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EP9628
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May 13, 2019

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

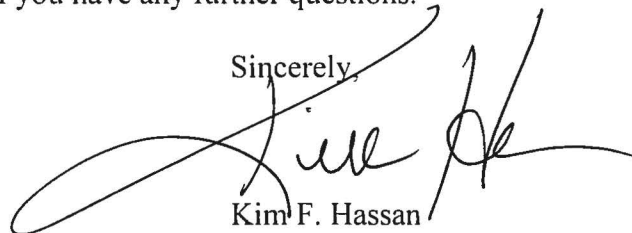
Re: Formal Case Nos. 1130 and 1155

Dear Ms. Westbrook-Sedgwick:

Enclosed please find Potomac Electric Power Company's Application for Reconsideration and Clarification of Order No. 19898 in the referenced proceedings.

Please contact me if you have any further questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim F. Hassan", with a large, sweeping flourish extending from the end of the signature.

Kim F. Hassan

Enclosure

cc: All Parties of Record

IN THE MATTER OF

APPLICATION OF
POTOMAC ELECTRIC POWER COMPANY
FOR RECONSIDERATION AND CLARIFICATION OF ORDER NO. 19898

I. BACKGROUND

¹ 15 D.C.M.R. § 140.1. Pursuant to Rule 140.7 “140.7 The filing of an application for reconsideration shall act as a stay upon the execution of the order or decision of the Commission until the final action of the Commission upon the application.”

and target multiple segments of the market, including the residential, commercial and public sectors of the market. Pepco's proposed TE Program consists of the following 13 offerings:

- Offering 1:** Residential Whole-House Time-of-Use ("TOU") Rate for Plug-In Vehicle ("PIV") owners who receive their electricity supply through the Standard Offer Service ("SOS") Program.
- Offering 2:** Installation credit for up to one hundred and fifty (150) residential customers with existing, installed Electric Vehicle Service Equipment ("EVSE") to install FleetCarma® data loggers and receive monthly bill credit thereafter for participation.
- Offering 3:** Fifty-percent discount on the cost of new Residential Smart Level II EVSE and installation for fifty (50) residential customers.
- Offering 4:** Smart Level II EVSE rebates of \$500 for five hundred (500) residential customers.
- Offering 5:** Fifty-percent discount on the cost of new Smart Level II EVSE for Multi-Dwelling Units ("MDU") and 100% discount on the installation costs for one hundred (100) MDU customers.
- Offering 6:** Fifty-percent discount on the cost of new Smart Level II EVSE for fifty (50) customer workplace locations.
- Offering 7:** Install up to thirty five (35) Public Neighborhood Smart Level II EVSE.
- Offering 8:** Installation of twenty (20) DC Fast Chargers.
- Offering 9:** Installation of charging infrastructure at a minimum of two (2) locations to support the use of Electric Fleet/Light Duty Charging Infrastructure

consisting of up to ten (10) Smart Level II EVSE and one (1) DC Fast Charger at each location.

Offering 10: Install up to ten (10) Smart Level II EVSE and two (2) DC Fast Chargers to support the Electric Taxi/Rideshare deployment.

Offering 11: Install five (5) bus depot chargers and one (1) on-route charger to support the use of Electric Buses.

Offering 12: Establish a \$1 million Innovation Fund, to be funded by the Modernizing the Energy Delivery System for Increase Sustainability ("MEDSIS") subaccount, for innovation projects.

Offering 13: Establish a \$1.5 million Technology Demonstration program to be funded by the MEDSIS subaccount.

In response to the filing, numerous parties filed comments in support of the TE Program.² Pepco was pleased to read the positive responses of numerous parties, such as Tesla, Sierra Club, Global Automakers, District Department of Energy and Environment ("DOEE"), District Department of Transportation ("DDOT"), EVgo, Plug-In America, and the Electric Vehicle Association of Greater Washington DC. Parties supportive of the TE Program noted the environmental and societal benefits of the TE Program, including carbon reduction, air quality improvement, and mitigating the effects of climate change.³ Parties also noted the critical role that

² The primary opponents of Pepco's TE Program Application are the Office of the People's Counsel ("OPC") and the Apartment and Office Building Association of Metropolitan Washington ("AOBA")

³ DDOT Comments at 1; Clean Air Partners Comments at 1; Tesla Comments at 2; Sierra Club Comments at 1-2.

Pepco has to play in the development of EV charging in the District,⁴ with one commenter adding, “[a]s an electric utility, Pepco will be able to target infrastructure where it will be most beneficial to consumers, and this effort will inform subsequent infrastructure programs in the area.”⁵

On April 12, 2019, the Commission issued Order No. 19898 (“Order No. 19898” or “Order”), in which the Commission approved in part, and denied in part, Pepco’s TE Program Application. Specifically, the Commission:

- Denied Pepco’s request to operate EVCS directly, as a standard service;
- Modified and approved Offering 1, Offering 7, Offering 8, Offering 10, and Offering 11;
- Rejected Pepco’s proposal to allocate 20% of Offerings 7 and 8 to underserved communities⁶ located in Wards 5, 7, and 8;
- Rejected Pepco’s proposed Offerings 2, 3, 6, 9, 12, and 13;
- Directed Pepco to meet with Staff and other stakeholders through a temporary TE Working Group to address stakeholders’ concerns regarding Offering 4 and Offering 5 within forty-five (45) days of the date of the Order and report back within 180 days of the date of the Order;
- Directed Pepco to file a proposal to update its tariffs regarding make-ready infrastructure to facilitate EVCS deployment within 30 days of the date of the Order;

⁴ EVgo Comments at 2; Global Automakers at 1; Ford Comments at 2.

⁵ Joint Automakers Comments at 1.

⁶ TE Program Application at 5, fn. 2.

- Directed Pepco to refile the program coordination and management expenses, such as billing, customer enrollment and outreach, program management, system interface and updates, analysis and reporting for Regulatory Asset treatment within 60 days of the Order;
- Directed Pepco to provide the Commission with a status report on the Company's efforts to obtain private partnerships to subsidize EVCS infrastructure within ninety (90) days from the date of the Order; and
- Directed Pepco to file an updated TE Program implementation plan within 30 days from the date of the Order.⁷

Pepco appreciates the Commission's consideration of its TE Program Application; however, as discussed in more detail below, the Company respectfully requests that the Commission reconsider its determinations in Order No. 19898 on the following bases:

- The Commission's decision regarding the scope of D.C. Code Section 34-1101(b) is inconsistent with District law and contrary to applicable Commission precedent;
- In passing the *Energy Innovation and Savings Amendment Act of 2012*, the Council of the District of Columbia did not express a desire for the competitive market alone to facilitate the deployment of public electric vehicle charging stations ("EVCS");
- The Commission's determination that there has been impressive growth in EVCS and related infrastructure is not supported by the record evidence;
- The Commission's finding that there are adequate public charging opportunities in Wards 5, 7 and 8 is contrary to the record evidence; and
- The Commission failed to clearly explain whether the sale of electricity by an EVCS results in the owner or operator of the EVCS being an electricity supplier,

⁷ Order No. 19898 at ¶79. The Order also directed Pepco to establish a regulatory asset and regulatory liability to track electric vehicle expenditures and revenues for the approved Offerings (*Id.* at ¶76); file quarterly reports on the implementation of the TE Program for two years after implementation begins and semi-annual reports for three to five years after implementation begins (*Id.* at ¶80); and file a TE Program Analysis, Evaluation, and Reassessment, as well as Electric Vehicle Market Penetration Study within two years after implementation begins (*Id.* at ¶81).

and, if not, then D.C. Code Section 34-1513(a) would not be implicated by the ownership or operation of an EVCS.

