

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

August 2, 2019

**FORMAL CASE NO. 1130, IN THE MATTER OF THE INVESTIGATION INTO
MODERNIZING THE ENERGY DELIVERY SYSTEM FOR INCREASED
SUSTAINABILITY,**

and

**FORMAL CASE NO. 1155, IN THE MATTER OF THE APPLICATION OF THE
POTOMAC ELECTRIC POWER COMPANY FOR APPROVAL OF ITS
TRANSPORTATION ELECTRIFICATION PROGRAM, Order No. 19983**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) grants in part and denies in part the Potomac Electric Power Company’s (“Pepco”) Application for Reconsideration and Clarification of Order No. 19898 (“Pepco’s Application” or “Pepco’s Application for Reconsideration”).¹

II. BACKGROUND

2. On September 6, 2018, Pepco filed its Application for Approval of its Transportation Electrification Program (“TE Program” or “TE Application”).² The public comment period regarding Pepco’s TE Application closed on January 14, 2019.³ On April 12, 2019, after a thorough review of the extensive public comments, review of the applicable statutory issues, and consideration of the market implications of Pepco’s TE Application, the Commission, by Order No. 19898, granted in part and denied in part Pepco’s TE Application.⁴ Among other things, Order No. 19898, addressed the jurisdictional issues associated with Pepco’s proposed TE Program, and determined that Pepco cannot offer a new service, such as electric vehicle rates or

¹ *Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability (“Formal Case No. 1130”), and Formal Case No. 1155, In the Matter of the Application of the Potomac Electric Power Company for Approval of Its Transportation Electrification Program (“Formal Case No. 1155”),* Potomac Electric Power Company’s Application for Reconsideration and Clarification of Order No. 19898 filed May 13, 2019 (“Pepco’s Application for Reconsideration”).

² *Formal Case No. 1130, Potomac Electric Power Company’s Application for Approval of its Transportation Electrification Program,* filed September 6, 2018 (“Pepco’s TE Application”).

³ *See Formal Case No. 1130, Revised Public Notice,* rel. November 2, 2018; 65 *D.C. Reg.* 12908-12909 (November 16, 2018).

⁴ *Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898,* rel. April 12, 2019 (“Order No. 19898”). On April 26, 2019, the Commission issued an Errata to Order No. 19898 correcting an error in paragraph 33 of that Order. *See Formal Case No. 1130, and Formal Case No. 1155, Order No. 19913,* rel. April 26, 2019.

deployment of charging stations, without first seeking approval from the Commission.⁵ The Commission determined that charging stations owners and operators who sell electricity fall within the Commission's jurisdiction as an electricity supplier, and therefore pursuant to D.C Code § 34-1513 (a) Pepco can only sell electricity from a Pepco-operated electric vehicle charging station ("EVCS") to a customer's electric vehicle ("EV") through an affiliated electricity supplier but not directly as a regulated utility.⁶ Order No. 19898 also approved, subject to some modifications and conditions, Offerings 1, 7, 8, 10 and 11 but rejected Offerings 2, 3, 6, 9, 12 and 13.⁷ The Commission referred Offerings 4 and 5 for further discussion at the Transportation Electrification ("TE") Working Group established for that purpose.⁸ The Commission found that Pepco cannot own EVCS because there is no showing that the public requires it at this time.⁹ However, the Commission agreed that Pepco should provide "make-ready" infrastructure to facilitate EVCS deployment.¹⁰

3. On May 13, 2019, Pepco filed its Application for Reconsideration and Clarification of Order No. 19898. Pepco identifies five issues for reconsideration and eight items for clarification. The main legal issue on reconsideration brought by Pepco is whether under D.C. Code § 34-1101 Pepco can offer a new service, such as EV rates and deployment of charging stations, without first seeking approval from the Commission.¹¹

III. RESPONSES AND COMMENTS TO PEPSCO'S APPLICATION¹²

4. The Sierra Club is asking the Commission to clarify that the provision of EVCS is not the sale of electricity regardless of who provides the service, and to approve Pepco's Offerings 7 and 8, which address deploying public charging stations in Wards 5, 7 and 8.¹³ Siemens supports Pepco's Application, and is urging the Commission to adopt Pepco's suggested changes and

⁵ *Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶ 16.*

⁶ *Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶ 22. See generally ¶¶ 19-21.*

⁷ *Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶ 72,75.*

⁸ *Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶¶ 42,44.*

⁹ *Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶ 31.*

¹⁰ *Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶ 33.*

¹¹ *Formal Case No. 1130, and Formal Case No. 1155, Pepco's Application for Reconsideration at 10-14.*

¹² After the close of the comment period, the Alliance for Transportation Electrification and the Electric Vehicle Association of Greater Washington DC filed comments in support of Pepco's Application. *See Formal Case No. 1130, and Formal Case No. 1155, Comments of the Alliance for Transportation Electrification Supporting Pepco's Application for Reconsideration and Clarification of Order No. 19898, filed July 8, 2019; Formal Case No. 1130, and Formal Case No. 1155, Comments of the Electric Vehicle Association of Greater Washington DC on Pepco's Application for Reconsideration and Clarification of Order no. 19898, filed July 24, 2019.*

¹³ *Formal Case No. 1130, and Formal Case No. 1155, Sierra Club Response to Application of Potomac Electric Power Company for Reconsideration and Clarification of Order No. 19898 at 1,5, filed May 17, 2019 ("Sierra Club's Response").*

clarifications of Order No. 19898.¹⁴ Siemens believes that Pepco's proposal will promote EV adoption in the District and states that it is not aware of a single instance where utility participation in the EV charging infrastructure market has harmed competition in that market. Siemens also highlights the potential benefits from utility participation in the EV market.¹⁵ Mr. Charles Benoit, a District resident, also supports Pepco's Application and more specifically, Offerings 7 and 8 related to allocating EVCS to Wards 5, 7 and 8.¹⁶ Mr. Benoit explains that "[o]wning an EV in DC without available home or workplace charging has made me a beggar, because the competitive market has totally failed DC residents."¹⁷ Based on his personal experience, Mr. Benoit is urging the Commission "to reevaluate the material fact as to whether the competitive market has served DC EV owners by supplying EVCS," and sees "no reason why Pepco should not be allowed to own and operate EVCS."¹⁸

