

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

ORDER

August 9, 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. 20204

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) adopts the procedural schedule set forth in Attachment A of this Order. The procedural schedule is a consolidated 18-month schedule alternatively proposed by the Office of the People’s Counsel (“OPC”), the Apartment and Office Building Association of Metropolitan Washington (“AOBA”), and the District of Columbia Government (“DCG”), wherein the Commission will review and consider the Potomac Electric Power Company’s (“Pepco” or “Company”) traditional one year cost-of-service proposal alongside of the Company’s Multiyear Rate Plan (“MRP”) proposal and appropriate Performance Incentive Mechanisms (“PIMs”).

II. BACKGROUND

2. On May 30, 2019, Pepco filed its Application for approval to increase rates for its electric distribution service in the District of Columbia (“Application”) under two different rate setting methodologies pursuant to Commission directives in Order No. 18846:¹ (1) a MRP incorporating PIMs, and (2) a traditional cost-of-service plan. Pepco asserts that the primary drivers for the rate increase under either the traditional or MRP approach includes improving reliability, modernizing the distribution system, providing tools to assist customers in managing their energy usage, and advancing policy goals on reliability, resiliency, clean energy integration and addressing climate change, and addressing the Company earning less than the authorized return on equity (“ROE”).² Both methods utilize a partially-forecasted 12-month test-year ending June 30, 2019, based on six (6) months of actual data and six (6) months of forecasted data. In its Application, Pepco requests that the new rates become effective on May 1, 2020.

¹ See *Formal Case No. 1139, In the Matter of the Application of the Potomac Electric Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service* (“*Formal Case No. 1139*”), Order No. 18846, rel. June 25, 2017 (“*Order No. 18846*”).

² *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* (“*Formal Case No. 1156*”), Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service, Exhibit (B) at 50, filed May 30, 2019 (“*Pepco’s Application*”). According to Pepco, its June 30, 2019, unadjusted earned ROE is only 5.81%, which is significantly below the authorized ROE of 9.525%.

3. The first method, and Pepco's preferred approach, is through the implementation of a MRP and Performance Based Rates ("PBR") proposal for its electric rates for the years 2020 through 2022.³ The Application requests authority to increase existing distribution service rates and charges for electric service in the District of Columbia by \$162 million through the implementation of a MRP, incorporating rate adjustments, and annual reconciliations, for each of the three years from 2020 to 2022.⁴ The increases would amount to \$85 million for 2020, \$40 million for 2021, and \$37 million for 2022. Pepco requests authority to earn a 7.81% rate of return, including a ROE of 10.3% under its MRP Application.⁵ Pepco represents that its Application would translate to an increase in electric bills of approximately \$8.57 in 2020, \$3.69 in 2021, and \$3.19 in 2022 for a typical residential customer who uses 692 kWh per month.⁶

4. The second method is the traditional cost-of-service method where rates are based on Pepco's costs and revenues during a test-year. Should the Commission reject Pepco's MRP, the Application requests authority to increase existing distribution rates by \$88.6 million using the traditional cost-of-service method based on test period ending June 30, 2019. Pepco requests authority to earn a 7.81% rate of return, including a ROE of 10.3% under its traditional Application in the event its MRP Application is disallowed/denied.⁷ Pepco also represents that its traditional Application would translate to an increase in distribution rates of approximately \$9.55 for a typical residential customer who uses 692 kWh per month.

5. On June 13, 2019, the Commission issued a Public Notice and Order No. 19956, opening *Formal Case No. 1156* and directing petitions for intervention to be filed by June 19, 2019, with any oppositions to be filed by June 24, 2019.⁸ In addition, the Order scheduled a Status Conference to enable the parties to discuss a consensus procedural schedule and to consider "whether the matter should be separated into two cases, and to address any other preliminary matters or issues identified by the parties."⁹ On June 21, 2019, a Public Notice of Pepco's Application was published in the *D.C. Register*.¹⁰

6. On June 27, 2019, by Order No. 19966, the Commission granted intervenor status to U.S. General Services Administration ("GSA"), DCG, the District of Columbia Water and Sewer Authority ("DC Water"), Washington Gas Light Company ("WGL"), AOBA, International Brotherhood of Electrical Workers, Local Union 1900 ("IBEW"), the Laborers' International

³ Generally, Pepco's Application at 1-2.

⁴ Pepco's Application at 4-6.

⁵ Generally, Pepco Application; Pepco (C)-1 at 1.

⁶ The Residential Aid Discount (RAD) Program provides qualified low-income customers with a credit equal almost to 100% of their Pepco distribution bill such that they would not face a bill increase as a result of this Application under either ratemaking approach.

⁷ Generally, Pepco Application; Pepco (C)-1 at 1.

⁸ *Formal Case No. 1156*, Order No. 19956, rel. June 13, 2019 ("Order No. 19956").

⁹ *Formal Case No. 1156*, Order No. 19956, ¶ 1.

¹⁰ 66 *D.C. Reg.* 7573-7577 (June 21, 2019).