In addition, as discussed in Section II.B below, Pepco respectfully requests that the Commission clarify the following aspects of Order No. 19898:

- The disaggregation of EV rates;
- The process to follow for identifying locations for the deployment of EVCS and their ownership/operation under Offering 10;
- Correct an error in the charging stations specified in Order No. 19898 for Offering 11;
- That any public EVCS for which Pepco provides make-ready infrastructure under the TE Program must permit charging by a wide range of EVs;
- That the Company should coordinate efforts with the District to obtain alternate sources of funding for EVCS make-ready infrastructure;
- Pepco may submit a new program coordination and management expenses budget encompassing any clarifications or revisions directed by Order No. 19898 and subsequent orders;
- All EVCS make-ready infrastructure expenditures are to be included in the regulatory asset established in Order No. 19898; and
- The timing of various reporting requirements.

II. INTRODUCTION

In its TE Program Application, Pepco proposes 13 offerings aimed at accelerating the widespread adoption of transportation electrification. Parties, and the Commission alike, acknowledged that the Company's TE Program is important to advancing the District's environmental goals,⁸ as well as to the District's transportation electrification goals, which are

⁸ EVgo Comments at 2; Global Automakers at 1; Ford Comments at 2. *See also* Order 19898 at ¶31.

articulated in the *Clean Energy DC Omnibus Amendment Act of 2018* (“Clean Energy Act”),⁹ the Resilient DC Plan,¹⁰ Sustainable DC 2.0 Plan,¹¹ and the Clean Energy DC Plan. As the Council of the District of Columbia (“Council”) mandated in passing the Clean Energy Act, in just over 10 years,

50% of public buses, passenger- and light-duty vehicles associated with privately-owned fleets with a capacity of 50 or more passengers or light-duty vehicles licensed to operate by the District of Columbia, commercial motor carriers, limousine-service vehicles, and taxis certified to operate by the District of Columbia shall be low-or-zero-emission vehicles.¹²

This requirement increases to 100% by 2045.¹³ To achieve these goals, the District of Columbia will need a significant number of EVCS capable of charging these various types of service vehicles.¹⁴

⁹ D.C. Law 22-257, effective March 22, 2019.

¹⁰ As the Resilient DC Plan noted “Achieving carbon neutrality by 2050 will require innovative policies, funding and financing strategies, and participation from all stakeholders to ensure a carbon-neutral District benefits all residents.” Resilient DC at 81. The TE Program Application is a part of this much larger effort to achieve the District’s overall objective.

¹¹ Sustainable DC 2.0 Plan at 128 (“Except in special cases, the District Government will require all agencies to purchase zero to low-emission vehicles and will prioritize placing green vehicles that spend most of their time in one area (such as police cruisers and buses) in areas with high concentrations of vulnerable populations”) and 129 (“There is still limited infrastructure to charge EVs. The District Government will partner with the private sector, Pepco, and other relevant players to facilitate the development of convenient, publicly accessible EV charging stations (for example in designated spaces on appropriate streets or in parking structures). “Electrification opportunities will be evaluated based on their ability to reduce GHGs, maximize public benefit and investment from the private sector, and equity...[.]”).

¹² Clean Energy Act at §502(b)(1).

¹³ *Id.*

¹⁴ As the Clean Energy DC Plan explained:

More than 80% of EV charging occurs at home or work. To achieve the level of EV adoption necessary to achieve the District’s long-term GHG reductions, property owners will need to equip many more residential and commercial parking spaces with charging stations. Both the perceived and actual availability of chargers are critical to increasing consumer comfort with EVs, and thus the willingness to purchase one.

Moreover, according to the National Renewable Energy Laboratory, the District of Columbia will require 1,055 Level 2 chargers and 76 Direct Current Fast Chargers (“DCFC”) to accommodate the anticipated level of PIVs registered in the District by 2030.¹⁵ At the time the TE Program Application was filed, the District only had 98 public EVCS, which included only four (4) DCFCs; however, a large number of these “public” EVCS were located in areas that are inaccessible to the general public, such as in parking garages reserved for employees and patrons.¹⁶ In addition, these public EVCS are clustered in the downtown core and are not equitably distributed throughout the District’s Wards. The TE Program Application also noted that Wards 5, 7 and 8 were underserved, and there were no EVCS deployed in Wards 7 and 8 when the TE Program Application was filed.¹⁷

Pepco’s TE Program presents a major opportunity to expedite greenhouse gas reductions by creating convenient and safe charging in the home, workplace, or public space, while managing

Clean Energy DC Plan at Section 6.1.2.1, 196 (August 2018).

¹⁵ TE Program Application at 11. The International Council on Clean Transportation warned in a White Paper released earlier this year:

Across major U.S. markets through 2017, about one-fourth of the workplace and public chargers needed by 2025 are in place. Charging infrastructure deployment will have to grow at about 20% per year to meet the 2025 targets identified in this report. The largest charging gaps are in markets where electric vehicle uptake will grow most rapidly, including in many California cities, Boston, New York, Portland, Denver, and Washington, D.C.

Quantifying The Electric Vehicle Charging Infrastructure Gap Across U.S. Markets at ii: (January 2019). The White Paper was issued prior to the Clean Energy Act becoming law, and thus its conclusion may not factor in the impact on EV adoption that the Clean Energy Act envisions, understating the need for public EVCS.

¹⁶ TE Program Application at 12. As the Clean Energy DC Plan indicated, “publicly available EV chargers (e.g., in parks and shopping centers) play a valuable role in facilitating a long-term transition to EVs in that they help build consumer confidence that electric vehicles can meet their travel needs.” Clean Energy DC Plan at 198.