5. Tesla opposes Pepco's Application, stating that it does not meet the legal criteria for reconsideration mainly because Pepco has not shown that the Commission's decision was erroneous as a matter of law or fact.¹⁹ Tesla's main concern centers around Pepco's proposal that the Commission mandate some degree of interoperability as a condition to EVs using Pepco's make-ready infrastructure.²⁰ This proposal, according to Tesla, would preclude Tesla's customers from charging their vehicles at public EVCS and from benefiting from the Commission-approved program.²¹

6. The Apartment and Office Building Association of Metropolitan Washington ("AOBA") asks the Commission to deny Pepco's Application in its entirety.²² According to AOBA, Pepco has not satisfied the legal standard of review on reconsideration or clarification but seeks to "reignite Pepco's failed effort to impose upon ratepayers the obligation to finance the

¹⁴ *Formal Case No. 1130, and Formal Case No. 1155, Siemens Response to Application of Potomac Electric Power Company for Reconsideration and Clarification of Order No. 19898 at 1, filed May 20, 2018 ("Siemens' Response").*

¹⁵ *Formal Case No. 1130, and Formal Case No. 1155, Siemens' Response at 5. See generally 4-7.*

¹⁶ *Formal Case No. 1130, and Formal Case No. 1155, Letter of Support from Mr. Charles Benoit at 3, filed May 20, 2019 ("Mr. Benoit's Letter").* The Commission notes that Mr. Benoit's Letter is not paginated, so the page numbers are the Commission's additions.

¹⁷ *Formal Case No. 1130, and Formal Case No. 1155, Mr. Benoit's Letter at 3.*

¹⁸ *Formal Case No. 1130, and Formal Case No. 1155, Mr. Benoit's Letter at 4.*

¹⁹ *Formal Case No. 1130, and Formal Case No. 1155, Tesla's Opposition to Pepco's Application for Reconsideration at 7-8, filed May 20, 2019 ("Tesla's Response").*

²⁰ *See Pepco's Application for Reconsideration at 27.* Pepco is asking the Commission to clarify that any EVCS for which Pepco provides make-ready infrastructure must be accessible by a broad range of EVs, not only EVs of a particular manufacturer.

²¹ *Formal Case No. 1130, and Formal Case No. 1155, Tesla's Response at 2-4.*

²² *Formal Case No. 1130, and Formal Case No. 1155, Response of the Apartment and Office Building Association of Metropolitan Washington at 3, filed May 20, 2019 ("AOBA's Response").*

Company's ownership and operation of EVCS . . ."²³ Generally, AOBA submits that under existing District laws "Pepco could only recover the cost of infrastructure upgrades from EVCS and vehicle users."²⁴ Moreover, AOBA argues that "ratepayers should not be burdened with the financial obligation and risk of loss for funding Pepco's ownership of EVCS and the Company's provisioning electricity as transportation fuel for electric vehicles in contravention of District of Columbia laws and the expressed intent of the D.C. Council."²⁵ AOBA encourages Exelon and Pepco to make their own private investment in the sector.²⁶

7. ChargePoint supports the Commission's decision to eliminate the requirements on EVCS owners and operators to obtain a license from the Commission and believes the decision will provide "more options for charging stations, allow for market-driven business models to operate stations, and reduce barriers for more providers to enter the market."²⁷ ChargePoint submits that Pepco's proposal to operate up to 50% of the authorized public EV charging stations under Offerings 7 and 8 and assume further responsibilities if the competitive market fails to deploy all approved public EVCS should be denied.²⁸ ChargePoint and EVgo Services, LLC ("EVgo")²⁹ believe utility operation is not the only way to deploy EVCS in disadvantaged communities, such as the deployment proposed by Pepco in Wards 5, 7 and 8 under Offerings 7 and 8.³⁰ Similarly, EVgo disagrees with certain aspects of Pepco's Application and asks the Commission to direct Pepco to expeditiously refile its proposal for the make-ready programs, as required by Order No. 19898, and address the associated implementation questions, such as the site-selection process for these programs, through stakeholder meetings.³¹

8. The District of Columbia Government ("DCG") supports Pepco's request to reconsider whether to allocate 20 percent of public EVCS placement in Wards 5, 7 and 8. DCG states that it supports equitable access to EVCS and the placement of 20 percent of new EVCS in underserved communities.³² DCG urges the Commission to uphold its decision prohibiting Pepco

²³ *Formal Case No. 1130, and Formal Case No. 1155, AOBA's Response at 4.*

²⁴ *Formal Case No. 1130, and Formal Case No. 1155, AOBA's Response at 6.*

²⁵ *Formal Case No. 1130, and Formal Case No. 1155, AOBA's Response at 12.*

²⁶ *Formal Case No. 1130, and Formal Case No. 1155, AOBA's Response at 9.*

²⁷ *Formal Case No. 1130, and Formal Case No. 1155, ChargePoint Inc. Comments on Potomac Electric Company's Application for Reconsideration and Clarification of Order No. 19898 at 4, filed May 20, 2019 ("ChargePoint's Comments").*

²⁸ *Formal Case No. 1130, and Formal Case No. 1155, ChargePoint's Comments at 4-5.*

²⁹ *Formal Case No. 1130, and Formal Case No. 1155, EVgo Services LLC Response to Application of Potomac Electric Power Company for Reconsideration and Clarification of Order No. 19898 at 3, filed May 20, 2019 ("EVgo's Response").*

³⁰ *Formal Case No. 1130, and Formal Case No. 1155, ChargePoint's Response at 7-8.*