Union of North America (“LiUNA”), the Small Business Utility Advocates (“SBUA”), and the Maryland DC Virginia Solar Energy Industries Association (“MDV-SEIA”).¹¹

7. On June 28, 2019, Commission Staff convened the Status Conference which was attended by all parties.¹² Pepco filed a Status Conference Report on July 8, 2019, which included the Company’s proposed procedural schedule along with OPC, AOBA, and DCG’s jointly proposed procedural schedules (hereinafter jointly referred to as (“OPC/AOBA/DCG”)).¹³

III. DISCUSSION

A. Status Conference Report

8. The Status Report notes that Commission Staff: (a) explained that the Commission was seeking a more efficient process to address rate cases; (b) acknowledged that Pepco’s Application appears to be consistent with previous Commission directives in terms of presenting both an alternative rate plan and traditional rate application; (c) recommended that the schedule that Pepco provided in its application be used as a “strawman” to develop a consensus schedule;¹⁴ (d) reminded parties to ensure that all prior directives for previous rate cases and the merger commitment impacts were addressed in the filings; (e) reminded the parties that the Omnibus CleanEnergy DC Act and the District of Columbia’s Energy Policy must be considered, and information in that regard will help inform the Commission in determining whether the impact of Pepco’s Application meets the District’s climate goals.¹⁵ On July 1, 2019, the Parties held a follow-up telephone conference to further clarify dates and other schedule related items.

B. Pepco’s Comments and Proposed Procedural Schedule

9. In the Status Report, Pepco states that after reviewing Order No. 19956, the Company at the Status Conference circulated a modified proposed procedural schedule which bifurcated the case by considering the MRP and traditional test-year filing in one proceeding and the PIMs in a subsequent proceeding.¹⁶ Pepco’s view is that the case could be bifurcated such that the traditional case and the MRP are considered together in Phase I of the proceeding and the PIMs

¹¹ *Formal Case No. 1156*, Order No. 19966, rel. June 27, 2019.

¹² *See Formal Case No. 1156*, June 28, 2019, Status Conference Transcript, filed June 28, 2019.

¹³ *Formal Case No. 1156*, Minutes from the June 28, 2019, Status Conference as well as the Parties’ Telephonic Conference on July 1, 2019, filed July 8, 2019 (“Status Report”). Attached to the minutes were Attachment 1 (Pepco’s Proposed Procedural Schedule) and Attachment 2 (OPC/AOBA/DCG’s Proposed Procedural Schedules). SBUA supported OPC/AOBA/DCG proposed schedule. The other intervenors took no position on either of the proposed schedules. *See* Status Report at 6. This Order will refer to OPC and all of the intervenors as OPC/Intervenors.

¹⁴ Both Pepco and OPC/AOBA/DCG came to the Status Conference with alternative procedural schedules. All proposed procedural schedules were discussed at the Status Conference.

¹⁵ Status Report at 1. The Status Report notes that OPC “was agnostic in terms of having a formal list of issues prior to submitting testimony.” *See* Status Report at 4.

¹⁶ *See* Status Report, Attachment 1 at 1-2 (containing Pepco’s Phased Procedural Schedule).

can be considered separately in Phase II.¹⁷ Pepco expressed a belief that PIMs “could be developed as part of the Commission’s MEDSIS proceeding and a separate proceeding would provide for focused consideration of a new ratemaking concept.”¹⁸ Pepco asserts that its approach is more efficient and is consistent with the Company’s understanding of “the Commission’s goals that the traditional rate case was more of a fallback rate case that the Commission expected to see when the Company filed its [MRP].”¹⁹

10. The Report notes Pepco’s response to Staff’s inquiry regarding traditional versus MRP adjustments, where Pepco indicates that in most cases, adjustments made in the traditional case would not require adjustments to the MRP.²⁰ Specifically, Pepco stated that if the MRP is considered separately, “changes would be reflected in the approved MRP in the same manner as disallowances would be reflected in any other base rate proceeding, as a compliance matter, and that it would file a compliance filing reflecting those disallowances.”²¹

11. Pepco’s proposed Phase I schedule contemplates that the Commission will issue a decision on the Company’s MRP proposal or traditional proposal by June 1, 2020.²² Pepco’s Phase II schedule would begin with the Company’s supplemental testimony on May 1, 2020, with the Commission issuing an order approving and authorizing implementation of specific PIMs by May 1, 2021. Pepco indicates during the pendency of Phase II the Company will track its proposed PIMS.²³ In addition, Pepco explains that the proposed bifurcation of the MRP/traditional rate case from the PIMs would require Pepco to track the PIMs with no incentives or penalties until the Commission approved any PIMs.²⁴ Once PIMs are approved, the PIMs would then be flowed into the existing MRP.²⁵ The Company notes that at “the end of Phase I, the Commission would issue an order approving a revenue requirement that would be implemented in rates, and at the end of Phase II the Commission would issue an order approving, modifying, or denying the PIMs that Pepco would implement accordingly.”²⁶ Pepco notes that information on the PIMs that the

¹⁷ Status Report at 4. Performance incentive mechanisms typically use financial rewards and penalties to encourage utilities to meet specific targets, as well as performance metrics for simply monitoring and reporting utility performance.

¹⁸ Status Report at 1.

¹⁹ Status Report at 3.

²⁰ Status Report at 4.

²¹ Status Report at 4.

²² Status Report at 4 and 6.

²³ Status Report, Attachment A.

²⁴ Status Report at 4.

²⁵ Status Report at 4-5.

²⁶ Status Report at 5.

