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January 15, 2019

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

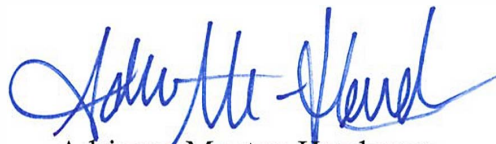
**Re: Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability ("Formal Case No. 1130" or "MEDSIS")**

Dear Ms. Westbrook-Sedgwick:

Enclosed please find the original and (3) copies of the *Office of the People's Counsel for the District of Columbia Reply Comments on the Pepco's TE Program*.

If there are any questions regarding this matter, please contact me at 202.727.3071.

Sincerely,



Adrienne Mouton-Henderson  
Assistant People's Counsel

Enclosure

cc: Parties of Record

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF THE DISTRICT OF COLUMBIA**

**In the Matter of**

**The Investigation into  
Modernizing the Energy Delivery  
System for Increased Sustainability**

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**Formal Case No. 1130**

**THE OFFICE OF THE PEOPLE'S  
COUNSEL FOR THE DISTRICT OF COLUMBIA'S  
REPLY COMMENTS ON THE POTOMAC ELECTRIC POWER COMPANY'S  
TRANSPORTATION ELECTRIFICATION PROGRAM**

**I. INTRODUCTION**

Pursuant to the Public Service Commission of the District of Columbia's ("Commission" or "PSC") Public Notice published in the *D.C. Register* on October 5, 2018, as revised on November 2, 2018, the Office of the People's Counsel for the District of Columbia ("OPC" or "Office"), the statutory representative of District of Columbia ratepayers and consumers with respect to utility matters,<sup>1</sup> hereby provides its reply comments regarding the Potomac Electric Power Company's ("Pepco" or "Company") proposed "Transportation Electrification Program in the District of Columbia" ("TE Program").<sup>2,3</sup>

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<sup>1</sup> D.C. Official Code § 34-804 (Lexis 2019).

<sup>2</sup> *Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability* ("Formal Case No. 1130"), Application of Potomac Electric Power Company for Approval of its Transportation Electrification Program, filed Sept. 6, 2018 ("TE Application").

<sup>3</sup> On December 28, 2018, the Commission propounded an extensive set of data requests on Pepco regarding the Company's TE Program Application. *See Formal Case No. 1130*, DC PSC Data Request No. 1, filed Dec. 28, 2018; OPC is reviewing Pepco's January 11, 2019 responses to those requests (DR1130, Docket No. E-6), and may subsequently move to supplement its initial and reply comments, should OPC deem it necessary. OPC further notes that the number and breadth of the PSC's data requests demonstrates that Pepco's as-filed application is deficient

In its initial comments, OPC explained that, while it supports efforts to transition the transportation sector in the District of Columbia from fossil-fuel-fired- to electrified vehicles, Pepco's TE Application should be rejected because it raises statutory and regulatory concerns and is overbroad, underdeveloped, inequitable, anticompetitive, unjust and unreasonable, and not in the public interest.<sup>4</sup> In the interim, the DC Council passed the CleanEnergy DC Omnibus Amendment Act of 2018 ("2018 CleanEnergy Amendment" or "the Act"). The Act clarifies that while Pepco may propose a transportation electrification program, the program may not go forward absent Commission approval, which requires the PSC to find that the program (i) is in the public interest, (ii) is consistent with the District's public climate change commitments, as determined by the Mayor, and (iii) is consistent with D.C. Official Code § 34-1101, which requires that rates charged be "reasonable, just, and nondiscriminatory."<sup>5</sup> OPC's initial comments, as supplemented herein, and those of other parties demonstrate amply why Pepco's TE Application fails to meet these requirements.

Rather than repeat arguments already made in OPC's Initial Comments, which the Office incorporates herein in their entirety by reference, OPC's Reply Comments focus on three particular areas: (i) what effect the passage of the 2018 CleanEnergy Amendment has on Pepco's TE Application; (ii) how initial comments from other stakeholders support OPC's conclusion that Pepco did not provide sufficient information in its TE Application filing to be found just and reasonable or in the public interest; and (iii) how other states have employed more rigorous

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and serve as further proof of why the Company's TE Application should be rejected.

<sup>4</sup> *Formal Case No. 1130*, Initial Comments of the Office of the People's Council, filed Dec. 12, 2018 ("OPC Initial Comments").

<sup>5</sup> D.C. Code § 34-1101 (Lexis 2018).

processes to determine reasonable TE programs for their respective jurisdictions and why DC should do the same.

## II. REPLY COMMENTS

***A. The 2018 CleanEnergy Amendment does not change the fact that Pepco's TE Application, as filed, is neither in the public interest nor just and reasonable, and it should, therefore, be rejected.***

On December 18, 2018, after initial comments had been filed on Pepco's proposed TE Application, the DC Council passed the 2018 CleanEnergy Amendment, which states in relevant part:

(1) The 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.

