



Sandra Mattavous-Frye, Esq.
People's Counsel

September 5, 2019

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

Re: Formal Case No. 1153, In the Matter of the Petition of Potomac Electric Power Company for an Investigation to Determine the Jurisdiction of the Public Service Commission to Regulate the Distribution of Electricity to Retail Customers at The Parks at Walter Reed

Dear Ms. Westbrook-Sedgwick:

Enclosed for filing in the above-referenced proceeding, please find the "*Office of the People's Counsel for the District of Columbia's Notice of Non-Opposition*".

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

Sincerely,

/s/ Tamika L. Taylor

Tamika L. Taylor
Assistant People's Counsel

Enclosure

cc: Parties of Record

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

In the Matter of the Petition of Potomac Electric Power Company for an Investigation to Determine the Jurisdiction of the Public Service Commission of the District of Columbia to Regulate the Electric Distribution System at The Parks at Walter Reed)
) **Formal Case No. 1153**
)
)
)

**NOTICE OF NON-OPPOSITION
OF THE OFFICE OF THE PEOPLE’S COUNSEL**

I. INTRODUCTION

Pursuant to Rule 105.8 of the Public Service Commission of the District of Columbia’s (“Commission” or “PSC”) Rules of Practice and Procedure, the Office of the People’s Counsel for the District of Columbia (“OPC” or “Office”), the statutory representative of District of Columbia ratepayers and consumers with respect to utility matters,¹ submits this Notice of Non-Opposition in response to Pepco’s Notice of Withdrawal of Petition, Settlement Agreement and Motion (“Notice”).

II. PROCEDURAL BACKGROUND

On September 25, 2018, the Potomac Electric Power Company (“Pepco” or “Company”) filed the *Petition of Potomac Electric Power Company for an Investigation to Determine the Jurisdiction of the Public Service Commission of the District of Columbia to Regulate the Electric Distribution System at The Parks at Walter Reed* (“*Petition*”).² In its *Petition*, the Company asked the Commission to determine if WGL Energy Systems, Inc., The Park at Walter Reed Owner’s

¹ D.C. Official Code § 34-804 (Lexis 2019).

² *Formal Case No. 1153, Petition of Potomac Electric Power Company for an Investigation to Determine the Jurisdiction of the Public Service Commission of the District of Columbia to Regulate the Electric Distribution System at The Parks at Walter Reed*, filed September 25, 2018 (“*Petition*”).

Association, Inc. (“Owners’ Association”), or both, are a public utility as a result of the operation of the electric distribution system at The Parks.³

On October 5, 2018, WGL Energy Systems (“WGL Energy”) filed an *Answer and Motion to Intervene*.⁴ WGL Energy asserted that the electric distribution at the Parks is not subject to the Commission’s jurisdiction because that infrastructure is a functioning microgrid. Also, on October 5, 2018, the Owners’ Association and The Parks at Walter Reed Developer, LLC (“TPWR”) filed a *Joint Answer* in response to Pepco’s *Petition*. Similar to WGL Energy, TPWR claimed that the electric distribution system located at The Parks at Walter Reed is a non-PSC jurisdictional microgrid.⁵

On October 19, 2018, the Commission issued Order No. 19721, which granted Pepco’s *Petition* for an investigation and the *Petitions to Intervene* filed by TPWR and WGL Energy, respectively.⁶ Specifically, in that Order, the PSC “open[ed] an investigation to determine whether the operation of Walter Reed’s Redevelopment (“Walter Reed”) electric distribution system is subject to regulation by the Commission as a public utility or by any alternative means designed to reasonably promote the public interest, preserve the public health, and protect customers.”⁷

On December 11, 2018, Pepco, WGL Energy, WGL Energy Services, Inc., TPWR, and the Owners’ Association filed a *Joint Motion for Abeyance and Expedited Ruling* (“*Motion for Abeyance*”), which indicated that the movants were actively engaging in settlement talks regarding

³ *Formal Case No. 1153, Petition* at p. 2.

⁴ *Formal Case No. 1153, WGL Energy Systems, Inc.’s Answer to Pepco’s Petition for Investigation; and WGL Energy Services, Inc.’s Petition to Intervene*, filed October 5, 2018.

⁵ *Formal Case No. 1153, The Parks at Walter Reed Owners’ Association and TPWR Developer, LLC’s Answer to Pepco’s Petition for Investigation; and TPWR Developer, LLC’s Petition to Intervene*, filed October 5, 2018.

⁶ *Formal Case No. 1153, Order No. 19721, rel. October 19, 2018* (“Order No. 19721”).

⁷ *Id.*, ¶ 1.

this matter. On January 25, 2019, the Commission granted the *Motion for Abeyance*.⁸ Notably, in that pleading, when listing all of the “Parties” whom would be participating in the then-forthcoming settlement discussions, Pepco excluded the Office.

