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December 23, 2020

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

Re: Formal Case No. 1156

Dear Ms. Westbrook-Sedgwick:

Attached is Potomac Electric Power Company's Reply Brief in the above referenced proceeding.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,

/s/ *Kim F. Hassan*

Kim F. Hassan

Enclosures

cc: All Parties of Record

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

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

REPLY BRIEF
OF
POTOMAC ELECTRIC POWER COMPANY

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December 23, 2020

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BEFORE THE
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REPLY BRIEF
OF
POTOMAC ELECTRIC POWER COMPANY

Pursuant to the directive of the Public Service Commission of the District of Columbia (the "Commission") in Order No. 20632,[1] as amended by the Commission at the evidentiary hearing on October 27, 2020, and memorialized in the Commission's November 12, 2020 Public Notice, as well as Rule 137 of the Commission's Rules of Practice and Procedure,[2] Potomac Electric Power Company ("Pepco" or the "Company") hereby submits its Reply Brief. In this Reply Brief, the Company responds to certain contentions contained in the initial briefs of other parties.[3] To

1 FC 1156, Order No. 20632, Attachment A. Full case citations are provided in the Table of Authorities to this Reply Brief.

2 15 D.C.M.R. §137.

3 In addition to the Company, initial briefs were filed by the Office of People's Counsel of the District of Columbia ("OPC"), the Apartment and Office Building Association of Metropolitan Washington ("AOBA"), the District of Columbia Government ("District Government" or "DCG"), the United States General Services Administration ("GSA") and the Laborers' International Union of North America-Baltimore Washington Construction and Public Employees Laborer's District Council ("BWLDC"). Pepco references the initial briefs of the other parties as, *e.g.*, "OPC Brief at ____." In the body and footnotes of this Reply Brief, references to the Company's initial brief are referred to as the "Initial Brief".

avoid unnecessary repetition, the Company, where appropriate, cross references its Initial Brief in response to certain contentions of other parties.[4]

For the reasons set forth below and in the Initial Brief, the parties' arguments in opposition to implementation of a multiyear rate plan ("MRP") as an alternative form of regulation ("AFOR") should be rejected. The record supports the Commission's approval of an MRP in this proceeding— the MRP Enhanced Proposal or, in the alternative, the Original MRP Proposal.

I. INTRODUCTION.

District of Columbia Mayor Muriel Bowser, the Council of the District of Columbia (the "Council"), and the Commission have been on a journey for some time to address climate change and to place a marker in the ground establishing their commitment to supporting clean energy integration as well as aligning utility performance with these goals. With the passage of the *CleanEnergy DC Omnibus Amendment Act of 2018* ("Clean Energy Act") and the Department of Energy and Environment's ("DOEE's") Sustainable DC Plan, the District has established, *inter alia*, the following energy commitments: (1) improving energy efficiency and reducing greenhouse gas emissions by 50% by 2032 and carbon neutrality by 2050; (2) increasing the District's use of renewable energy sources to 100% by 2032; (3) doubling the amount of solar energy deployed in the District to 10% by 2041; (4) providing energy-bill assistance to low- and moderate-income residents; (5) modernizing energy infrastructure for improved efficiency and reliability; (6) reducing power outages to between zero and two events of less than 100 minutes per year; and (7) requiring all public transportation and privately owned fleet vehicles to become emissions-free by

[4] Because the Company in its Initial Brief comprehensively addressed the issues before the Commission in this proceeding and established that the MRP Enhanced Proposal should be implemented as an alternative form of regulation, the decision not to address specific arguments in this Reply Brief should not be considered agreement on the part of the Company with any of the positions or arguments of the other parties except as may be expressly identified herein or in the Initial Brief.

the year 2045. In addition, the District has joined the unprecedented 100 Resilient Cities effort, committed to the development of strategies to address inclusive growth, climate, smart cities, health, and equity. Through its intentional efforts, the Commission has unequivocally established its commitment to moving the District forward and driving innovation in the utility delivery area through its grid modernization initiatives, e.g., FC 1130, "PowerPath DC" that includes transportation electrification and multiple other initiatives; FC 1148, which includes the Energy Efficiency and Energy Conservation Task Force; FC 1167, a newly-opened proceeding for implementation of electric and natural gas climate change business plans; and various proceedings defining important metrics used to implement clean energy programs. This work has led to the next chapter in the District's energy progress—consideration of performance-based ratemaking to support this ambitious undertaking.

As Company Witness McGowan testified in his Direct Testimony, the MRP is a "fundamental component to enable the changes that consumers, the Commission, the Council of the District of Columbia, the Company, and other stakeholders desire in the District of Columbia, as an MRP also creates a more balanced regulatory environment that facilitates investment."[5] It is imperative that the Company not only respond and prepare for this evolution in the energy sector but also continue to be innovative and proactive in enabling this transition. The Company's MRP proposal aligns the Company's long-term planning process with the District's long-term goals.

Commissions across the United States have already made this transition. Indeed, transitioning away from traditional cost of service ratemaking and toward ratemaking that aligns utility performance with policy goals is critical to ensuring meaningful and impactful implementation of the Commission's decarbonization goals. The fact that consumers are still

[5] PEPCO (B): McGowan Direct at 26:5-8.

experiencing the impacts of the COVID-19 pandemic spurs the need to move forward with implementing an MRP – not shy away from it.