(2) The Public Service Commission may approve the application if it finds that it is in the public interest, consistent with the District's public climate change commitments as determined by the Mayor, and consistent with section 8(2) of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 977; D.C. Official Code § 34-1101).<sup>[6]</sup>

The Act clarifies that a public utility can offer and implement a transportation electrification initiative if approved by the PSC. To obtain approval, the public utility's application must satisfy three statutory conditions. Specifically, the Commission must find the proposal: (1) is in the public

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<sup>6</sup> CleanEnergy DC Omnibus Amendment Act of 2018, B22-0904, 22d Council Period § 502(c) (2018) (enrolled), <http://lims.dccouncil.us/Download/40667/B22-0904-Enrollment.pdf>; CleanEnergy DC Omnibus Amendment Act of 2018, B22-0904, 22d Council Period (2018), <http://lims.dccouncil.us/Legislation/B22-0904?FromSearchResults=true>.

interest, (2) is consistent with the Mayor’s climate change commitments, and (3) is consistent with DC Code § 34-1101, which requires that public utility rates be just and reasonable.<sup>7</sup>

While the 2018 CleanEnergy Amendment clarifies that Pepco may seek to own utility infrastructure, the Act does not change the legal analysis and recommendations set forth in OPC’s Initial Comments.<sup>8</sup> As the Office stated therein, “[o]ther than its provision of standard offer service” (“SOS”), Pepco is prohibited from “engag[ing] in the business of an electricity supplier in the District of Columbia except through an affiliate.”<sup>9</sup> The Office further explained why EV charging does not fall under Pepco’s provision of SOS service and why Pepco’s request to own and operate EV charging stations is anticompetitive.<sup>10</sup> The Act’s passage neither changes nor affects the foregoing. Moreover, the Act provides no basis for the Commission to grant the TE Application, as none of Pepco’s offerings (as submitted), including its request to own and operate charging infrastructure, meet the standards laid out in the Act. Pepco has not shown that its offerings are in the public interest, are consistent with the District’s climate change commitments, or result in just and reasonable rates.

1. *Requiring DC ratepayers to bear the burden of paying for electric vehicle charging infrastructure is not in the public interest.*

The DC Council has determined that the Act’s “public interest” standard refers to “investment...in sustainable projects and programs that contribute to the health, education, safety, and welfare of District residents by reducing the causes of, and mitigating the adverse effects of,

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<sup>7</sup> 2018 CleanEnergy Amendment § 502(c)(2); DC Code § 34-1101(a) (Lexis 2018).

<sup>8</sup> *Formal Case No. 1130*, OPC Initial Comments at 6-12.

<sup>9</sup> *Id.* at 7-12 (citing, among other things, D.C. Code § 34-1513(a) (Lexis 2018)).

<sup>10</sup> *Id.* at 7-12. Through Order No. 18004, the Commission made clear that those selling electricity at an EV charging station must acquire an electricity supplier license. *See Id.* at 10 and n.29.

climate change, reducing air, water, and other pollution, protecting and conserving natural resources, reducing energy costs in the District, [and] promoting energy efficiency...”<sup>11</sup>

The TE Program does not meet the Council’s objectives for at least two reasons. First, the Council has explained that the public interest is best served by promoting competition in the provision of transportation electrification infrastructure. Second, the Council has stated that the focus of a transportation electrification project should be to promote the welfare of District residents. Pepco’s proposal to require District residents to fund the TE Program fails both these tests.

- a) The proposal that DC ratepayers subsidize the TE Program could negatively impact competition and private investment in the EV sector.

As OPC explained in its Initial Comments, the Council previously recognized that “range anxiety” and price concerns are prohibitive to the widespread adoption of EVs in the District.<sup>12</sup> The Energy Innovation and Savings Amendment Act of 2012 (“EISA”) was designed to combat these hurdles by promoting a competitive marketplace for EV charging stations.<sup>13</sup> There is no

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<sup>11</sup> 2018 CleanEnergy Amendment (enrolled) at 9. More generally, PSC claims that it serves “the public interest by ensuring financially healthy electric, natural gas and telecommunications companies provide safe, reliable and quality utility services at reasonable rates for District of Columbia residential, business, and government customers.” Public Service Commission of the District of Columbia, *The Office of Consumer Services Brochure*, <https://dcpsc.org/getattachment/adca77f4-ba32-414d-b6db-982fc9b4d608/The-Office-of-Consumer-Services-Brochure.aspx>.

<sup>12</sup> *Formal Case No. 1130*, OPC Initial Comments at 9-10. Council of the District of Columbia, Committee on the Environment, Public Works, and Transportation, Report on Bill 19-749, the “Energy Innovation and Savings Amendment Act of 2012” at 3-4 (Oct. 24, 2012), <http://lims.dccouncil.us/Download/2620/B19-0749-COMMITTEEREPORT.pdf>. Range anxiety is caused by a lack of access to charging stations and a driving range limited by battery power. *Id.*

<sup>13</sup> *Id.*

evidence that the Council abandoned this objective in enacting the 2018 CleanEnergy Amendment.<sup>14</sup>

Much of Pepco's overall program methodology – that is, providing and owning ratepayer-funded EV charging infrastructure – is detrimental to the competitive EV market intended by the EISA. This intrusion into the private sector is unnecessary, especially given Pepco's existing role and correlative market power as a regulated utility. Allowing Pepco to subsidize its own charging stations with ratepayer funds would discourage cost-effective investment in charging stations by private entities who lack the benefit of ratepayer subsidies.<sup>15</sup> OPC is not the only party with these concerns. In its initial comments, the Apartment and Office Building Association of Metropolitan Washington ("AOBA") correctly argues that the nature of Pepco's TE Program funding is contrary to the intent of the EISA in enabling a competitive EV market.<sup>16</sup>