Company was planning to track in 2020 would not be available until early 2021 – after OPC/Intervenors file their testimony.²⁷

12. In response to OPC/AOBA/DCG’s preferred phased approach (set forth in the next section), Pepco argues that it is inefficient because it would duplicate efforts and resources and would require the Company to litigate multiple rate cases in four years (*i.e.* traditional rate case filing in 2019, first MRP in 2020, and second MRP in 2022).²⁸ In response to OPC/AOBA/DCG’s consolidated schedule, Pepco recommends deleting the technical conference and all related items and moving OPC/Intervenors’ testimony up to November 1, 2019.²⁹ OPC and AOBA do not believe the November 1st date provides enough time to thoroughly review the filings and prepare direct testimony.³⁰

13. Additionally, Pepco identified a number of other issues with OPC/AOBA/DCG’s schedules. Specifically, Pepco disagrees with the other parties’ recommendations to provide continuous quarterly/semi-annual updates to actual costs because, Pepco asserts, with a MRP the true-up mechanism would handle any over- and underages.³¹ Pepco also does not support any schedule that includes surrebuttal.³² Finally, Pepco asserts that a Reply Brief is necessary because the Company must respond to all issues raised by the parties.³³

14. Under any procedural schedule, the parties were able to agree on establishing two discovery dates, with discovery beginning June 28, 2019, and ending on the date set for the prehearing/pretrial conference. The parties also agreed that the adopted schedule need only provide the start and end of discovery on the procedural schedule.³⁴ Pepco wants 21 days to respond to discovery through the filing of rebuttal testimony, because prior to rebuttal testimony “the number of data requests and the level of detail does not permit shortened discovery timeframes.”³⁵ Additionally, the parties agreed that the time to respond to discovery after rebuttal testimony should be shortened, but they were unable to agree on the exact response time.³⁶

²⁷ Status Report at 5.

²⁸ Status Report at 6. *See also* Status Report at 3, where Pepco initially indicated that it would have to litigate two rate cases in two years.

²⁹ Status Report at 6.

³⁰ Status Report at 6.

³¹ Status Report at 4.

³² Status Report at 6.

³³ Status Report at 7.

³⁴ Status Report at 6.

³⁵ Status Report at 6.

³⁶ Status Report at 6.

Furthermore, the parties were unable to agree on shortening the time period to five days to respond after updates to actual costs were filed.³⁷

C. OPC/AOBA/DCG's and Other Intervenors' Comments and Proposed Procedural Schedules

15. OPC, in conjunction with AOBA and DCG, presented two proposed schedules.³⁸ OPC/AOBA/DCG contend that its schedules will allow parties enough time to thoroughly vet Pepco's application.³⁹ OPC/AOBA/DCG's preferred option is "to phase the proceeding and address the traditional rate case in the first phase and then address the MRP and PIMs with a policy discussion in the middle of the two phases to inform the second rate case."⁴⁰ OPC/AOBA/DCG's second option would be to conduct a consolidated proceeding addressing all issues based on an eighteen month schedule.

16. As a general matter under either schedule, the Status Report indicates that OPC and AOBA require updates to actuals for Pepco's "traditional" six months historical and six months forecasted test-year filing prior to filing their direct testimony because in prior cases, the information received in the updates of forecasted information caused a change in positions taken in testimony already filed by OPC/Intervenors.⁴¹ OPC and AOBA assert it would be more efficient and less resource intensive to receive the updates before filing direct testimony so as to allow for discussion of the data and clarification with Pepco.⁴² In addition, OPC believes that "receiving the information early in the process would ensure that only actual contested issues would be raised at hearing," and that "the updates could help in considering the MRP numbers and the reasonableness of Pepco's forecasts on which its MRP application [is] based."⁴³ DCG asks for the Commission to include surrebuttal testimony in whatever schedule it adopts, and OPC/AOBA/DCG believes such surrebuttal testimony will limit the number of days for hearing.⁴⁴

17. Specifically with regards to OPC/AOBA/DCG's phased schedule, the purpose of Phase I is to separate the traditional case from the MRP, and to review the traditional case on its own.⁴⁵ A technical conference would be convened in March 2020 to discuss performance based

³⁷ Status Report at 6.

³⁸ See Status Report, Attachment 2 at 1-4 (containing OPC/AOBA/DCG's Phased Procedural Schedule) and at 5 (containing OPC/AOBA/DCG's Consolidated Procedural Schedule).

³⁹ Status Report at 1. OPC/AOBA/DGC notes that the other intervenors had not been contacted regarding the proposed schedule because they did not have sufficient time to coordinate contact. *See* Status Report at 2.

⁴⁰ Status Report at 1-2.

⁴¹ Status Report at 2.

⁴² Status Report at 2.

⁴³ Status Report at 2.

⁴⁴ Status Report at 6.

⁴⁵ Status Report at 5.

ratemaking elements and framework and provide a comment period for the parties.⁴⁶ OPC/AOBA/DCG explain that the “technical conference should be comprised of panelists that represent: (1) utilities, regulatory agency staff, and consumer advocates from states that have already implemented a performance based-alternative rate design, and (2) stakeholders in the District of Columbia” and that “the Commission should issue a pre-formulated set of questions for the panelists to address to aid the Commission with developing a framework to evaluate alternative rate designs” in advance of the technical conference.⁴⁷ This approach contemplates the Commission issuing “two concurrent orders, one on any approved rate increase based on the historical test year (which would be implemented following the order) and a second order on the policy framework the Commission will use to evaluate the MRP.”⁴⁸ The rates from Phase I would be effective upon issuance of the Commission’s Order on the traditional rate case and remain effective throughout the Commission’s review and consideration of the Phase II MRP and PIMs proceeding.⁴⁹ In Phase II of OPC/AOBA/DCG’s schedule, Pepco’s proposed MRP with PIMs would be considered on the merits, inclusive of whether a rate design change is warranted, and if so what the rates should be.⁵⁰ OPC believes that supplemental testimony would be necessary.⁵¹ However, OPC notes that at the end of Phase II, the MRP may be approved or disapproved.⁵²