³¹ *Formal Case No. 1130, and Formal Case No. 1155, EVgo's Response at 1-3.*

³² *Formal Case No. 1130, and Formal Case No. 1155, District of Columbia Government's Response to the Application of the Potomac Electric Power Company for Reconsideration and Clarification of Order No. 19898 at 1-2, filed May 20, 2019 ("DCG's Response").*

from owning and operating EVCS. DCG opposes the possibility of allowing Exelon to use Pepco to leverage ratepayer funds to construct EVCS that support its unregulated EV carshare venture.³³ Further, DCG disagrees that the Commission should clarify the process for identifying EVCS locations and the applicable identification criteria. The District believes this process falls within the jurisdiction of the District Department of Transportation (“DDOT”) and the Department of Energy and the Environment, and therefore it would be peculiar for the Commission to provide the requested clarification.³⁴ Finally, DCG urges the Commission to deny Pepco’s request related to obtaining alternative sources of funding for its EVCS make-ready infrastructure. DCG submits that Pepco and the District should work independently to obtain outside funding, with Pepco focusing on funding for the make-ready infrastructure, while the District focusing on its broader mandate to achieve its emissions reduction goals.³⁵

9. The Office of the People’s Counsel for the District of Columbia (“OPC”) opposes Pepco’s Application in its entirety, concluding that Pepco has not identified any legal grounds for reconsideration of Order No. 19898.³⁶ Specifically, OPC disagrees with Pepco’s position on whether the Company is required to obtain a certificate of public convenience and necessity (“CPCN”) prior to furnishing a service, namely EVCS service.³⁷ OPC believes that even if no such certificate is required, Pepco is still obligated to demonstrate that approval of the Company’s request to own EVCS is in the public interest, which Pepco has failed to show.³⁸ Further, OPC holds that contrary to Pepco’s assertions, both the Council of the District of Columbia (“D.C. Council”) and the Commission “are concerned that there be a strong, competitive market for the provision of EVCS.”³⁹ OPC supports “equitable deployment of EVCS across all Wards of the City, but does not favor requiring District ratepayers bear the burden of providing EVCS where there is no evidence that there are unmet needs in those areas.”⁴⁰ Finally, OPC requests that the Commission affirm its decision to allow Pepco to sell electricity from EVCS to an EV through an affiliate only, not directly.⁴¹

³³ *Formal Case No. 1130, and Formal Case No. 1155, DCG’s Response at 3-4. DCG also proposes a more extensive definition of “make-ready infrastructure.”*

³⁴ *Formal Case No. 1130, and Formal Case No. 1155, DCG’s Response at 2, 4-6.*

³⁵ *Formal Case No. 1130, and Formal Case No. 1155, DCG’s Response at 7-9.*

³⁶ *Formal Case No. 1130, and Formal Case No. 1155, Response of the Office of the People’s Counsel for the District of Columbia in Opposition to Pepco’s Application for Reconsideration and Clarification at 2, filed May 20, 2019 (“OPC’s Response”).*

³⁷ *Formal Case No. 1130, and Formal Case No. 1155, OPC’s Response at 3-7.*

³⁸ *Formal Case No. 1130, and Formal Case No. 1155, OPC’s Response at 6.*

³⁹ *Formal Case No. 1130, and Formal Case No. 1155, OPC’s Response at 9.*

⁴⁰ *Formal Case No. 1130, and Formal Case No. 1155, OPC’s Response at 12.*

⁴¹ *Formal Case No. 1130, and Formal Case No. 1155, OPC’s Response at 12-13.*

IV. DECISION**A. Standards on Application for Reconsideration**

10. D.C. Code § 34-604 (b) states in pertinent part:

Any public utility or any other person or corporation affected by any final order or decision of the Commission may, within 30 days after the publication thereof, file with the Commission an application in writing requesting a reconsideration of the matters involved, and stating specifically the errors claimed as grounds for such reconsideration.⁴²

11. The standards governing petitions for reconsideration of Commission orders are well settled. The purpose of a petition for reconsideration is to identify errors of law or fact in the Commission's initial Order so that they can be corrected.⁴³ It is not a vehicle for losing parties to rehash arguments earlier considered and rejected. If there is substantial evidence in the record to support the Commission's initial decision, that decision is not erroneous simply because there is substantial evidence that could support a contrary conclusion.⁴⁴ The Commission enjoys wide discretion on the issues that come before it, and on a petition for reconsideration or clarification may clarify certain findings and conclusions set forth in its initial decision.⁴⁵

12. AOBA, Tesla, and OPC argue that Pepco has identified no legal or factual bases upon which the Commission should grant the Company's Application for Reconsideration. The Commission agrees that Pepco should have been more explicit in identifying the grounds for each of its requests but disagrees with the commenters that no legal or factual grounds have been identified. For example, Pepco's challenge of the Commission's interpretation of D.C. Code § 34-1101 describes in detail the legal basis for the potential error in the Commission's decision and Pepco's contrary interpretation. Similarly, Pepco's request for reconsideration as to whether there has been impressive growth in EVCS is based on specific facts on the record, which Pepco believes the Commission misinterpreted. The Commission enjoys wide discretion when deciding whether reconsideration or clarification is warranted. Based on the record and arguments presented by Pepco and the interested persons, the Commission finds, as discussed below, that some but not all of Pepco's requests for reconsideration or clarification warrant a review or clarification.

⁴² D.C. Code § 34-604 (b) (2001).

⁴³ D.C. Code § 34-604 (b) (2001).

⁴⁴ *Formal Case No. 1053, In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electricity Distribution Service, Phase II*, Order No. 14832, ¶ 5, rel. June 13, 2008, citing *State of New York v. United States*, 880 F. Supp. 37 (D.D.C. 1995) and *Washington Gas Light Co. v. Public Service Commission*, 856 A.2d 1098, 1104 (D.C. 2004).

⁴⁵ *See, e.g., Formal Case No. 1087, In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 17027, ¶ 3, rel. December 26, 2012, citing D.C. Code § 34-604 (b) (2001).