Even stakeholders arguing for a more expansive role for Pepco in the EV market acknowledge the potential of the TE Program to stifle the competitive market. ChargePoint, which offers products similar to those proposed in Pepco's Offerings 7-11, cautions that "it is imperative that the current competitive marketplace dynamics remain intact, and that the utility's cost-free offerings do not impede the sales of other vendors, supplanting current market activities with pre-selected charging solutions."<sup>17</sup> In other words, Pepco's offerings could shut out other solutions, such as those offered by ChargePoint, from participating competitively in the EV market. Alternatively, the Department of Energy and Environment ("DOEE") supports Pepco's ownership

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<sup>14</sup> *Id.* at 2.

<sup>15</sup> *Id.*, Att. J, NRG Energy Inc.'s Letter to the Committee at 3.

<sup>16</sup> *Formal Case No. 1130*, Comments of Apartment and Office Building Association at 6, filed December 12, 2018 ("AOBA Initial Comments").

<sup>17</sup> *Formal Case No. 1130*, Comments of ChargePoint, Inc. at 15, filed Dec. 12, 2018 ("ChargePoint Comments").

of EV charging infrastructure “in a manner that supports market competition” but acknowledges this would require amendments to current regulations.<sup>18</sup> Without a firm understanding of the magnitude of EV infrastructure required in the District, both currently and in the future, achieving a balance between utility participation and maintaining a competitive market is extremely difficult. For these reasons, OPC’s argument related to Pepco’s TE Program’s impact on competition in the District remain a legitimate concern.

- b) Billing DC ratepayers for programs that will benefit Maryland and Virginia consumers is contrary to the public interest.

The Council’s description of the public-interest standard emphasizes impacts on the electric bills of District residents. As noted by DOEE, however, charging station installation will primarily benefit commuters living in Maryland and Virginia.<sup>19</sup> It is not in the public interest to saddle District residents with the costs of a program that will primarily benefit residents in contiguous states.

2. *Pepco’s TE Program is inconsistent with the DC Code’s requirement that rates be just and reasonable.*

No determination can be made that Pepco’s proposal is either in the “public interest” or “just and reasonable” absent a showing that there are clear and substantial system-wide benefits, that those required to pay for the costs of the program will receive direct and tangible benefits, and that the Company has sought to minimize program costs to ratepayers. As proposed, Pepco’s TE Application fails to make the required showing.<sup>20</sup>

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<sup>18</sup> *Formal Case No. 1130*, Comments by the Department of Energy and Environment at 8, filed Dec. 12, 2018 (“DOEE Initial Comments”).

<sup>19</sup> *Id.* at 11.

<sup>20</sup> *See, generally Formal Case No. 1130*, OPC Initial Comments.



First and foremost, Pepco's TE Program proposes to require ratepayers, especially the residential class, to fund the vast majority of the \$15.2 million program costs, even though the number of parties that can enroll directly in certain offerings will be limited. It is unjust and unreasonable and inequitable to require non-participants to subsidize any program costs. Under the principle of cost causation, which serves as the bedrock for utility ratemaking, only prudent, used and useful, and known and measurable costs that are incurred by a utility through its provision of service to a ratepayer class can be allocated to that customer group. Pepco has made no showing that the program costs are needed or will be incurred for the provision of electric distribution service to District ratepayers, nor has a showing been made that the offerings will provide system-wide benefits. The Company's putative claims regarding the societal benefits that its proposed Program would confer on both participants and non-participants is nothing short of speculative.<sup>21</sup> It has put forth no evidence to substantiate its claims that any of the purported benefits identified in its Application (e.g., an increase in EV penetration or a reduction in greenhouse gases in the District) will actually materialize.

Additionally, in order to satisfy the precepts of D.C. Code section 34-1101, Pepco must demonstrate that its proposed Program is based on prudent and reasonable costs. It has not done so. Several stakeholders recommend alternative options that the District and Pepco could pursue that promote the intent of the EISA, without unnecessarily hindering the competitive EV market or imposing extra burdens on Pepco's District ratepayers who enroll in its proposed Offerings. DOEE recommends the Commission and Pepco "explore additional private and public

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<sup>21</sup> E.g., *Formal Case No. 1130*, Potomac Electric Power Company's Initial Comments on AOBA's Motion Pepco's Initial Comments at 9-11, filed Dec. 12, 2018 ("Pepco's Initial Comments").

partnerships to alleviate the cost to the District's ratepayers."<sup>22</sup> The DOEE further notes that since several private companies filed letters in support of Pepco's TE Program, Pepco should "leverage that support to fund necessary infrastructure improvements through means other than increasing rates."<sup>23</sup> AOBA cites the success of ChargePoint and its existing partnership with Pepco and argues that these private sector EV infrastructure companies should be incentivized to "invest in the District of Columbia and deploy their technology in the city."<sup>24</sup>

OPC agrees that allowing the EV private sector to flourish in the District will reduce the cost and responsibility of the utility to purchase and maintain EV infrastructure. ChargePoint states that such an initiative would "reduce the overall cost of the program, reduce risks to ratepayers, and still enable the utility to achieve its main goal to gain insights into charging activities and loads."<sup>25</sup> And other private companies that have expressed interest in this proceeding and the charging station potential that the District holds have made known their willingness to work with Pepco in expanding charging infrastructure.<sup>26</sup>

As the District's sole distribution electric utility, Pepco already plays a significant role in determining the infrastructure that will be used to support EV charging in the District by setting rate structures and creating load-management- and demand-response programs. AOBA calls on the Commission to work with Pepco to refine such programs in lieu of requiring ratepayers to

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<sup>22</sup> *Formal Case No. 1130*, DOEE Initial Comments at 4.