18. OPC/AOBA/DCG assert that the phased approach would allow time to review the proposals and determine if the proposed changes to rate design are in the public interest.⁵³ In support of the phased schedule, OPC notes that: (1) “Pepco’s Application is essentially multiple rate cases in one requiring parties to review both the partially-forecasted test year and the MRP data and to consider the development of a new rate design;”⁵⁴ and (2) “ratepayers bear the costs of litigating the case and because more time is needed to consider the MRP and ensure that it will not result in negative impacts, phasing the case would make it more efficient and would speed up the consideration of issues that have been addressed historically.”⁵⁵ OPC explains that Pepco has 18 witnesses included in its Application, some of whom provide testimony on crossover issues for both the traditional and MRP.⁵⁶ OPC maintains that a resolution of the traditional rate case would

⁴⁶ Status Report at 5.

⁴⁷ Status Report, Attachment 2 at 4.

⁴⁸ Status Report at 5.

⁴⁹ Status Report at 2.

⁵⁰ Status Report at 5.

⁵¹ Status Report at 5.

⁵² OPC states that the Phase II Order will address: (a) whether Pepco may implement a MRP; (b) if so, the design of the plan; and (c) the rates to be charged. *See* Status Report at 2.

⁵³ Status Report at 2.

⁵⁴ Status Report at 3.

⁵⁵ Status Report at 3.

⁵⁶ Status Report at 3.

inform the MRP and reduce the need for Pepco to call a witness again.⁵⁷ Further, OPC states “that the traditional rate case informs the MRP, that the only likely scenario under which the traditional case can be settled is under the joint parties’ phased approach, and that PIMs should not be considered independently from MRPs.”⁵⁸

19. AOBA asserts that the Commission required the Company to file a traditional rate case and that “Pepco could file an MRP or PIM[s] along with it, but because the MRP included novel ideas it justified separate consideration.”⁵⁹ Additionally, AOBA believes that “the phased approach is necessitated by Pepco’s decision to file a 6-month projected test year for the traditional rate case and the question of forecast accuracy is at the heart of Pepco’s MRP request.”⁶⁰

20. DCG asserts that using a phased proceeding would allow parties to focus on discrete concepts (*i.e.* traditional rate case, and MRP) in an orderly manner.⁶¹ The Report states that DCG stated “that the Omnibus Act . . . would require a Commission-lead working group/stakeholder group to separately consider PIMs, including energy efficiency and demand response PIMs, and noted that the timing of the proposed Phase II proceeding could facilitate implementation of whatever PIMs resulted from the Omnibus working group/stakeholder process.”⁶²

21. OPC/AOBA/DCG’s proposed Phase I schedule contemplates that the Commission will issue a decision on the Company’s traditional single year proposal by May 20, 2020.⁶³ OPC/AOBA/DCG’s Phase II schedule would begin with the Commission issuing a concurrent Phase II policy order on May 20, 2020, setting the framework the Commission would use when evaluating alternative rate designs with the Commission issuing a final order addressing: (i) whether Pepco may implement a MRP; (ii) if so, the design of the plan; and (iii) the rates that may be charged by February 17, 2021. OPC/AOBA/DCG also provided a Consolidated Schedule, as an alternative to their phased approach, which allows for the processing of the entire case within eighteen months.⁶⁴ Under that proposed schedule, discovery begins on June 28, 2019, discovery closes June 29, 2020, with hearings the week of June 29, 2020, and with an Order issuing on November 25, 2020, on the ratemaking methodology that Pepco should use to set corresponding rates.⁶⁵

⁵⁷ Status Report at 3.

⁵⁸ Status Report at 6.

⁵⁹ Status Report at 3.

⁶⁰ Status Report at 6.

⁶¹ Status Report at 2.

⁶² Status Report at 2. DCG’s view was captured in the Transcript at 31:7-21.

⁶³ Status Report at 2.

⁶⁴ Status Report, Attachment 2 at 5.

⁶⁵ Status Report, Attachment 2 at 5.

22. The other intervenors' comments or recommendations regarding the procedural schedules are more limited. WGL indicates that it intervened as an observer, that it planned to file an alternative rate plan case in early 2020, and noted it's preference would be for the Commission to consider the cases separately but concurrently on the same schedule.⁶⁶ GSA believes that both traditional and MRP can be reviewed in a single proceeding, but it considered Pepco's schedule to be far too compressed.⁶⁷ LiUNA states that Pepco's schedule was "a little ambitious" and that the cases could be separated, but that its involvement would relate only to the MRP and PIMs.⁶⁸ SBUA believes that the cases should be separated with the MRP and PIMs in the second phase, and the decision on the first phase coming in May, but this depends on when actuals are received and whether more time is provided to prepare direct testimony.⁶⁹ DC Water, IBEW, and MDV-SEIA take no position on the schedules.⁷⁰

IV. DECISION

23. Although the Commission has relied primarily on traditional cost-of-service regulation based on an historical test-year when establishing rates, this Commission has for some time encouraged Pepco and interested parties to explore the strategies and alternatives to the traditional ratemaking approach because of the frequent need for rate increases caused by Pepco's reliability investments.⁷¹ In *Formal Case No. 1103*, the Commission urged the Company, OPC and intervenors to be open to considering non-traditional methods of ratemaking because of the benefits it could provide to District ratepayers by conserving resources from avoided costs of rate proceedings.⁷² In *Formal Case No. 1139*, we again noted the merits of examining traditional utility ratemaking versus alternative rate designs.⁷³ In that case, no alternative ratemaking proposal was proffered by any parties, but we reiterated that we would allow Pepco to submit a multiyear plan in the next rate case if the Company believed it should be considered in light of the environment on growing distributed energy resources ("DERs").⁷⁴ The Commission indicated that it "is not averse to allowing Pepco to include in its next rate case a request for a fully forecasted test year

⁶⁶ Status Report at 3.