B. Reconsideration**1) The Applicability of D.C. Code § 34-1101 Under the CleanEnergy DC Omnibus Amendment Act Does Not Impact Order No.19898.**

13. In Order No. 19898, the Commission indicated that, under Subsection 502 (c) of the Clean Energy DC Omnibus Amendment Act of 2018 (“CleanEnergy DC Act”),⁴⁶ it is permitted to approve an application by the electric company to promote transportation electrification if the Commission 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 § 34-1101.⁴⁷ Pepco argues that as part of the Commission’s application of the CleanEnergy DC Act, “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.”⁴⁸ Pepco is correct that the CleanEnergy DC Act “does not refer specifically to Subsection 34-1101 (b),”⁴⁹ and the Commission must look to all of Section 34-1101.⁵⁰ Assuming arguendo, that the only applicable and operative part of Section 34-1101, as it relates to Pepco’s TE Application, is Subsection 34-1101 (a), the Commission’s decision in Order No. 19898 still remains undisturbed.⁵¹ Our determination aligns with the language of Subsection 34-1101 (a) that requires the service and

⁴⁶ Clean Energy DC Omnibus Amendment Act of 2018, D.C. Law 22-257, effective March 22, 2019 (“CleanEnergy DC Act”).

⁴⁷ *Formal Case No. 1130*, and *Formal Case No. 1155*, Order No. 19898, ¶ 11.

⁴⁸ *Formal Case No. 1130*, and *Formal Case No. 1155*, Pepco’s Application for Reconsideration at 11. Subsection 34-1101 (b) states:

No public utility shall furnish a service or facility, directly or indirectly, without first proceeding and proving to the satisfaction of the Public Service Commission that the present and future public convenience and necessity requires that the service be provided or the facility be offered. Upon application of a public utility for a certificate of present and future public convenience and necessity pursuant to this subsection, the Commission shall issue an order granting or denying the application, in whole or in part, stating the reasons for the action.

⁴⁹ *Formal Case No. 1130*, and *Formal Case No. 1155*, Pepco’s Application for Reconsideration at 11-12, quoting Clean Energy DC Act at § 502 (c)(2). (“ . . . rather it provides: ‘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).’”).

⁵⁰ The CleanEnergy DC Act did in several places cite the specific sections or subsections of the D.C. Code when proposing amendments to previously adopted laws. See CleanEnergy DC Act, Sections 103, 302, 501. Thus, it is only logical that Subsection 502 (c) must be interpreted to mean that the Commission is to consider whether the TE Application is consistent with all of D.C. Code Section 34-1101.

⁵¹ The Commission need not address the breadth of Pepco’s grandfathered CPCN under Subsection 34-1101 (c). Subsection 34-1101 (c) states “[e]very 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.”

facilities offered by Pepco to be “in all respects just and reasonable” and any charges to be “reasonable, just, and nondiscriminatory.”⁵² Further, our finding is consistent with Subsection 502 (c), the CleanEnergy DC Act’s requirement that the Commission must find in the first instance that the application is in the public interest, which we declined to do based on the record in this proceeding. We, therefore, confirm and clarify our overarching finding that, pursuant to Subsection 502 (c)(2) of the CleanEnergy DC Act, Pepco cannot own and operate EVCS because there is no showing based on the record in this proceeding that the “public interest” requires that Pepco own and operate EVCS.⁵³

2) **Misinterpretation of the Commission’s Statement Related to the Role of the Competitive Market in Facilitating EVCS Deployment.**

14. Pepco is challenging the Commission’s statement that “the D.C. Council in passing the [Energy Innovation and Savings Amendment Act of 2012 (“EISA”)], expressed a desire for the competitive market to facilitate the deployment of EVCS in the District,” and asking that we correct our Order.⁵⁴ In support, Pepco cites to the D.C. Council’s Committee Report on the EISA and argues that there is no indication that the “Council in enacting EISA intended for the competitive market alone to facilitate the deployment of EVCS.”⁵⁵ Based on the plain language of the Commission’s statement, it is clear that Pepco misinterpreted the Commission’s statement – we did not state that the D.C. Council intended for the competitive market *alone* to facilitate the deployment of EVCS. The statutory language of the EISA identified certain conditions under which EVCS were not subject to Commission jurisdiction. The D.C. Council expressly stated that by enacting EISA, it intended to create regulatory certainty, which in turn “encourages more charging station providers to enter the market.”⁵⁶ Further, the D.C. Council expressed a concern that overburdensome regulation would impede the development of the EVCS market.⁵⁷ Based on

⁵² D.C. Code § 34-1101 (a) (2001). (“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. Every unjust, unreasonable, or discriminatory charge for the facility or service is prohibited and unlawful. Every public utility is required to obey the lawful orders of the Commission created by this subtitle.”).

⁵³ See *Formal Case No. 1130*, and *Formal Case No. 1155*, Order No. 19898, ¶ 31.

⁵⁴ *Formal Case No. 1130*, and *Formal Case No. 1155*, Pepco’s Application for Reconsideration at 15-16.

⁵⁵ *Formal Case No. 1130*, and *Formal Case No. 1155*, Pepco’s Application for Reconsideration at 15.

⁵⁶ *Committee Report on Bill 19-749*, “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) (“Committee Report on EISA”) at 5.

⁵⁷ Committee Report on EISA at 8. (“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.’”) [emphasis added]

these facts, we are not convinced our statement in Order No. 19898 regarding the D.C. Council's intent in passing EISA should be corrected and we therefore reject Pepco's request.

3) EVCS Market Growth in the District.

15. Pepco argues that the Commission's determination that "EV and related infrastructure has seen impressive growth" based on a 71% increase in public EVCS between June 2017 and August 2018, while "accurate in terms of percentage growth," fails "to consider the baseline from which this increase was determined, the locations of those EVCS or, more importantly, the District's needs for substantially more public EVCS."⁵⁸ Pepco goes on to highlight that in the nine months since filing its TE Application, the number of public EVCS has risen to 120,⁵⁹ which is "far from the 500 [EVCS] that the Sustainable DC [P]lan identified as being needed in the District, or the 1,055 identified by the National Renewable Energy Laboratory (NREL)" as being needed by 2030 to accommodate 40,000 EVs.⁶⁰ Pepco requests that "the Commission modify Order No. 19898 to allow Pepco to own, operate, and deploy public EVCS alongside other market participants" and proposes two compromise solutions through which Pepco would be able to own EVCS.⁶¹