<sup>23</sup> *Formal Case No. 1130*, DOEE Initial Comments at 3.

<sup>24</sup> *Formal Case No. 1130*, AOBA Initial Comments at 9.

<sup>25</sup> *Formal Case No. 1130*, ChargePoint Initial Comments at 16, filed Dec. 12, 2018 ("ChargePoint Comments"); *see id.* at 10 ("[T]he Commission must account for and maintain the existing competitive market for charging infrastructure in the District of Columbia as a matter of established policy.").

<sup>26</sup> *Formal Case No. 1130*, Comments of EVgo, filed Nov. 19, 2018 ("EVgo Comments")("[I]t is important that utilities work with experienced partners to encourage deployment of charging infrastructure to support District residents, while also crafting programs that complement private investment.").

finance Pepco's EV infrastructure charging efforts.<sup>27</sup> Tesla also submits that Pepco should focus on "rate design offerings for residential and commercial customers that reduce the cost of EV ownership and encourage customers and third parties to deploy charging stations in the District."<sup>28</sup> OPC agrees that these capabilities allow Pepco to empower EV developers to grow their presence in the District and encourage its ratepayers to adopt EV technology without Pepco needing to own and operate the charging stations themselves. It also allows Pepco to actively be at the forefront of TE in the District without the financial risks being placed on ratepayers' backs, especially residential ratepayers.

Though the Office continues to recommend the Commission reject the Company's Application, given the multiple expressions of interest by private entities, Pepco should—at a minimum—be precluded from requiring any ratepayers to pick up the tab for the TE Program absent a compelling demonstration that the Company has made a good-faith effort to solicit partnerships with private entities. While Pepco claims it has reduced the price tag for its TE Program from \$15 million to just under \$10 million by considering "participant contributions, revenues received through the use of the public chargers, and the use of funds from the MEDSIS initiative,"<sup>29</sup> before the Commission allows any rate-based recovery, Pepco should be required to reduce this number further by seeking private investment in charging infrastructure. Even if these solicitations prove unsuccessful, Pepco should at least be obligated to explain what it did to pursue private partnerships, and why the effort failed. Regardless of the outcome of the Company's efforts to effect partnerships with private entities, to the extent that unsubsidized TE Program costs

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<sup>27</sup> *Formal Case No. 1130*, AOBA Initial Comments at 4.

<sup>28</sup> *Formal Case No. 1130*, Tesla Initial Comments at 5, filed December 12, 2018 ("Tesla Initial Comments").

<sup>29</sup> *Formal Case No. 1130*, TE Application at 7.

remain, under no circumstances should Pepco be allowed to recover costs from ratepayers who will receive a direct and tangible benefit from the program offerings.

3. *Pepco's has not shown that its program is consistent with the District's public climate change commitments.*

The 2018 CleanEnergy Amendment allows the PSC to approve Pepco's TE Program only if it is "consistent with the District's public climate change commitments as determined by the Mayor." At present, the District's climate goals call for a 50% reduction in carbon emissions by 2032 and a 100% reduction by 2050. Outside of providing a list of expansive and laudatory public policy goals,<sup>30</sup> Pepco has not provided the detail needed to determine whether *its TE Application* is consistent with the District's climate change commitments. Furthermore, the concerns that OPC highlighted in its Initial Comments relating to the lack of effective load management, rate design, and planning processes in Pepco's TE Application demonstrate why Pepco's TE Application is in fact at odds with the District's climate goals.<sup>31</sup>

In many respects these issues are more critical considering the CleanEnergy Amendment of 2018 and should be the focal point of any TE Application, rather than the offerings Pepco chose to include. But as explored at length in OPC's Initial Comments,<sup>32</sup> Pepco did not provide information on, or require participants to enroll in, demand-response programs. Furthermore, Pepco did not include any performance metrics to track the TE Offerings' impact on demand response, energy efficiency, or cost-effectiveness.<sup>33</sup> These examples indicate that Pepco's TE

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<sup>30</sup> *E.g., Formal Case No. 1130*, Pepco Initial Comments at 9-11.

<sup>31</sup> *See, generally, Formal Case No. 1130*, OPC Initial Comments at 23-25.

<sup>32</sup> *Id.* (explaining why the assumptions underlying the cost-benefit analysis proffered by Pepco to claim emission impacts do not match the contours of Pepco's TE Application).

<sup>33</sup> *See* 2018 CleanEnergy Amendment, Title II. Pepco did include a benefit-cost analysis. However, the assumptions associated with its analysis were highly flawed as discussed in the OPC's initial comments. For example, Pepco assumed that 100 percent of EV charging would take place between the hours of 10 PM to 7 AM but offers no control

Offerings' may not align with the District's public climate change commitments. For a transportation electrification proposal to align with the District's public climate change commitments, it should have strong demand-response components, performance metrics, and reasonable and sustainable costs. Pepco's TE Application, as proposed, is deficient in all of these respects. Accordingly, it should be rejected.