¹⁷ TE Program Application at 13.

the new EV load in a manner that encourages dispatch of the most efficient and lowest emitting resources. As discussed further in Section III.A below, little has changed since the TE Program Application was filed. There are three additional public EVCS deployed in Ward 5, but there are still *no* public EVCS in Wards 7 and 8. The TE Program Application supports the District's transportation electrification goals by providing public access and more equitable distribution to all Wards, especially those that are currently underserved. Pepco is in a unique position to help the market grow, particularly in areas that have been not been served by the competitive market.

The TE Program Application proposed only a small fraction of the public EVCS necessary to achieve the District's goals. Specifically, the Company proposed to install and own 35 public neighborhood Level II Smart Charging stations, *at least 20%* of which were committed to Wards 5, 7, and 8; 20 DCFC, *at least 20%* of which would be deployed in Wards 5, 7 and 8; up to 10 Level II chargers and two (2) DCFCs placed to maximize access for taxi and rideshare charging; and five bus depot and one on-route bus charger.¹⁸ As such, Pepco does not believe that utility ownership of these few charging stations will unduly burden competition. Rather, the proposed offerings will provide grid optimization benefits to customers, enhance consumer welfare by providing additional customer choice in electric pricing, and provide a choice of products and services from qualified third parties to meet the needs of the proposed projects.

Pepco's unique position as a regulated electric company can help facilitate more equitable access to EVCS that provide interoperability to allow PIV customers to maximize the use of public EVCS. If the District is to meet the transformational goals it has set for electrification of the

¹⁸ *Id.* at 38.

transportation sector and achieve meaningful reduction in greenhouse gas emissions, it is critically important that public EVCS become readily available throughout all of the District.

At present, there currently are *no* public EVCS deployed in Wards 7 and 8 and only five (5) in Ward 5. Major transportation arteries run through these wards. Taxicabs and rideshare vehicles regularly frequent these wards. Fleet vehicles and buses¹⁹ travel through these wards. To ensure the fluidity of traffic flow and address concerns regarding the District-wide availability of EVCS, it is critical that the District act now to begin to address this disparity. As the Clean Energy DC Plan recognized “the perceived and actual availability of chargers are critical to increasing consumer comfort with EVs.”²⁰

For these reasons and those discussed herein, Pepco requests that the Commission allow the Company to own and operate EVCSs and adopt the Company’s other recommendations below to modify and clarify certain aspects of the Order.

III. ARGUMENT

A. RECONSIDERATION

1. The Commission’s Decision Regarding the Scope of Section 34-1101(b) Is Inconsistent with District Law and Contrary to Applicable Commission Precedent.

In Order No. 19898, the Commission indicated that, under Section 502(c) of the *Clean Energy DC Omnibus Amendment Act of 2018* (“Clean Energy Act”),²¹ it is permitted to approve

¹⁹ As the Sierra Club notes, these communities are “disproportionately burdened by diesel bus-related air pollution.” Initial Comments of the Sierra Club Regarding Pepco’s Transportation Electrification Proposal at 12 (Nov. 5, 2018).

²⁰ Clean Energy DC Plan at 196.

²¹ D.C. Law 22-257, effective March 22, 2019.

an application by the electric company to promote transportation electrification if it finds that the application is: (1) in the public interest, (2) consistent with the District’s public climate change commitments as determined by the Mayor, and (3) consistent with D.C. Code § 34-1101.”²² However, the Commission subsequently stated, citing to D.C. Code § 34-1101(b), that “Pepco cannot offer a new service, such as EV rates or deployment of charging stations, without first seeking approval of the Commission, which Pepco seeks as part of its TE Program Application.”

Pepco respectfully submits that the Commission’s statement regarding the applicability of D.C. Code Section 34-1101(b) as it pertains to Pepco’s activities as an electric company is incorrect. As a public utility that provided electric service in the District of Columbia on June 27, 1989, the actual code section applicable to Pepco is D.C. Code Section 34-1101(c), which states unequivocally:

Every public utility that was regulated by the Commission and that furnished a service or facility within the District of Columbia as of June 27, 1989 is deemed to have been granted a certificate of public convenience and necessity.

Thus, contrary to Order No. 19898, no finding under Section 34-1101(b) is required in connection with Pepco’s TE Program Application as, by statute, Pepco already has District-wide authority to provide electric service.

Further, the Clean Energy Act does not refer specifically to Section 34-1101(b) rather it provides:

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, . . . 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

²² Order No. 19898 at ¶11.

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).²³

Thus, the Clean Energy Act actually references a section of the 1913 Public Utilities Act. That section is now codified as D.C. Code Section 34-1101(a), which provides in relevant part:

Every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any public utility for a facility or service furnished, rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory.

To be clear, the Company does not challenge that Section 34-1101(a) is applicable to any public utility rate or service the Commission may approve, whether for the TE Program Application or otherwise. However, the language of the Clean Energy Act itself does not refer to Section 34-1101(b), which is referenced in Order No. 19898²⁴ and was the basis on which the Commission found “that Pepco cannot own EVCS because there is no showing that the public requires that Pepco own EVCS at this time as prescribed by D.C. Code § 34-1101 (b).”

In addition, any attempt to apply Section 34-1101(b) to electric services provided by Pepco is contrary to prior Commission orders regarding the scope of that subsection and the grandfathering provided by Section 34-1101(c). The Commission’s position regarding the application of Section 34-1101(b) in Order No. 19898 cannot be squared with its prior decisions or the regulations it adopted regarding Certificates of Public Convenience and Necessity (“CPCN”), in which the Commission has clearly and unambiguously ruled that Pepco is

²³ Clean Energy Act at §502(c)(2).

²⁴ See, e.g., Order No. 19898 at ¶¶16, 26, 27, 31.

grandfathered from the requirements of Section 34-1101(b) under the exemption provided in Section 34-1101(c) for its activities as an electric company.

For example, in Order No. 13850 in Formal Case No. 1044, the Commission squarely addressed the divergent positions of parties regarding the scope of the CPCN granted pursuant to Section 34-1101(c) to public utilities, such as Pepco, that were operating in the District of Columbia on June 27, 1989.²⁵ In that proceeding, Pepco and the District of Columbia government had argued that under Section 34-1101(c) the Company was provided a blanket exemption from the requirements of Section 34-1101(b) for its public utility functions, whether or not the actual services or facilities in question existed as of June 27, 1989. The Office of the People's Counsel took a contrary position, asserting that the exemption only pertained to the specific facilities and services that were offered by the public utility on June 27, 1989 and that Pepco was required to seek a CPCN for any new facilities and services. Although the Commission found the language of the statute ambiguous on this issue,²⁶ after noting the legislative history of the statute and the testimony of the then-Chairman of the Commission before the Council in support of the legislation as well as the report on the legislation prepared by the Council's Committee on Public Services, the Commission held:

we find Chairman Worthy's statement and the Committee report probative of the legislature's intent and conclude that ***Pepco is not required to seek a CPCN under §34-1101(b) in order to provide services and facilities.***²⁷

²⁵ June 27, 1989 is the effective date of the *Public Utilities Amendment Emergency Act of 1989*, emergency legislation that was enacted as a companion to the *Public Utilities Amendment Act of 1989*, D.C. Law 8-47. These statutes added what are now codified as D.C. Code Sections 34-1101(b)-(d).