16. The Commission recognizes that despite impressive growth rates, the number of EVCS deployed in the District represents a low-base in absolute terms and is short the targets identified by the Sustainable DC Plan or NREL Study. Further, as a regulator, the Commission must be cognizant of program costs for achieving policy goals and developing markets. In Order No. 19898, the Commission authorizes Pepco, through a regulatory asset that would be recovered from ratepayers, to cover the upfront costs of make-ready infrastructure for EVCS. This constitutes about 30% to 45% reduction in make-ready costs faced by EVCS owners and operators, which should accelerate EVCS deployment beyond its current pace.⁶² Further, the NREL figure of 1,055 EVCS that Pepco cites is for serving an EV market of 40,000 EVs eleven years in the future, which is a far cry from the 721 EVs registered in the District as of August 2018.⁶³ While we agree that more effort is needed to advance the installation of EVCS in the District, we note that our rejection of Pepco's ownership of EVCS was based on the record before the Commission

⁵⁸ *Formal Case No. 1130*, and *Formal Case No. 1155*, Pepco's Application for Reconsideration at 16, quoting *Formal Case No. 1130*, and *Formal Case No. 1155*, Order No. 19898, ¶ 28.

⁵⁹ From August 2018 to May 2019, twenty-two (22) new EVCS were installed in the District, representing a 22% increase over nine months.

⁶⁰ *Formal Case No. 1130*, and *Formal Case No. 1155*, Pepco's Application for Reconsideration at 17; *Formal Case No. 1130*, and *Formal Case No. 1155*, Pepco's TE Application at 11.

⁶¹ *Formal Case No. 1130*, and *Formal Case No. 1155*, Pepco's Application for Reconsideration at 18. ((1) "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"; and (2) "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.")).

⁶² *See Formal Case No. 1130*, Pepco's Data Response 1-7, filed January 11, 2019.

⁶³ *Formal Case No. 1130*, and *Formal Case No. 1155*, Order No. 19898, ¶ 28, citing *Formal Case No. 1130*, Pepco's Application at 17.

in Order No. 19898. In fact, the Commission explicitly recognized that the demand for EV charging and the supply of EVCS will change when we directed Pepco to provide an EV Market Penetration Study.⁶⁴ However, the Commission agrees that additional actions may be necessary to ensure that the supply of EVCS in the District aligns with the demand for charging services from EVs. Therefore, the Commission will convene a hearing to further explore the contours of the EVCS market in the District.

4) **Pepco Has Not Availed Itself of the Opportunity to Present Record Evidence that Supply and Demand for Public Charging Opportunities in Wards 5, 7 and 8 are out of Balance.**

17. Pepco's request for reconsideration on the Commission's finding in Order No. 19898 that "the record evidence submitted identifies the health issues that impact [Wards 5, 7, and 8] but does not clearly indicate that the competitive market is not providing adequate EV charging opportunities."⁶⁵ Pepco reiterates and updates information from its TE Application that Ward 5 contained only two (2) EVCS when the TE Application was filed but since that time, another three (3) EVCS have been installed bringing the total to five (5), while Wards 7 and 8 still have zero (0) public EVCS installed.⁶⁶ Pepco acknowledges the Commission's directive to provide an EV Market Penetration Study but argues that "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" and the Commission should "permit Pepco to deploy, own and operate seven public Smart Level 2 EV chargers and four public DCFC in Wards 5, 7, and 8."⁶⁷

18. The Commission is aware, as Pepco points out, that EVCS are not proportionally deployed across all Wards of the District. However, Pepco has not provided any information that supports how many EVCS there should be in each Ward and the factors supporting those numbers. In Order No. 19898, the Commission rejected Pepco's proposal to deploy EVCS in Wards 5, 7, and 8 based on the record before us because there was no information indicating that EV charging opportunities were inadequate, *i.e.*, the demand for EV charging in those Wards exceeded the number of EVCS.⁶⁸ For this reason, the Commission directed Pepco to "within two years after implementation begins . . . provid[ing] a detailed EV Market Penetration Study analyzing the distribution of registered EVs by Ward and the deployment of public EVCS by Ward, so the Commission can assess the effectiveness of the competitive market at serving all parts of the District relative to market demand."⁶⁹ There is nothing precluding Pepco from filing the study with the requested information soon, and, in fact, Pepco provides new information concerning the

⁶⁴ *Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶ 64.*

⁶⁵ *Formal Case No. 1130, and Formal Case No. 1155, Pepco's Application for Reconsideration at 19-20, quoting Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶ 49. (Quotation marks omitted).*

⁶⁶ *Formal Case No. 1130, and Formal Case No. 1155, Pepco's Application for Reconsideration at 20.*

⁶⁷ *Formal Case No. 1130, and Formal Case No. 1155, Pepco's Application for Reconsideration at 21.*

⁶⁸ *Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶ 49.*

⁶⁹ *Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶ 64.*

competitive market's supply of EVCS services in Wards 5, 7, and 8.⁷⁰ Order No. 19898 is a first step which allows Pepco to recover the costs of make-ready infrastructure for EVCS, thus reducing the costs faced by EVCS owners and operators, which should enable non-utility EVCS owners and operators to expand into areas with lower demand.⁷¹ We also recognize that DDOT is required to implement the Electric Vehicle Public Infrastructure Expansion Amendment Act of 2018 and deploy 15 public EVCS, including at least one in each Ward and DCG's support for equitable access to EVCS and the placement of 20 percent of new EVCS in underserved communities.⁷² The Commission is committed to ensuring that transportation electrification opportunities flourish in all segments of the District. As part of the hearing discussed in Paragraph 16, the Commission will explore appropriate actions to facilitate transportation electrification opportunities in underserved communities.