⁶⁷ Status Report at 3.

⁶⁸ Status Report at 3.

⁶⁹ Status Report at 3.

⁷⁰ Status Report at 3.

⁷¹ See *Formal Case No. 1103, In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Services* ("Formal Case No. 1103"), Order No. 17424, ¶ 120, rel. March 26, 2014 ("Order No. 17424"). ("We urge the Company, OPC and the intervenors to remain open to considering some nontraditional methods of moving forward during this period of growth and change, especially because the resources saved from avoided rate proceedings can inure to the benefit of District ratepayers who ultimately pay the costs of our proceedings.")

⁷² *Formal Case No. 1103*, Order No. 17424, ¶ 120.

⁷³ *Formal Case No. 1139*, Order No. 18846, ¶ 595.

⁷⁴ *Formal Case No. 1139*, Order No. 18846, ¶¶ 595 and iii.

and or a multi-year rate proposal, in addition to a traditional test year filing subject to” several conditions.⁷⁵ The Commission also stated in that Order:

Most multi-year rate plans feature a performance metric system that includes some performance incentive mechanisms (“PIM[s]”). These PIMs provide awards or penalties, or both, for performance in targeted areas. However, in this case, no parties have put forward any performance matrix or parameters for awards or penalties for us to consider. Nonetheless, the Commission would allow Pepco to submit such a multi-year rate plan in the next rate case if Pepco believes that this should be considered in an environment of growing DERs. It is up to Pepco to propose such a plan and then prove that the mechanism can work reasonably with the information available.⁷⁶ (footnotes omitted)

24. Pepco’s rate Application seeks the adoption of a PBR mechanism, including MRP and PIMs. Besides the MRP and PIMs, the Application also provides information allowing for traditional rate case review. Pepco’s Application appears on its face to be consistent with the directives in Order No. 18846. It should be noted that Pepco did not prepare its alternative regulation proposal in a vacuum. Pepco held four workshops between September 2018 and April 2019 with OPC and other interested persons outlining the various types of alternative forms of regulation, including a precursor of the Company’s current Application before the Commission.

25. Pepco’s Application indicates that “authorization of the [rate] request through the proposed MRP will allow the Company to recover prior investments in its electric distribution infrastructure, other costs necessary to operate, as well as investments and costs that will be made in the future.”⁷⁷ The Company contends that a rate increase is needed to allow Pepco to: (a) continue investments in the electric distribution system; (b) continue to improve reliability and customer service; (c) modernize the distribution system through increased interconnection of DERs; and (d) to advance the forward-focused policy goals of the District on reliability, resiliency, clean-energy and climate change.⁷⁸

⁷⁵ *Formal Case No. 1139*, Order No. 18846, ¶ 594. The conditions set forth by the Commission in the Order are, “in addition to those stated in Commission Rules 200.1, 200.2, 200.3, and 200.5: (1) there must be a baseline revenue and cost evaluation which is equivalent to a historical test year; (2) Pepco must explain how to escalate or trend a myriad of revenues and expenses; (3) additional time must be allowed for the first examination of the new paradigm; thus, we foresee that and advise Pepco that the schedule for any rate case that includes a fully forecasted test year for the first time will require an appropriate extension of time to ensure that the Commission and all participants have the necessary time to fully examine any new proposal; (4) Pepco needs to provide a mechanism which allows parties to reconcile any forecasted components to subsequent actuals for the same test year. Our focus in considering any alternative mechanism will include a review of the benefits that accrue to customers as opposed to solely focusing on the utility.”

⁷⁶ *Formal Case No. 1139*, Order No. 18846, ¶ 585.

⁷⁷ Pepco’s Application at 6.

⁷⁸ Pepco’s Application at 6.

26. The Commission recognizes that the overarching concern of OPC and the intervenors is ensuring that no party's right to due process is infringed and that ample time is provided to thoroughly vet the various parts of Pepco's proposal. Further, ratepayers and Pepco have an interest in ensuring Pepco continues to have the resources necessary to modernize its distribution system in the District and provide safe and reliable service. The Commission reaffirms our statement in *Formal Case No. 1139*, that "[o]ur focus in considering any alternative mechanism will include a review of the benefits that accrue to customers as opposed to solely focusing on the utility."⁷⁹

27. In *Formal Case No. 1139*, we cautioned Pepco and the parties that evaluating new rate making approaches would require additional time. It is clear that Pepco's initial eleven month consolidated schedule was overly abbreviated. Both OPC/AOBA/DCG's and Pepco's phased approaches provide for 12 months for each phase and a total of 24 months to address all issues presented. Only OPC/AOBA/DCG's consolidated schedule allows for a suitably lengthened schedule while not unduly delaying the conclusion of this case.