In response, on December 12, 2018, the Office filed a letter in this docket.⁹ It conveyed two points: (1) the Office did not find the requested abeyance objectionable and (2) the Office, as the District’s statutory utility consumer advocate, must participate in any/all settlement discussions.

The very next day, Pepco (on behalf of WGL Energy, WGL Energy Services, Inc., TPWR, and the Owners’ Association) filed a letter in response to OPC’s December 12 Letter.¹⁰ In it, the Company asked the PSC to exclude the Office from the then-forthcoming settlement discussions on the putative grounds that the participants were attempting to negotiate a private, commercial transaction and OPC’s presence would have a chilling effect on any such discussions.

Subsequently, on December 17, 2018, the Office filed with the Commission the *Conditional Opposition of the Office of the People’s Counsel for the District of Columbia to the Joint “Parties” Motion for Abeyance and Expedited Ruling*.¹¹ Through its *Conditional Opposition*, the Office stated it did not find the requested abeyance and related settlement talks patently objectionable, asked the Commission to include OPC in all future settlement talks, and

⁸ *Formal Case No. 1153*, Order No. 19807, rel. January 25, 2019.

⁹ *Formal Case No. 1153*, December 12, 2018 Letter from Office of the People’s Counsel for the District of Columbia, filed December 12, 2018 (“OPCs December 12 Letter”).

¹⁰ *Formal Case No. 1153*, December 13 Letter from Potomac Electric Power Company, filed December 13, 2018 (“Pepco’s December 13 Letter”).

¹¹ *Formal Case No. 1153*, *Conditional Opposition of the Office of the People’s Counsel for the District of Columbia to the Joint “Parties” Motion for Abeyance and Expedited Ruling*, filed December 17, 2019 (“*Conditional Opposition*”).

requested that the PSC direct the participants to fully brief the Office on any settlement discussions that had taken place as of the date of the Office's *Conditional Opposition*.

On January 25, 2019, the Commission issued Order No. 19807, wherein it granted the requested abeyance.¹² In that same Order, the PSC rejected the Office's request to participate in the then-forthcoming settlement discussions.

After a series of further procedural extensions, on August 26, 2019, Pepco filed the *Joint Motion for Approval of Nonunanimous Agreement of Stipulation and Full Settlement and to Dismiss Formal Case No. 1153*.¹³

III. NOTICE OF NON-OPPOSITION

On September 5, 2019, Pepco, on behalf of the Settling Parties filed the Notice. For the reasons discussed herein, and subject to the Office's reservation of rights, the Office does not object to the Settling Parties' motion or the request to terminate *Formal Case No. 1153*.

In the *Joint Motion for Approval*, the Settling Parties state "that the Owners' Association and TPWR entered into an asset and purchase sale agreement with Pepco on August 26, 2019, whereby the Owners' Association agreed to sell, transfer and assign to Pepco all of the assets comprising the electric energy infrastructure ('Electrical Infrastructure') used to deliver electric energy at the TPWR Property (the 'Purchase and Sale Agreement')." ¹⁴ The Settlement Agreement provides further that following the closing of the asset sale: (1) "Pepco will operate the electric

¹² *Formal Case No. 1153*, Order No. 19807, rel. January 25, 2019 ("Order No. 19807").

¹³ *Formal Case No. 1153, Joint Motion for Approval of Nonunanimous Agreement of Stipulation and Full Settlement and to Dismiss Formal Case No. 1153*, filed August 26, 2019 ("*Joint Motion for Approval*"). The Settlement Agreement was filed on behalf of WGL Energy Systems, Inc., WGL Energy Services, Inc., the Parks at Walter Reed Owners' Association, Inc., TPWR Developer, LLC, and the District of Columbia Government, collectively the ("Moving Parties").

¹⁴ *Joint Motion for Approval* at 1.

energy infrastructure used to deliver electric energy at the TPWR Property as part of its overall District of Columbia electric distribution system and include this infrastructure in its rate base;” and (2) that the “infrastructure...will be subject to the Commission’s jurisdiction.”¹⁵

Assuming that the contemplated asset sale is consummated, the transfer of assets to Pepco will resolve the jurisdictional issues raised by Pepco in the *Petition*. Pepco is an “electric company” as defined in Section 34-207 of the District of Columbia Code and a “public utility” pursuant to Section 34-214 of the District of Columbia Code. The Commission will therefore, as a matter of law, have jurisdiction over the assets in question following any sale to Pepco and will be obligated to insure that the service provided over those facilities is “reasonably safe and adequate and in all respects just and reasonable.”¹⁶ Accordingly, this Office does not object to the withdrawal of the Settlement Agreement and the termination of the instant proceeding.