The Maryland Public Service Commission ("Maryland Commission") recognized the benefits of an MRP when it approved BGE's MRP Pilot on December 16, 2020 in Case No. 9645. The Maryland Commission stated:

> The Commission's use of this methodology, which is used in several other states, is expected to limit the number and frequency of utility rate cases, and allow customers to know with certainty the timing and scale of changes in rates. Until now, the Commission has relied largely on a traditional form of ratemaking based on a past, or historic, 12-month period as the basis for electric and gas utilities to recover the cost of providing service to customers. As such, many utilities file rate cases as frequently as every year in an effort to recover their costs more quickly.[6]

In this proceeding, as discussed in the Initial Brief,[7] Pepco's MRP Enhanced Proposal and Original MRP Proposal comply with the Commission's guidance in its AFOR Order: demonstrating measurable, qualitative and quantitative benefits for District customers (including rate offsets in the case of the MRP Enhanced Proposal in response to the economic impact of the COVID-19 pandemic); providing rate stability for Pepco customers with rate offsets through 2022, during the COVID-19 pandemic; providing greater transparency throughout the MRP period; proposing customer assistance programs as well as a reduction of capital spending as part of the MRP Enhanced Proposal in recognition of the needs of District consumers during the pandemic; as well as a number of other key benefits that support customer affordability, enhance and support

[6] MD PSC Press Release, dated December 16, 2020, *Maryland PSC Approves BGE Rate Plan for 2021-2023* at 2. Other benefits of an MRP the Maryland Commission identified include: shortening the cost recovery period; providing more predictable rates for customers; spreading changes in rates over multiple years; allowing adjustments to reflect changes in the business environment, rather than changes in the utility's actual revenue and costs; and providing greater transparency. MdPSC Order No. 89226 at 54. The Maryland Commission also determined that AFORs might be helpful "in facilitating the achievement of the State's ambitious goals regarding electrification, renewable development, pipeline replacement, development of new consumer solutions, grid resiliency, and other state goals." *Id*. at 53.

[7] Initial Brief at Section III.D.

reliability and resilience, and position the Company to more effectively support the climate goals of the District and the Commission.

Several parties in this proceeding have made their resistance to change abundantly clear. Parties flatly rejected the idea of instituting an AFOR, steadfastly clinging to traditional ratemaking. Despite being given every opportunity to delve into the nuances of AFORs and consider the best form for the District, the parties' testimony reflects only superficial consideration and rejection of MRPs in favor of the status quo. However, the status quo is not sustainable. Although the Company may have been willing to absorb the regulatory lag associated with prior year levels of spending, without an MRP, the Company "would be constrained in its ability to invest in grid modernization and technology to support the District of Columbia and customer energy goals."[8] From the outset, several parties have attempted to stall, halt, or thwart the progression of this case in spite of the Commission's clear direction that it intended to consider AFORs. Parties jointly have filed multiple motions seeking to derail these proceedings, all of which failed to impede the Commission's consideration of an AFOR. Parties decried the process repeatedly as one that undermined their due process rights, despite being given more process than any rate proceeding in recent history. These claims of failed due process, however, were yet another tactic to derail the AFOR proceeding. Nowhere was that more evident than the evidentiary hearing where, after boldly stating that the hearing should involve over 370 issues of material fact, the parties not only barely touched on these purported material issues in cross examination, but failed to fully utilize the time the Commission allotted and passed over cross examination of some of the key AFOR witnesses.

[8] PEPCO (B): McGowan Direct at 27:12-14.

Despite this unfortunate posturing by the parties, the Commission must still lead. The Commission has a full and complete record before it upon which to base its decision, a record built upon over 18 months of unprecedented process. As was detailed in the Initial Brief, that record establishes that the MRP Enhanced Proposal is reasonable, will permit the Commission to make the findings required by Section 34-1504(d)(2) of the District of Columbia Official Code ("DC Code") to approve an AFOR, and should be approved given the COVID-19 pandemic. Given the length of time this proceeding has taken, time is now of the essence. While Pepco, the Commission, the District and Pepco customers, continue to cope with the impact of the COVID-19 pandemic, the effects of climate change have not ceased and continue to grow worse. The need to focus on reliability and resilience likewise has increased. The collaborative effort focused on energy efficiency and electrification must continue. The next step in the Commission's evolution is to approve an improved ratemaking process that enables the flexibility and transparency that supports consumers when they need such support the most and will foster the District's sustainability goals. District customers deserve nothing less.

On December 16, 2020, pursuant to MdPSC Order No. 89678, the Maryland Commission took such bold action, approving a three-year MRP for the Baltimore Gas & Electric Company ("BGE") and authorizing an increase in rates for electric distribution service of almost $140 million over the MRP term.[9] BGE's initial MRP application was filed on May 14, 2020, during the same time that parties in this proceeding argued an MRP was not appropriate during the COVID-19 pandemic. In contrast, no party in the BGE proceeding argued that an MRP was not appropriate due to the pandemic. The Maryland Commission was mindful of the severe economic impact the COVID-19 pandemic has had on Maryland customers and explicitly addressed this in

[9] The incremental increases approved over the 3 year term of the MRP are: $59,334,000 in 2021, $38,696,000 in 2022 and $41,879,000 in 2023. MdPSC Order No. 89678 at ¶3.