²⁶ Formal Case No. 1044, Order No. 13850 at ¶10 (Dec. 29, 2005).

²⁷ *Id.* at ¶12 (emphasis added).

This conclusion is also borne out by the Commission's orders in Formal Case No. 897, the proceeding in which the Commission adopted the regulations to implement the *Public Utilities Amendment Act of 1989*, D.C. Law 8-47. For example, in Order No. 9549, in discussing the grandfathering of existing public utilities provided by D.C. Law 8-47, the Commission explained:

There is nothing in the Act that would limit the authorization of existing utilities to specific types of service within the service categories defined in D.C. Code, Title 43, Chapter 2 [now Title 34]. . . . The fact that the legislation is designed to be competition-neutral and new utilities may limit their applications, because of lack of proof of a broad public need, to a sub-category, ***does not preclude an existing utility, which prior to the Act could serve the entire service category, from continuing to serve it without applying for a certificate.*** MFS' proposed amendment to 1508.3, which would limit existing utilities to their service field, or sub-category of service, shall also be rejected.²⁸

The regulations the Commission promulgated to implement the *Public Utilities Act of 1989*, appear at Chapter 15 of Title 15 of the District of Columbia Municipal Regulations. Section 1509.1 provides:

Any public utility that provided services or facilities and was regulated by the Commission prior to June 27, 1989, the effective date of the Emergency Act, ***shall be deemed to have been granted a Certificate*** allowing it to provide facilities or services ***in the service category or categories in which it was operating prior to the effectiveness of the Emergency Act.*** (Emphasis added).

Under the Commission's CPCN regulations, Pepco is deemed to have been granted a CPCN for Electric Service, which pursuant to 15 D.C.M.R. § 1506(a) encompasses "the activities of owning, operating, controlling, or managing any electric plant, within the District of Columbia" Thus, contrary to the language of Order No. 19898, Section 34-1101(b) is not applicable to any of Pepco's operations as an electric company in the District of Columbia. The Commission's reliance on any aspect of Section 34-1101(b) is incorrect.

²⁸ Formal Case No. 897, Order No. 9549 at 23 (Sept. 5, 1990) (emphasis added).

2. **In Passing EISA the Council of the District of Columbia Did Not Express a Desire for the Competitive Market Alone to Facilitate the Deployment of EVCS.**

In Order No. 19898, the Commission indicated “the DC Council in passing the EISA, expressed a desire for the competitive market to facilitate the deployment of EVCS in the District.”²⁹ However, the *Energy Innovation and Savings Amendment Act of 2012* (“EISA”),³⁰ does not mention the competitive market. Although a footnote in Order No. 19898 cites to page 8 of the Committee Report on EISA as support for this position,³¹ that page also does not indicate that the Council in enacting EISA intended for the competitive market alone to facilitate the deployment of EVCS. Specifically, the portion of page 8 of the Committee Report addressing electric vehicles provides:

The introduced version of B19-749 would clarify that electric vehicle charging station operators are not utilities for purposes of regulation under the Public Service Commission. Electric vehicle charging station operators provide fuel for transportation, not energy for distribution or transmission. The 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. Subjecting more traditional service companies to the types of regulations normally reserved for utilities “would encumber station providers with prohibitive costs and regulatory burdens that would stifle the market for charging stations, and the vehicles that use them.”

The Committee Print retains the clarification that electric vehicle charging station operators are not utilities for purposes of regulation under the Public Service Commission. It also adds a provision that will enable the Department of Motor Vehicles to transmit information to the electric utility about electric vehicles registered in the District and their registered addresses.

Electric vehicles do add stress to the grid. Utilities need to assess the added stress and upgrade appropriate infrastructure if needed. California and Maryland, among other jurisdictions, have adopted measures to transmit data about electric

²⁹ Order No. 19898 at ¶28.

³⁰ D.C. Law 19-0252, effective March 19, 2013.

³¹ Order No. 19898 at n.67.

vehicles to utilities for planning purposes. To ensure that the electric utility can plan for the added stress on the grid, the DC Department of Motor Vehicles would be enabled to transmit data to it. The electric company would be expressly prohibited from using the data for anything but reliability-planning purposes.

There is no mention of any desire on the part of the Council for the “competitive market” alone to facilitate deployment. Pepco respectfully requests that the Commission correct this misstatement in Order No. 19898 regarding the Council’s intent in passing EISA.

3. The Record Evidence Does Not Support the Commission’s Determination that There Has Been Impressive Growth in EVCS and Related Infrastructure.

After attributing an intent to the Council that is not explicitly in EISA or the Committee Report regarding EISA, Order No. 19898 then states “[t]o a large degree the DC Council’s intent for deployment of EVCS by the competitive market has been met” and argues that “EV and related infrastructure have seen impressive growth.”³² The “impressive growth” noted by the Commission is a 71% increase in public EVCS between June 2017 and August 2018; however, the Commission failed to consider the baseline from which this increase was determined, the locations of those EVCS or, more importantly, the District’s need for substantially more public EVCS.

The growth identified by the Commission is accurate in terms of percentage growth, but it reflects an increase in public EVCS from only 57 to less than 100 at the time of the filing of Pepco’s TE Program Application. Given the aggressive goals established by the Clean Energy Act,³³ a

³² *Id.* at ¶28.

³³ For example, the Clean Energy Act requires that 100% of all public buses, passenger- and light-duty vehicles associated with privately-owned fleets shall be zero emission vehicles by 2045. It also mandates that the District Department of Transportation (“DDOT”) develop a comprehensive clean vehicle transition plan to encourage and promote the adoption of that goal as well as (i) at least 25% zero-emission vehicle registrations by 2030; and (ii) 100% replacement of public buses, including school buses, with electric public buses upon the end of their useful life, by 2021. Clean Energy Act at §§501-502.

more rapid and ubiquitous deployment of EVCS is essential if the District's goals are to be achieved. As the Council has noted, in 2011, when the District launched its Sustainable DC plan, the initiative included the installation of **500** public electric vehicle charging stations throughout the District.³⁴ That same Council Committee Report, in addressing the need for public EVCS, noted that the stations the private sector had deployed were not public or easily accessible and were located primarily in underground parking garages downtown.³⁵

