FC1130 - 2019 - M - 403

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January 14, 2019

VIA ELECTRONIC FILING AND U.S. MAIL

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

RE: Formal Case No. 1130

Dear Ms. Westbrook-Sedgwick:

Please find enclosed for filing in the above-referenced proceeding the Reply Comments of the Sierra Club Regarding Pepco's Transportation Electrification Proposal. If you have any questions regarding this filing, please contact me.

Thank you for your consideration.

Respectfully submitted,

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Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

In the Matter of the Investigation into	)	
Modernizing the Energy Delivery System	)	Formal Case No. 1130
for Increased Sustainability	)	

REPLY COMMENTS OF THE SIERRA CLUB REGARDING
PEPCO'S TRANSPORTATION ELECTRIFICATION PROPOSAL

Pursuant to the Public Service Commission's ("Commission's") November 2, 2018 Public Notice (Revised Comment Period and Clarification), the Sierra Club respectfully submits the following reply comments regarding Potomac Electric Power Company's ("Pepco's") September 6, 2018 Application for Approval of its Transportation Electrification Program in the District of Columbia ("Transportation Electrification Proposal" or "Proposal"). As discussed below, the CleanEnergy DC Omnibus Amendment Act of 2018 (D.C. Bill 22-904) ("Clean Energy Omnibus") eliminates any jurisdictional uncertainty by expressly providing the Commission with the authority to review Pepco's Proposal, and the Sierra Club urges the Commission to timely act on Pepco's Proposal based on the record before it. Moreover, Pepco's Proposal meets the approval criteria set forth in the Clean Energy Omnibus, although modifications identified by several stakeholders in their initial comments would strengthen the Proposal. Finally, the Commission should take the opportunity to clarify that for site hosts that are not otherwise public utilities, the mechanism by which they set pricing to drivers does not affect their regulated status.

I. The Commission Has Jurisdiction to Review Pepco's Transportation Electrification Proposal

Subsequent to the filing of initial comments in this proceeding, on December 18, 2018, the D.C. Council passed the Clean Energy Omnibus, setting to rest jurisdictional questions previously raised by the Commission and discussed by stakeholders in their initial comments about the reviewability of Pepco's Proposal. Section 502(c)(1) of the Clean Energy Omnibus provides that: "[t]he Public Service Commission may consider an application by the electric company to promote transportation electrification through utility infrastructure ownership and other programs and incentives, including if such application has been made before the applicability date of this title." Section 502(c)(2) further provides the criteria that govern the Commission's review. Consistent with the plain language of Clean Energy Omnibus, there is no barrier to the Commission's review of Pepco's Transportation Electrification Proposal.

II. The Commission Should Render a Timely Decision Regarding Pepco's Proposal Based on the Record Before It

The Sierra Club concurs with the comments and letters provided by a number of stakeholders[1] encouraging the Commission not to defer ruling on Pepco's Proposal pending completion of the MEDSIS working group processes, but to instead render a timely decision based on the record before it. As set forth in the Committee Report for the Clean Energy Omnibus, the threat posed by climate change is real and growing, and there is great urgency in implementing actions to mitigate that threat.[2] For the District of fulfill its 2032 climate commitments, significant additional actions will be required beyond business as usual, including

[1] *See, e.g.,* ABB Comments, FC 1130 (Nov. 5, 2018); Tesla Opposition to AOBA Motion to Dismiss, FC 1130 (Dec. 3, 2018); Center for Climate and Energy Solutions Letter, FC 1130 (Nov. 8, 2018); Siemens Letter, FC 1130 (Nov. 8, 2018); EVgo Comments, FC 1130 (Nov. 16, 2018).
[2] *See* Council of the District of Columbia Committee on Transportation and the Environment, Committee Report re Bill 22-904, the CleanEnergy DC Omnibus Amendment Act of 2018 (Nov. 20, 2018), at 2-4.

actions to accelerate electrification of the transportation sector in the District.[3] Pepco's initial proposal was filed nearly two years ago, and since that time, stakeholders have had a number of opportunities to provide feedback both on the proposal itself and on the appropriate role for the utility in advancing transportation electrification.[4]

Given the urgency of the climate threat and the need to expeditiously implement solutions to mitigate its impacts, and given that the Clean Energy Omnibus expressly authorizes review of Pepco's Transportation Electrification Proposal[5] and sets forth criteria for review and approval,[6] the Commission should act expeditiously on Pepco's Proposal. The alternative of deferring action on the Proposal for more than a year pending the completion of MEDSIS working groups should be rejected. In light of the well-formed positions of many of the key stakeholders, another year of working group process (especially workings groups not principally focused on EVs) is unlikely to lead to consensus around the disputed aspects of the Proposal[7] and deferring action would be a significant setback for the District in its efforts to combat climate change.