5) **The Sale of Electricity from an EVCS to an EV Results in the EVCS Owner or Operator Being Classified as an Electricity Supplier Under D.C. Code § 34-1501 (17).**

19. Pepco reads Order No. 19898 to state that “the Commission’s current position is that the sale of electricity from an EVCS does not render one an electricity supplier” because the Order states that “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.”⁷³ Pepco then asserts that “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 electricity supplier and thus the limitations imposed by D.C. Code Section 34-1513 (a) would not be implicated.”⁷⁴ Similarly, the Sierra Club and Tesla are asking the Commission to clarify that the provision of EV charging services is not the sale of electricity, and therefore is not an activity of an electricity supplier, regardless of the entity providing the charging services.⁷⁵

20. Pepco, the Sierra Club, and Tesla misinterpret Order No. 19898. The language in Order No. 19898 is unambiguous, but to avoid any confusion we clarify that EVCS owners and operators who *sell* electricity to EVs are electricity suppliers subject to the Commission’s jurisdiction. Paragraphs 19 and 22 explain that from a jurisdictional standpoint an EVCS that sells electricity meets the definition of an electricity supplier under D.C. Code § 34-1501 (17), which

⁷⁰ *Formal Case No. 1130, and Formal Case No. 1155, Pepco’s Application for Reconsideration at 20.*

⁷¹ *See Formal Case No. 1130, Pepco’s Data Response 1-7, filed January 11, 2019.*

⁷² *See D.C. Law 22-0078, the “Electric Vehicle Public Infrastructure Expansion Act of 2018.” The 15 public EVCS to be deployed by DDOT could address the purported need for more charging stations in Wards 5, 7, and 8, which Pepco has not yet demonstrated. See also, Formal Case No. 1130, and Formal Case No. 1155, DCG Response at 1-2, filed May 20, 2019.*

⁷³ *Formal Case No. 1130, and Formal Case No. 1155, Pepco’s Application for Reconsideration at 22, quoting Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶ 19. (Quotation marks omitted).*

⁷⁴ *Formal Case No. 1130, and Formal Case No. 1155, Pepco’s Application for Reconsideration at 22.*

⁷⁵ *Formal Case No. 1130, and Formal Case No. 1155, Sierra Club’s Response at 1-4; Formal Case No. 1130, and Formal Case No. 1155, Tesla’s Response at 10.*

is “a person, including an aggregator, broker, or marketer, who generates electricity; *sells electricity*; or purchases, brokers, arranges or, markets electricity for sale to customers.”⁷⁶ Our decision is also consistent with the decision of the Maryland Public Service Commission, which clearly stated that “[w]hile EV charging stations, themselves, are facilities that use specialized equipment to provide electricity to charge an EV battery, *what takes place at the station is the retail sale of electricity*” [emphasis added].⁷⁷ The Commission’s decision to amend its rules and eliminate any licensing and bonding requirements on EVCS owners and operators that sell electricity to EVs is a regulatory decision to waive certain regulations for electricity suppliers who operate EVCS.

C. Clarifications

21. **Clarification No. 1.** Pepco requests clarification as to what the Commission meant by disaggregated EV rates.⁷⁸ As part of its TE Application Pepco proposed EV rates for Offerings 1, 7 and 8. The Commission directed Pepco to develop rates for Offering 10, taxi and rideshare vehicles, and Offering 11, electric buses. The rates filed as part of the Application did not separate the cost components of a customer’s bill to identify generation and transmission (“SOS”) costs from distribution costs. The Commission clarifies that it expects Pepco to identify the following when refiling rates for each of the approved Offerings: 1) the SOS service rate for a customer who does not select a third-party supplier; and 2) the distribution rate. Order No. 19898, footnotes 107 and 113, already explained that Pepco should evaluate its new role as a provider of make-ready infrastructure and determine whether a new tariff is necessary for Offerings 10 and 11. Because Offering 4 also applies to both SOS and non-SOS customers, that offering would also require a tariff that disaggregates the EV rates. However, the multi-dwelling units tariff associated with Offering 5 should be determined by the TE Working Group.

22. **Clarification No. 2.** Pepco requests the Commission clarify the process by which locations for the EVCS accessible for taxis and rideshare services under Offering 10 are to be selected when it directed Pepco “to work with the appropriate District Government Agencies to select EVCS locations.”⁷⁹ Furthermore, 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.⁸⁰ The Commission agrees with DCG that these questions should be addressed by the appropriate District agencies and therefore the Commission takes no position on the selection criteria or the process of site selection. The appropriate District agencies, EVCS owners and operators, and industry stakeholders, such as taxi or ridesharing

⁷⁶ D.C. Code § 34-1501 (17) (2001).

⁷⁷ *Case No. 9478, Maryland Public Service Commission, In the Matter of the Petition of the Electric Vehicle Work Group for Implementation of a Statewide Electric Vehicle Portfolio (“MD PSC Case No. 9478”)*, Order No. 88997, at 39-40, rel. January 14, 2019. The Order further explained that “there is no difference between a utility’s wire running to an electric meter on the side of a customer’s house to allow the customer to watch TV, and a utility’s wire running to an electric charging station to allow the customer to charge an electric vehicle.”

⁷⁸ *Formal Case No. 1130, and Formal Case No. 1155, Pepco’s Application for Reconsideration* at 23-24.

⁷⁹ *Formal Case No. 1130, and Formal Case No. 1155, Pepco’s Application for Reconsideration* at 24.

⁸⁰ *Formal Case No. 1130, and Formal Case No. 1155, Pepco’s Application for Reconsideration* at 25.

companies, are better equipped to make these decisions. Also, Pepco is already involved in a similar process in Maryland and is aware of the requisite steps to ensure optimal site selections for EVCS.⁸¹ However, since there was insufficient information in the record regarding the site selection process, the Commission did not direct that a specific process be used. The Commission believes that potential EVCS owners and operators and taxi or ridesharing companies in collaboration with the appropriate District agencies are better equipped to determine the desired locations for placement of EVCS.⁸² Thus, the Commission clarifies that Pepco is to work with all interested stakeholders and District agencies on the site selection for the make-ready infrastructure necessary for Offering 10 in the TE Working Group.

23. **Clarification No. 3.** Pepco requests the Commission correct a description of the EVCS approved under Offering 11 for Electric Buses.⁸³ The Commission, hereby corrects the descriptions of bus charges in paragraphs 52, 53, and 72, by recognizing that the make-ready infrastructure for EVCS approved under Offering 11 is for the six (6) charging stations composed of the deployment of five (5) bus depot chargers of 125 kW each and one (1) on-route charger of 500 kW, as proposed by the Company.