The CleanEnergy Amendment of 2018 mandates rapid electrification of a substantial portion of the District's vehicles. Specifically, the Act requires that, by 2030, 50% of many forms of transportation in the District must be zero-emission vehicles. This requirement increases to 100% by 2045. Without corresponding rapid action related to demand management, rate design, and planning processes, electrifying vehicles at this rate could require significant distribution system upgrades, with the costs being borne by ratepayers. Pepco's TE Application fails to provide the requisite detailed information regarding any of these significant areas. Regardless of the action the Commission takes in relation to Pepco's TE Application, the PSC should require additional analysis in these areas through the MEDSIS process.

***B. Several stakeholders agree that Pepco's proposed investments and offerings are not substantiated.***

According to Pepco's TE Application, the Company proposes to provide 13 Program Offerings at a total estimated cost of \$15,222,900, with the overall goal of enabling EV charging throughout the District. But as OPC explained in its Initial Comments, the proposed investments are not meaningfully supported to justify the total cost of the Program. The Offerings are also insufficiently detailed to justify claimed Program benefits and are improperly designed to achieve the District's energy-efficiency- and sustainability goals. While the general consensus among

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programs or pricing to incent such an outcome.

stakeholders is that they support the electrification of the transportation sector in the District, many expressed concerns with the specifics of Pepco's TE Application. OPC highlights below some of those concerns.

1. *Pepco has not demonstrated that its proposed EV Infrastructure proposed is needed to achieve policy goals or is just and reasonable.*

Pepco's proposed TE Application is mainly comprised of rebates and installations for both Level 2 chargers and Direct Current Fast Chargers ("DCFC"), for an approximate total of 800 chargers across all 13 Offerings.<sup>34</sup> Overall, stakeholders agree that critical aspects of Pepco's TE Program Offerings are unsubstantiated.

- a) The magnitude of proposed EV infrastructure investments are not substantiated.

Several parties agree that Pepco's filing does not adequately substantiate the size and scope of its Offerings. For example, DOEE recommends that Pepco, in Offering 11, "ensure there is sufficient demand to justify investing in electric bus charging infrastructure and minimize the risk of stranded assets."<sup>35</sup> Such demand is never adequately justified, for Offering 11 or any of the other Offerings. Additionally, many of Tesla's program recommendations focus on consolidating (and even eliminating) some Offerings, either due to the high cost per charging unit, or because their benefits can be satisfied in other Offerings. Tesla further suggests removing Offering 3, which achieves the same goal of installing more Level 2 smart chargers on the same budget as Offering 4 but for only a tenth of the number of customers.<sup>36</sup> The Office shares similar concerns as DOEE

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<sup>34</sup> Also included in Offering 2 is 150 FleetCarma dataloggers for use in residential EVs.

<sup>35</sup> *Formal Case No. 1130*, DOEE Initial Comments at 10.

<sup>36</sup> *Formal Case No. 1130*, Tesla Initial Comments at 6.

and Tesla, because duplicative and excessive Offerings will only serve to inflate the TE Program costs without adding any additional benefit.

Pepco also fails to address how the magnitude of its investment in EV charging infrastructure could impact the competitive EV charging market in the District. While stakeholders, such as DOEE and ChargePoint, did not address the proposed number of chargers directly, they did comment on how Pepco's participation in the EV charging market could impact existing competition in the private sector.<sup>37,38</sup> ChargePoint recommends that Offerings 7-11 be closely evaluated because they could have negative impacts on the District's competitive EV market and may ultimately "limit the TE Program's ability to achieve desired outcomes."<sup>39</sup> OPC shares these concerns and observes that the overall number of chargers proposed by Pepco is likely directly tied to the impact it will have on competition. However, there was no analysis of the number of EV chargers needed in DC or how the significant number of additional chargers proposed by Pepco would impact competition in this sector within the District.<sup>40</sup>

Calling the overall magnitude of Pepco's proposed TE Program further into question is that some Offerings seem to duplicate existing infrastructure investment programs. DOEE cautions against duplicating the electrification efforts currently being undertaken by other organizations, such as those required by the District Department of Transportation's ("DDOT") pursuant to the

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<sup>37</sup> *Formal Case No. 1130*, DOEE Initial Comments at 9.

<sup>38</sup> *Formal Case No. 1130*, ChargePoint Initial Comments at 16.

<sup>39</sup> *Id.* at 14, 16.

<sup>40</sup> As OPC noted in its initial comments, Pepco's supporting data considers EV adoption within the broader DC-MD-VA urban area, without any evidence supporting why EV chargers are needed specifically within the District and not the commuting corridor at large. In short, the OPC finds that "Pepco provides no data to back its claim that EV adoption *in the District* is hampered by a lack of charging stations." *See Formal Case No. 1130*, OPC Initial Comments at 14.

