No. 17770, for inclusion in the UPC.<sup>419</sup> Janocha further explains that the UPC also recovers as O&M expenses: (1) the first Biennial Plan costs not otherwise capitalized, and (2) costs from the first Triennial Plan (as discussed by Pepco witness McGowan).<sup>420</sup>

205. Janocha says that the revenue requirement is calculated using Pepco’s portion of the projected capital costs, which includes the projected costs of engineering, design, and construction; actual labor; materials; and, allowance for funds used during construction. Additionally, the revenue requirement includes the O&M expenses described above, which does not earn a return on investment. The revenue requirement includes a return on investment through depreciation expense based on the plant investment that is placed into service. The revenue requirement also includes a return on investment based on the rate of return authorized in *Formal Case No. 1139*, Pepco’s most recently decided base rate case.<sup>421</sup>

206. DDOT primarily will perform the required civil engineering, design, and construction work, while Pepco primarily will perform the electrical engineering, design, and construction work.<sup>422</sup> The Biennial Plan says that while the Joint Applicants intend to cover approximately 50% of the project costs each, because the civil costs exceed the electrical costs, “Pepco will reimburse DDOT for the Civil Engineering/Program Management Services and other fees DDOT pays to their contractors. Additionally, Pepco will furnish the manhole and conduit material for each DC PLUG initiative project.”<sup>423</sup>

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<sup>417</sup> Testimony of Pepco witness McGowan at 6:15-18.

<sup>418</sup> Testimony of Pepco witness McGowan at 7:8-11. In its Response to AOBAs 1-6, Pepco explained that the ranking for Feeder 14261 in the feeder ranking model based on 2010-2016 outage data changed and it no longer merited undergrounding in the Biennial Plan; substantial reliability work has been performed on this feeder.

<sup>419</sup> Testimony of Pepco witness Janocha at 5:4-18. The O&M expenses are (1) The Company’s portion of the Customer Education Plan; (2) Community outreach stations in the vicinity of construction activities; (3) A compliance coordinator that will track and report on local hiring and contracting throughout the course of the DC PLUG initiative, to ensure compliance with Section 102 (7) of the Undergrounding Act; (4) Commission costs associated with the Commission’s evaluation of DC Plug Initiative filings; and (5) OPC costs associated with the OPC’s review of the DC PLUG initiative filings.

<sup>420</sup> Testimony of Pepco witness Janocha at 5:19-6:2 and Biennial Plan at 29-30.

<sup>421</sup> Testimony of Pepco witness Janocha at 6:2-14 and Biennial Plan at 30-31.

<sup>422</sup> Biennial Plan at 22, Testimony of Pepco witness Janocha at 8:22-9:4, and PEPCO (C)-1.

<sup>423</sup> Biennial Plan at 22.



207. With regard to the prudence of the budget for implementation of the Education Plan, Pepco witness McCabe asserts that the total annual budget for the Education Plan is \$929,278 with Pepco recovering \$657,028 through the UPC.<sup>424</sup> Witness McCabe asserts that the proposed Education Plan budget is reasonable because it is “scalable and flexible to address the community needs and interests throughout the duration of the project construction.” McCabe contends that the Joint Applicants looked at draft education plans “that ranged in cost estimated at approximately \$4 million per year to the current estimated budget” of \$929,278. Witness McCabe concludes that the “current Education Plan will effectively communicate the necessary project-related information while also ensuring that the bulk of the funds allotted to the DC PLUG initiative should be directed toward placement of power lines underground. As a result, the budget that supports the Education Plan is reasonable in light of the objectives.”<sup>425</sup> Given that the Joint Applicants and OPC entered into the 2014 and 2016 Joint Stipulations, which have been accepted by the Commission, and that no further concerns have been raised regarding the prudence of the proposed Education Plan-related expenditures, the Commission finds that the proposed DC PLUG Education Plan Budget set forth in Attachment N of the Biennial Plan is prudent.

208. AOBA witness Oliver, arguing against the prudence of the costs, asserts that “[w]hen the increases that Pepco customers will experience under the UPC and DDOT charges the Joint Applicants propose in this proceeding are combined with this Commission’s recent rate increase determinations for Pepco in Formal Case No. 1139, the result is rate shock for large commercial customers in the District.”<sup>426</sup> Oliver’s Table 1 presents his analysis of rate impacts by customer class. GSA echoes AOBA’s concern about rate impacts and asserts that “[t]he rates proposed in the Application are unjust, unreasonable and discriminatory.”<sup>427</sup>

209. Additionally, Oliver states that “Pepco’s proposal for revenue reconciliations or ‘true-ups’ by rate class for UPC and DDOT surcharges do[es] not address the potential impacts of transfers of customers between rate classes.”<sup>428</sup> AOBA witness Oliver recommends that “[t]he Commission [ ] require that all revenue reconciliations filed by Pepco under the DC PLUG program [ ] explicitly account for transfers of customers and associated revenue requirements between rate classes.”<sup>429</sup>

210. While AOBA and GSA complain about the bill impact of the rate design, no party has argued that the cost recovery, rates, and rate design do not conform to the requirements of the New Act. As to AOBA’s argument concerning the impact of transfers of customers among classes and the need to account for the transfers in either the UPC or Underground Rider, there is no record demonstrating that this is a problem. The Commission has not ordered any similar change for the

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<sup>424</sup> Testimony of Pepco witness McCabe at 13:4-8.

<sup>425</sup> Testimony of Pepco witness McCabe at 13:18-20 and 14:1-6.

<sup>426</sup> Testimony of AOBA witness Oliver at 6:13-17.

<sup>427</sup> GSA’s Protest at 27.

<sup>428</sup> Testimony of AOBA witness Oliver at 6:19-21.

<sup>429</sup> Testimony of AOBA witness Oliver at 8:4-7.



Bill Stabilization Adjustment (“BSA”) where AOBA made the same complaint. During each rate case, the number of customers for each class is determined and used in the rate design. Building additional adjustments into the UPC and Underground Rider, outside the context of a rate case, is needlessly complex and would create unnecessary uncertainty in cost recovery. Based on the foregoing discussion, the Commission rejects AOBA’s proposal.

211. The Commission has previously stated: “A prudence review must determine whether the utility’s actions, based upon what it knew at the time . . . were reasonable and prudent in light of the circumstances that then existed.”<sup>430</sup> The Commission has examined the line-item descriptions and cost breakdowns for each of the proposed construction projects<sup>431</sup> and the description in the Joint Application of Pepco’s and DDOT’s cost sharing arrangement. The Commission concludes that the various attributions of infrastructure additions to either Pepco or DDOT are consistent with the Company Infrastructure Improvement definitions referenced above and that the cost sharing arrangement between Pepco and DDOT described in the Joint Application is consistent with the funding provisions of the New Act. The only matter related to Pepco’s projected costs that requires additional information is the Amortization of deferred costs. To gain greater clarity related to these costs, the Commission directs the Joint Applicants to provide, in the 90-day Compliance Filing, an itemization of the “Amortization of deferred costs” that amounted to \$2,761,432 in 2017.<sup>432</sup> Accordingly, and upon condition of receiving the clarity sought related to the Amortization of deferred costs, the Commission finds that the Joint Applicants have reasonably allocated the estimated overall project costs among Pepco and DDOT.

212. The Commission concludes that the Joint Applicants have provided a *prima facie* showing that the Electric Company Undergrounding Infrastructure Improvement costs Pepco will incur will be prudent. To the extent that actually incurred costs deviate from these estimates, those cost differentials will be captured at the time the Company makes its annual filings to adjust its UPC surcharge levels so as to avoid any over- or under-recovery of actual costs incurred. Accordingly, the Commission finds that the projected Electric Company Infrastructure Improvement costs are prudent.

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<sup>430</sup> See *Formal Case No. 920, Re Chesapeake and Potomac Telephone Co.*, Order No. 10276, ¶ 24, rel. August 23, 1993. (“However, a prudence review must determine whether the utility’s actions, based on what it knew at the time of construction of plant, were reasonable and prudent in light of the circumstances that existed. Therefore, a determination of prudence based on the facts known at the time of the prudence review are likely to be a better indication of prudence than a hindsight evaluation at the time of a rate case. Consequently, any showing that the prior prudence determination is incorrect would have to be supported by strong evidence.”)

