

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

**ORDER**

**June 27, 2019**

**FORMAL CASE NO. 1156, IN THE MATTER OF THE APPLICATION OF POTOMAC ELECTRIC POWER COMPANY FOR AUTHORITY TO IMPLEMENT A MULTIYEAR RATE PLAN FOR ELECTRIC DISTRIBUTION SERVICE IN THE DISTRICT OF COLUMBIA, Order No. 19966**

**I. INTRODUCTION**

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) grants the Petitions to Intervene of the U.S. General Services Administration (“GSA”), Washington Gas Light Company (“WGL”), the Apartment and Office Building Association of Metropolitan Washington (“AOBA”), the District of Columbia Water and Sewer Authority (“DC Water”), International Brotherhood of Electrical Workers, Local Union 1900 (“IBEW”), the District of Columbia Government (“District Government”), the Laborers’ International Union of North America (“LiUNA”), the Small Business Utility Advocates (“SBUA”), and the Maryland DC Virginia Solar Energy Industries Association (“MDV- SEIA”).<sup>1</sup>

**II. BACKGROUND**

2. On May 30, 2019, the Potomac Electric Power Company (“Pepco” or “Company”) filed its application for approval to increase rates through the implementation of a Multiyear Rate Plan (“MRP”) for its electric distribution service in the District of Columbia (“Application”) for

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<sup>1</sup> *Formal Case No. 1156, In the Matter of the Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia*, Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service (“*Formal Case No. 1156*”), The U.S. General Services Administration’s Petition to Intervene and Notice of Appearance, filed June 11, 2019 (“GSA’s Petition”); *Formal Case No. 1156*, Washington Gas Light Company’s Petition for Leave to Intervene and Notice of Appearance, filed June 12, 2019 (“WGL’s Petition”); *Formal Case No. 1156*, Petition to Intervene of the Apartment and Office Building Association of Metropolitan Washington, filed June 18, 2019 (“AOBA’s Petition”); *Formal Case No. 1156*, District of Columbia Water and Sewer Authority Petition to Intervene and Notice of Appearance, filed June 18, 2019 (“DC Water’s Petition”); *Formal Case No. 1156*, Petition for Leave to Intervene and Notices of Appearance on Behalf of the International Brotherhood of Electrical Workers, Local 1900, filed June 18, 2019 (“IBEW’s Petition”); *Formal Case No. 1156*, District of Columbia Government’s Petition for Leave to Intervene, filed June 19, 2019 (“District Government’s Petition”); *Formal Case No. 1156*, Petition to Intervene and Notice of Appearance of the Baltimore Washington Construction and Public Employees Laborers’ District Council, filed June 19, 2019 (“LiUNA’s Petition”); *Formal Case No. 1156*, Petition to Intervene of Small Business Utility Advocates, filed June 19, 2019 (“SBUA’s Petition”); and *Formal Case No. 1156*, Petition to Intervene of the Maryland DC Virginia Solar Energy Industries Association, filed June 19, 2019 (“MDV-SEIA’s Petition”).

the years 2020 through 2022.<sup>2</sup> The Application includes a proposal for an MRP and performance based rate (“PBR”) plan.<sup>3</sup>

3. On June 13, 2019, the Commission issued Order No. 19956 that, among other things, set a deadline of June 19, 2019, for filing Petitions to Intervene.<sup>4</sup> By the filing deadline, the following parties filed Petitions to Intervene: GSA, WGL, AOBA, DC Water, IBEW, the District Government, LiUNA, SBUA, and MDV- SEIA. No objections were filed to any of these petitions.

### III. DISCUSSION

4. Any person with a substantial interest in a matter may seek to intervene pursuant to 15 DCMR § 106.1.<sup>5</sup> Intervention is not a matter of right. Instead, pursuant to Section 106.5, intervention is entirely within the discretion of the Commission. The exercise of that discretion is fact-specific and guided by the same practical and equitable concerns as the courts.