Moreover, as discussed further in Section II.A.4 below, the numbers touted by the Commission fail to address the fact that, to date, there has been minimal deployment of public EVCS in the District's underserved markets, such as Wards 5, 7 and 8. Since Pepco filed its application nine months ago, the number of public EVCS deployed in the District has increased to 120, the large majority of which are still clustered in the downtown core.³⁶ However, 120 public EVCS is far from the 500 EV charging stations that the Sustainable DC plan identified as being needed in the District, or the 1,055 identified by the National Renewable Energy Laboratory (NREL). That target of 500 public EVCS or number noted by NREL also predates passage of the

³⁴ Report of the Committee on Transportation and the Environment of the Council of the District of Columbia on Bill 22-096, the "Electric Vehicle Public Infrastructure Expansion Act of 2017" at 2 (November 29, 2017). The Report noted that, as of that date, DDOT had installed only 5 public charging stations in the District of Columbia. *Id.*

³⁵ *Id.* at 3. To address the need for public EVCS, the *Electric Vehicle Public Infrastructure Expansion Act of 2017* established a pilot program by which DDOT was to install at least 15 EVCS by January 1, 2019, including at least one in each Ward in the District. The statute also contemplated that those EVCS could be operated and maintained by public utilities. See D.C. Code §50-921.23. This goal has not yet been met.

³⁶ The clustering of EVCS in the District's downtown core can be clearly seen on sites such as <https://www.plugshare.com>, which allow one to locate EVCS based on address or zipcode. Moreover, as was noted in the TE Program Application, many of these public EVCS "are located in hotels, businesses, and commercial parking garages and are reserved for employees or patrons." TE Program Application at 12.

Clean Energy Act and its transformational goal to encourage transportation electrification and the use of zero-emission vehicles in the District.

To address the imbalance in the deployment of public EVCS in a meaningful way and provide some access to public EV charging with broad interoperability in the District, Pepco requests that the Commission modify Order No. 19898 to allow Pepco to own, operate, and deploy public EVCS alongside other market participants. To address concerns regarding potential anticompetitive impacts of utility ownership of EVCS, Pepco proposes a compromise that the Company be allowed to own up to 50% of the public EVCS that are authorized to be deployed under the TE Program and, so as to facilitate the fluidity of EV traffic throughout the District, which is only approximately 5% of the 500 EV chargers identified as required under the Sustainable DC Plan and an even smaller percentage of the public chargers that will be required after the passage of the Clean Energy Act.

Additionally, Pepco requests that, if the competitive market fails to deploy all of the 55 approved public EVCS within nine (9) months after the Company has implemented the TE Program, Pepco be allowed to own, operate, and deploy the remaining public EVCS. This will allow the Commission to jumpstart the District's climate goals regarding EV penetration and broaden coverage across the District's major travel corridors.

4. The Commission's Finding that There Are Adequate Public Charging Opportunities in Wards 5, 7 and 8 Is Not Supported by the Record Evidence.

In recognition of the fact that broader access to public EVCS is needed to expand EV penetration in the District, Pepco proposed in the TE Program Application to deploy 35 Public

Neighborhood Smart Level 2 chargers³⁷ and 20 public DCFCs³⁸ in the District. Additionally, prior to filing its TE Program Application, the Company determined that there were only two public EVCS located in Ward 5 and none in Wards 7 and 8. Moreover, DOEE has found that these same Wards are the most adversely impacted by the negative environmental and air quality impacts of transportation.³⁹ To address this stark disparity in access to EVCS as well as the environmental justice concerns DDOE has identified, Pepco has proposed to allocate 20% of Offerings 7 and 8 to Wards 5, 7 and 8.

No party challenged the inequality of access to public EVCS in Wards 5, 7 and 8 that Pepco highlighted in the TE Program Application. As the Sierra Club noted in its comments:

[e]lectric vehicles have a critical part to play in the District's future, both to enable the District to meet its climate goals, and also to mitigate the heavy health burden imposed by air pollution from the transportation sector. States around the country are rapidly recognizing that utilities have an important and additive role in advancing transportation electrification, and doing so in a manner that will responsibly integrate new EV load and ensure benefits to all electric customers, including those underserved by the current transportation system and overburdened by transportation-related air pollution.⁴⁰

In Order No. 19898, however, the Commission rejected Pepco's request, finding that "the record evidence submitted identifies the health issues that impact these communities but does not clearly

³⁷ Offering 7.

³⁸ Offering 8.

³⁹ DOEE determined that Ward 5, Ward 7, and Ward 8 are the communities within the District most vulnerable and impacted by air pollution, based on the following factors: asthma rates in the District, mortality rates from cancer and heart disease, and income levels. *See The District of Columbia's Spending Plan for Volkswagen Settlement Funds (Beneficiary Mitigation Plan)* at pp. 4-8 (July 6, 2018).

⁴⁰ Initial Comments of the Sierra Club Regarding Pepco's Transportation Electrification Proposal at p. 15 (November 5, 2018). The Sierra Club also noted that Pepco's Offering 11 "to support electric buses by installing depot and on-route bus chargers has the potential to benefit communities that have been disproportionately burdened by diesel bus-related air pollution." *Id.* at 12.

indicate that the competitive market is not providing adequate EV charging opportunities.”⁴¹ Pepco respectfully submits that this finding is incorrect and is not supported by the record before the Commission.

In its TE Program Application and accompanying testimony, Pepco presented uncontroverted evidence that, of then 98 EVCS located in the District of Columbia, *none* were located in Wards 7 and 8, and only two (2) were located in Ward 5.⁴² Since the TE Program Application was filed nine months ago, 22 new public EVCS have been installed in the District, increasing the total number of public EVCS to 120.⁴³ Of those 22 new public EVCS, three were installed in Ward 5. However, to date, there are still no public EVCS deployed in Wards 7 and 8.⁴⁴ The numbers speak for themselves: the competitive market is not deploying EVCS in Wards 7 and 8 at all and only sparingly in Ward 5.

In rejecting Pepco’s proposal to deploy public EV charging stations in Wards 5, 7, and 8, the Commission stated it would revisit this issue in two years, after Pepco has submitted a EV Market Penetration Study “to assess the competitive market’s ability to expand EVCS deployment

⁴¹ Order No. 19898 at ¶49.

⁴² See TE Program Application at 13. Pepco later confirmed there were only two public EVCS located in Ward 5 at the time the Company’s TE Program Application was filed.

⁴³ A “public” EVCS was installed at Joint Base Anacostia–Bolling which is in Ward 8; however, as an active military base, it is not readily accessible by the general public and is not included in the 120 public EVCS.