Electric Vehicle Public Infrastructure Expansion Amendment Act of 2018, which mandates that DDOT install at least 15 public EV charging stations.<sup>41</sup> Additionally, the CleanEnergy Amendment of 2018 provides District agencies clear authority to take action on TE without the use of utility programs funded by ratepayers. Pepco's TE Application is silent as to what degree, if any, its proposal would complement other existing electrification programs. Moreover, Pepco's TE Application does not include any discussion of other paths that could be followed to achieve a fully-electrified transportation sector. Such alternatives should be considered by the Commission because these could have a significant impact on efficient TE investment levels. This DOEE observation coupled with the recent passage of the CleanEnergy Amendment of 2018 further highlight the infirmities of Pepco's TE Application and underscore the need for one designed around, and that better reflects, these critical considerations.

- b) The impact of Pepco's TE Program on the distribution system could be significant, but the Company's Application lacks the quantification or planning processes necessary to mitigate its effects.

If approved by this Commission, Pepco's TE Program would introduce hundreds of EV chargers to the District's electric distribution system. DOEE cautions that high-power clusters of Level 2 chargers, or even a single DCFC, could adversely affect the District's electric distribution infrastructure and requests that the Commission "require Pepco to account for the potential distribution system impacts and load forecasts as part of Pepco's short-term and long-term planning and load forecasting processes."<sup>42</sup> OPC agrees with DOEE. Increasing EV presence on the grid can lead to an increase in grid instability, especially without sufficient charge-management

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<sup>41</sup> *Formal Case No. 1130*, DOEE Initial Comments at 9.

<sup>42</sup> *Formal Case No. 1130*, DOEE Initial Comments at 8.



programs. Pepco's proposal neither addresses these adverse effects on the District's electric distribution system nor adequately proposes load management solutions for EV chargers that would mitigate these effects.

c) The benefits associated with the TE Program are unclear.

In order to justify Pepco's proposal, the benefits from the program must be shown to justify the significant financial investment and the potential impacts of the program on the distribution system. But the benefits claimed by the Company are insufficiently supported and cannot be used to determine the viability of its proposal. While Pepco and some stakeholders, including ChargePoint, DOEE, and Tesla, broadly mention the possibility of intangible benefits, such as expanded access to EV charging, the proposal fails to set forth tangible benefits for the District's ratepayers.

Furthermore, DOEE acknowledges that "the primary beneficiaries [of Offerings 7 and 8] will be commuters living outside of the District" and recommends that Pepco seek funding from the other states within the corridor for these Offerings.<sup>43</sup> DOEE's observation brings into question the magnitude of benefits that will be created for District utility customers through these Offerings. The Office shares this concern from a practical standpoint and notes many technical concerns associated with the quantification of these ostensible benefits in OPC's Initial Comments.<sup>44</sup>

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<sup>43</sup> *Formal Case No. 1130*, DOEE Initial Comments at 8.

<sup>44</sup> *Formal Case No. 1130*, OPC Initial Comments at 4.

2. *Pepco did not provide the detail needed to determine its Offerings were just and reasonable or in the public interest.*

Pepco's proposal includes 13 Offerings as a way of moving forward with electrifying transportation in the District and achieve D.C.'s energy-efficiency- and sustainability goals. However, the Offerings fall short of adequately describing exactly how each advantages ratepayers and in some cases may discourage Program participation.

- a) Pepco's rate design proposals are insufficient.

In its evaluation of Pepco's proposed whole-house TOU rate, DOEE recommends that Pepco clarify the rate segments, including super on/off-peak segments, for future TOU rate designs.<sup>45</sup> OPC agrees but finds it is neither appropriate nor necessary to wait until an unspecified future date to improve Pepco's rate design. OPC believes that designing a more effective TOU rate could help to incentivize ratepayers and help to shift load presently. This would not cost ratepayers anything and should be voluntary and could provide tangible benefits.

ChargePoint also argues that the rate structure for the public chargers in Offerings 7 and 8 "may be a) inconsistent with pricing to drivers from competitive market providers and site hosts, b) inhibit optimal utilization of charging stations, and c) limit flexibility across various use cases."<sup>46</sup> OPC agrees that not enough detail was provided for these rate Offerings to allow for effective analysis or a determination of reasonableness. Additionally, given that these rates would be charged in a competitive space, at a minimum, more information and analysis would be needed.

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<sup>45</sup> *Formal Case No. 1130*, DOEE Initial Comments at 6.

<sup>46</sup> *Formal Case No. 1130*, ChargePoint Initial Comments at 15.

b) Rebates are unnecessary and inequitable.

Pepco's TE Program includes rebates for residential and commercial customers to purchase and install EV charging infrastructure. AOBA and DOEE agree that ratepayers should not fund Pepco's private sector EV program rebates, with AOBA stating that "ratepayers of the District of Columbia should not be burdened with the cost of financing this private sector endeavor proposed by Pepco and shouldering the future risk of loss into the future with no financial benefit to ratepayers."<sup>47</sup> Additionally, DOEE questions Pepco's proposal for ratepayer-based financial support for rebates when infrastructure tax credits are already available to offset the cost of private and public EVSE, ultimately recommending that Pepco first leverage this existing system and then further justify additional ratepayer funding, if necessary.<sup>48</sup> OPC agrees that ratepayers should not be forced to bear the cost and risk of Pepco's proposed rebates. In light of existing rebates and tax incentives available to current EV owners, it is all the more important that the Commission ensure additional incentives are equitable and do not place an unjust burden on non-EV owners.

c) Data collection was ill-defined and did not consider ratepayers' privacy.