<sup>431</sup> These are found in the confidential workpapers filed with the Joint Application.

<sup>432</sup> Updated ERRATA Exhibit PEPCO (C)-1 at 1 of 11.

**E. The Projected Costs of DDOT's Infrastructure Improvements are Prudent (Section 34-1313.10 (b)(5))**

213. The New Act defines DDOT Underground Electric Company Infrastructure Improvement Costs ("DDOT Costs").<sup>433</sup> The first Biennial Plan includes an itemized estimate of the DDOT Costs in a section entitled "Project Cost" and Appendix H provides the itemized estimates of the DDOT Costs, as supported by the testimony of Company witness Clark and DDOT witness Williams.<sup>434</sup>

214. Standard DDOT practices were used for estimating the civil cost of a DDOT project in the development phase. DDOT used historical bid-based and cost-based methodologies as well as its engineering judgment and experience to develop the cost estimates. DDOT's cost estimates assume that the stage of design is at approximately 10-25%.<sup>435</sup> DDOT analyzed historical bid prices from the previous three years to calculate its cost estimates. These estimates include the cost-based estimating methodology for specific items that can be calculated using RSMeans Heavy Construction Cost Data ("RSMeans"), which is also used by DDOT contractors.<sup>436</sup> DDOT asserts that it employed its engineering judgment and experience in conjunction with the methods described above as well as guidelines, such as DDOT's Standards and Specifications for Highways and Structures.<sup>437</sup>

215. DDOT asserts that it is reviewing planned road resurfacing (Annual Paving Plans) and reconstruction (Six Year Transportation Improvement Program) projects to identify opportunities for coordination with DC PLUG and cost savings. Witness Williams testified that "DDOT and Pepco will provide an update of their efforts to coordinate the projects in the first Biennial Plan in the annual reports as well as in semi-annual meetings on the first Biennial Plan. In addition, Pepco and DDOT will report on the status of coordination efforts in future Biennial Plans filed with the Commission."<sup>438</sup> The Joint Applicants assert that of the six feeders selected in the first Biennial Plan, only Feeder 14900 qualifies as an opportunity project; work on the 1.7 mile Oregon Avenue reconstruction project is expected to begin by the second quarter of 2018.<sup>439</sup>

216. GSA says there is no procedure to review DDOT costs and that the Commission should direct that "Pepco's recovery of costs charged by DDOT is contingent on the adoption of a mechanism for prudence review, disallowance of any imprudent dollars, and return to ratepayers

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<sup>433</sup> See D.C. Code § 34-1311.01 (14) (2017) (DDOT Underground Electric Company Infrastructure Improvement Costs)

<sup>434</sup> Joint Application at 16.

<sup>435</sup> Biennial Plan at 26.

<sup>436</sup> Biennial Plan at 26 and Testimony of DDOT witness Williams at 5:14-19.

<sup>437</sup> Biennial Plan at 27 and Testimony of DDOT witness Williams at 6:1-3.

<sup>438</sup> Testimony of DDOT witness Williams at 9:2-5.

<sup>439</sup> Biennial Plan at 24 and Testimony of DDOT witness Williams at 8:19-9:2.

of any dollars unspent on the DDOT projects approved by the Commission.”<sup>440</sup> The Commission addresses GSA’s arguments as part of the Financing Order in **Section VII.B.ii.**, ¶¶ 250-252.

217. The Commission reviewed the itemized estimates of DDOT Project Costs contained in Appendix H of the first Biennial Plan. No party has challenged or otherwise opposed the estimates themselves as inaccurate, unreasonable, or imprudent. We find that the cost estimates on their face seem reasonable and prudent, recognizing, however, that the estimates are preliminary and based on the development phase of the undergrounding projects. The Commission directs Pepco to report quarterly on all payments made to DDOT, using the cost categories in Appendix H, beginning on April 1, 2018. Further, at the next Semi-Annual Meeting after each successive Six-Year Transportation Improvement Plan is released, the Joint Applicants shall report on the “opportunity projects” that have been identified.

218. Regarding the specific break down of DDOT Activities and the associated funding sources, the Commission directs the Joint Applicants to include a reconciliation of \$60 million first Biennial Plan DDOT Charge and the total DDOT construction spending planned for the first Biennial Plan in the 90-day compliance filing. Additionally, the Joint Applicants should include a report explaining how much of the civil construction costs for Feeder 14900 will be counted towards the \$62.5 million District capital budget portion of the overall DC PLUG financing identified in the New Act.

**F. The Electric Company’s Proposed Underground Project Charges will be Just and Reasonable (Section 34-1313.10 (b)(6))**

219. The Joint Applicants assert that based on the data and information provided in the Joint Application and Financing Order, the proposed UPCs are just and reasonable.<sup>441</sup> The Biennial Plan states that the UPC is a surcharge that will be collected from all distribution customers, excluding RAD customers, to recover Pepco’s portion of the DC PLUG initiative investments as defined in Section 101 (42) of the Undergrounding Act.<sup>442</sup> The Joint Applicants assert that the UPC will recover Pepco’s \$250 million investment in the same manner as approved in Order No. 17697, and as clarified by Order No. 17770, in *Formal Case No. 1116*, and affirmed by the D.C. Court of Appeals.<sup>443</sup>

220. The Joint Applicants further assert in the first Biennial Plan, that the revenue requirement and resulting rates included in the UPC are calculated using Pepco’s portion of the projected capital cost data including, but not limited to, the actual costs of engineering; design and construction; the cost of removal; and actual labor, materials, and Allowance for Funds Used

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<sup>440</sup> GSA’s Protest at 25.

<sup>441</sup> Joint Application at 21.

<sup>442</sup> Biennial Plan at 28.

<sup>443</sup> Biennial Plan at 29.

During Construction. The revenue requirement includes O&M expenses;<sup>444</sup> pursuant to Section 310 (c)(3) of the New Act. The revenue requirement also includes a return on investment based on the most recent base rate case; however, O&M expenses do not earn a return on investment.<sup>445</sup> The Joint Applicants assert that the total revenue requirement is allocated among customers, except RAD customers, based on the allocation of total revenue in the most recent base rate case, exclusive of customer charges, as provided in Section 310 (c)(1) of the New Act.<sup>446</sup>

221. The Joint Applicants assert that for each customer class, a volumetric surcharge is developed on a per-kilowatt hour basis by dividing the class revenue requirement by the forecasted billing units for that class for the 12-month period corresponding with that rate year under Rider UPC.<sup>447</sup> On August 8<sup>th</sup>, Pepco updated the UPC calculations within two weeks of the issuance of the final order in *Formal Case No. 1139*.<sup>448</sup> On August 24<sup>th</sup>, Pepco filed an ERRATA to correct its UPC calculations. According to the first Biennial Plan, the initial UPC will be effective 90 days after the issuance of the authorizing order<sup>449</sup> and it will be based on forecasted project costs of approximately \$59.6 million for feeders placed in service through 2022 under the first Biennial Plan.<sup>450</sup>

222. The Joint Applicants assert that the UPC will be updated annually on or before April 1; the first update is expected in 2018.<sup>451</sup> The update will include all of the requirements in Section 315 of the Undergrounding Act. In addition to the forecasted expenditures that are placed into service for the two calendar years for which the update is filed, the annual adjustment will include a true-up of UPCs for the prior calendar year.<sup>452</sup>

223. Pepco witness Janocha asserts that the annual true-up will be conducted by customer class and that for each class, an over- or under-recovery amount will be calculated as the difference between actual Electric Company Infrastructure Improvement Costs incurred during the

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<sup>444</sup> Biennial Plan at 30.

<sup>445</sup> Biennial Plan at 31.

<sup>446</sup> Biennial Plan at 31.

<sup>447</sup> Biennial Plan at 32 and Testimony of Pepco witness Janocha at 9:16-21.

<sup>448</sup> Order No. 18846, rel. July 25, 2017.

<sup>449</sup> Biennial Plan at 32 and Testimony of Pepco witness Janocha at 9:13-14.