24. **Clarification No. 4.** Pepco requests “the Commission clarify that any public EVCS for which Pepco provides make-ready infrastructure in accordance with Order No. 19898 must be publicly accessible and designed to allow charging by a broad range of EVs.”⁸⁴ The Company argues that “[u]nless the Commission mandate 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 to install public EVCS that can then only be used by the EVs of a particular manufacturer.”⁸⁵ On the other hand, Tesla submits that Pepco suggests an interoperability requirement that would preclude Tesla’s customers from charging their vehicles at public EVCS.⁸⁶ The Commission agrees with Tesla’s logic, and we directed that Pepco provides the make-ready infrastructure to accommodate third-party EVCS owners/operators (*i.e.*, Tesla) on a nondiscriminatory basis.⁸⁷

⁸¹ *MD PSC Case No. 9478*, Order No. 88997, at 66, rel. January 14, 2019. The Maryland Public Service Commission directed the utilities to “locate public EV charging equipment only at property leased, owned, or occupied by a unit of State, county, or municipal government for public use and, to that end, the Utilities shall work with state, municipal and local government entities to determine the siting locations for these public EV chargers.”

⁸² DCG in its Response clearly identifies the District Department of Transportations as “the District Agency that issues public space occupancy permits.” *Formal Case No. 1130*, and *Formal Case No. 1155*, DCG’s Response at 7.

⁸³ *Formal Case No. 1130*, and *Formal Case No. 1155*, Pepco’s Application for Reconsideration at 25-26.

⁸⁴ *Formal Case No. 1130*, and *Formal Case No. 1155*, Pepco’s Application for Reconsideration at 27-28.

⁸⁵ *Formal Case No. 1130*, and *Formal Case No. 1155*, Pepco’s Application for Reconsideration at 27.

⁸⁶ *Formal Case No. 1130*, and *Formal Case No. 1155*, Tesla’s Response at 9.

⁸⁷ Arguments about interoperability of EVCS with different EVs are more appropriate when the Commission considers cost allocation of make-ready infrastructure to either socialize the cost or assign costs to EVCS owner/operators.

25. **Clarification No. 5.** Pepco requests “that the Commission clarify its directive in Order No. 19898 and direct the Company to 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 no-profit organizations), develop a budget for Pepco’s activities in support of this effort and file a status report with the Commission on the efforts by January 1, 2020.”⁸⁸ The Commission agrees with DCG that the District’s mandate for obtaining outside funds is broader in scope than Pepco’s obligation to seek outside funding for the make-ready infrastructure. Certain aspects of Pepco’s and the District’s goals are overlapping, but as DCG points out, there are already established reporting channels for coordination⁸⁹ and, therefore, there is no need for the Commission to further specify the coordination efforts between the Company and the District. It remains a matter of judgment on Pepco to pursue alternate funding as it deems appropriate. However, the Commission recognizes that Pepco may need additional time to comply and, therefore, extends the status report deadline until January 1, 2020, as requested by the Company.

26. **Clarification No. 6.** Pepco requests “that the Commission [] clarify that the Company can submit a new program coordination and 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.”⁹⁰ In Order No. 19898, the Commission stated, “[t]he Commission approves the 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” and 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.”⁹¹ Customer enrollment and outreach refers to Pepco’s education and outreach efforts even though the activities may differ and the budget could change.⁹² The Commission finds no need for further clarification since we presume Pepco will submit for our approval all prudently incurred program coordination and management expenses.

27. **Clarification No. 7.** Pepco explains that the Commission’s directives for Pepco to provide make-ready infrastructure “will be effective for all EVCS installations” but the Commission only established a regulatory asset “for make-ready investments related to approved offerings.”⁹³ Pepco requests “that the Commission clarify that all expenditures by Pepco for make-

⁸⁸ *Formal Case No. 1130, and Formal Case No. 1155, Pepco’s Application for Reconsideration at 28-29.*

⁸⁹ *Formal Case No. 1130, and Formal Case No. 1155, DCG’s Response at 9.*

⁹⁰ *Formal Case No. 1130, and Formal Case No. 1155, Pepco’s Application for Reconsideration at 29-30.*

⁹¹ *Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶ 58.*

⁹² For example, given the provision of make-ready service, Pepco may need to have increased communication with the site host given Pepco may need to provide a pre-qualified list to the site host for vendors who will install or operate/maintain the charging stations. The details about utility and third-party functions and who is doing what can be discussed in the TE Working Group established in Order No. 19898, ¶¶ 42, 44.

⁹³ *Formal Case No. 1130, and Formal Case No. 1155, Pepco’s Application for Reconsideration at 30-31. (emphasis omitted).*

ready infrastructure are to be tracked in the regulatory asset.”⁹⁴ The Commission is only granting Pepco permission for regulatory asset treatment for make-ready infrastructure for the approved offerings. In Paragraph 62 of Order No. 19898, the Commission explained that “to [the] extent that any specific Offering reaches the prescribed limits, Pepco or other interested persons may notify the Commission and request the lifting of the caps.”⁹⁵ When reviewing such a request, the Commission will assess if continued regulatory asset treatment is still appropriate given the state of EVCS deployment. The Commission confirms that only the expenses associated with the make-ready infrastructure for the approved offerings will be included in the regulatory asset. For example, if there is a need for make-ready infrastructure for Offering 5 but Offering 5 has not been approved by the Commission, such expenditures shall not be included in the regulatory asset.

28. **Clarification No. 8.** Pepco requests that the Commission extend to ninety (90) days after the Commission’s Order on Reconsideration the timelines for “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; and, (ii) updated cost information for program coordination and management expenses” and 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.”⁹⁶ Given the complexity of these tasks, the Commission grants Pepco’s request to amend the reporting timelines.