MdPSC Order No. 89678. For example, it held that because of the severe health and economic impacts of the COVID-19 pandemic, "it is prudent to use the tax refunds and certain other adjustments to prevent an immediate rise in customer bills for 2021."[10] This Commission should continue to lead and take the same bold action to aid the District customers in this time of economic uncertainty and to advance the ratemaking paradigm to support the District's climate change goals.

II. LEGAL STANDARDS.

Section 34-1504(d)(2) of the District of Columbia Official Code ("DC Code") sets forth the statutory requirements the Commission must satisfy in order to adopt an AFOR. Specifically, the Commission must find that the AFOR: (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.

Section IV of OPC's Brief discusses the legal standards that OPC believes are applicable to this proceeding. The Commission, as the regulatory body charged with establishing just and reasonable rates for public utilities in the District of Columbia, has extensive experience in such matters and is undoubtedly aware of the legal standards applicable to its decision making. Pepco would note, however, that much of OPC's discussion in Section IV.B relates to the standards the District of Columbia Court of Appeals has articulated regarding its review of a Commission ratemaking order.

In Section IV.C of its initial brief, OPC points to the Commission's AFOR Order and the overarching framework that it contained.[11] As the Commission noted in the AFOR Order, however, with the exception of statutory requirements, the framework's elements are not mandates but, rather, "should be **considered** when presenting a well-designed/properly constructed

10 MdPSC Order No. 89678 at ¶23.
11 OPC Brief at 19-20 (quoting principles in Paragraph 94 of the AFOR Order).

AFOR."[12] Moreover, in Order No. 20632, the Commission rejected an argument advanced by some parties that the MRP Enhanced Proposal should be dismissed for allegedly failing to comply with the AFOR Order. The Commission reiterated that the AFOR Order "sets out 'principles' and 'guidelines' rather than bright-line requirements."[13] Moreover, the Company's MRP Enhanced Proposal is consistent with the AFOR Order principles, as was detailed in Section III.D of the Initial Brief.[14] The Commission, not OPC, will be the arbiter of whether the Company's proposal satisfies the statutory requirements and sufficiently achieves any other objectives set out in the AFOR Order that the Commission considers pertinent.

Further, in Sections IV.C and IV.D, OPC cites at several points to a statement ("Statement") issued by Commission Beverly in this proceeding on October 21, 2020.[15] As Commissioner Beverly indicated in the Statement, however, he was not prejudging the matter before the Commission.[16] That Statement was not an order of the Commission or a decision of a court and does not establish a legal standard. Rather, the Statement made clear that Commissioner Beverly was concerned about the impact of the ongoing health emergency, a concern shared by the Company. As discussed in Pepco's Initial Brief and in this Reply Brief, an MRP is the best means by which the Commission can protect the interests of all stakeholders in light of current economic circumstances. It would be inappropriate to conclude, as OPC appears to suggest,[17] that Commissioner Beverly had already made a determination regarding the MRP Enhanced Proposal's

[12] FC 1156, Order No. 20273 at ¶96.
[13] FC 1156, Order No. 20632 at ¶21.
[14] Section III.D also addressed that the Original MRP Proposal is consistent with the framework established in the AFOR Order.
[15] FC 1156 Dkt No. 391.
[16] Statement at 2. As a trier of fact in this proceeding, such prior judgment would have been inappropriate, and it is unlikely that the Commissioner intended for his Statement to be cited in a discussion of legal standards in the briefs of the parties.
[17] OPC Brief at 20.

or the Original MRP Proposal's compliance with the AFOR Order framework or any other issue in this proceeding. OPC's reliance on the Statement is improper and should be given no weight.

Finally, in Section IV.D,[18] OPC references the broad general guidelines the Commission proposed in the AFOR Order for use in developing PIMs.[19] The AFOR Order, however, does not establish that these are the criteria by which the Commission will determine whether a PIM should be adopted or how the Commission will ultimately review proposed PIMs, whether in this proceeding or in other proceedings.[20] To the contrary, the Commission was clear that the listing was a proposal that the Commission would finalize in its final order in this proceeding should it adopt the Original MRP Proposal and its proposed PIMs.[21] It is premature to hold out these criteria as a legal standard.

III. PEPCO'S MRP AND CAPITAL CONSTRUCTION PLAN SUPPORTS GRID MODERNIZATION AND THE DISTRICT'S CLEAN ENERGY GOALS.

Parties dismiss the Company's MRP proposals claiming they do not contain sufficient investments to support the District of Columbia's clean energy goals over the 2020-2022 period. First, the Company's MRP proposal is not simply a one-time request, but rather a request to move toward a regulatory framework to support the long-term clean energy goals of the District of Columbia. An approach that is consistent not only with the AFOR Order but also the Commission's recent opening of FC 1167. With the MRP proposals, the Company is proposing a new integrated regulatory framework that encourages stakeholder review of the Company's future capital and spending plans, proposed levels of performance and the cost to achieve the level of

[18] OPC Brief at 21-22.
[19] AFOR Order at ¶103.
[20] For example, in FC 1160, the Commission recently directed the EEDR Metrics Working Group to file a report within 180 days that, *inter alia*, is to address the design and provide a recommended list of EEDR PIMs. FC 1160, Order No. 20654 at ¶2.
[21] AFOR Order at ¶104.

performance, while improving transparency, lowering customer costs and ensuring customers only pay for the cost of service approved by the Commission.[22] Second, as discussed further below, the Company's MRP includes a significant level of grid modernization and reliability investments that are needed to support the District of Columbia's long-term clean energy goals. These investments in reliability and resiliency are a necessary first step to allow a more robust deployment of DER and technologies to support the District of Columbia's ambitious long-term clean energy goals.