<sup>450</sup> Appendix I shows the development of the revenue requirement, Appendix J shows the revenue allocation and Appendix J shows the UPC for each customer class. (Biennial Plan at 32). The corrected versions of these Appendices can be found in the August 24<sup>th</sup> ERRATA. Additionally, the Commission notes that the "Date Effective" listed on the Pepco (C)-3 Errata reflects "Usage on and after January 1, 2018." However, Pepco represents in the testimony of its witness Janocha, and we order here, that the new Riders become effective 90 days after the issuance of this Order (*i.e.*, February 2018).

<sup>451</sup> Biennial Plan at 33 and Testimony of Pepco witness Janocha at 10:3-7.

<sup>452</sup> Biennial Plan at 33.

prior calendar year and actual booked revenues under Rider UPC during the same time period.<sup>453</sup> Actual Electric Company Infrastructure Improvement Costs will be allocated among the classes in proportion to the UPC revenue requirement that was in effect during the true-up period. The Joint Applicants assert that the Rider UPC collections are tracked by distribution service customer class and will be directly assigned. For each class, the under-recovery amount will be added to, or the over-recovery amount credited to, that class's revenue requirement for the next rate period.<sup>454</sup>

224. The "Underground Project Charge Rider - Rider 'UPC'" is provided in Appendix K of the Biennial Plan (*see also* August 24<sup>th</sup> ERRATA). It is applicable to all rate schedules except RAD customers. The Joint Applicants assert that the UPC will be shown on customer bills as "Underground Charge, Pepco."<sup>455</sup> Monthly bill impacts are shown in PEPCO (C)-4 for 2018, and PEPCO (C)-5 for 2019, as well as in Appendix M to the first Biennial Plan, based on *Formal Case No. 1103* in the July 3, 2017 Application. However, on August 8, 2017, these exhibits were updated by Pepco to reflect the results of *Formal Case No. 1139*. The Commission notes that on August 24, 2017, Pepco filed an Errata for the monthly bill impact exhibits because the RT class had been left out of the August 8<sup>th</sup> revenue allocation.<sup>456</sup> The August 24<sup>th</sup> ERRATA shows that a Residential Class customer with a monthly usage of 700 kWhs will pay an additional 13 cents or 0.15% for the UPC in the first year.<sup>457</sup>

225. The Joint Applicants assert that the annual revenue requirement under Rider UPC is allocated to customer classes based on the total rate class distribution service revenue minus the customer charge revenue.<sup>458</sup> On this basis, the Residential Class is allocated 8.58% of the revenue requirement and the MMA Class is allocated 1.17%.<sup>459</sup>

226. OPC asserts that it "reviewed and verified that Pepco's UPC calculation and cost allocation to individual customer classes complies with the requirements of the Undergrounding Act."<sup>460</sup>

227. AOBA asserts that the fact that the New Act imposes mandatory rate-setting and rate design restrictions on the Commission "alters the very function and operation of the

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<sup>453</sup> Biennial Plan at 33 and Testimony of Pepco witness Janocha at 10:10-22.

<sup>454</sup> Biennial Plan at 33 and Testimony of Pepco witness Janocha at 10:10-22.

<sup>455</sup> Biennial Plan at 34 and Testimony of Pepco witness Janocha at 7:7-8.

<sup>456</sup> ATTACHMENT 1 presents an analysis of the customer class allocations before and after the *Formal Case 1139* decision, based on the combined impact of the UPC and the Undergrounding Rider and accounting for the redefinition of the residential classes. ATTACHMENT 2 shows the residential rate impacts under *Formal Case Nos. 1116 and 1121*, July 3<sup>rd</sup> Application, and August 24 ERRATA.

<sup>457</sup> PEPCO (C) – 4, at 1 of 9.

<sup>458</sup> Testimony of Pepco witness Janocha at 8:9-12 and Biennial Plan at 31.

<sup>459</sup> PEPCO (C) – 1 Updated ERRATA, at 2 of 11.

<sup>460</sup> OPC's Protest at 16.



Commission” and precludes it from ensuring that the proposed underground project charges will be just and reasonable.<sup>461</sup> Furthermore, citing arguments it advanced in *Formal Case No. 1139*, AOBA claims that “the revenue reconciliation or true-up procedure that the Joint Applicants propose fails to address the influence of movements of customers between rate classes during a biennial period.”<sup>462</sup> AOBA witness Oliver recommends that “[t]he Commission [ ] require that all revenue reconciliations filed by Pepco under the DC PLUG program [ ] explicitly account for transfers of customers and associated revenue requirements between rate classes.”<sup>463</sup>

228. AOBA further alleges that the Joint Application will result in “rate shock” for commercial customers “[w]hen the increases that Pepco customers will experience under the UPC and DDOT charges the Joint Applicants propose in this proceeding are combined with this Commission’s recent rate increase determinations for Pepco in Formal Case No. 1139.”<sup>464</sup> AOBA witness Oliver recommends that the Commission “recognize that, if the impacts on residential customer rates are to be limited as proposed by the Joint Applicants, then in the context of the Commission’s responsibility to ensure just, reasonable and non-discriminatory rates for all classes, the scope and costs of the filed Biennial Plan must likewise be limited.”<sup>465</sup> AOBA witness Oliver notes that “[i]f GSA-related shortfalls in DDOT cost recovery are collected from customers within the same classes in which GSA accounts are served, then the entire burden of such DDOT cost recovery shortfalls would be imposed on commercial customers.”<sup>466</sup>

229. GSA asserts that the Application’s proposed rates for the two surcharges to be assessed on Pepco’s customers are not just and reasonable and discriminate against commercial class customers.<sup>467</sup> GSA argues that the surcharge rates do not reflect cost causation or fall within a “zone of reasonableness” because the rates charged to commercial class customers is “exorbitant.”<sup>468</sup> GSA contends that the “Residential class (excluding RAD) is being allocated only 8.58% of the revenue requirement recovered through each of the surcharges, while the GS and GT classes alone will collectively provide more than ten times as much – 87% of the revenue requirement.”<sup>469</sup> GSA argues that the skewed allocation is made worse, “for the purposes of DC PLUG surcharges, [because] customer charge revenue is removed from the allocation calculation” resulting in “even more DC PLUG costs [being] shifted away from residential customers and

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<sup>461</sup> AOBA’s Protest at 9-11.

<sup>462</sup> Testimony of AOBA Witness Oliver at 5:6-8.

<sup>463</sup> Testimony of AOBA Witness Oliver at 8:4-7.

<sup>464</sup> Testimony of AOBA Witness Oliver at 6:13-17.

<sup>465</sup> Testimony of AOBA Witness Oliver at 8:9-14.

<sup>466</sup> Testimony of AOBA Witness Oliver at 19:3-7.

<sup>467</sup> GSA’s Protest at 25.

<sup>468</sup> GSA’s Protest at 26-27.

<sup>469</sup> GSA’s Protest at 27.

loaded onto commercial customers.”<sup>470</sup> Additionally, GSA asserts that the use of a “per kWh volumetric charge” in the rate design proposed for the UPC and the Underground Rider for the commercial classes is unjust and unreasonable because it “will produce intra-class subsidies and will result in substantial rate impacts for high usage and high load factor commercial customers.”<sup>471</sup>

230. The Commission understands AOBA and GSA’s expressed concern regarding the commercial class customers’ subsidization of undergrounding-related costs for residential customers. However, the allocation of the DC PLUG costs among rate classes was considered by the D.C. Council and set in the statute. Furthermore, the D.C. Council was fully aware of the impact of the allocation on commercial class customers as the issue was litigated before the D.C. Court of Appeals and necessitated the passage of amended legislation – the New Act. As such, the cost allocation approved by the Commission in this proceeding must be in accordance with the allocation approved in Pepco’s most recent base rate case, Formal Case No. 1139. The Commission has no authority to alter the statutorily mandated allocation structure in the context of this proceeding. As the Joint Applicants have provided credible evidence that the proposed UPCs are in compliance with the New Act, and no party has demonstrated otherwise, the Commission finds that the proposed UPCs are just and reasonable.

231. The Commission would like to clarify the Company’s proposed tariff language pertaining to the manner in which the UPC will appear on customers’ bills.<sup>472</sup> In its updated ERRATA filing, Pepco proposes to designate the charge as “Underground Charge, Pepco.” However, the UPC should appear as a separate line item on customers’ bills with the following designation: “Underground Project Charge, Pepco.”