THEREFORE, IT ORDERED THAT:

29. The Potomac Electric Power Company’s Request for Reconsideration of Order No. 19898 is **DENIED IN PART AND GRANTED IN PART**; and

30. The Potomac Electric Power Company’s Request for Clarification of Order No. 19898 is **DENIED IN PART AND GRANTED IN PART**.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

⁹⁴ *Formal Case No. 1130, and Formal Case No. 1155, Pepco’s Application for Reconsideration at 30.*

⁹⁵ *Formal Case No. 1130, and Formal Case No. 1155, Order No. 19898, ¶ 62.*

⁹⁶ *Formal Case No. 1130, and Formal Case No. 1155, Pepco’s Application for Reconsideration at 31-32. (Citation omitted).*

FORMAL CASE NO. 1130, IN THE MATTER OF THE INVESTIGATION INTO MODERNIZING THE ENERGY DELIVERY SYSTEM FOR INCREASED SUSTAINABILITY,

and

FORMAL CASE NO. 1155, IN THE MATTER OF THE APPLICATION OF THE POTOMAC ELECTRIC POWER COMPANY FOR APPROVAL OF ITS TRANSPORTATION ELECTRIFICATION PROGRAM, Order No. 19983

**DISSENT IN PART AND ABSTENTION IN PART OF
COMMISSIONER RICHARD BEVERLY**

The majority opinion concluded that “Pepco cannot own EVCS because there is no showing that the public requires that Pepco own electric vehicle charging stations (“EVCS”) at this time as prescribed by D.C. Code §34-1101(b).” Pepco argues that the Commission’s reliance on D.C. Code §34-1101(b) is in error because: 1) although the Clean Energy Act generally references D.C. Code §34-1101, it makes no specific reference to subsection (b), which governs the need for a utility company to obtain a certificate of public convenience and necessity (“CPCN”); and 2) under both statute and longstanding Commission precedent, Pepco is deemed to have a CPCN to provide electric service. Essentially, Pepco is arguing that the Commission improperly denied its Transportation Electrification application for a failure to prove something that cannot reasonably be in dispute.

The majority opinion leaves its determination on this issue “undisturbed.” Essentially, the majority implies that Pepco may be right but leaves open the possibility that the Company could still be wrong. To me, the lack of a straightforward determination on this question creates unnecessary confusion in the interpretation of D.C. Code §34-1101(b). Additionally, the way this issue was handled raises a fundamental question of due process.

Pepco did not apply for a CPCN nor was Pepco ever put on notice, prior to the adverse decision in Order No. 19898, that the Commission considered the CPCN to be an issue. If the Commission construed Pepco’s Transportation Electrification application as one requesting (directly or indirectly) that it be issued a CPCN, then D.C. Code §34-1101 (b) requires that the Commission issue a public notice (which presumably at least mentions the phrase CPCN) and hold a hearing before making a ruling to grant or deny the request. Because the Commission did not issue a public notice or hold a hearing, Pepco was denied even the basic right to know that the CPCN was an issue.

On the question of whether D.C. Code §34-1101(b) applies, I agree with Pepco. Even so, I think the error is harmless. Pepco concedes that D.C. Code §34-1101(a) is applicable. That section states “Every public utility doing business in the District of Columbia is required to furnish service and facilities reasonable safe and adequate *and, in all respects, just and reasonable.*” The CleanEnergy DC Omnibus Amendment Act of 2018 has a variation on the same theme that says the Commission may approve the electric company’s EVCS application if it is, among other things, “*in the public*

interest.”¹ In my opinion, the majority is simply saying that Pepco’s application, as filed, is not in the public interest and/or the proposed service is not “in all respects just and reasonable.” The determination can be phrased several ways, but the outcome is still the same.² Therefore, I must respectfully dissent from this section of the order.

Pepco takes issue with the majority’s statement that “the DC Council in passing the [Energy Innovations and Savings Amendment Act of 2012 (“EISA”)], expressed a desire for the competitive market to facilitate the deployment of EVCS in the District.” According to Pepco, the EISA did not even mention the competitive market and certainly did not indicate a legislative intent for the market alone to facilitate the deployment of EVCS. The majority dismisses Pepco’s argument out of hand by noting that, in the legislative history, the District Council expressly stated a desire to create “regulatory certainty” and that regulatory certainty, in turn, facilitates competition. The legislative history cannot be used to create a limitation that is not supported by the actual language of the statute but creating a limitation does not appear to be the majority’s intent. To me, the majority’s statement is mere dicta and, even if not entirely accurate, is not a basis for reconsidering the decision.

Although the EISA does not mention the competitive market, there is also nothing in this legislation that requires us to be oblivious to the possible creation of an unlevel playing field created by allowing a regulated monopoly to enter a competitive market funded by ratepayers.³ That is why I approached the issue differently in my concurring opinion and focused on a determination of whether the costs for Pepco’s competitive venture can be passed on to ratepayers rather than whether Pepco can own the EVCS. In my concurring opinion, I concluded that it was not appropriate for Pepco to pass on these costs except for the cost of the EV make-ready infrastructure, which would be equally available to other EVCS owners and operators. I have no problem with designating a certain amount of EV make-ready infrastructure for certain underserved areas in particular wards of the District of Columbia, but I would prefer to do so after establishing a working group to examine the issue and ensure that we are making the best use of ratepayer money without negatively impacting the competitive EVCS market.⁴

¹ It is important not to overlook that Pepco filed its Transportation Electrification application on September 6, 2018. The CleanEnergy DC Omnibus Amendment Act of 2018 became effective on March 22, 2019.

² The majority also claims that, under the terms of the merger, the Commission “continues to have full plenary authority over Pepco, and the Company no longer retains any service and operations that are not regulated by the Commission.” Our jurisdiction is determined by statute and we cannot unilaterally expand it, nor can the parties expand it by agreement.

³ Since I did not address the issue as one of whether Pepco can own the charging stations, I did not endorse the view that the outcome of a market study had some bearing on whether ownership in the future might be warranted.

⁴ OPC observes that, although rideshare vehicles, taxis, and public busses pass through underserved wards, it is not clear why these vehicles need to stop and charge in these wards (at ratepayers’ expense) rather than traveling through them to charging stations located elsewhere.

Inasmuch as my concurring opinion did not endorse the majority's views beyond supporting an approval of EV make-ready infrastructure, I will leave it to the majority to clarify their position on the remaining issues as they deem appropriate and abstain from the rest of the decision.⁵

⁵ The District government recommends further defining "electric vehicle supply equipment" ("EVSE") as "the charging equipment necessary to deliver electrical energy from an electricity source to charge an electric vehicle's battery, including cable, conductors, and electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the electric vehicle." I hope that we will give serious consideration to this recommendation.