Each Offering in Pepco's TE Application includes provisions for Pepco to collect and analyze data from its deployed EV charging infrastructure, with the goal of informing future TE Program design and objectives. DOEE advocates for collecting Program data as well, even going so far as suggesting that data from Offerings 1 and 2 be shared among the stakeholder community.<sup>49</sup>

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<sup>47</sup> *Formal Case No. 1130*, AOBA Initial Comments at 3.

<sup>48</sup> *Formal Case No. 1130*, DOEE Initial Comments at 7.

<sup>49</sup> *Formal Case No. 1130*, DOEE Initial Comments at 6, 7.

In Offering 2, Pepco proposes supplying existing residential EV owners with FleetCarma dataloggers, with Pepco collecting and analyzing data from the dataloggers to understand residential EV charging behavior. Tesla makes the point that “Offering 2 provides no significant benefits to ratepayers because much of the data can be found from advanced metering infrastructure (AMI).”<sup>50</sup> OPC agrees with Tesla’s observation and notes that Pepco did not detail the additional data that would be generated from Offering 2 nor the value it would provide to ratepayers.

As OPC explained in its initial comments, data collection is necessary to develop a well-rounded EV program; however, security and privacy are crucial aspects of any well-developed data collection network. Pepco has not delineated any such data collection network that attempts to provide adequate security and privacy safeguards for customer’s information.<sup>51</sup> DOEE recommends additional detail on communications infrastructure,<sup>52</sup> which can and should ensure the security and privacy of participants’ data within that infrastructure. Should the Commission approve Pepco’s Application, OPC agrees that Pepco needs to provide more details to ensure that personal EV data from private citizens’ is being properly handled.

- d) Aspects of Pepco’s proposed offerings and cost recovery mechanisms are inequitable and unfair.

Pepco’s TE Program includes a proposal to unjustly use MEDSIS funds for Company-specific projects and another proposal to rate base O&M and rebate expenses. Both proposals are inequitable and should be rejected.

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<sup>50</sup> *Formal Case No. 1130*, Tesla Initial Comments at 5.

<sup>51</sup> *Formal Case No. 1130*, OPC Initial Comments at 30-33.

<sup>52</sup> *Formal Case No. 1130*, DOEE Initial Comments at 7.

Neither AOBA nor DOEE supports Commission approval of Pepco's proposed Innovation and Technology Program Offerings, which would use MEDSIS funds for financing. AOBA recommends that the Commission and stakeholders "have the benefit of the MEDSIS working group reports and recommendation before the Commission" reviews or approves any aspect of Pepco's TE Plan proposal.<sup>53</sup> DOEE echoes similar reasoning: "given the MEDSIS working groups are still in progress, DOEE thinks it prudent to wait for the findings and recommendations of the working groups rather than dispersing funds in an ad hoc, fragmented way."<sup>54</sup> Furthermore, DOEE notes the inequity associated with Pepco's proposal: "DOEE has concerns with using MEDSIS funds ... [because] ... Pepco should not be permitted to profit from funds that its parent company committed for the exclusive benefit of ratepayers."<sup>55</sup> Ultimately, DOEE recommends that the Commission utilize MEDSIS funds in accordance with the recommendations of the MEDSIS working groups.<sup>56</sup> OPC agrees with the points made by both AOBA and DOEE and continues to recommend that MEDSIS funds not be siphoned off to Pepco exclusively and the Commission reject Pepco's Innovation and Technology Programs as proposed.

Pepco also proposes to create a regulatory asset for the Operations and Maintenance ("O&M") expenses associated with its proposed TE Program. The O&M costs include administrative expenses, consultant contracts, the cost of rebates provided to customers, and MEDSIS funds used for the Innovation and Technology Programs. To be clear, Pepco is requesting to earn a return on MEDSIS funds, which were provided by its parent company, and

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<sup>53</sup> *Formal Case No. 1130*, AOBA Initial Comments at 2.

<sup>54</sup> *Formal Case No. 1130*, DOEE Initial Comments at 10.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

the rebates awarded to participating customers. While Pepco argues in Initial Comments that its proposal is “entirely consistent with Commission precedent,” OPC strongly disagrees. In support of its position, Pepco refers to Order No. 19091; however, this Order did not create a regulatory asset allowing Pepco to earn a return on either MEDSIS funds or program rebates. Instead, Order No. 19091 allowed Pepco to earn a return on “costs to implement and administer” an Arrearage Management Program.<sup>57</sup> The creation of the regulatory asset requested in this docket would set a new, inequitable precedent that should be rejected. Accordingly, the Commission must closely examine whether providing Pepco an incentive through rate-basing O&M expenses is just and reasonable. The economic incentives associated with the utility business model are complex, making one-off incentives unlikely to achieve intended outcomes.

- a. Other states have undergone more rigorous processes when developing TE programs.

Pepco and other stakeholders point to other jurisdictions that are in various stages of developing and approving TE programs as justification for approval of Pepco’s Application. While a utility proposing a TE Program proposal is not without precedent, Commission approval of Pepco’s Application must be predicated on District law and District-specific concerns. Pepco’s proposal is expansive and unwieldy, with many issues and insufficient details that warrant in-depth discussions before any offering/program is approved. Moreover, other states’ TE programs demonstrate the need for rigorous processes in developing utility-managed, ratepayer-funded transportation electrification programs.