**G. Additional Matters Related to the Biennial Plan (Section 34-1313.10 (c)(1)-(4))**

*i. Section 1313.10 (c)(1)-(4) requirements*

232. Section 310 (c) of the New Act requires that the Commission include four additional pieces of information in its order on the Biennial Plan: (1) authorization for the electric company to impose and collect the UPCs from its distribution service customers in the District in accordance with the distribution service customer class cost allocations approved by the Commission for the electric company and in the electric company’s most recent base rate case (excluding RAD customers); (2) authorization for the electric company to bill the UPCs to the distribution service customers (excluding RAD customers) as a volumetric surcharge; (3) approval of the annual revenue requirement, which shall include the rate of return on equity as set by the Commission’s most recently decided base rate case used in calculating the UPCs; and (4) a description of the frequency of project construction update reports for the DDOT Underground

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<sup>470</sup> GSA’s Protest at 28.

<sup>471</sup> GSA’s Protest at 29.

<sup>472</sup> See Exhibit PEPCO (C)-3 Updated ERRATA, at 32 (August 24, 2017).

Electric Company Infrastructure Improvements.<sup>473</sup> The Commission discussed the first two issues in the discussion of the UPCs in **Section VI.F.** above and makes the requisite authorizations in the findings and conclusions section of this Order. We address the remaining to two issues below.

ii. *Approval of the Annual Revenue Requirement (Section 1313.10 (c)(3))*

233. Section 310 (c)(3) of the New Act requires the Commission to approve the annual revenue requirement, which shall include the rate of return on equity as set by the Commission's most recently decided base rate case used in calculating the UPCs.<sup>474</sup> The Joint Applicants proposed the following revenue requirement for two (2) years:

<b>Joint Applicants' Biennial Plan's Revenue Requirement – Filed August 28, 2017<sup>475</sup></b>		
<b>Year</b>	<b>2018</b>	<b>2019</b>
<b>Revenue Requirement</b>	\$3,990,710	\$1,603,396

234. The proposed revenue requirement consists of gross plant additions, a return on the plant (using the 9.5% Rate of Return ("ROR") approved in *Formal Case No. 1139* – the last Pepco rate case), and a depreciation expense (using the depreciation rates approved in *Formal Case No. 1139*). The revenue requirement also includes the statutorily authorized recovery of \$2.76 million in amortized deferred costs related to the preliminary design work and costs associated with the engineering design of Feeder 14261, which was approved in *Formal Case No. 1116* but never constructed.

235. The Commission observes that the Company provided a revenue requirement for the first two years only in the Joint Application. In order for the public to better understand the impact of DC PLUG in the future, Pepco is directed to provide an estimated revenue requirement for the first Biennial Plan through the conclusion of construction in the 90-day Compliance Filing, including details of any applicable District property taxes.

236. The Commission finds that Pepco/DDOT's revised revenue requirement for the Biennial Plan is accurate and properly reflects the proposed undergrounding investment costs and return of those investments as provided for in the New Act. The Commission notes, however, that in Order No. 17697, at paragraph 218, the Commission directed Pepco, because of the possibility of double counting, to exclude the Cost of Removal from the revenue requirement and recover those costs as a separate ratemaking adjustment in a base rate case. Similarly, here, if Pepco has included the Cost of Removal in the revenue requirement, then those costs should be excluded from the UPC when the Company files its first annual adjustment.

<sup>473</sup> See D.C. Code § 34-1313.10 (c)(1) – (4) (2017).

<sup>474</sup> D.C. Code § 34-1313.10 (c)(3) (2017).

<sup>475</sup> See Exhibit Pepco (C)-1 Updated ERRATA, at 1 of 11 (August 28, 2017).

iii. *Project Construction Update Reports (Section 1313.10 (c)(4))*

237. Section 308 (b) of the New Act requires that Pepco and DDOT identify estimated start and end dates for each project approved in the plan no more than 90 days after approval of the biennial Underground Infrastructure Improvements Projects Plan. In the Application, Pepco and DDOT indicated that they would identify estimated start and end dates within 90 days of approval of the Application and Biennial Plan.<sup>476</sup> Thereafter, Section 34-1313.10 (c)(4) requires that the Commission's order include a description of the frequency of project construction update reports for the DDOT Underground Electric Company Infrastructure Improvements funded by the DDOT Underground Electric Company Infrastructure Improvement Charges and the Electric Company Infrastructure Improvements as set forth in the [biennial] Underground Infrastructure Improvement Projects Plan, as approved by the Commission, to be filed by Pepco and DDOT with the Commission and served concurrently on OPC.<sup>477</sup>

238. The Joint Applicants propose that the Commission continue the requirement approved in *Formal Case No. 1116*, Order No. 17697, to file annual update reports no later than September 30 of each year in the years in which a biennial plan is not filed. The Joint Applicants assert that the report should be made concurrently with the status report required pursuant to Section 307 (b) of the New Act. In addition, pursuant to the 2014 Stipulation of OPC, Pepco, and DDOT, the Joint Applicants assert that they will continue to hold semi-annual meetings and file the thirty-day reports on those meetings with the Commission.<sup>478</sup>

239. The Commission recognizes that only preliminary drawings and schematics were included in the first Biennial Plan. We are approving the plan based on these preliminary drawings, with the understanding that final construction drawings will be made available for review by Commission Staff and OPC as they are finalized. We have also directed the Joint Applicants to file, within 90 days of the date of this Order, the start dates and projected end dates for each of the six projects. The Joint Applicants shall include in the 90-day Compliance Filing a status report on all design work for the six DC PLUG feeders, both civil drawings and electrical schematics. The Joint Applicants shall also schedule informal review sessions for OPC and Commission Staff as the construction drawings are finalized.

**H. The Grant of Authorizations and Approvals Sought by the Joint Applicants in the Joint Application is in the Public Interest (Section 34-1313.10 (b)(7))**

240. In Section 102 of the New Act, the D.C. Council found that “[g]lobal climate change has increased the frequency and severity of destructive weather patterns. Accordingly, electric power distribution service in the District of Columbia is vulnerable to equipment failures on the overhead electric distribution system of the electric company for many reasons, including

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<sup>476</sup> Joint Application at 16, Testimony of Pepco witness Clark at 28:19-21.

<sup>477</sup> The Commission notes that a scrivener's error exists in the New Act. Section 34-1313.10 (c)(4) refers to the “triennial Underground Infrastructure Improvement Projects Plan,” when the text should read “biennial Underground Infrastructure Improvement Projects Plan.”

<sup>478</sup> Joint Application at 22-23.



high winds, flooding, lightning strikes, snow and ice accumulations, foreign contact between overhead equipment and animals, trees, and other objects, and other causes.”<sup>479</sup> The D.C. Council goes on to assert that “this damage has caused the loss of electric power over extended time periods to residential and commercial customers; which damage and power loss have created economic losses for the District and its citizens, including critical infrastructure customers and other high-priority users of electricity, and has otherwise adversely affected the general welfare of the public.”<sup>480</sup> The D.C. Council concludes that “absent taking additional intensified outage-prevention measures,” “similar outages on the electric company’s overhead distribution system will continue to occur.”<sup>481</sup> Therefore, the D.C. Council reasons that “selectively undergrounding certain overhead power lines can be expected to increase system reliability,” resiliency, and flexibility and “reduce the economic, social, and other impacts caused by repeated power outages on the District’s residents, businesses, workers and visitors,” which clearly “promote[s] the public interest.”<sup>482</sup>

241. Despite the D.C. Council’s stated public interest rationale for enacting the New Act, GSA and AOBA contend that approving the Application is not in the public interest mainly because the statutorily required cost allocation to pay for the undergrounding initiative places a larger portion of the costs on commercial class customers. However, the D.C. Council acknowledge that the “[e]lectric system modernization will require an unprecedented investment in the electric distribution infrastructure in the District.”<sup>483</sup> The Joint Applicants on the other hand asserts that the first Biennial Plan “represents a reasonable, economical approach to enhance the reliability and resilience of the electric distribution system as well as to minimize the impact of more frequent severe weather events on the electric distribution system in the District of Columbia, as was found with respect to the First Triennial Plan in Order No. 17697.”<sup>484</sup> We concur with the Joint Applicants.