The Office stresses, however, that the ostensibly private commercial transaction described in the Settlement Agreement and purportedly reflected in the Purchase and Sale Agreement cannot resolve, *inter alia*, the reasonableness or safety of the former Walter Reed distribution system, the jurisdictional status of the transaction, or determine the reasonableness of any costs that Pepco seeks to include in rate base in a future rate case. Accordingly, the Office’s non-opposition in this proceeding is expressly conditioned on its reservation of its legal rights to further investigate and, if necessary, challenge all aspects of the asset transfer, including jurisdictional status, and the Purchase and Sale Agreement in future proceedings before this Commission. Should the Commission allow Pepco to withdraw its *Petition* and the joint Settlement Agreement and related *Motion*, the Office respectfully requests that any such approval be made with prejudice.

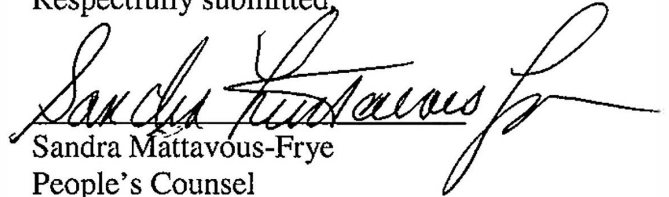
¹⁵ Joint Motion for Approval at 3.

¹⁶ DC Code § 1-204.93 (2015).

IV. CONCLUSION

WHEREFORE, for the reasons stated herein the Office provides notice that it does not object to the Notice and that it reserves all rights to investigate and challenge the reasonable of the facilities subject to the Purchase and Sale Agreement in future proceedings before this Commission.

Respectfully submitted,



Sandra Mattavous-Frye
People's Counsel
D.C. Bar No. 375833

Karen R. Sistrunk
Deputy People's Counsel
D.C. Bar No. 390153

Laurence Daniels
Director of Litigation
D.C. Bar No. 471025

Travis R. Smith, Sr.
Trial Supervisor
D.C. Bar No. 481129

**OFFICE OF THE PEOPLE' COUNSEL
OF THE DISTRICT OF COLUMBIA**
1133 Fifteenth Street, N.W.,
Suite 500
Washington, D.C. 20005-2710
(202) 727-3071

Dated: September 5, 2019

CERTIFICATE OF SERVICE

Formal Case No. 1153, In the Matter of the Petition of Potomac Electric Power Company for an Investigation to Determine the Jurisdiction of the Public Service Commission of the District of Columbia to Regulate the Distribution of Electricity to Retail Customers at The Parks at Walter Reed

I certify that on September 5, 2019, a copy of the “*Office of the People’s Counsel’s* Notice of Non-Opposition” was served on the following parties of record by hand delivery, first class mail, postage prepaid or electronic mail:

Brinda Westbrook-Sedgwick
Commission Secretary
Public Service Commission
of the District of Columbia
1325 G Street, NW, Suite 800
Washington, DC 20005
bwestbrook@psc.dc.gov

Christopher Lipscombe
Office of the General Counsel
Public Service Commission
of the District of Columbia
1325 G Street, NW, Suite 800
Washington, DC 20005
CLipscombe@psc.dc.gov

Leslie T. Thornton -Senior Vice President,
General Counsel & Corporate Secretary
Donald R. Hayes
Meera Ahamed
Paul S. Buckley
John C. Dodge
Cathy Thurston-Seignious
Adam Fine
Benjamin Isreal
Washington Gas Light Company
1000 Maine Avenue, S.W.
Washington, D.C. 20024
cthurston-seignious@washgas.com
Leslie.thorton@washgas.com
blisrael@washgas.com

The Parks at Walter Reed Owners’
Association, Inc.
c/o Hines Interest Limited Partnership
Charles K. Watters, Jr., Senior Managing
Director
Two City Center
800 10th Street, N.W., Suite 600
Washington, DC 20001

Brian R. Caldwell
Assistant Attorney General Public Integrity
Unit 441 4th Street, N.W., Suite 600-S
Washington, D.C. 20001
Brian.caldwell@dc.gov

Steven Shparber
Nelson Mullins Riley & Scarborough LLP
101 Constitution Avenue, NW, 9th Floor
Washington, DC 20001
steven.shparber@nelsonmullins.com

Potomac Electric Power Company
Wendy E. Stark
Kim F. Hassan
Andrea H. Harper
Dennis P. Jamouneau
701 Ninth Street, N.W., 9th Floor
Washington, D.C. 20068
westark@pepcoholdings.com

Registered Agent for the Parks at Walter
Reed Owners' Association, Inc.
Capital Corporate Services, Inc.
1090 Vermont Avenue. N.W., Suite 910
Washington, D.C. 20005

/s/ Tamika L. Taylor
Tamika L. Taylor
Assistance People's Counsel