III. Pepco's Proposal Meets the Statutory Approval Criteria Set Forth in the Clean Energy Omnibus

The Clean Energy Omnibus provides that the Commission may approve an application by the electric company if it finds that it is: (1) in the public interest; (2) consistent with the

[3] *Id.* at 4-5.
[4] *See* Sierra Club Initial Comments, FC 1130 (Nov. 5, 2018), at 11.
[5] *See* Section 502(c)(1), discussed *supra*.
[6] *See* Section 502(c)(2).
[7] Sierra Club Initial Comments, FC 1130 (Nov. 5, 2018), at 10-11 (observing that many of the circumstances that make working group processes most valuable are absent here and that the significant process during the past two years has done little to alter the basis positions of the stakeholders regarding the appropriate role for utilities with regard to supporting transportation electrification).

District's pubic climate change commitments as determined by the Mayor; and (3) would result in rates that are just and reasonable.[8] Pepco's Proposal meets these criteria.

First, as set forth in the Sierra Club's initial comments[9] and those of many other stakeholders,[10] Pepco's Transportation Electrification Proposal is in the public interest. The Proposal will expand access to the benefits of transportation electrification to presently underserved market segments such as residents of multi dwelling unit residents, with a specific carve-out for residents of Wards 5, 7, and 8.[11] The Proposal will help support electrification of transit buses,[12] which will improve air quality and public health for riders and those living and working along these bus routes. And it will help to ensure better management of EV load, which will help reduce electric rates for all Pepco customers in the District.[13] As a number of stakeholders noted, Pepco's Proposal will complement and facilitate the development of a competitive market for electric vehicle charging services.[14] And in accelerating deployment of

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[8] Clean Energy Omnibus § 502(c)(2).

[9] Sierra Club Initial Comments, FC 1130 (Nov. 5, 2018) at 1-2 (explaining how electrification of transportation improves air quality in the District); 2 (explaining how utility management of EV load can lower rates for all customers).

[10] *See, e.g.*, ABB Comments, FC 1130 (Nov. 5, 2018) (highlighting how Pepco's Proposal serves all communities); Center for Climate and Energy Solutions, FC 1130 (Nov. 8, 2018) (highlighting public health benefits of conventional pollution reductions from electrifying transportation); Siemens Comments, FC 1130 (Nov. 8, 2018) (highlighting need for utility investment by observing that "[p]rivate companies alone cannot provide the needed infrastructure especially in the under-served markets such as MUDs and low income"); ChargePoint Comments, FC 1130 (Dec. 12, 2018), at 11 (observing that "utility investment in charging infrastructure can catalyze and foster a long-term, scalable, and competitive market for charging equipment and networks"); Tesla Comments, FC 1130 (Dec. 12, 2018) (explaining that "[a]ccess to charging infrastructure is a key factor for consumers considering the purchase of an EV, and Pepco's Proposal ultimately seeks to increase access to charging in the District").

[11] Pepco's revised Proposal increases the size of the MDU offering from 10 to 100, Pepco Transportation Electrification Proposal at 30, includes new public direct current fast chargers that would be intended to serve as a resource for residents of MDUs, *id.* at 33-34, and creates a $1 million innovation fund "to provide grants to encourage innovative projects that are designed to serve multiple users and/or multiple tenant applications, such as electric car share hubs, urban residential charging hubs, DCFC applications for multi-family and multi-tenant applications, and mobility fleet applications," at least 20 percent of which would be reserved for residents and organizations in Wards 5, 7, and 8. *Id.* at 39.

[12] *Id.* at 38 (Pepco's Proposal would support electric buses by installing depot and on-route bus chargers).

[13] *Id*. at 28 (expanding residential smart Level 2 EVSE from 50 to 550, thereby enabling better load management for these customers).

[14] *See* Siemens Comments, FC 1130 (Nov. 8, 2018); ChargePoint Comments, FC 1130 (Dec. 12, 2018), at 11; Tesla Comments, FC 1130 (Dec. 12, 2018), at 6 (recommending scaling up Offerings 5 and 6).

electric vehicles, it will serve to improve air quality and benefit public health throughout the District.[15]

Second, the Proposal is consistent with the District's public climate change commitments. This consistency is well documented by the Clean Energy DC Plan, discussed in the Committee Report for the Clean Energy Omnibus, which shows that electric vehicle adoption and bus fleet electrification will materially support the District's efforts to achieve its climate goals.[16]