242. The ECIIFAA lays the foundation for Pepco to address the concerns that the D.C. Council, many District residents, as well as Pepco customers have expressed over the years regarding system reliability and resilience. The Joint Application’s proposal to underground six feeders in the first Biennial Plan is an appropriate step towards addressing those concerns, consistent with the New Act. We are hopeful that the undergrounding projects will greatly enhance the reliability and resilience of the electric distribution system as well as minimize the impact of more frequent severe weather events on the electric distribution system in the District of Columbia. Accordingly, the Commission finds that granting the authorizations and approvals sought by Pepco and DDOT in their Joint Application is in the public interest.

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<sup>479</sup> D.C. Code § 34-1311.02 (1) (2017) (Findings).

<sup>480</sup> D.C. Code § 34-1311.02 (1) (2017) (Findings).

<sup>481</sup> D.C. Code § 34-1311.02 (1) (2017) (Findings).

<sup>482</sup> D.C. Code § 34-1311.02 (2) (2017) (Findings).

<sup>483</sup> D.C. Code § 34-1311.02 (5) (2017) (Findings).

<sup>484</sup> Testimony of Pepco witness Clark at 15:3-7.



## VII. THE FINANCING ORDER

243. The New Act, *inter alia*, authorizes the funding of the undergrounding of certain vulnerable feeders in the District and the establishment of a mechanism by which the undergrounding project will be funded. In Section VI.D., ¶¶ 200-212 of this Order, the Commission addressed the funding of the activities to be undertaken by Pepco with respect to the Electric Company Infrastructure Improvement Costs. This Financing Order focuses on the financing of the Underground Project activities to be undertaken by DDOT, referred to as DDOT Underground Electric Company Infrastructure Improvement Costs (“DDOT Costs”).<sup>485</sup>

244. The District Government collects DDOT Costs by imposing on Pepco the DDOT Underground Electric Company Infrastructure Improvement Charge (“DDOT Charge”) to pay the DDOT Costs for the applicable year.<sup>486</sup> Pepco pays the DDOT Charge to the District Government in equal installments for the duration of the Biennial Plan by depositing funds into the DDOT Underground Electric Company Infrastructure Improvement Fund (“Fund”).<sup>487</sup> Pepco, in turn, collects the costs of the DDOT Charge from ratepayers through the Underground Rider, which is an annually adjusted rider to Pepco’s volumetric rates associated with distribution service paid by all of Pepco’s distribution service customers, except for RAD customers, to recover money Pepco pays to the District Government.<sup>488</sup>

### A. **Content of the Financing Application (Section 34-1313.02)**

245. As an initial matter, the Financing Application is included in the first Biennial Plan in accordance with D.C. Code § 34-1313.02 (a). Additionally, the Financing Application, per D.C. Code § 34-1313.02 (b)(2), includes the DDOT Charges for the next 2-year period, a calculation of the Underground Rider by distribution service customer class estimated to be sufficient to generate an amount equal to the DDOT Charge, and a proposed public notice of the application in the “Cost Recovery” section of the first Biennial Plan and the testimonies and exhibits of Pepco Witnesses McGowan and Janocha and DDOT Witness Williams.<sup>489</sup> Having reviewed the Financing Application, the Commission finds that it meets the requirements of D.C. Code § 34-1313.02.

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<sup>485</sup> D.C. Code § 34-1311.01 (14) (2017).

<sup>486</sup> D.C. Code § 34-1311.01 (13) (2017).

<sup>487</sup> D.C. Code § 34-1311.01 (12) (2017); D.C. Code § 34-1313.03a (2017).

<sup>488</sup> D.C. Code § 34-1311.01 (42A) (2017).

<sup>489</sup> Joint Application at 23-24. Testimony of Pepco witness McGowan at 7:17-19, in addition to Pepco witness Janocha’s full testimony. Appendix I contains the revenue requirement for the Underground Rider and Appendix J contains the rate design of the Underground Rider.

**B. Required Content of the Financing Order (Section 34-1313.01)***i. Description of DDOT Activities (Section 1313.01 (a)(1))*

246. DDOT Underground Electric Infrastructure Improvement Activities (“DDOT Activities”) are defined as the civil engineering for the construction and installation of DDOT Underground Electric Company Infrastructure Improvements (“DDOT Improvements”).<sup>490</sup> The DDOT Improvements, that will be constructed by DDOT include underground conduits, duct banks electrical vaults, manholes, transformer pads, and similar facilities for the distribution of electricity with in the District.<sup>491</sup>

247. A description of the DDOT Underground Electric Infrastructure Improvement Activities to be paid through the DDOT Charge for the next two years, pursuant to D.C. Code § 34-1313.01 (a)(1), is included in the Application in Appendices B, C, G, and H, and is discussed in the testimony of Pepco witness Clark and DDOT witness Williams. The Application, in line with the New Act, states that “DDOT primarily will perform the civil engineering, design, and construction work, while Pepco primarily will perform the electrical engineering, design and construction work.”<sup>492</sup>

*ii. Assessment of DDOT Charge (Section 1313.01 (a)(2))*

248. The Biennial Plan explains that the Undergrounding Act limits the DDOT portion of the DC PLUG initiative to \$187.5 million over the course of three Biennial Plans. DDOT witness Williams explains that under the New Act, DDOT and Pepco will file three Biennial Plans, each with a DDOT Charge of \$60 million (\$30 million per year). These three Biennial Plans would total \$180 million which is less than the statutory maximum of \$187.5 million.<sup>493</sup>

249. The Commission will assess Pepco an annual fee equal to the cost of the work to be performed by DDOT in the next two-year period in the form of the DDOT Charge.<sup>494</sup> Pepco will remit the funds, equal to 1/24 of the DDOT Charge, within the first 10 days of each month during the applicable billing period.<sup>495</sup> Pepco’s payments for the DDOT Charge will be placed

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<sup>490</sup> See D.C. Code § 34-1311.01 (13) (2017) (DDOT Underground Electric Infrastructure Improvement Activities); D.C. Code § 34-1311.01 (10) (2017) (DDOT Underground Electric Company Infrastructure Improvements).

<sup>491</sup> D.C. Code § 34-1311.01 (10) (2017).

<sup>492</sup> Joint Application at 22.

<sup>493</sup> Testimony of DDOT witness Williams at 7:2-8. ATTACHMENT 4 shows how the \$187.5 million is spread over the three Biennial Plans.

<sup>494</sup> See D.C. Code § 34-1311.01 (13) (2017). (DDOT Charge “means a charge imposed by the District on the electric company pursuant to a financing order issued by the Commission, which charge shall be used by the District to pay the” DDOT Costs.).

<sup>495</sup> Biennial Plan at 34. See also, D.C. Code § 34-13.13.01 (a)(2)(B) (2017).

into the DDOT Improvement Fund for exclusive use in paying DDOT Costs.<sup>496</sup> The Fund is to be used “solely” to pay DDOT Costs.<sup>497</sup> Under the statute, “any amounts collected with respect to the [DDOT Charge] and not expended for [DDOT Costs] as contemplated by this chapter shall be refunded to the electric company and thereafter credited to customers as the Commission may direct.”<sup>498</sup>

250. GSA argues that the Joint Application lacks any mechanism whereby the Commission can review the “reasonableness and prudence of DDOT’s actual expenditures.”<sup>499</sup> Further, GSA contends that there is no “mechanism to give money paid by customers through the Underground Rider back to customers if DDOT expenditures are found to be imprudent, or if DDOT does not spend all of the money.”<sup>500</sup> GSA points to the Applicants’ response to GSA DR 2, Question 7, and argues that, while the Applicants assert that the Commission will have the authority to conduct a prudence review of the DDOT expenditures and to disallow imprudent costs, they provide no details and simply refer to Sections 310 and 301 (a)(2)(A) of the New Act.<sup>501</sup> GSA argues that, unlike the UPC, “DDOT-related amounts would be recovered from customers regardless of what is actually being spent on the projects during the two-year period. This structure does not result in reasonable rates, since the amounts recovered bear no relationship to actual costs incurred.”<sup>502</sup> GSA concludes that the Commission should:

. . . limit cost recovery to DDOT and Pepco (for DDOT costs) to the dollars expected to be spent during the next two years and spell out that cost recovery by DDOT, and Pepco’s recovery of costs charged by DDOT, is contingent on the adoption of a mechanism for prudence review, disallowance of any imprudent dollars, and return to ratepayers of any dollars unspent on the DDOT projects approved by the Commission.<sup>503</sup>

251. Within the bounds of the statute laid out by the D.C. Council, the Commission has clear oversight responsibilities concerning the Underground Act and the recovery of the costs of DDOT Activities from Pepco through the DDOT Charge.<sup>504</sup> GSA challenges the New Act’s lack

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<sup>496</sup> Biennial Plan at 34-35. *See also*, D.C. Code § 34-13.13.03a (b) (2017).