Pepco invests capital to replace aging infrastructure, improve reliability, and meet customer growth. The technologies selected for particular investments are in accordance with Pepco's system planning responsibilities and commitment to pursue the cost-effective use of innovative technologies. Underlying every decision that Pepco makes to modernize its distribution system is recognition of its obligation to provide its customers safe, reliable and secure electric service, while building a smarter, stronger and cleaner grid to support the District's clean energy, climate change and resilience goals. As the local electric utility, Pepco is committed to and charged with making investments in the electric distribution system, which it owns and operates, to improve reliability and meet or exceed customer expectations. The Company also recognizes that, as the electric distribution company serving the District of Columbia, it has a foundational role to play in helping achieve the District's climate change and clean energy goals equitably, inclusively and cost effectively. To accomplish this, Pepco is focused on making investments to modernize the grid to leverage and enable smart energy solutions and clean technologies. Those investments—for which Pepco is always accountable to the Commission and ultimately its customers—must address the short-term and long-term needs of the electric system infrastructure while also being prudent, safe,

[22] PEPCO (4B): McGowan Rebuttal at 7:17-22.

and reliable. When Pepco makes an investment in its system, it examines available technologies and makes the necessary upgrades in a way that continues to modernize the system, making it more resilient, more automated and more capable of supporting greater amounts of DERs and electrified technologies, such as electric vehicles or electric building solutions. Pepco's distribution system of today is more advanced than the system was even a few years ago and far more advanced than decades ago. These innovations in the normal course of operations, while often imperceptible to many external stakeholders, have significantly extended system capabilities over time and are creating the platform required to support increased deployment of DERs and alternatives (such as Non Wires Alternatives or locational constraint solutions) to traditional capital investment and to support the District's sustainability policies and resilience goals.

As part of its planning process, Pepco has also implemented new procedures to take into account the changes that are likely to occur relative to increased DERs, energy efficiency and demand response, in addition to traditional investment drivers of aging infrastructure replacement and reliability issues.[23] Pepco uses a mix of short-term and long-term solutions in order to cost-effectively resolve system issues, and the addition of new circuits, substation transformers, substations, and increased and anticipated DERs are all considered when determining the best solution to meet the needs of Pepco's customers and fulfill Pepco's obligation to provide safe and reliable service.[24] In keeping with the District's climate goals, those short-term and long-term needs include continuing to provide a robust electric distribution system to which DER can interconnect so that DER can proliferate in the District of Columbia, as only two-tenths of one

[23] PEPCO (3I): Clark Surrebuttal at 12:18-15:3.
[24] PEPCO (3I): Clark Surrebuttal at 12:1-13:2.

percent (0.2%) of the DER in the entirety of Pepco's electric distribution system (in the District of Columbia and Maryland) can operate without electric distribution system support.[25]

Despite DCG's protestations on brief and in direct contradiction to its claims that "[r]eliability investments in themselves do not modernize the grid,"[26] DOEE's presentation in the Final PIMs Report makes clear that Pepco's MRP is supportive of grid modernization. DOEE concedes

> Stage 1 - *Right now DC is squarely within Stage 1*. (reference DOEE slide deck #6), characterized by low DER adoption. Advanced Metering Infrastructure (AMI) is fully deployed in the District, but its functionality is not yet being fully utilized. There is a need for more granular data and deploying and utilizing the functionalities of advanced inverters, and calculating the locational value for DER. We also need a consensus framework for Benefit Cost Analysis. Pepco needs to deploy more communication and sensory devices on its system to gather more data on locational value for DER.[27]

Slide #6 to which DOEE references (attached to the Final PIMs Report) shows the three stages of Grid Modernization. Stage 1, characterized by low DER adoption, focuses on "Aging Infrastructure Refresh" and "Smart Grid Investments."[28] It is not until Stage 2 (DER Integration) that grid modernization focuses on "DER Integration & Optimization" and "Dist. Platform Development."[29] DOEE concedes that the states that are in Stage 2 of grid modernization are Hawaii and California, the two most advanced states in the nation in terms of DER deployment.[30]

By DOEE's own admission, Pepco's MRP lays the appropriate grid modernization foundation for the Stage in which the District currently sits. Pepco's ongoing and planned

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25 Only one system can island from the electric distribution system in the District of Columbia. The notion that building the Capital Grid Project will create stranded assets is disingenuous. DOEE Comments at 1, 3.

26 DCG Brief at 14.

27 Final PIMs Report at 12 (emphasis added).

28 DOEE PIMs Presentation, Slide 6, Final PIMs Report.

29 DOEE PIMs Presentation Slide 6, Final PIMs Report.

30 Final PIMs Report at 12.

investment in such technologies as distribution automation;[31] remote monitoring sensors;[32] installation of smart relays and replacement of remote terminal units;[33] automatic reclosers;[34] installation of ASP computer;[35] capacitor controls—providing remote capacitor automation, monitoring and protection;[36] broadband base stations to support transport of Smart Grid;[37] installation of telecom repeaters, master radios and access points for ASR;[38] inspection, testing and replacement of battery systems across the District system[39] are all examples of "smart" investments in the MRP.[40] They provide more granular data and a more automated and dynamic system. As Company Witness Clark testified:

> In addition, providing customer choice and increasing DER adoption is enabled by these and other investments, as is transportation and other electrification initiatives. These and other future investments create a grid that supports the transition of the grid to a platform for the provision of advanced energy and information services, which differs both in scope and customer expectations from the services Pepco has traditionally offered.[41]

However, those investments cannot be made without a strong, reliable grid on which to place them, and DER require a reliable platform. The Company's grid modernization plans, as reflected in the Construction Report, are designed to be "a foundational element of these important policy objectives:"[42] As Company Witness Clark explained:

> A reliable grid is a necessary first step to continuing to build a modern grid that is capable of hosting increasing amounts of Distributed Energy Resources (DERs),

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31 PEPCO (I)-2 at 121, 205.
32 PEPCO (I)-2 at 125.
33 PEPCO (I)-2 at 123.
34 PEPCO (I)-2 at 175.
35 PEPCO (I)-2 at 207.
36 PEPCO (I)-2 at 209.
37 PEPCO (I)-2 at 218.
38 PEPCO (I)-2 at 235.
39 PEPCO (I)-2 at 14.
40 PEPCO (2I): Clark Rebuttal at 24:14-25:10.
41 PEPCO (2I): Clark Rebuttal at 25:5-10.
42 PEPCO (2I): Clark Rebuttal at 21:20-22:1.

> such as solar generation, battery storage, and other non-wires alternatives (NWAs).[43]

Hence, the other investments that Pepco is making in 2020, 2021 and 2022 to harden the system, making it stronger and more resilient, are equally important in Stage 1, as indicated in DOEE's Slide 6 (Aging Infrastructure Refresh). The MRP is precisely the plan needed to support the stage of grid modernization the District "is squarely within"[44] at this time and in the coming years. The parties' assertions that approval of the MRP and its construction plans will impair the achievement of the District's clean energy goals, or that the Company's planned investments will not facilitate achievement of those goals[45] are erroneous.

Moreover, OPC's assertion that adoption of an MRP "does not allow stakeholders to advocate for NWA alternatives"[46] is demonstrably false. Pepco has already issued its first Request for Proposals ("RFPs") in its Distribution System Planning Process incorporating Non-Wires Alternatives ("DSP/NWA Process"), which incorporates RFPs for non-wires solutions for capacity constraints into the Company's planning process. The Company has received interest from 31 potential RFP recipients and expects to have the results of the first DSP/NWA Process cycle in early 2021. As Company Witness Clark testified, the DSP/NWA Process will be aided by a newly developed tool from Quanta Technology that will facilitate the cost-effective deployment of DER on the system.[47] Moreover, the Quanta tool, which was deployed in 2020, has been developed to incorporate the locational value of DER, a foundational need according to DOEE. Pepco is also refining its load forecasting tools to better support the interconnection and growth of DERs on the system.[48]

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43 PEPCO (2I): Clark Rebuttal at 22:1-4.
44 Final PIMs Report at 12 (emphasis added).
45 *See*, *e.g.*, OPC Brief at 119; DCG Brief at 13.
46 OPC Brief at 119.
47 PEPCO (3I): Clark Surrebuttal at 14:8-15.
48 PEPCO (3I): Clark Surrebuttal at 14:8-17.

The incorporation of RFPs for locational constraint solutions is only one example of sustainable, grid modernization programs and initiatives resulting from the Commission's forward-thinking proceedings intended to help implement the District's clean energy goals and each of these stakeholders and the Company are active participants in those proceedings.[49] In response to Commission orders (FC 1130), the Company was able to file a proposed Time of Use pilot program for working group collaboration and Commission consideration and provide a straw man proposal for a dynamic pricing program for working group collaboration.[50] Further, the Company is filing an energy efficiency and demand response plan (FC 1160), in direct response to the Commission's actions in response to the Clean Energy Act.[51] Each of these programs reduces load, potentially deferring investments that would otherwise have been required. These are only a few examples of the innovations that the Company, stakeholders and the Commission are undertaking to allow for deferral of investment in the system, while ensuring ongoing system reliability and resiliency.

Moreover DCG's claim that expedited recovery would not help the Company advance District goals is disingenuous.[52] Company Witness McGowan discussed in detail how timely recovery helps the Company keep pace with the District's goals:

> It is critical for the Commission to implement a framework that allows the Company the opportunity for the timely recovery of its costs and the possibility of earning the ROE that the Commission determines is reasonable. Giving the utility the opportunity to earn its approved ROE benefits our customers as well as the utility. Earning the approved ROE is crucial if the Company is to continue to fund the important reliability and resiliency work that is the bedrock upon which grid modernization is made possible. Without a reliable and modern electric infrastructure, Pepco will not be able to address the other environmental and energy

[49] The Commission has multiple open proceedings intended to implement the District's clean energy policies, including FC 1130 (Power Path DC); FC 1050, RM9-2015-01, RM-40-2017-01 (interconnection and net metering); FC 1148 (Energy Efficiency and Energy Conservation Task Force); Docket GD-2019-04-M (Clean Energy Act); and FC 1167 (Electric and Gas Climate Business Plans).

[50] FC 1130, Order No. 20286 at ¶87.

[51] *See* FC 1160, Order No. 20654.

[52] DCG Brief at 13.