Finally, the cost impacts of the Proposal are modest and are mitigated in several ways. According to Pepco, the bill impact of the Proposal would be an increase of approximately 14 cents per month for a typical residential customer using 648 kWh per month.[17] This modest cost is offset by the public health benefits and rate benefits of increasing transportation electrification in the District. As the Department of Energy and Environment ("DOEE") has explained, "[a]ir quality issues in the District are primarily due to emissions from vehicles and air pollution transported from other states."[18] Specifically, "[o]zone continues to be the biggest air pollution challenge the region faces" and "[c]ontrolling emissions from mobile sources," along with getting cooperation from upwind states and regions to address transported pollution, are "necessary to improve public health."[19] In addition, efforts to manage EV load will put downward pressure on rates, potentially providing significant savings to District electric

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[15] *See* Sierra Club Initial Comments, FC 1130 (Nov. 5, 2018), at 1-2; Center for Climate and Energy Solutions, FC 1130 (Nov. 8, 2018).
[16] Clean Energy Omnibus Committee Report at 5.
[17] Pepco Transportation Electrification Proposal at 47.
[18] D.C. Dept. of Energy & Environment, District of Columbia's Ambient Air Quality Trends Report (Oct. 2014), at ES-1, available at https://doee.dc.gov/sites/default/files/dc/sites/ddoe/service_content/attachments/AQ%20TRENDS%20Report%20for%20DDOEwebsite_finalDraft_2014Oct29.pdf.
[19] *Id.*

customers.[20] Finally, the direct costs of the Proposal are already offset to some degree by participant contributions and public charger revenues[21] and by Pepco's proposal to use $2.5 million from MEDSIS.[22] As discussed below, there may be ways to further improve the cost-efficacy of Pepco's Proposal.

IV. Pepco's Proposal Could Be Improved Through Several Modifications

While Pepco's Proposal is consistent with the statutory approval criteria set forth in the Clean Energy Omnibus, it could nevertheless be improved through modifications to several of the offerings.

First, Sierra Club agrees with Tesla that Offering 2 (FleetCarma), as proposed, does not optimize cost-effectiveness. Pursuant to Offering 2, Pepco would provide enrollees with a FleetCarma data logging device that would gather charging information (time, duration, location) and then provide an off-peak charging rebate, as well as compensating participants through a $50 one-time initiation credit and a $5/month continuing participation credit.[23] FleetCarma has a high annual per-device licensing fee, which together with the initiation credit and monthly participation credits, results in a program cost of approximately $1,630/participant.[24] As Tesla notes, similar insights can be gained at a lower cost by enrolling customers in a time-of-use rate and examining customer load profiles and experience to understand whether they respond to

[20] *See* Direct Testimony of Mark Warner, FC 1130 (Sept. 6, 2018), at 37, Tbl. 9 (finding that, under Societal Cost Test, Pepco customers will realize $54.6 million (net present value 2019-2035) in avoided wholesale generation costs from rapid acceleration of EV deployment with managed charging and $39.5 million (NPV) in avoided non-wholesale costs).
[21] *See* Direct Testimony of Peter Blazunas, FC 1130 (Sept. 6, 2018), at 11, Tbl. 3 (estimating $657,500 in participant contributions from Offerings 3, 5, and 6, and $2,812,500 from public charger revenues associated with Offerings 8 and 9).
[22] *Id*.
[23] Pepco Transportation Electrification Proposal at 29.
[24] Tesla Comments, FC 1130 (Dec. 12, 2018), at 5.

price signals.[25] Indeed, as Sierra Club pointed out in its Initial Comments,[26] it is possible to gain these same insights while avoiding the cost of second meters for the EV load by using the smart residential Level 2 chargers that Pepco will be installing through Offerings 3 and 4 to enable EV-only time-of-use rates. And even in the absence of a Commission determination that these chargers can function as revenue grade meters, as National Grid's recent proposal in Massachusetts demonstrates,[27] smart networked chargers can be used to provide off-peak charging rebates for off-peak charging at home without the need for devices with high licensing fees.

Second, the Sierra Club agrees with ChargePoint[28] that, to the extent Pepco will own public charging stations through its Proposal and set the rate to drivers at those stations, those rates must be carefully reviewed to avoid unintended impacts to EV drivers or to the development of the competitive market. If the pricing to drivers at these stations is too low, private market entrants will not be able to compete on price; too high, and EV drivers may simply avoid the stations, stranding the investment. The Commission should fully examine the proposed pricing scheme for any public charging station for which Pepco will determine pricing, with attention focused on the following considerations: (i) impacts on private market operators; (ii) Pepco's cost of service to provide EV charging; (iii) encouraging EV adoption (i.e., supporting fuel cost savings for drivers); (iv) increasing equitable access to charging stations; and (v) maximizing grid benefits.