<sup>497</sup> D.C. Code § 34-13.13.03a (c) (2017).

<sup>498</sup> D.C. Code § 34-13.13.01 (a)(2)(A) (2017).

<sup>499</sup> GSA’s Protest at 24.

<sup>500</sup> GSA’s Protest at 25.

<sup>501</sup> GSA’s Protest at 25.

<sup>502</sup> GSA’s Protest at 24.

<sup>503</sup> GSA’s Protest at 25.

<sup>504</sup> D.C. Code § 34-13.13.01 (a)(5) (2017) (The Commission, within the Financing Order is empowered to “[p]rescribe the filing of billing and collection reports related to the DDOT [Charges] and Underground Rider ...”).

of any mechanism whereby the Commission can review the “reasonableness and prudence of DDOT’s actual expenditures.”<sup>505</sup> The Commission finds that all DDOT Charge payments will be placed in the DDOT Fund, which can only be used for to pay for DDOT Costs.<sup>506</sup> Any review of DDOT Charges would be limited to determine if the withdrawal from the DDOT Fund were only to pay for DDOT Costs. To facilitate review and to promote transparency, beginning with the close of Fiscal Year 2019, the Commission directs the Joint Applicants to file a biennial report, forty-five (45) days after the end of the District’s fiscal year, on the balance of the DDOT Fund and all payments made to and from the DDOT Fund in the preceding two (2) years. The information provided in the report should be sufficiently detailed to demonstrate that withdrawals by DDOT comply with D.C. Code § 34-1313.03a (c).

252. Contrary to GSA’s assertion that there is no mechanism for the return of money to customers if DDOT costs are found to be imprudent or DDOT does not spend all of the money,<sup>507</sup> D.C. Code § 34-1313.01 (a)(2)(A) clearly provides that any “any amounts collected with respect to the DDOT [Charge] and not expended for DDOT [Costs] as contemplated by this chapter shall be refunded to the electric company and thereafter credited to customers as the Commission may direct.” This provision, coupled with the reporting and review requirements discussed in the prior paragraph, represents the type of refund mechanism that GSA complains is lacking.

253. Finally, GSA argues that unlike the UPC, “DDOT-related amounts would be recovered from customers regardless of what is actually being spent on the projects during the two-year period. This structure does not result in reasonable rates, since the amounts recovered bear no relationship to actual costs incurred.”<sup>508</sup> Contrary to GSA’s argument, the Commission finds that over the two-year project window covered by the first Biennial Plan, DDOT Costs will reasonably track the DDOT Charge Pepco pays to cover those costs into the DDOT Fund. The payment schedule of 24 equal monthly payments for the DDOT Charge is a tool to aid Pepco in planning for the payment of DDOT Charges throughout the Biennial Plan. This schedule also promotes bill stability for customers, much like Levelized or Budget Billing, because the value of the Underground Rider will only be subject to minimal variations as discussed below in the true-up discussion. Finally, as authorized by D.C. Council, this payment structure enables DDOT to operate as a contractor with Pepco for the construction of DDOT Improvements to be used by District electric customers, without running afoul of the anti-deficiency act. Such payments prior to infrastructure being used and useful is accepted utility practice for large infrastructure projects where costs for Construction Work In Progress (“CWIP”) are authorized so as to minimize financing costs and large shifts in costs when projects are placed in service.

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and D.C. Code § 34-1313.01 (a)(6) (2017) (The Financing Order may, “[c]onsistent with this chapter, contain such other findings, determinations, and authorizations as the Commission considers necessary and appropriate.”)

<sup>505</sup> GSA’s Protest at 24.

<sup>506</sup> See D.C. Code § 34-1313.03a (c) (2017).

<sup>507</sup> GSA’s Protest at 25.

<sup>508</sup> GSA’s Protest at 24.

254. Based on the discussion provided above, the Commission directs Pepco to pay the DDOT Charge into the DDOT fund as explained in the Application and pursuant to D.C. Code § 34-1313/01 (a)(2)(A). The Commission also directs Pepco to remit by the 10<sup>th</sup> day of each month, during the applicable two-year periods, a payment equal to 1/24 of the DDOT Charges approved for the applicable two-year period pursuant to this Financing Order to the DDOT Underground Electric Company Infrastructure Improvement Fund established in D.C. Code § 34-1313.01 (a)(2)(B).

iii. *Assessment of Underground Rider (Section 1313.01 (a)(3))*

255. As described in the Biennial Plan, the Underground Rider is an annually adjusted rider to Pepco's volumetric distribution service rates paid by all of Pepco's distribution service customers, except RAD customers. The Underground Rider can be expected to generate sufficient revenues to permit Pepco to recover the DDOT Charge of \$60 million over the two years of the first Biennial Plan. The annual revenue requirement to be collected under the Underground Rider is \$30 million (or 12/24ths) of the DDOT Charges approved in this Financing Order.<sup>509</sup>

256. The Underground Rider will allocate costs to Pepco's distribution service customer classes, excluding customers served through the RAD program, in accordance with the distribution service customer class cost allocations in effect pursuant to Pepco's most recently decided base rate case.<sup>510</sup> The Application was filed utilizing the Commission's decision in *Formal Case No. 1103*, which was the same distribution case utilized in the previous Triennial Plan Application. The Application was subsequently updated on August 8, 2017 and August 24, 2017 to reflect the Commission's recent decision regarding Pepco's distribution rates in *Formal Case No. 1139*. It is also important to note, that the cost allocation, but not the total cost, of the Underground Rider is subject to modifications as part of a true-up, as discussed in the next section, to reflect any Commission decisions regarding cost allocation of Pepco distribution rates that are issued during this Biennial Plan.<sup>511</sup>

257. The distribution service customer class cost allocation methodology for the Underground Rider's revenue requirement is the same as the allocation methodology approved by the Commission in *Formal Case Nos. 1116 and 1121* and affirmed in *AOBA v. DCPSC*.<sup>512</sup> The New Act defines the methodology as "the means of allocation of the electric company's revenue requirement to each customer rate class on the basis of the total rate class distribution service revenue minus the customer charge revenue."<sup>513</sup> This approved methodology aligns each class's

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<sup>509</sup> Biennial Plan at 36.

<sup>510</sup> Biennial Plan at 36.

<sup>511</sup> See D.C. Code § 34-1313.14 (b)(1) (2017).

<sup>512</sup> *Apartment & Office Building Association of Metropolitan Washington v. Public Service Commission of District of Columbia*, 129 A.3d 925 (D.C. 2016).

<sup>513</sup> See D.C. Code § 34-1311.01 (8A) (2017).



revenue responsibility under the Underground Rider with that class's base revenue responsibility, as determined by the Commission in the most recent Pepco distribution base rate case.<sup>514</sup>

258. The rates under the Underground Rider are developed for each applicable customer class as a volumetric surcharge (*i.e.*, on a per kilowatt-hour basis). The billing units used to set the rates are forecasted kWh sales for the time period corresponding to the Underground Rider's rate period.<sup>515</sup> The Underground Rider is subject to a true-up on, at most, a semi-annual basis as established in D.C. Code § 34-1313.14.