28. While OPC/AOBA/DCG and Pepco take starkly different approaches to how best to separate the elements of Pepco's Application across two phases, we believe that evaluating the traditional case alongside the MRP and PIMs can, among other things, provide cost savings to ratepayers and provide the Commission and the parties the opportunity to: (a) observe the interdependencies between the rate-making adjustments; (b) analyze changes in rate base and operating income; (c) analyze the proper authorized rate of return, ROE, and capital structure; and (d) analyze the interdependencies between current decoupling mechanisms. Further, if Pepco is allowed to adjust rates over multiple years, the Company should be subject to strong PIMs that ensure the advancement of the Commission's grid modernization and District Government's environmental goals. All parties recognize that a phased approach presents some level of inefficiencies as both phased approaches took significantly longer than the consolidated schedules. For these reasons, the Commission believes the 18 month consolidated schedule proposed by OPC/AOBA/DCG presents the best path forward. Thus, the Commission adopts the procedural schedule set forth in Attachment A which is primarily based on OPC/AOBA/DCG's 18-month consolidated procedural schedule.

A. Other Procedural Matters

29. The Commission has discretion and ultimate control over use of its limited resources and how it manages its calendar.⁸⁰ For the reasons stated herein, the Commission adopts the procedural schedule set forth in Attachment A. The adopted schedule, among other things, provides for discovery to begin on June 28, 2019, and to end on May 22, 2020, in advance of the Prehearing Statement being filed with the Commission on May 29, 2020. The schedule contemplates four Technical Conferences: (1) the Class Cost of Service Studies Model, (2) the

⁷⁹ *Formal Case No. 1139*, Order No. 18846, ¶ 594.

⁸⁰ *See D.C. v. Pub. Serv. Comm'n of D.C.*, 802 A.2d 373, 378 (D.C. 2002) ("No principle of administrative law is more firmly established than that of agency control of its own calendar Consolidation, scope of the inquiry, and similar questions are housekeeping details addressed to the discretion of the agency and, due process or statutory considerations aside, are no concern of the courts") (Citations omitted).

Construction Report, (3) Framework for Evaluating Alternative Ratemaking Proposals and (4) MRP Annual Reconciliation and bill stabilization adjustment (“BSA”) Frameworks. The schedule reflects Pepco’s agreement with the parties to make updates to actuals on September 16, 2019.

30. The Commission believes that Pepco’s plan to make updates to actuals by September 16, 2019, is reasonable. In *Formal Case No. 1139*, the Commission voiced some of the same concerns of OPC, AOBA, and DCG concerning forecasted data.⁸¹ As for DCG’s recommendation for quarterly or semi-annual updates to actuals, the Commission is not inclined to direct this option because DCG has not provided a review process or actions to be taken if the forecasted values and actual values are significantly different. After Pepco presents its updated data and explanation of variances, the Commission is open to revisiting this issue if warranted. Further, under an MRP, the comparison between actual and forecasted costs can be investigated through the annual reconciliation process proposed by Pepco. Additionally, parties can discuss this issue in their direct testimony if they believe additional review of forecasted and actual values are warranted beyond Pepco’s proposed annual reconciliation.

31. Pepco has already hosted Technical Conferences on the Class Cost of Service Studies Model and the Construction Report. We direct Pepco to host a Technical Conference on October 24, 2019, to provide a walk-through of the mechanics of Pepco’s proposed MRP Annual Reconciliation and BSA frameworks that are part of its Application. This will enable parties to gain a greater understanding of what Pepco is proposing and provides an opportunity for a discussion that could clarify areas of concern without the burden of formal discovery.

32. The two-day technical conference, on September 25 and 26, 2019, concerns the Commission’s establishment of a framework for evaluating alternative regulation proposals.⁸² The Commission will issue a Notice in advance of the Technical Conference establishing an agenda and scope of discussion.⁸³ As scheduled, parties would submit comments following this technical conference and the Commission would issue a Policy Order on the alternative forms of regulation

⁸¹ *Formal Case No. 1139*, Order No. 18846, ¶ 594. (“Moreover, we remind Pepco of the concerns raised in *Formal Case No. 1087* where Pepco’s test year included six months of forecasted test year data and the ability of Pepco to demonstrate and the parties to discover, how budgeted data was used to derive the forecasted amounts in the test year. This is an important threshold that Pepco must address before obtaining the Commission’s final approval of such a future rate application.”) (Citation omitted).

⁸² See D.C. Code § 34-1504 (d) (2001), which provides:

- (1) Notwithstanding any other provision of law, the Commission may regulate the regulated services of the electric company through alternative forms of regulation.
- (2) The Commission may adopt an alternative form of regulation if the Commission finds that the alternative form of regulation: (A) Protects consumers; (B) Ensures the quality, availability, and reliability of regulated electric services; and (C) Is in the interest of the public, including shareholders of the electric company.
- (3) Alternative forms of regulation may include: (A) Price regulation, including price freezes or caps; (B) Revenue regulation; (C) Ranges of authorized return; (D) Rate of return; (E) Categories of services; and (F) Price-indexing.

⁸³ The Commission will consider and incorporate as appropriate the specific proposal and questions proposed by OPC/AOBA/DCG in the Status Report, Attachment 2 at 3-4.

framework. Part of this technical conference will involve identifying alternative ratemaking approaches, including PIMs, that further the Commission's MEDSIS goals and the District's energy related objectives, such as those laid out in the Clean Energy DC Plan. The Commission directs parties to identify how any PIMs they support or propose advance the MEDSIS Vision and District's goals as part of their submission and subsequent testimony.