> policy goals that the District of Columbia and the Commission wish to advance. Customers not only benefit from the reliability and resilience investments but also the investments focused solely on achieving the District of Columbia and Commission's goals. By having the opportunity to earn its approved ROE, Pepco has a better ability to fund all of these important initiatives. Without such a framework in place, there will be a need for the Company to prioritize capital expenditures among these and other goals. This will limit the Company's future ability to fully fund projects that advance public policy goals and will make it more difficult to achieve the ambitious goals the District of Columbia has set for itself as quickly as would otherwise be the case.[53]

The Climate Ready DC Plan recognizes the increasing threat of climate change, for example, citing to the increased numbers of heat emergency days expected over the coming years and extreme rainfall events.[54] And, more recently, DOEE issued its Carbon Free DC plan, which presents its roadmap for achieving the District's climate change goals. The roadmap established in Carbon Free DC relies on increasing amounts of electrification, economy wide, pointing to the need to continue to make investments in foundational elements of the electric grid to enhance reliability and resilience, while expanding its overall capacity and capabilities.[55] These plans recognize that aggressive action is needed to combat and curb the effects of climate change; and Pepco recognizes this imperative, as well, as the Company recently demonstrated with the release of its Climate Change Commitment.[56] Those aggressive actions—as proposed in these Climate Ready DC, Carbon Free DC, as well as Resilient DC—require Pepco investments in the grid as a platform for the growing adoption of new distributed technologies, electrified technologies and energy efficiency and demand response technologies at a pace that will help the District achieve these important goals. As Company Witness McGowan testifies:

> Pepco is not simply requesting a recovery mechanism to improve its earnings as some parties might suggest, but rather, the Company is proposing a new integrated

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53 PEPCO (4B): McGowan Rebuttal at 6:13-7:9.

54 Climate Ready DC Plan at 2-3.

55 *See* https://dc.gov/sites/default/files/dc/sites/ddoe/service_content/attachments/Carbon%20Free%20DC%202050_General%20Overview.pdf.

56 https://www.pepco.com/SafetyCommunity/Environment/Pages/ClimateActionGoals.aspx.

> regulatory framework that encourages stakeholder review of the Company's future capital and spending plans, proposed levels of performance and the cost to achieve the level of performance, while improving transparency, lowering customer costs and ensuring customers only pay for the cost of service approved by the Commission. Without the appropriate underpinnings and ratemaking framework, Pepco will not be positioned to fully assist in supporting these important initiatives and goals due to competing capital constraints. It is important to take a long-term, forward-looking view and establish a new regulatory framework that will permit these goals and initiatives to be actively supported and achieved.[57]

Continuing with the status quo, as the parties propose, is not supportive of the District goals and undermines the District's, Commission's, Company's and other stakeholders' efforts to reduce greenhouse gas emissions and combat the threat of climate change.

The Company is proactively taking steps to ensure that the District's clean energy policies and objectives are incorporated into Pepco's planning processes. Pepco agrees with the need to integrate more DER and non-wires solutions into the electric distribution system and shares the interest of stakeholders in quickly deploying new technologies that are shown to be effective in support of an increasingly modern, secure and sustainable distribution system. The Commission has provided a multitude of opportunities for all stakeholders to be active participants in achieving the District's clean energy and climate change goals. Together Pepco, with its expertise in distribution system planning and operation in the District of Columbia, and the other stakeholders with their respective expertise can approach the modernization of the District of Columbia electric distribution grid in a productive and effective way. The adoption of an MRP—the new integrated regulatory framework that encourages stakeholder review of the Company's future capital and spending plans, proposed levels of performance and the cost to achieve the level of performance, while improving transparency, lowering customer costs and ensuring customers only pay for the

[57] PEPCO (4B): McGowan Rebuttal at 7:16-8:3.

Commission-approved cost of service – is a crucial step in the process for Pepco to demonstratively assist the District of Columbia meet its clean energy and climate goals.

IV. PEPCO'S MRP ENHANCED PROPOSAL IS JUST AND REASONABLE AND IN THE PUBLIC INTEREST AND SHOULD BE APPROVED.

In response to the Commission's recommendation that parties identify opportunities to expand support for customers adversely impacted by the COVID-19 pandemic, Pepco filed the MRP Enhanced Proposal as an alternative to the Original MRP. As Company Witness McGowan explained, the flexibility an MRP offers allowed Pepco to propose innovative adjustments as a response to the impacts of the COVID-19 pandemic.[58] In the MRP Enhanced Proposal, the Company made enhancements to the Original MRP Proposal that include:

- Offsetting all customer distribution rate increases until January 1, 2022.
- Mitigating 2022 customer rate impacts by partially offsetting the 2022 distribution rate increase.
- Deferring $60 million in capital expenditures during the 2021-2022 time period.
- Using $29 million of shareholder funds including an extension of the Customer Base Residential Credit ("CBRC") for an additional nine months.
- Proposing new customer assistance programs, modifications to existing customer assistance programs, and requesting additional funding for customer assistance programs.
- Reducing the requested return on equity ("ROE") from 10.30% to 9.70%.

As discussed in the Initial Brief, Pepco has met its burden of proof to establish that the MRP Enhanced Proposal is in the public interest and should be approved.

A. Record Evidence Demonstrates that the MRP Enhanced Proposal Is Just and Reasonable, Especially in Light of an Ongoing Pandemic.