259. GSA, in objecting to the revenue allocation, asserts:

The rates proposed in the Application are unjust, unreasonable and discriminatory. The Residential class (excluding RAD) is being allocated only 8.58% of the revenue requirement recovered through each of the surcharges, while the GS and GT classes alone will collectively provide more than ten times as much - 87.54% of the revenue requirement. As a result, the Residential class (excluding RAD) will see a combined 4.0 % increase in distribution revenues for the first year (3.5% from the Underground Rider alone); by comparison, the three GS classes will see much larger combined increases in distribution revenue responsibility of 6.7%, 10.1 %, and 9.7%, while the three GT classes will see increases of 9.9%, 10.7% and 10.7%.<sup>516</sup>

260. Additionally, GSA contends that these rates bear no relation to cost causation claiming that:<sup>517</sup>

The Applicants cannot rationalize the removal of customer charge revenues from the allocation of DC PLUG costs on the basis of cost causation when all of the increased revenue required from residential customers due to the last two rate cases was assigned to the customer charge. Although the Applicants maintain that removing customer charge revenue in allocating DC PLUG costs is required by statute, it is clear that this step only compounds the inequity produced by Pepco's current revenue allocation and

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<sup>514</sup> Biennial Plan at 36.

<sup>515</sup> Biennial Plan at 37.

<sup>516</sup> GSA's Protest at 27. The 8.58% figure cited here does not include MMA; *see* ATTACHMENT 2.

<sup>517</sup> GSA's Protest at 28.

produces proposed rates that are unjust, unreasonable, and not reflective of cost causation.<sup>518</sup>

261. The Commission finds that the cost allocation methodology used for the Underground Rider is the same methodology directed by the New Act. Just like for the UPC, Pepco has taken the total revenue requirement allocated to each customer rate class in *Formal Case No. 1139* and removed the customer charge to set the volumetric rates for the Underground Rider. The Joint Applicants correctly state that “[a]s approved in Order No. 17697 (§ 187) and affirmed by the D.C. Court of Appeals, customer charge revenues were excluded from the allocation on the basis that the DC PLUG initiative does not include infrastructure, such as meters and services, that would normally be recovered through a customer charge.”<sup>519</sup> On this basis the Commission concludes the cost allocation methodology and volumetric structure of the Underground Rider appropriately complies with the New Act. Based on the discussion provided above, the Commission directs Pepco to apply the Underground Rider to customer’s bills as explained in the Application and pursuant to D.C. Code § 34-1313.01 (a)(3).

iv. *Inter-Class True-up Mechanism (Section 1313.14)*

262. Under D.C. Code § 34-1313.14 of the Undergrounding Act, rates under the Underground Rider will be subject to true-up, at most, twice a year. For each customer class subject to the Underground Rider, an over- or under-collection amount will be calculated as that class’s Underground Rider collections, less actual DDOT Charges attributable to that class during the true-up period. For the purpose of calculating each class’s over- or under-collection amount, actual DDOT Charges will be imputed to classes consistent with the distribution service class cost allocation of the revenue requirement that was used to develop the Underground Rider rates that were in effect during the true-up period. Collections from each class under the Underground Rider will be tracked separately. The amount of the true-up of the Underground Rider will be allocated to each distribution service customer class in the proportion to which the customer class contributed to the under- or over-collection. Pepco witness Janocha and the first Biennial Plan explain that this methodology is consistent with Section 314(f)(1) of the Undergrounding Act.<sup>520</sup>

263. AOBA contends that “the tracking of customer transfers and adjustment of class revenue requirements to reflect those transfers should be included within the mathematical calculations required of Pepco in any application of a true-up mechanism.”<sup>521</sup> However, AOBA has made no showing that such transfers are contemplated as part of the true-up mechanism in Section 34-1313.14. In the past, the Commission has not permitted the adjustment of the revenue requirement of inter-class transfers between rate cases. Therefore, allowing such transfers for true-

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<sup>518</sup> GSA’s Protest at 28.

<sup>519</sup> Biennial Plan at 31.

<sup>520</sup> Biennial Plan at 37 and Testimony of Pepco witness Janocha at 15:7-21. Appendix L contains the Underground Rider and Appendix M shows the monthly bill impacts; the corrected version was included in the August 24<sup>th</sup> ERRATA.

<sup>521</sup> Testimony of AOBA witness Oliver at 22, n.13.

up purposes would be inconsistent with our previous decisions. In accordance with Section 34-1313.14(c), the Commission will review the accuracy any true-up calculations when the Company files requests for approval of a schedule applying the true-up mechanism.

v. *Financing Order Irrevocability (Section 1313.01 (b))*

264. Pursuant to D.C. Code § 34-1313.01 (b), the Commission determines that this Financing Order will be operative and in full force and effect from the date of issuance of this Order.<sup>522</sup>

265. Finally, we note that, pursuant to D.C. Code § 34-1313.01 (c), except to implement any true-up mechanism as required by § 34-1313.14, the Commission may not reduce, impair, postpone, terminate, or otherwise adjust the Underground Rider approved in the financing order unless the Commission similarly adjusts the DDOT Charge by an equal amount.<sup>523</sup>

### **VIII. FINDINGS OF FACT AND CONCLUSIONS**

266. The Commission has conducted an independent review of the Joint Application and first Biennial Plan submitted by the Joint Applicants and recognizes that most of the content of the Application was unchallenged by the parties. The Joint Applicants have made a *prima facie* showing that the Application complies with the requirements of the New Act; meaning that they have provided a sufficient quantum of evidence to meet their burden of production.<sup>524</sup> In this instance there has been no clear showing by the parties that the requirements of the New Act have not been met. The Commission further recognizes that Section 34-1313.10 (a) of the New Act gives the Commission authority to impose in this Order, and condition our approval of the Application on, “such reasonable terms and conditions” as we determine necessary.<sup>525</sup> Therefore, in accordance with the requirements established in the New Act, and after a thorough review of the Application, including the parties’ contentions as discussed above, we make the following findings of fact and conclusions of law:

- a. The Application satisfies D.C. Code § 34-1313.10 (b)(1) and the applicable requirements of D.C. Code § 34-1313.08, which includes, among other things, the ranking of reliability performance of individual feeders being properly conducted and the primary selection criteria utilized substantially complying with the requirements of the New Act.

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<sup>522</sup> See D.C. Code § 34-1313.01 (b) (2017).

<sup>523</sup> See D.C. Code § 34-1313.01 (b) (2017).

<sup>524</sup> *Nader v. de Toledano*, 408 A.2d 31, 48 (D.C. 1979). See also, *In re Sukhbir Singh Bed*, 917 A.2d 659, 665 (D.C. 2007). “A party satisfies his burden of production with respect to an issue material to his case when he has made out a “prima facie” case as to such issue – i.e., a sufficient quantum of evidence which, if credited, would permit judgment in his favor unless contradicted by credible evidence offered by the opposing party.” (citing *Nader*, 408 A.2d at 48).

<sup>525</sup> D.C. Code § 34-1313.10 (a) (2017).

- b. The Application satisfies D.C. Code § 34-1313.10 (b)(2) in that the Proposed Underground Infrastructure Improvements are Appropriately Designed and Located.
- c. The Application satisfies D.C. Code § 34-1313.10 (b)(3) in that the Intended Reliability Improvements for Pepco's Customers will Accrue to the benefit of Pepco's customers.
- d. The Application satisfies D.C. Code § 34-1313.10 (b)(4) in that the Projected Costs Associated with Pepco's Proposed Underground Infrastructure Improvement Activity are prudent.
- e. The Application satisfies D.C. Code § 34-1313.10 (b)(5) in that the projected costs of DDOT's Underground Electric Company Infrastructure Improvements Costs funded by DDOT Underground Electric Company Infrastructure Improvement Charges are prudent.
- f. The Application satisfies D.C. Code § 34-1313.10 (b)(6) in that Pepco's proposed Underground Project Charges are just and reasonable.
- g. The Application satisfies D.C. Code § 34-1313.10 (b)(7) in that approval of the Joint Application is in the public interest.
- h. In accordance with D.C. Code § 34-1313.10 (c)(1), Pepco is authorized to impose and collect the Underground Project Charges, as approved in this Order, from its distribution service customers in the District, however, no such charges shall be assessed against RAD customers.
- i. In accordance with D.C. Code § 34-1313.10 (c)(2), Pepco is authorized to bill the Underground Project Charges, as approved in this Order, to distribution service customers, excluding RAD customers, as a volumetric surcharge;
- j. In accordance with D.C. Code § 34-1313.10 (c)(3), the Commission approves the annual revenue requirement of \$3,990,710 for Year One which includes the return on equity of 9.5%.
- k. The 2014 and 2016 Joint Stipulations filed by OPC, Pepco, and DDOT are just and reasonable and accepted without modification, but pursuant to the reasonable terms and conditions imposed in Order Nos. 17697 and 17770, as discussed in this Order at ¶¶ 128-130, 178-183.
- l. Pursuant to D.C. Code § 34.1313.03a (c) the Commission finds the projected DDOT Underground Electric Company Infrastructure Improvement Costs to be funded by the DDOT Underground Electric Company Infrastructure Improvement Charges are prudent and that the amount of the DDOT Underground Electric Company Infrastructure Improvement Charges is reasonable and that the Underground Rider reasonably can be expected to generate sufficient revenues to

permit the electric company to recover the DDOT Underground Electric Company Infrastructure Improvement Charges.