33. In the Status Conference Report, DCG brought up the CleanEnergy DC Act's directive that the Commission establish a working group to develop and file "energy savings metrics, quantitative performance indicators, and cost-effective standards to be adopted by the Commission for electric company or gas company energy efficiency or demand response programs," within 90 days of the working group's first meeting.⁸⁴ Additionally, the Act directed the working group established by the Commission to consider recommendations regarding (1) measures to ensure utility programs "do not impede District business or nonprofits currently providing energy efficiency and demand response programs" and (2) "[p]erformance incentive mechanisms that are based on the quantitative performance indicators" the working group establishes for utility run energy efficiency and demand response programs.⁸⁵ In its Application, Pepco Witness McGowan states that the Company is "committed to participating in the working group process to consider implementing energy efficiency programs, demand response programs, and electric transportation in the District of Columbia."⁸⁶ The Commission intends to establish the working group in October 2019 so that report back from the working group to the Commission can be completed by January 2020 in advance of OPC/Intervenors filing their direct testimony. After reviewing the working group's recommendation, the Commission will determine how any results could be integrated into this case considering Pepco has not proposed, and the Commission has not approved, Pepco's operation of any energy efficiency or demand response programs under this provision. However, this should not foreclose discussions of what other measurable metrics are appropriate given that new rates would not be effective until the end of 2020.

34. OPC/AOBA/DCG request that the Commission consider allowing surrebuttal testimony because they believe such testimony will limit the hearing time. The Commission has carefully considered the request and agrees that, because of the complexities of this proceeding, adding surrebuttal testimony as pre-filed testimony should aid the Commission's desire to streamline our rate case proceedings by reducing the number of days for the hearing. However, to ensure that Pepco is afforded its right to due process, the Company will have an opportunity to offer written or live rejoinder on any information or testimony offered on surrebuttal.

35. In addition, the filing of a Joint Prehearing Conference Statement, on May 29, 2020, should: (a) identify material issues of disputed facts; (b) set forth the parties' stipulations; (c) indicate the number of witnesses as well as the nature of their testimony; (d) provide admissions; (e) authenticate documents; and (f) address any other procedural matters. At the Prehearing Conference on June 3, 2020, the Commission will review the Joint Prehearing Statement and the

⁸⁴ See D.C. Code § 8-1774.07 (g)(1) and (3) (Supp. 2019).

⁸⁵ See D.C. Code § 8-1774.07 (g)(2) (Supp. 2019).

⁸⁶ Pepco's Application, Exhibit (B) at 43. The Company indicates that until the energy efficiency, demand response, and transportation programs are implemented in the District, the Company cannot develop the related PIMs, and thus it would be premature to propose such PIMs in their Application.

parties' positions and determine if any material facts remain in dispute and will issue an Order and Report on the Prehearing Conference. The schedule also provides the parties with a Settlement and Stipulation Conference to get them to focus on the possibility of settlement. If the matter is not settled and there remain disputed issues of material fact, the schedule provides for a hearing the week of June 29, 2020.

36. With respect to Post-Hearing briefs, we have considered and disagree with OPC/AOBA/DCG's request that the parties only be allowed to file one brief. The elimination of the short period (15 days) added to the schedule for reply briefs will not reduce regulatory lag or streamline the Commission's rate case proceedings to any significant extent, if at all. A two-week savings would be *de minimis* in an 18-month schedule and result in no measurable benefit. On the other hand, allowing reply briefs will provide the opportunity for the parties to crystalize the issues and their positions on those issues *vis a vie* the other parties. Upon the filing of the reply briefs, the record closes.

37. The Commission also has the responsibility of ensuring that Pepco's filings are consistent with the District's clean energy policies to decrease greenhouse gas emissions annually to help reach the District's 50% goal by 2032. We look forward to reviewing Pepco's filed testimony in this proceeding on this issue. The Commission is in the process of reviewing and implementing the statutory requirements addressed to us through the CleanEnergy DC Act.

B. Discovery

38. Discovery in this proceeding can be conducted in accordance with Commission Rules 122-126.⁸⁷ After the filing of Rebuttal Testimony, the response period for discovery requests is shortened to five (5) business days for all parties. The evidentiary hearing is not to be used as the forum for the parties to conduct discovery. The Commission encourages the parties to use every available method of discovery, to obtain answers to questions so that the parties can determine what, if any, material issues of fact in dispute cannot be resolved by the parties and will be presented for the Commission to consider at the evidentiary hearing. Any objections to discovery requests must be served within five (5) business days after service of the request. Any follow-up discovery requests are due within five (5) business days of service and any objections are due to such follow-up requests within two (2) business days. The parties shall consult with each other and attempt in good faith to resolve all discovery disputes prior to making an objection and again prior to filing a motion seeking relief from the Commission. In the event parties are unable to resolve a dispute, the aggrieved party may file a motion for relief within three (3) business days from service of the written objection. The opponent shall respond to the motion within two (2) business days of service of the motion. The motion and response shall be in letter format, and shall each be limited in length to three (3) single-spaced pages with a 12-point or greater font. The letters must specify the dates and times of all consultations for the purpose of resolving the dispute.

⁸⁷

15 DCMR §§ 122-126 (1995).

C. Delegation of Authority

39. To ensure that procedural issues do not delay parties' hearing preparations, the Commission delegates to its General Counsel, for purposes of this case only, decisions regarding all uncontested procedural motions, such as motions for extension of time, and motions for special appearance. Additionally, the General Counsel is directed to issue any other scheduling notices as needed during the course of this proceeding. Finally, the Commission directs the General Counsel to render an initial decision on any motions to compel, with only reconsideration requests being handled by the full Commission.