This base rate case has been litigated concurrently with the COVID-19 global health pandemic. OPC and other intervenors invoke the pandemic as a reason why the Company's

58 PEPCO (5B): McGowan Surrebuttal at 7:13-15.

revenue request should be reduced.[59] Indeed, the opposite result is appropriate. Today, more than ever, Pepco customers need their utility to continue to provide safe, reliable, clean and affordable service. In the face of the COVID-19 pandemic and in response to stakeholder feedback, the Company reviewed how it could provide certainty around energy costs going forward as well as targeted relief and assistance to customers based on their changing circumstances and needs due to the pandemic. The MRP Enhanced Proposal provides the targeted relief and certainty around energy costs customers need, while allowing the Company the flexibility to invest as needed to continue to provide safe, reliable, clean and affordable service.

Pepco has made significant investments in the electric distribution system to ensure safe, reliable, affordable and sustainable energy for its valued customers. Since 2017, Pepco has invested $905 million to improve service to its customers, and the Company is proposing an investment of $661 million over the 2021-2022 periods.[60] The MRP Enhanced Proposal requests a revenue requirement of $135.9 million for this defined period. As detailed in Pepco's Initial Brief and in the extensive written and oral evidentiary record in this proceeding, Pepco's request in this base rate case is necessary to adequately fund vital public safety initiatives, maintain reliability, and provide excellent service to our more than 359,000 District of Columbia customers.[61]

Finally, and contrary to OPC's claims,[62] the MRP Enhanced Proposal preserves the Commission's full authority over Pepco's rates and oversight over the actions and spending of the Company on an annual basis. This increased oversight ensures that Pepco's charges align with investments made while protecting the interests of customers, which is critically important during

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[59] *See* OPC Brief at 28-29; DCG Brief at 25; AOBA Brief at 3-4.
[60] PEPCO (I): Clark Direct at i-ii.
[61] PEPCO (A): Velazquez Direct at 2:21-22; PEPCO (B): McGowan Direct at 3:13-15.
[62] OPC Brief at 158.

these most unprecedented times. In addition, an MRP provides the Commission and parties with more insight into the Company's planning process over a longer term.

This new construct allowed the Company to develop and propose meaningful, substantive customer assistance programs, offer significant shareholder support, reduce capital spend, and other tangible benefits that will provide customers with immediate, timely relief upon Commission approval. The Company appreciates the Commission's leadership in turbulent times and is proud to propose this MRP Enhanced Proposal that is just, reasonable, and in the interest of all consumers. Pepco's MRP Enhanced Proposal will not only provide certainty for customers during this period but also would allow the Company to continue to make needed investments in the local energy grid to make it stronger, smarter, cleaner and better able to serve customers now, and as the District recovers.

B. The Company's Use of June 2019 Historical Test Year and 2.50% Escalation Factor Is Reasonable.

The MRP Enhanced Proposal addresses many of the objections the parties raised in response to the Original MRP Proposal, particularly with respect to the development of the revenue requirement.[63] In response to parties' objections to reliance on Company projections for calculating revenue requirements during the term of the MRP,[64] the MRP Enhanced Proposal instead starts the analysis with the June 2019 historical test period costs, with appropriate

[63] "[T]he Company has crafted an MRP Enhanced Proposal in an attempt to streamline evaluation of an MRP in this proceeding and provide the Commission with an MRP approach that addresses many of the concerns raised by other parties as well as the emergent public health emergency." PEPCO (6C): Wolverton Surrebuttal at 1:17-2:2. Inexplicably, some parties' briefs ignore the fact that the Company's MRP Enhanced Proposal addressed most, if not all, of the parties' objections to the Original MRP. For example, GSA's initial brief discusses at length its concerns regarding the Earnings Sharing Mechanism and the 10.3% ROE that were part of the Original MRP Proposal, but never discusses that the ESM was eliminated and the proposed ROE reduced to 9.7% in the MRP Enhanced Proposal. Even more confusing is GSA's request that any annual reconciliation filing be asymmetrical, allowing rate reductions, but not rate increases, while ignoring the fact that this is what is proposed in the MRP Enhanced Proposal. GSA Brief at 34.

[64] PEPCO (6C): Wolverton Surrebuttal at 3:8-17.

ratemaking adjustments.[65] The Company then applies an escalation factor to those historical costs to calculate the revenue requirement for the MRP term.[66]

As discussed in detail in the Initial Brief,[67] the MRP Enhanced Proposal applies a 2.5% escalation factor to Pepco's historical O&M expense and plant additions for the 12-month period ended June 2019.[68] The proposal then relies on such escalated O&M and plant additions and other appropriate forecasts to project rate base and operating income for the MRP term.[69] While other parties have criticized the escalation factor recommended by the Company, their own recommendations are within the same range[70] and a substantially similar approach to projected O&M costs was used in the recently decided BGE MRP proceeding in Maryland, where the Maryland Commission found the company's approach reasonable:

> In Order No. 88975, the Commission approved an inflation adjustment proposed by BGE to be applied to historical non-labor O&M costs. The inflation adjustment approved by the Commission was based upon a historical five-year average of the Baltimore-Columbia-Towson region CPI, which the Commission found "…was an appropriate proxy for the rate of inflation for the rate effective period." Similarly, in the present case, ***the Commission finds that BGE's 2.5 percent per year inflation forecast derived from the IHS Consumer Price Index represents a reasonable proxy for the rate of inflation to be used in the MRP***. BGE's submission of the September 2020 update to the CPI Index for the Baltimore-Columbia-Towson region also demonstrates that the Company's 2.5 percent per year inflation forecast is reasonable, given that it lies between the low (1.8 percent) and the high (2.8 percent) of that three-year forecast for 2021 through 2023.[71]

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[65] PEPCO (6C): Wolverton Surrebuttal at 4:4-8. Since each of the other parties to this proceeding has recommended using traditional ratemaking based on the June 2019 test year, it is reasonable to conclude that the Company's starting point is appropriate.