5. As we explained in one of the Orders in *Formal Case No. 1119*, the Exelon/Pepco merger case:

Under our rules, an intervenor is a party to a proceeding and, as such, has the right to file testimony, participate in the discovery process, present and cross-examine witnesses, participate in settlement discussions, and file motions and briefs in the subject proceeding. These privileges go to the heart of participation in an administrative proceeding and are indicative of the important role that intervenors have, as parties, in our process. We therefore limit intervenor status to those who have a substantial interest in the proceeding. Historically, we have been liberal in our interpretation of “substantial interest” but a threshold indicator is a demonstration of a particular interest in the effect of a proceeding in the District of Columbia.<sup>6</sup>

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<sup>2</sup> *Formal Case No. 1156*, Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service, filed May 30, 2019.

<sup>3</sup> Application at 4-6.

<sup>4</sup> *Formal Case No. 1156*, Order No. 19956, ¶ 5.

<sup>5</sup> 15 DCMR § 106.1 (1981). The provision reads:

Any person as defined by this chapter, not named as a party in the pleadings initiating a proceeding but having a substantial interest therein, may petition the Commission for leave to intervene.

<sup>6</sup> See *Formal Case No. 1119*, *In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction* (“*Formal Case No. 1119*”), Order No. 17597, ¶¶ 10-11, rel. August 22, 2014. See also, *Formal Case No. 1145*, *In the Matter of Applications for Approval of Biennial Underground Infrastructure Improvement Projects Plans and Financing Orders*, Order No. 19086, ¶ 10, rel. September 6, 2017.

6. As quoted above, in determining “substantial interest,” a threshold indicator is a demonstration of a particular interest in the effect of a proceeding in the District of Columbia. In the context of this proceeding, an interested person seeking intervenor status must demonstrate that its substantial interest is related to issues within the authority of this Commission within the District of Columbia. We are constrained by both our rules, our precedent, and any ruling by the court in ruling on petitions to intervene.<sup>7</sup> The Commission has established a two-step process for determining whether an intervenor should be granted party status. First, the intervenor must establish that it has a substantial interest in the proceeding, and second, an intervenor must show that it has a “perspective so unique that only party status would allow it to have its view adequately represented.”<sup>8</sup>

7. **GSA’s Petition.** GSA represents the consumer interests of the federal executive agencies in proceedings before state regulatory bodies, pursuant to 40 U.S.C. §501(c). GSA asserts in support of its petition for intervention that federal executive agencies have a substantial interest in this proceeding because they own and operate numerous buildings and facilities within the District and annually purchase millions of dollars of electricity.<sup>9</sup>

8. **WGL’s Petition** WGL asserts that as a public utility providing natural gas retail sales and delivery service in the District and regulated by the Commission, it has a substantial interest in the outcome of this proceeding. WGL contends that Pepco’s Multiyear Rate Plan is a novel approach to ratemaking in the District and could have significant implications for future rate cases filed by WGL. WGL adds that the Commission’s decision in this case will be precedential and may impact the options available to WGL for rate setting. WGL concludes that as the only other public utility under traditional rate regulation in the District, no other party can represent its interest in this matter.<sup>10</sup>

9. **AOBA’s Petition.** AOBA states that its members have a substantial interest in this case because they own, manage and/or control office buildings and apartment housing units located in the District which are served by Pepco. AOBA further asserts that its members own or manage approximately 82.4 million square feet of commercial office space and over 77,000 apartment units in the District and receive service from Pepco under its non-residential and master-metered apartment rate schedules.<sup>11</sup> AOBA contends that its members will be directly affected

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<sup>7</sup> *Rhode Island & M Associates v. Public Service Commission*, 117 A.3d 582 at 3 (unpublished memorandum opinion) (D.C. App. 2015).

<sup>8</sup> *Rhode Island & M Associates*, *supra*. See also, *Formal Case No. 1116, In the Matter of the Application for Approval of a Triennial Underground Infrastructure Improvement Projects Plan*, Order No.17625, ¶ 10, rel. September 9, 2014; and *Formal Case No. 1119*, Order No. 18058, ¶ 28, rel. December 17, 2015.

<sup>9</sup> *Formal Case No. 1156*, GSA’s Petition at 1.

<sup>10</sup> *Formal Case No. 1156*, WGL’s Petition at 1-2.