⁴⁴ For example, although ChargePoint has public EVCS throughout the NW quadrant of the District as well as the downtown core, it has none in Wards 7 and 8. https://na.chargepoint.com/charge_point. Similarly, EVgo has some EVCS in the District, but its current presence is small. <https://www.evgo.com/charging-locations/>.

across the District.”⁴⁵ However, in order to achieve the District's electric vehicle adoption and decarbonization goals, transportation electrification infrastructure must be expanded to *all* areas in the District as quickly as possible. A two-year gap will only delay the District's response to needed transportation electrification infrastructure.⁴⁶

Accordingly, and for the reasons discussed above, Pepco respectfully requests that the Commission reconsider its decision in Order No. 19898 and permit Pepco to deploy, own and operate seven public Smart Level 2 EV chargers and four public DCFC in Wards 5, 7 and 8.

5. The Commission Failed to Clearly Explain Whether the Sale of Electricity by an EVCS Results in the Owner or Operator of the EVCS Being an Electricity Supplier and, if not, then D.C. Code § 34-1513(a) Would not Be Implicated by the Ownership or Operation of an EVCS.

In Order No. 19898, the Commission indicated that “the specific language of the EISA only exempted EVCS owners and operators *who are not selling electricity*, from the Commission's oversight, leaving charging station owners and operators *who sell electricity* within the

⁴⁵ Order No. 19898 at ¶49. The Commission directed Pepco to assess penetration and distribution of EVCS and EV drivers by Ward and report back to the Commission in two years.

⁴⁶ As DOEE commented, Offering 10, which would support taxi and rideshare charging, “supports DOEE's priority of reducing emissions from the most heavily used vehicles in the District.” The failure of the commercial market to supply publicly accessible EVCS District-wide, only minimal EVCS in Ward 5 and *no* EVCS in Wards 7 and 8, undermines all of the District's clean energy goals.

The District of Columbia Department of For-Hire Vehicles (DFHV), for example, provides licensing and financial incentives for EV taxicabs, but the drivers have very few options for charging their vehicles within the city limits. Many drivers complain that they must go to Virginia or Maryland to recharge, making EV taxicabs impractical and costly to operate. The lack of more public chargers, particularly for those dedicated to taxi and rideshare vehicles, jeopardizes the District's clean energy goals. See: <https://www.eenews.net/stories/1060110833> (“There's just one charging station in the District of Columbia that's available to cabbies at a reasonable price.”) See also: <https://wamu.org/story/17/08/14/no-place-charge-d-c-s-electric-cab-drivers-ask-help/>.

Commission’s jurisdiction as an electricity supplier.”⁴⁷ However, the Commission then appears to find that this distinction is contrary to the Council’s intent in enacting EISA and therefore holds “to further the DC Council’s intent, the Commission will implement a rulemaking to amend its rules and eliminate any licensing and bonding requirements on EVCS owners and operators that sell electricity to EVs.”⁴⁸

If, as it appears from Order No. 19898, the Commission’s current position is that the sale of electricity from an EVCS does not render one an electricity supplier, then such sales cannot result in Pepco being considered to being engaged in the business of an electricity supplier.⁴⁹

Stated simply, if the sale of electricity from an EVCS to an EV is not a sale of electricity supply, then Pepco should be free to make such sales, as its ownership and operation of an EVCS would not be engaging in the business of an electricity supplier and thus the limitations imposed by D.C. Code Section 34-1513(a) would not be implicated.⁵⁰

⁴⁷ Order No. 19898 at ¶19 (emphasis in original). The Commission quoted from the Public Notice that it published in the District of Columbia Register on March 20, 2015 which advised:

[I]f EV charging station owners and operators are not selling electricity, there is no need to obtain an electric supplier license from the Commission. However, if EV charging station owners and operators are selling electricity, i.e., setting a price to charge EV owners based on the actual number of 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.

Id. at n.40.

⁴⁸ *Id.* at ¶19.

⁴⁹ Order No. 19898 at n.51 (quoting from the Committee Report on Bill 19-746, “Energy Innovation and Savings Amendment Act of 2012”, Committee on the Environment, Public Works and Transportation, Council of the District of Columbia (October 24, 2012)). The Commission did not address in any detail why it was reversing the position it announced in its earlier March 20, 2015 Public Notice.

⁵⁰ D.C. Code § 34-1513(a) provides: “Other than its provision of standard offer service, the electric company shall not engage in the business of an electricity supplier in the District of Columbia except through an affiliate.”

While excluding all other EVCS owners and operators, Order No. 19898 would apparently continue to classify Pepco as an electricity supplier if it were to own or operate EVCS. There is no rationale for such disparate treatment, nor any explanation provided in Order No. 19898 that would justify such treatment.

B. CLARIFICATION

The following sections provide Pepco's requests for clarification of Order No. 19898. The clarifications requested fall into two main categories (i) clarifications required for specific directives and (ii) clarifications regarding the timing of various reporting requirements.

1. The Commission Should Clarify What Is Meant by Disaggregated EV Rates.

In Order No. 19898, the Commission directed that the EV rates established for the TE Program are "to be disaggregated into SOS and distribution components to ensure competitive access to the distribution system."⁵¹ However, the Order also directs Pepco to file a complete updated EV Tariff that provides detailed price information for generation, transmission, and distribution for the approved Offering 1, the Whole House Time of Use offering.⁵²

As a threshold matter, it is not clear what "disaggregation" of EV rates means outside of the approved Offering 1 tariff for which Pepco is directed to provide more detail. The only approved offering in the Order for which Pepco will provide a distribution, transmission, or generation rate is Offering 1, which is an SOS-only rate. Thus, it is unclear what other "disaggregation" the Commission would expect to see or for which offering.

⁵¹ Order No. 19898 at ¶21.

⁵² *Id.* at ¶36.

Moreover, it is unclear what the Commission means regarding disaggregation of components in order to “ensure competitive access to the distribution system.”⁵³ As stated above, Offering 1 is an SOS-only rate and not a rate open to customers who have chosen third-party (competitive) suppliers. The Offering forecloses the use of alternate sources of supply because the time-of-use aspect of the rate is on the supply rate, not the distribution component(s).

2. The Commission Should Clarify the Process to Be Followed for the Identification of Locations for and the Selection of Owners/Operators of EVCS Accessible for Taxis and Rideshare Services under Offering 10.

In Order No. 19898, the Commission acknowledged the importance of electrification of taxis and ridesharing vehicles if the District is to achieve its goals of reducing greenhouse gases.⁵⁴ To this end, the Commission approved “Offering 10 as it relates to Pepco’s deployment of ‘make-ready infrastructure’ for up to ten (10) Smart Level II EV chargers and two (2) DCFC accessible for taxis and rideshare services.”⁵⁵ The Commission also directed Pepco “to work with the appropriate District Government Agencies to select EVCS locations.”⁵⁶

To avoid any ambiguity regarding this latter aspect of the Order, Pepco requests that the Commission clarify the process by which locations for the EVCS accessible for taxis and rideshare services are to be selected. Pepco’s operating assumption is that the District (the District Department of Transportation (“DDOT”) and/or the DFHV), with input from Pepco, will determine the locations the District believes will be optimal for the installation of EVCS accessible for taxis and rideshare services. However, Order No. 19898 does not address that a District

⁵³ *Id.* at ¶21.