Illinois, Maryland, and California, for example, are taking a deliberate and collaborative approach to transportation-electrification-program development. The Illinois Commerce

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<sup>57</sup> *Formal Case No. 1119*, Order No. 19091, rel. September 8, 2017.

Commission (“ICC”) conducted two policy sessions on transportation electrification in April and September of 2018.<sup>58</sup> The latest activity was an Electric Vehicle Notice of Inquiry consisting of a detailed list of questions by the ICC, which was answered by stakeholders in initial reply comments.<sup>59</sup> The Notice of Inquiry will likely seek additional information from stakeholders through additional rounds of comments. This could potentially result in the ICC establishing a process or proceeding dedicated to EV planning and integration in that state.<sup>60</sup> The Maryland PSC has opened Public Conference 44 (“PC44”) on grid modernization. The Maryland Commission’s process is discussed in ChargePoint’s Initial Comments.<sup>61</sup> After rejecting PG&E’s initial EV plan to install 25,000 chargers, the California Public Utility Commission opened a rulemaking in order to establish a more comprehensive transportation electrification framework among its stakeholders.<sup>62</sup> OPC notes that each of these processes appears to have benefited from more in-depth input and analysis from stakeholders and more data than Pepco has provided within this current docket.

Other states have taken the route of contested cases before the presiding commission. New York State Law Section 66-O required each electric IOU to file an application for a residential EV charging tariff by April 1, 2018.<sup>63</sup> In case 18-E-0206, utilities without existing residential EV

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<sup>58</sup> <https://www.icc.illinois.gov/meetings/detail.aspx?t=5&id=21251> and <https://www.icc.illinois.gov/meetings/detail.aspx?t=5&id=21235>

<sup>59</sup> <https://www.icc.illinois.gov/Electricity/workshops/evnoi.aspx>

<sup>60</sup> See NOI at 9. See also ComEd Reply Comments at 1.

<sup>61</sup> *Formal Case No. 1130*, ChargePoint Initial Comments at 10.

<sup>62</sup> Order Instituting Rulemaking to Continue the Development of Rates and Infrastructure for Vehicle Electrification and Closing Rulemaking 13-11-007.  
<http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M250/K030/250030021.PDF>

<sup>63</sup> <https://www.nysenate.gov/legislation/laws/PBS/66-O>.

charging tariffs (Central Hudson, NYSEG, and RG&E) proposed new EV tariffs for consideration by the New York Public Service Commission, but those tariffs were ultimately rejected by the Commission and the utilities were directed to file tariff amendments.<sup>64</sup> Massachusetts has also had a contested case for TE, a \$25 million program proposal by National Grid considered in Docket No. 17-13. After allowing for stakeholder testimony and analysis, the program was ultimately approved by the DPU in September 2018.<sup>65</sup>

The District currently has a process in place for developing TE programs – MEDSIS. However, because Pepco chose to develop and submit its proposed TE Application for Commission approval before the conclusion of the MEDSIS working groups and the submission of their final working group reports to the PSC, it was developed outside of this proceeding as it neither reflects nor is informed by their forthcoming recommendations.

#### **IV. CONCLUSION**

**WHEREFORE**, the Office of the People’s Counsel for the District of Columbia respectfully requests the Commission consider and adopt the recommendations discussed herein and in the Office’s Initial Comments, including, but not limited to, rejecting Pepco’s TE Program, as it is unjust and unreasonable and is not in the public interest.

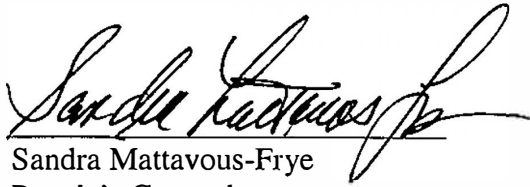
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<sup>64</sup> Case no. 18-E-0206, Item no. 13, “Order Rejecting Tariff Filings and Directing Tariff Revisions.” The process provided needed regulatory scrutiny on rates designed for EV integration. New York rate design process was part of a larger set of initiatives by the state, including EVolve NY, a \$250 million initiative to deploy 200 150kW DC chargers. See also <https://www.nypa.gov/news/press-releases/2018/20181119-evolve>

<sup>65</sup> Docket No. 17-13, Order filed by DPU.



Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sandra Mattavous-Frye", written over a horizontal line.

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Dated: January 15, 2019

## CERTIFICATE OF SERVICE

### **Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability ("MEDSIS")**

I certify that on January 15, 2019, a copy of the *Office of the People's Counsel's for the District of Columbia Reply Comments on the Pepco's TE Program* was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

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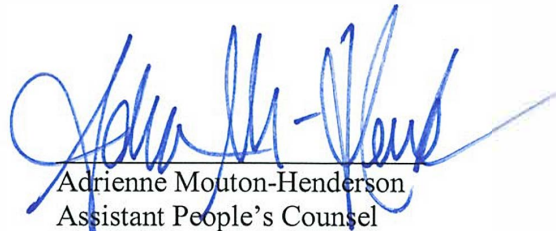
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