<sup>11</sup> *Formal Case No. 1156*, AOBA’s Petition at 1.

by the Company's proposed approval to increase rates through the implementation of Pepco's MRP for its electric distribution service in the District for the years 2020 through 2022.<sup>12</sup> AOBA avers that its members are directly affected by the Company's revenue requirements, as well as by the allocation of those revenue requirements among rate classes. AOBA asserts that, as a result, its members are highly sensitive to the magnitude of Pepco's revenue requirements and the manner in which Pepco allocates its cost of service and revenue requirements among rate classes, and the proposed structure of the Company's charges for service within the non-residential and master-metered apartment rate classes.<sup>13</sup> AOBA continues that it can provide relevant and necessary information that is germane to the issues in this proceeding, including but not limited to, revenue requirements issues, rate of return, class cost of service allocations, and rate design impacting distribution rates in the District. AOBA submits that no other party can adequately represent the interests of apartment and office building owners and managers. AOBA adds that it has been an intervenor in every major Pepco rate proceeding before this Commission over the last 40 years, including the Company's three last base rate proceedings, *i.e.*, *Formal Case Nos. 1150, 1139 and 1103* and the proceeding that addressed the merger of Pepco Holdings, Inc. and Exelon, *i.e.*, *Formal Case No. 1119*.<sup>14</sup>

**10. DC Water's Petition.** DC Water is an independent authority of the District Government, with a separate legal existence within the District Government. DC Water "provides retail water and wastewater services to more than 600,000 District residents, 17.8 million annual visitors to the District, and 700,000 people who are employed in the District."<sup>15</sup> DC Water states that it is one of Pepco's largest customers and serves many of the same District residents, businesses and governmental entities served by PEPCO, and will be directly impacted by any determinations the Commission may make regarding Pepco's Application. DC Water asserts that its interests are unique in that, among certain Pepco rate classes, it is the largest customer, if not the only customer. Accordingly, DC Water contends that no other party can adequately represent DC Water's interests and intervention is appropriate.<sup>16</sup>

**11. IBEW's Petition.** IBEW asserts that it is the bargaining representative for many of Pepco's employees, and IBEW and Pepco are parties to a collective bargaining agreement that sets forth covered employees' wages, hours, and other terms and conditions of employment.<sup>17</sup> Pepco's proposed MRP, which IBEW states is based, in part, on Pepco's predicted labor costs, will affect Pepco's revenue from 2020 through 2022. IBEW asserts that Pepco's revenue will directly affect the funds Pepco has available for operational costs, including labor costs. IBEW argues that Pepco's Application includes a proposal for a

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<sup>12</sup> *Formal Case No. 1156*, AOBA's Petition at 2.

<sup>13</sup> *Formal Case No. 1156*, AOBA's Petition at 2.

<sup>14</sup> *Formal Case No. 1156*, AOBA's Petition at 2.

<sup>15</sup> *Formal Case No. 1156*, DC Water's Petition at 2-3.

<sup>16</sup> *Formal Case No. 1156*, DC Water's Petition at 3.

<sup>17</sup> *Formal Case No. 1156*, IBEW's Petition at 1-2.

performance-based rate plan that sets forth certain operational incentive mechanisms, which will directly affect employees represented by IBEW.<sup>18</sup> IBEW contends that it has a direct and substantial interest in Pepco's revenue and operational goals, and in ensuring that Pepco is properly staffed in order to achieve those operational goals. It concludes that no party to this proceeding adequately represents the interests of IBEW and the men and women employed by Pepco.<sup>19</sup>

**12. The District Government's Petition.** The District Government states that it is a municipal corporation created by an act of Congress and is the local government for the territory constituting the permanent seat of the government of the United States and is empowered to sue and be sued.<sup>20</sup> It states in its Petition that it has intervened and participated as a party in every Pepco rate case before the Commission over several decades.<sup>21</sup> The District Government argues that it has a direct and substantial interest in this proceeding because it is a large consumer of electric distribution service provided by Pepco under commercial class rate schedules.<sup>22</sup> The District Government adds that it also takes electricity service under various other rate schedules unique to the District like Street Lighting Energy (SL) and Traffic Signals (TS).<sup>23</sup> In addition, the District Government states that through the Department of Energy & Environment ("DOEE"), it also has a substantial interest in this proceeding as it is statutorily responsible for promoting "the general welfare of the public by assuring coordinated and efficient management of the District's energy policy and programs," including "the development of a comprehensive energy plan, policy, and programs for the District of Columbia," such as the Clean Energy DC Plan.<sup>24</sup> In this capacity, the District Government argues that it has a substantial interest in ensuring that Pepco's first-ever proposal to enact an MRP with Performance Incentive Mechanisms does not hinder and, in fact, advances the District's energy and climate policies.<sup>25</sup> In addition, Pepco seeks ratepayer recovery of its environmental remediation costs for its Benning Road facility stemming from a consent decree entered into with the District Government.<sup>26</sup> The District Government contends that it has a direct and substantial interest in ensuring that Pepco does not improperly or inequitably shift to ratepayers (*i.e.* residents) costs that should be properly borne by Pepco's shareholders and insurance carriers to remediate harm, or potential harm, to the health of District residents and the