⁵⁴ Order No. 19898 at ¶51.

⁵⁵ *Id.*

⁵⁶ *Id.*

government agency (such as DDOT, the DFHV or even the Commission itself) should then issue solicitations for the installation and operation of EVCS at these locations and manage the selection process.

Without clearer direction from the Commission, it is possible that the process the Commission envisions may not be effective in attaining the goals set out in the Order without more clarification. Moreover, there may be criteria that the Commission believes should be considered as part of the selection process. For example, interoperability will be critical to ensure the broadest possible use. Ready access to the chosen locations by taxis, rideshare vehicles or other EVs must also be taken into account. In addition, the process would benefit from clarification as to whether taxi fleet owners or rideshare operators are to have input into this process. Finally, unless the EVCS are installed on property owned by the District, the selection of locations will require the participation of private property owners or the federal government. In such circumstances, the property owner may insist on making or approving the selection of the EVCS owner/operator. In sum, there are myriad issues that require more clarification in order to allow this offering to meet the goals envisioned by the Commission. The Company requests clarification from the Commission on how it intends the site selection process, the easement process, and the EVCS owner/operator selection process to be undertaken and by whom.⁵⁷

3. The Commission Should Clarify Its Approval of Offering 11 to Correct an Error in the Charging Stations Specified in Order No. 19898.

⁵⁷ It is also important that there is a clear understanding of the Company's role, if Pepco is asked to undertake or assist in the selection process, as these costs will need to be estimated and included in the program coordination and management expenses.

Although in initially describing Offering 11, Order No. 19898 correctly identified it as a proposal to “[i]ninstall five (5) bus depot charge[r]s and one (1) on-route charger to support the use of Electric Buses.”⁵⁸ In its subsequent discussion of the offering, Order No. 19898 inaccurately describes the Company’s proposal as the installation of “five (5) Level II charging stations and one (1) DC Fast Charging station for a total of six (6) EVCS in selected bus depots and along bus routes.”⁵⁹ Order No. 19898 cites to the testimony of Company Witness Stewart in connection with this erroneous description;⁶⁰ however, that testimony indicates that, because of the size of the battery packs used in electric buses, DCFCs are the only type of charging stations that will work for Offering 11.⁶¹ Indeed, rather than a standard 50 kW DCFC, a 125 kW DCFC would be installed in the bus depot and the on-route charger would be 500 kW.

Order No. 19898 indicates that the Commission’s intent was to approve “Offering 11 as it relates to Pepco’s deployment of make-ready infrastructure.”⁶² Pepco therefore requests that the Commission clarify that the reference in Order No. 19898 to Level II charging stations was an error, and the Commission actually intended to approve the deployment of make-ready infrastructure for 6 DC Fast Charging stations (five 125 kW units in bus depots and one 500 kW on-route unit) as the Company had proposed.⁶³

⁵⁸ Order No. 19898 at ¶4.

⁵⁹ *Id.* at ¶52. See also *id.* at ¶53 (“On this basis, the Commission approves Offering 11 as it relates to Pepco’s deployment of make-ready infrastructure, for five (5) Smart Level II charging stations and one (1) DC Fast Charging station”), ¶72 (“five (5) Level II charging stations and one (1) DC Fast Charging station for public electric buses”)

⁶⁰ *Id.* at n.108.

⁶¹ PEPCO (B): Stewart Direct at 22.

⁶² Order No. 19898 at ¶53.

⁶³ TE Program Application at 38.

4. The Commission Should Clarify that Any Public EVCS for which Pepco Provides Make-Ready Infrastructure under the TE Program Must Permit Charging by a Wide Range of EVs and Be Readily Accessible.

Pepco intended that the public EVCS it proposed as part of the TE Program would be compatible with a broad range of EVs⁶⁴ and would also be accessible by most potential users⁶⁵ to maximize their availability and allow for a seamless charging experience. This will encourage the fluidity of travel using EVs within the District, thereby furthering the District's transportation electrification goals. If the Commission does not alter its determination in Order No. 19898 that Pepco cannot own and operate public EVCS, then the Commission should clarify that any public EVCS for which Pepco provides make-ready infrastructure must permit readily accessible charging by a broad range of EVs in as seamless a manner as possible.⁶⁶

As the Commission is aware, some EVCS only permit charging by EVs from certain manufacturers. Unless the Commission mandates some degree of interoperability at public EVCS using make-ready infrastructure, the incongruous result of Order No. 19898 may be that Pepco customers pay for the make-ready infrastructure necessary to install public EVCS that can then only be used by the EVs of a particular manufacturer. Such an outcome would thwart the goals of

⁶⁴ Unlike gas stations, which are readily accessible to all gasoline powered vehicles regardless of manufacturer and without the driver having to have an account for that particular brand of gasoline, the use of many EV charging stations requires that the EV driver have an account with the EVCS operator. This lack of interoperability makes the public EV charging experience less seamless and hampers the fluidity of travel.

⁶⁵ As noted in footnote 41 above, many existing EVCS are inaccessible to public users due to locations within parking garages, office buildings or residential buildings. Taxis and ride-share drivers are particularly impacted by lack of readily accessible chargers.

⁶⁶ For example, the Commission could require that public EVCS deployed as part of this program allow access even if the EV operator does not have an account with the EVCS vendor so as to permit convenient access to the EVCS by any EV operator.

the Clean Energy Act and impair the widespread use of EVs and transportation electrification. Pepco respectfully requests that the Commission clarify that any public EVCS for which Pepco provides make-ready infrastructure in accordance with Order No. 19898 must be truly publicly accessible and designed to allow charging by a broad range of EVs.⁶⁷

5. The Commission Should Clarify That the Company Should Coordinate Efforts with The District To Obtain Alternate Sources Of Funding For EVCS Make-Ready Infrastructure.

In Order No. 19898, the Commission indicated “that Pepco should explore additional private and public partnerships to alleviate the cost to the District’s ratepayers for the EVCS make-ready infrastructure with a focus on prioritizing the expenditure of ratepayers funds on programs that will provide the most public benefits to District residents.”⁶⁸ The Commission also noted that the Clean Energy Act “recommends that the District pursue funding options to subsidize electric charging station infrastructure investments.”⁶⁹

The Company agrees that such efforts to offset some of the costs of EVCS make-ready infrastructure are important and should be encouraged. In light of the common goals of the District and the Company, however, it would behoove both to work together to pursue funding sources so as to avoid competing (and thus possibly counterproductive) efforts. To this end, rather than focusing solely on private partnerships to subsidize EVCS make-ready infrastructure, Pepco requests that the Commission clarify its directive in Order No. 19898 and direct the Company to

⁶⁷ The Commission should also require that all public EVCS installed under this program should provide metrics and service-level data to the Commission to evaluate usage metrics and operations data for ensuring maintenance and workability. This data will allow the Commission to evaluate the effectiveness of this program.