- m. Beginning with the close of Fiscal Year 2019, the Joint Applicants are directed to file a biennial report forty-five (45) days after the end of the District's fiscal year on the balance of the DDOT Fund and all payments made to and from the DDOT Fund in the preceding two (2) years. The information provided in the report should be sufficiently detailed to demonstrate that withdrawals by DDOT comply with D.C. Code § 34-1313.03a (c).
- n. Pursuant to D.C. Code § 34-1313.01 (b), the Financing Order is operative and in full force and effect from the date of this Order.
- o. Pursuant to D.C. Code § 34-1313.01 (c), except to implement any true-up mechanism as required by D.C. Code § 34-1313.14, the Commission may not reduce, impair, postpone, terminate, or otherwise adjust the Underground Rider approved in the financing order unless the Commission similarly adjusts the DDOT Charge by an equal amount.

**THEREFORE, IT IS ORDERED THAT:**

267. The Joint Application of the Potomac Electric Power Company and District of Columbia Department of Transportation for Approval of the First Biennial Underground Infrastructure Improvement Projects Plan and Financing Order is **APPROVED**;

268. Potomac Electric Power Company's proposed Underground Project Charge rider that increases electric distribution rates by no more than \$3,990,710 for Year One of the Biennial Plan is **ACCEPTED**;

269. The 2014 and 2016 Joint Stipulation filed by the Office of the People's Counsel, the Potomac Electric Power Company, and the District of Columbia Department of Transportation is **ACCEPTED** pursuant to the reasonable terms and conditions imposed in Order Nos. 17697 and 17770;

270. In accordance with D.C. Code § 34-1313.08 (b), the Potomac Electric Power Company shall identify the estimated start date and projected end date for each project approved in the Underground Infrastructure Improvements Projects Plan within 90 days of the date of this Order;

271. The tariff language and rate design proposed by the Potomac Electric Power Company as updated in the August 24, 2017, ERRATA are **ACCEPTED** with the change identified in ¶ 231 of this Order;<sup>526</sup> the Underground Project Charge rider and the Underground

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<sup>526</sup> The Commission notes that at pages 22-23 of the Biennial Plan it says: "the Underground Rider, which will appear as a separate surcharge on customers' bills." However, the Underground Rider Tariff states: "Amounts payable with respect to the Underground Rider (including any true-up of such amounts as described in 'Adjustment to Charge' below) will be included in the distribution energy charge on customer bills." See Exhibit PEPSCO (C)-3 Updated ERRATA at 33 of 66. The Biennial Plan should be corrected to be consistent with the language of the tariff.



Rider shall become effective 90 days after the date of this Order unless otherwise ordered by the Commission;

272. The Joint Applicants are directed to file a report on the status of the Benning Area Reliability Plan within 30 days from the date of this Order. The report must contain the details of the current condition of Feeders 15705 and 15707, details as to what specific improvements the Potomac Electric Power Company will be making to those feeders, and a timeline for completion of those improvements;

273. The Joint Applicants shall file a 90-day Compliance filing that includes:

- a. A report on the status of all design work for the six feeders, both civil drawings and electrical schematics;
- b. An explanation of the changes in the designs for Feeder 308 made since the first Triennial Plan;
- c. A report on plans for undergrounding any portion of any parallel feeder, including details of any additional costs;
- d. A schedule of formal utility coordination meetings, the Joint Applicants' plan for communicating updates to other utilities when there is a change in DC PLUG work or schedule, and an explanation of their strategy for overcoming challenges with telecom coordination;
- e. Estimated annual revenue requirements, including details of any applicable District property taxes, for the first Biennial Plan through the conclusion of construction;
- f. An itemization of "Amortization of Deferred Costs;"
- g. A reconciliation of \$60 million total first Biennial Plan DDOT Charge and the total DDOT construction spending planned for the first Biennial Plan; and
- h. A report explaining how much of the civil construction costs for Feeder 14900 will be counted towards the \$62.5 million District capital budget portion of the overall DC PLUG financing identified in the New Act.

274. The Potomac Electric Company shall submit the final civil drawings and electrical schematics once they are finalized. Final civil drawings and electrical schematics should at a minimum include:

- a. Intertie markings for all six DC PLUG feeders;
- b. Feeder source information for all six DC PLUG feeders (substation, bus, and alternate feed); and
- c. Identification of equipment remaining overhead.

275. The Joint Applicants shall schedule informal review sessions for Commission Staff and the Office of People's Counsel to review the final construction designs as they are finalized;

276. As part of the informal review sessions the Joint Applicants shall provide the following information on each DC PLUG feeder as applicable:

- a. Whether the Distribution Automation devices are gas or oil insulated;
- b. The type of Distribution Automation device and device interrupting withstand ratings;
- c. Control schematics showing the Distribution Automation operation layout that includes substation communication; and
- d. For each of the substations that serve any of the six DC PLUG feeders: (1) firm capacity; (2) summer rating; and (3) present and forecasted load.

277. The Joint Applicants shall report on the progress of the Benning Area Reliability Plan, including Feeders 15705 and 15707, in the Annual Update and at the Semi-Annual Meetings;

278. The Joint Applicants shall provide regular updates on existing and potential obstacles to the timely completion of a project in their Annual Report and at the Semi-Annual Meetings;

279. The Potomac Electric Power Company shall report quarterly on all payments made to the District of Columbia Department of Transportation, using the cost categories in Appendix H, beginning on April 1, 2018;

280. The Potomac Electric Power Company shall reflect the impact of any enacted changes to federal corporate income tax rates in its annual adjustment application made pursuant to D.C. Code § 34-1313.15;

281. At the next Semi-Annual Meeting after each successive Six-Year Transportation Improvement Plan is released, the Joint Applicants shall report on the "Opportunity Projects" that have been identified;

282. When the Potomac Electric Power Company transfers DC PLUG improvements costs into rate base in a base rate case application, it shall include a separate ratemaking adjustment clearly indicating the date of transfer;

283. The Potomac Electric Power Company shall exclude the Cost of Removal from the UPC Revenue Requirement in the April 1st adjustment filing made pursuant to D.C. Code § 34-1313.15;

284. Beginning with the close of Fiscal Year 2019, the Joint Applicants are directed to file a biennial report forty-five (45) days after the end of the District's fiscal year on the balance of the DDOT Fund and all payments made to and from the DDOT Fund in the preceding two (2) years. The information provided in the report should be sufficiently detailed to demonstrate that

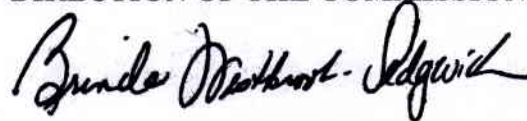
withdrawals by the District of Columbia Department of Transportation comply with D.C. Code § 34-1313.03a (c);

285. The Potomac Electric Power Company and the District Department of Transportation shall comply with all other directives included in this Order in the manner and time periods set forth herein; and

286. The United States General Services Administration's Motion to Reject or Suspend the Current Application and Plan and/or to Waive or Hold in Abeyance the Filing of Future Biennial Plans is **DENIED**.

**A TRUE COPY:**

**BY DIRECTION OF THE COMMISSION:**

A handwritten signature in black ink, reading "Brinda Westbrook-Sedgwick". The signature is written in a cursive, flowing style.

**CHIEF CLERK:**

**BRINDA WESTBROOK-SEDGWICK  
COMMISSION SECRETARY**