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<sup>18</sup> *Formal Case No. 1156*, IBEW's Petition at 2.

<sup>19</sup> *Formal Case No. 1156*, IBEW's Petition at 2.

<sup>20</sup> *Formal Case No. 1156*, District Government's Petition at 1.

<sup>21</sup> *Formal Case No. 1156*, District Government's Petition at 1.

<sup>22</sup> *Formal Case No. 1156*, District Government's Petition at 1.

<sup>23</sup> *Formal Case No. 1156*, District Government's Petition at 1.

<sup>24</sup> *Formal Case No. 1156*, District Government's Petition at 2.

<sup>25</sup> *Formal Case No. 1156*, District Government's Petition at 2.

<sup>26</sup> *Formal Case No. 1156*, District Government's Petition at 2, citing to testimony from Pepco Witness Sanford.

environment.<sup>27</sup> Through its petition to intervene, the District Government seeks the right to fully participate in this proceeding.<sup>28</sup>

13. **LiUNA's Petition.** LiUNA is a labor union serving the District of Columbia by and through the Baltimore Washington Construction and Public Employees Laborers' District Council ("BWLDC").<sup>29</sup> LiUNA states that through the BWLDC it represents more than 6,300 members in the Washington, D.C. metropolitan area, including approximately 800 members who reside in the District and who will be directly impacted by the outcome of this proceeding.<sup>30</sup> LiUNA represents that through its training facilities, it recruits, screens, and trains workers for construction positions with LiUNA signatory contractors, some of whom are contractors of Pepco. LiUNA argues further that through its broader advocacy role in the District community, it communicates with and advocates for construction workers who are not members of LiUNA, but who work for Pepco construction contractors.<sup>31</sup> LiUNA states that through its experience in the construction industry in the District and its broader experience building and maintaining utility and energy infrastructure locally and nationally, provides it with a unique and different voice from that of the general public, and no other party can represent its interests before the Commission.<sup>32</sup> LiUNA contends that it has a significant interest in the subject matter of this proceeding, and its members will be affected by any order entered by the Commission on the requested relief. LiUNA also believes it can provide relevant and necessary information concerning issues related to the proceeding, including wage rates, training requirements, construction standards, local workforce development, and third-party contracting practices that may impact the cost of reliability construction projects, as well as the impact of rate increases on LIUNA members who reside in the District.<sup>33</sup>

14. **SBUA's Petition.** SBUA states that it is a non-profit organization whose mission and corporate purpose is to represent, protect, and promote the interests of small business utility customers.<sup>34</sup> SBUA asserts that maintaining reasonable revenue requirements and an electricity rate structure that facilitates the success of small commercial customers with cost effective utilities is central to the mission of SBUA. At this stage in the proceeding, SBUA contends that it would be the only party focusing exclusively on the small business community. It argues that the interests of small business diverge from residential ratepayers and large businesses in significant ways, including on issues of revenue requirements, utility expenditures, revenue

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<sup>27</sup> *Formal Case No. 1156*, District Government's Petition at 2.

<sup>28</sup> *Formal Case No. 1156*, District Government's Petition at 2.

<sup>29</sup> *Formal Case No. 1156*, LiUNA's Petition at 1.

<sup>30</sup> *Formal Case No. 1156*, LiUNA's Petition at 1-2.

<sup>31</sup> *Formal Case No. 1156*, LiUNA's Petition at 2.

<sup>32</sup> *Formal Case No. 1156*, LiUNA's Petition at 2.

<sup>33</sup> *Formal Case No. 1156*, LiUNA's Petition at 2.