D. Streamlined Hearing Process

40. Although there is a statutory requirement that an order affecting rates cannot be entered by the Commission without a formal hearing, the D.C. Court of Appeals has held that a formal hearing is unnecessary when there is no dispute over material facts and if the only disputes involve law or policy.⁸⁸ Unless the parties identify material issues of fact that require a hearing, the Commission intends to act in this proceeding based entirely on the written record. The material issues of fact in dispute would be the sole issues to be addressed at the evidentiary hearing in this case. Issues of law or policy can be addressed in written filings. If there is a hearing, the Commission will limit the cross-examination during the hearing to a maximum of 40 minutes per witness per intervening party to this proceeding. Any redirect of witnesses will be limited to 20 minutes. If a party requires additional time, they should be prepared to explain to the Commission the additional points they are trying to make, the impact on the case, and the additional time requested.

E. Procedural Rules

41. This case is a general ratemaking proceeding. As such, it is governed by Chapters 1 and 2 of the Commission's Rules of Practice and Procedure, except to the extent modified by the procedural schedule set forth Attachment A.⁸⁹ Disputes regarding facts and conclusions asserted in pre-filed testimony and exhibits filed by the parties must be precisely identified in the amended and supplemental testimony.

42. The filings also shall include tables specifically identifying for each issue all testimony and exhibits relied upon. All parties filing testimony in this proceeding on more than two issues shall file and serve with the testimony an Issue Index to the party's direct, supplemental, and rebuttal testimony. The index shall identify, by issue and sub-issue, all testimony and exhibits relied upon with respect to that issue. With any filing, the parties also shall include tables demonstrating the revenue impact of each adjustment to Pepco's cost-of-service where appropriate.

⁸⁸ See D.C. Code § 34-908 (2001); *Watergate East, Inc. v. District of Columbia Public Service Com'n*, 662 A.2d 881 (D.C. 1995).

⁸⁹ 15 DCMR § 100 (1981).

43. All filings made with the Commission must be electronically filed (e-filed) using the Portable Document Format (“PDF”) with the optical character recognition (OCR) feature enabled.⁹⁰ Documents created in Microsoft Word, Excel, and other software programs must be converted to PDF before submission to the Commission. Parties also shall file with the Commission the required number of paper copies of each e-filed document within one business day of submission of the e-filing. Parties must ensure that the paper copies are identical to the e-filed document. To ensure that the electronic and paper filings are the same, parties are strongly encouraged to make their paper copies from the PDF version of the filing. Parties not yet registered as users with the Commission’s eDocket system may do so by accessing the Commission’s website: www.dcpso.org/edocket/newuser.asp?fmode=N, reviewing and completing the application for Account – Letter of Assurance, and submitting an electronic and a paper copy of the application to the Commission.

44. The parties will cross-examine other parties’ witnesses in the following order: Pepco, OPC, and Intervenors in alphabetical order. Evidence shall be presented in the following order:

Pepco	(Entire Pre-Filed Case)
OPC	(Entire Case)
Intervenors	(Entire Case)
Pepco	(Rejoinder – written/live)

This arrangement consolidates questioning of each parties’ witnesses regarding prefiled testimony, but allows Pepco the opportunity to address all arguments since it has the burden of proof in this case.⁹¹

THEREFORE, IT IS ORDERED THAT:

45. The Procedural Schedule set forth in Attachment A of this Order is **ADOPTED**.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

⁹⁰ 15 DCMR § 119.2 (2011).

⁹¹ See Formal Case No. 1150, *In the Matter of the Application of Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service*, Order No. 19263, ¶ 19, rel. February 2, 2018.

ATTACHMENT A: PROCEDURAL SCHEDULE

<u>Action</u>	<u>Date</u>
Pepco Application Filed	May 30, 2019
Public Notice Issued	June 13, 2019
Petitions to Intervene	June 19, 2019
Discovery Begins	June 28, 2019
Technical Conference I – CCOSS Model	July 16, 2019
Technical Conference II – Construction	July 25, 2019
Pepco Supplemental Direct / Updates to Actuals for the Test-Year with Variance Explanations by Account	September 16, 2019
Technical Conference III – Framework for Evaluating Alternative Ratemaking Proposals	September 25-26, 2019
Comments from all Stakeholders on Technical Conference III	October 15, 2019
Technical Conference IV – MRP Annual Reconciliation and BSA Frameworks	October 24, 2019
Policy Order on Alternative Ratemaking Framework	December 11, 2019
OPC/Intervenors file Direct Testimony , Exhibits and Workpapers	February 19, 2020
Settlement & Stipulation Conference	TBD
Report on Settlement & Stipulation Conference	TBD
All Parties file Rebuttal Testimony , Exhibits and Workpapers	April 8, 2020
All Parties file Surrebuttal Testimony , Exhibits and Workpapers	May 20, 2020
Community Hearings (Date & Locations)	TBD
Discovery Ends	May 22, 2020
Settlement & Stipulation Conference	May 27, 2020
Joint Prehearing Statement and Report on Settlement & Stipulation Conference	May 29, 2020
Prehearing Status Conference	June 3, 2020
Order and Report on Status Conference	June 17, 2020
Hearings	Week of June 29, 2020
Post-Hearing Brief	August 26, 2020
Post-Hearing Reply Brief	September 10, 2020