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[25] *Id.*
[26] Sierra Club Initial Comments, FC 1130 (Nov. 5, 2018), at 13.
[27] Pre-Filed Direct Testimony of Rishi Sondhi, Mass. D.P.U. 18-150 (Nov. 15, 2018), at 27 (noting that residential customers receiving a rebate for smart Level 2 chargers will be automatically enrolled in an off-peak charging rebate program).
[28] *See* ChargePoint Comments, FC 1130 (Dec. 12, 2018), at 15-16.

Third, Sierra Club agrees with Solar United Neighbors of D.C. that net energy metering ("NEM") customers who participate in Pepco's whole house time-of-use rate should be more equitably compensated for the power they provide to the grid.[29] As Solar United Neighbors explain in their comments, "it is important to properly compensate NEM customers for the benefits they provide to the grid and to incentivize the proliferation of distributed energy resources producing energy during peak hours when it is most needed in the District in order to reach the District's climate goals and build a dynamic grid that provides greater value to all ratepayers."[30] Pepco's time-of-use rate recognizes the relatively greater value of generation during peak hours and of shifting demand away from those same hours. Because NEM customers are providing generation during the hours when it is most valuable, their compensation should reflect this value, not just the default non-time-differentiated Standard Offer Service rate.

V. The Commission Should Clarify that for Non-Utility EV Charging Station Site Hosts, the Mechanism by which They Set Pricing to Drivers Does Not Affect Their Regulatory Status.

As set forth in the initial comments of Tesla, ChargePoint, and Sierra Club,[31] it is important for the Commission to clarify that a non-utility EV charging station site hosts that sells electricity on a volumetric basis is not subject to regulation as a public utility. Absent such a clarification, the Commission's current guidance[32] could significantly stifle the development of a competitive charging market in the District.

[29] Solar United Neighbors of D.C. Comments, FC 1130 (Nov. 16, 2018), at 6-7.
[30] *Id.* at 6.
[31] Tesla Initial Comments, FC 1130 (Dec. 12, 2018), at 4; ChargePoint Initial Comments, FC 1130 (Dec. 12, 2018), at 8-9; Sierra Club Initial Comments, FC 1130 (Nov. 5, 2018), at 9-10.
[32] Public Notice, FC 1096 (Mar. 20, 2015), at 1.

The Energy Innovation and Savings Amendment Act ("EISA") of 2012 clarified the Public Service Commission's jurisdiction over the provision of EV charging services by expressly removing from the definitions of "electric company" and "public utility" a person or entity that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles [33] Together with the EISA Committee Report's explanation that "[e]lectric vehicle charging station operators provide fuel for transportation, not energy for distribution or transmission" and "[t]he fact that their product has an energy component doesn't make them a utility anymore than perhaps a hotel, which sells electricity as a part of its product, would also be a utility,[34] it is clear that EISA was intended to exclude all non-utility EV charging station site hosts from regulation regardless of how they price their charging services.

In its March 20, 2015 Public Notice, the Commission stated that "if EV charging station owners and operators are selling electricity, *i.e.*, setting a price to charge EV owners based on the actual amount or units of electricity that is transferred to the EV during a charging session, the EV charging station owner or operator needs to obtain an electric supplier license from the Commission."[35] As Sierra Club, Tesla and ChargePoint all explained in their initial comments, this interpretation is at odds with the clearly intended meaning of EISA as set forth in the Committee Report and would defeat EISA's salutary goals. As the Committee Report explains, "[c]larifying that electric vehicle charging station operators are not utilities creates regulatory certainty for station operators," which in turn encourages the deployment of more charging

[33] D.C. Code §§ 34-207 (providing that the term "electric company" "excludes a person or entity that does not sell or distribute electricity and that owns or operates equipment used exclusively for the charging of electric vehicles"), 34-214 ("The term "public utility" excludes a person or entity that owns or operates electric vehicle supply equipment but does not sell or distribute electricity, an electric vehicle charging station service company, or an electric vehicle charging station service provider.").
[34] Committee on the Environment, Public Works, and Transportation Report regarding Bill 19-749, the "Energy Innovation and Savings Amendment Act of 2012," at 8 (Oct. 24, 2012).
[35] Public notice, Formal Case No. 1096 (Mar. 20, 2015), at 1.

stations, which will help alleviate range anxiety.[36] Because the Commission's March 20, 2015 Notice appears to misstate the intention of EISA, and does so in a way that has the potential to significantly stifle the development of the competitive market for EV charging services in the District, the Commission should take the opportunity now to clarify that the pricing formula at non-utility owned EV charging stations does not affect the regulated status of the owner.

Thank you for your consideration.

Respectfully submitted,

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[36] *Id.* at 5.