<sup>34</sup> *Formal Case No. 1156*, SBUA's Petition at 1.

allocation, rate structure, marginal costs, and on other energy matters.<sup>35</sup> SBUA claims that because small businesses usually cannot afford their own representation, it believes small businesses are not adequately represented at Commission proceedings, arguing that small businesses are integral to the health of Washington D.C.'s economy and many are within Pepco's service area. SBUA claims that there are approximately 71,146 small businesses in the District of Columbia, comprising 98.2% of all District businesses, 48.5% of all District employees and 240,441 total workers.<sup>36</sup> SBUA maintains that utilities are one of the most significant expenses for small businesses and an issue of major concern, claiming that the use of revenues by major utilities and the related utility costs have significant impacts on small businesses and therefore impact the District's gross state output, jobs, labor income, and indirect business taxes.<sup>37</sup> SBUA expects its participation will assist the Commission in conducting a thorough evaluation of Pepco's revenue and base rate proposals. SBUA's anticipated participation in the case will include addressing issues of importance to SBUA's constituency, such as ensuring adequate customer service and outreach to small commercial customers, encouraging spending policies that promote contract opportunities for small businesses, and ensuring human resource and other high cost areas that are rate based and paid for by ratepayers, including small commercial customers, are reasonable.<sup>38</sup>

15. **MDV-SEIA's Petition.** MDV-SEIA states that its members design, sell, integrate, install, maintain and finance solar energy equipment for residential, commercial, and institutional customers in the District, and sell the energy generated by the equipment to customers served by Pepco.<sup>39</sup> MDV-SEIA argues that it has a substantial interest in this proceeding because Pepco's rates and charges directly affect MDV-SEIA's members and their customers in the District. With the passage of the 2018 Clean Energy DC Omnibus Amendment Act, the District is moving towards 100% renewable energy by 2032.<sup>40</sup> MDV-SEIA contends that Pepco's rates and charges considered in this proceeding, including the residential customer charge, will affect the economics of solar energy development in the District, which will directly impact MDV-SEIA's members and their customers.<sup>41</sup> Lastly, MDV-SEIA believes that through its intervention in the case, it can provide relevant and necessary information on issues germane to this proceeding and submits that no other party can adequately represent the interests of MDV-SEIA and its members.<sup>42</sup>

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<sup>35</sup> *Formal Case No. 1156, SBUA's Petition at 1.*

<sup>36</sup> *Formal Case No. 1156, SBUA's Petition at 2.*

<sup>37</sup> *Formal Case No. 1156, SBUA's Petition at 2.*

<sup>38</sup> *Formal Case No. 1156, SBUA's Petition at 2.*

<sup>39</sup> *Formal Case No. 1156, MDV-SEIA's Petition at 1.*

<sup>40</sup> *Formal Case No. 1156, MDV-SEIA's Petition at 2.*

<sup>41</sup> *Formal Case No. 1156, MDV-SEIA's Petition at 2.*

<sup>42</sup> *Formal Case No. 1156, MDV-SEIA's Petition at 2.*

**IV. DECISION**

16. The Commission believes that the petitions to intervene of GSA, WGL, AOBA, DC Water, IBEW, the District Government, LiUNA, SBUA, and MDV-SEIA, demonstrate that each of the petitioners therein has a substantial interest in the proceeding and will present a unique perspective that will aid the Commission in its consideration of this case. Each of the entities requesting intervention have participated in prior rate cases and we see no reason to disallow their participation in this proceeding. Moreover, all of the petitions are unopposed. Therefore, the petitions to intervene filed by GSA, WGL, AOBA, DC Water, IBEW, the District Government, LiUNA, SBUA, and MDV-SEIA are granted.

**THEREFORE, IT IS ORDERED THAT:**

17. The Petitions to Intervene filed by U.S. General Services Administration, Washington Gas Light Company, the Apartment and Office Building Association of Metropolitan Washington, the District of Columbia Water and Sewer Authority, the International Brotherhood of Electrical Workers, Local Union 1900, the District of Columbia Government, the Laborers' International Union of North America, the Small Business Utility Advocates, and the Maryland DC Virginia Solar Energy Industries Association are **GRANTED**.

**A TRUE COPY:****BY DIRECTION OF THE COMMISSION:****CHIEF CLERK:****BRINDA WESTBROOK-SEDGWICK  
COMMISSION SECRETARY**