⁶⁸ Order No. 19898 at ¶60.

⁶⁹ *Id.*

assist the District's efforts to obtain alternate sources of funding for EVCS make-ready infrastructure (including grants from the federal government, foundations and other non-profit organizations), develop a budget for Pepco's activities in support of this effort and file a status report with the Commission on the effort by January 1, 2020.

6. **The Commission Should Clarify That Pepco May Submit A New Program Coordination and Management Expenses Budget Encompassing Any Clarifications or Revisions Directed by Order No. 19898 or any Subsequent Order.**

The Customer Education & Outreach Plan that Pepco proposed as part of its TE Program Application provided "a focused approach to meet program participation levels, inform customers about electric vehicle opportunities, and to help raise awareness about the benefits of electric transportation to its customers."⁷⁰ As is discussed above, Order No. 19898 contemplates a modification of Pepco's activities, including working group processes, seeking to obtain alternate sources of funding for EVCS make-ready infrastructure, and working with District agencies to identify locations for EVCS, activities that differ from those included in Pepco's Customer Education & Outreach Plan and the budget the Company submitted with its TE Program Application. Moreover, if the Commission clarifies Order No. 19898 as the Company has suggested, there may be further changes in areas of engagement and coordination as well as the selection of locations for (and possibly owners/operators of) EVCS accessible for taxis and rideshare services.

Once the Commission has clarified its intent in these various areas, Pepco requests that the Commission also clarify that the Company can submit a new program coordination and

⁷⁰ PEPCO (A): Clark Direct at 20. *See also* TE Program Application at 40-41; PEPCO (C): Murphy Direct.

management expenses budget that would encompass these modified roles to the Commission for its review and that these expenses would then be included in the regulatory asset established by Order No. 19898 as they are incurred.⁷¹

7. **The Commission Should Clarify that All EVCS Make-Ready Infrastructure Expenditures Are to Be Included in the Regulatory Asset Established in Order No. 19898.**

In Order No. 19898, the Commission noted that “Pepco does not have approved EV distribution rates and therefore does not address the deployment of EV infrastructure up to the EVCS in its tariffs.”⁷² It directed Pepco “to file a proposal to update its tariffs to cover “make-ready” infrastructure to facilitate EVCS deployment This approach may involve possible changes in General Terms and Conditions, if necessary”⁷³ The Commission indicated that the changes were to be applicable to all EVCS owners “to enable fair and equitable access.”⁷⁴ Thus, once implemented, this directive will be effective for all EVCS installations. However, the Commission’s subsequent discussion regarding cost recovery is limited to only approved offerings as it states: “The Commission approves establishment of a regulatory asset to track EV expenditures for the make-ready investments *related to the approved offerings* and for the coordination/management expenses such as billing, customer enrollment and outreach, program management, system interface and updates, analysis and reporting.”⁷⁵

⁷¹ The timing of this submission is addressed in Section II.B.9 below.

⁷² Order No. 19898 at ¶31.

⁷³ *Id.* at ¶33.

⁷⁴ *Id.*

⁷⁵ *Id.* at ¶58 (emphasis added).

To resolve this ambiguity, Pepco requests that the Commission clarify that all expenditures by Pepco for make-ready infrastructure are to be tracked in the regulatory asset.

8. The Commission Should Clarify and/or Modify the Timing of Various Reports under Order No. 19898.

Order No. 19898 includes numerous reporting obligations for Pepco, ranging from 30 days following the Order to semi-annual reporting that will occur up to five years post-program implementation. Given the nature of and timelines associated with these reporting requirements, Pepco requests several clarifications and/or modifications.

Specifically, Pepco requests that the Commission modify the timelines associated with filing (i) an updated Implementation Plan, which includes any necessary updates to its tariff for “make ready” infrastructure as well as necessary tariffs for Offerings 1, 7, 8, 10, and 11;⁷⁶ and, (ii) updated cost information for program coordination and management expenses.⁷⁷ Pepco requests that these timelines be extended to ninety (90) days after the Commission’s order on reconsideration.

Pepco requests such clarification and/or modification in order to streamline the reporting process. This specific request is based on the fact that many of these directives can be

⁷⁶ Order No. 19898 at ¶61 (“In paragraph 33, the Commission directed Pepco to file a proposal to update its tariffs to cover “make-ready” infrastructure to facilitate EVCS deployment within thirty (30) days of the date of this Order. Additionally, to ensure an accurate baseline, Pepco is directed to file, within thirty (30) days of the date of this Order, an Updated Implementation Plan, providing timelines for the filings of relevant tariffs with the Commission, anticipated timelines for meeting with relevant District Government agencies and stakeholders, and when the various approved Offerings will become available in the District. Pepco’s plan should further detail how it will seek involvement of certified business enterprises in the TE Program.”)

⁷⁷ *Id.* at ¶58 (“Therefore, Pepco is directed to refile the program coordination and management expenses such as billing, customer enrollment and outreach, program management, system interface and updates, analysis and reporting for Regulatory Asset treatment within sixty (60) days of this Order.”).

accomplished and managed on the same general timetable. Moreover, as discussed above in Section II.B.7, Order No. 19898 markedly modifies the TE Program originally filed by the Company and will require, in most instances, more time than was envisioned by the Order to redevelop certain budget estimates and workstreams.

In addition, Pepco requests clarification that all other reporting directives that are tied to the date of Order No. 19898 for compliance purposes be tied instead to the date of the Commission's order on this Reconsideration Application. For example, and as stated above, Order No. 19898 directs the TE Working Group to meet and confer regarding Offerings 4 and 5 within 45 days and file a report within 180 days. Pepco respectfully requests that the due dates for these and any other items—unless explicitly part of this reconsideration or clarification—be modified and tied instead to the Commission's order on this Reconsideration Application.

III. CONCLUSION

Pepco respectfully requests that the Commission provide the clarifications sought herein and reconsider its determinations in Order No. 19898 as discussed above and issue the relief requested herein.⁷⁸

Respectfully submitted,

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⁷⁸ On April 26, 2019, the Commission issued an Errata to Order No. 19898 to correct an error in Paragraph 33 of the Order. Formal Case Nos. 1130 & 1155, Order No. 19913 (April 26, 2019).

CERTIFICATE OF SERVICE

I hereby certify that a copy of Potomac Electric Power Company's Application for Reconsideration and Clarification of Order No. 19898 was served this May 13, 2019 on all parties in Formal Case No. 1130 and 1155 by electronic mail.

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