[66] PEPCO (6C): Wolverton Surrebuttal at 3:11-14.

[67] *See* Initial Brief at 58-61.

[68] PEPCO (6C): Wolverton Surrebuttal at 6:21-8:12.

[69] PEPCO (6C): Wolverton Surrebuttal at 6:21-8:12.

[70] OPC (C): DeCourcey Direct at 56:8-12; DCG (A): Lane Direct at 47:3-12.

[71] MdPSC Order No. 89678 at ¶126 (*citing* Case No. 9484, *In the Matter of the Application of Baltimore Gas and Electric Company for Adjustments to Its Gas Base Rates*, Order No. 88975 (Jan. 4, 2019)("In order to estimate non-labor O&M inflation, BGE used a 2.5 percent per year inflation forecast derived from the IHS Consumer Price Index, All Urban data, as of April 26, 2019.191 BGE stated that it used a single escalation factor of 2.5 percent throughout the MRP period for both labor and non-labor to simplify assumptions and create efficiencies in the budgeting process.")(emphasis added).

As discussed in MdPSC Order No. 89678, the Maryland Commission had previously approved an inflation adjustment to historical non-labor O&M costs[72] and as Company Witness Wolverton testified in this proceeding, it is essential that any escalation factor apply to costs and not to revenues, as OPC argues.[73] Company Witness Wolverton explained that OPC's approach in applying the escalation factor to revenues would require an annual reduction of approximately 72% from the actual 2018 level of DC distribution capital spending.[74] Unless the escalation factor is applied to costs, the Company will not be able to fund its capital projects.[75]

Notably, in the SoCal Edison MRP, the example provided by DCG Witness Lane in support of the use of escalation factors, the 2.49% escalation factor is applied to the company's costs, not to its revenues.[76] As discussed at length in the Initial Brief,[77] OPC is an outlier on this issue and as Company Witness Zarakas' testified, the application of solely I-X approaches to MRPs, in which escalation rates are applied to revenues rather than costs, are not common in the United States.[78]

More importantly, Company Witness Zarakas explains that escalating revenues rather than costs will produce very different results:

> Escalating revenue requirements by an index (such as inflation) will provide a different result than escalating O&M and capital costs by that same factor because the capital costs are not directly reflected in revenue requirements. Rather, the return on Pepco's rate base (on an original cost less depreciation basis) and depreciated expenses are included in revenue requirements. The two approaches –

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72 MdPSC Order No. 89678 at ¶119 (citations omitted).

73 Initial Brief at 59-61; PEPCO (5C): Wolverton Rebuttal at 12:4-3:1; PEPCO (5C)-4.

74 PEPCO (5C): Wolverton Rebuttal at 12:4-15; PEPCO (5C)-4. *See also* Initial Brief at 59-60.

75 *See* PEPCO (5C)-4 and discussion at Initial Brief at 59 (showing that using OPC's approach, an escalation factor applied to revenues rather than capital would generate only one-third of the funds the Company's approach generates for the entire MRP Enhanced Proposal term and an ROE of only 5.63%).

76 DCG (A): Lane Direct at 47:7-12.

77 *See* Initial Brief at 59-61.

78 PEPCO (3J): Zarakas Rebuttal at 13:13-14:2.

escalating revenue requirements and escalating O&M and capital costs – typically produce different results.[79]

As Company Witness Wolverton explained, those "different results" would mean that the Company would be deprived of essential capital.[80] Simply stated, OPC's recommendation for applying an escalation factor would leave the Company woefully short of capital to fund operations.

Further, the Maryland Commission recognized that because of the reconciliation process it had adopted, a process that the Company has incorporated into its MRP Enhanced Proposal, the overall effect of the MRP is to hold customers harmless:

> ***To the extent that BGE has overestimated the inflation rate, customers will be held harmless. . .. If there is a significant disparity between revenues and costs to the detriment of customers, that issue will be addressed in the annual informational filing and reconciliation processes.***[81]

In summary, the escalation factor recommended in the MRP Enhanced Proposal is reasonable and should be adopted and the Commission should apply that escalation factor to capital, not revenue as the opposing parties recommend.

C. The Company's Recommendation to Model the Reconciliation Process after that Adopted in Maryland Is Reasonable.

OPC's testimony regarding the Original MRP Proposal complained that the Annual Reconciliation Filing would amount to a series of mini rate cases that would be burdensome to other parties.[82] As explained in the Company's Rebuttal Testimony, however, this was inaccurate and misleading.[83] The component filings necessary for Commission review of an Annual Reconciliation Filing under the Original MRP Proposal are far fewer than under traditional

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79 PEPCO (3J): Zarakas Rebuttal at 14:16-15:3.

80 *See* PEPCO (6C)-1.

81 MdPSC Order No. 89678 at ¶126 (footnotes omitted)(emphasis added).

82 OPC (C): DeCourcey Direct at 33:13-14 (The ARF "would *increase* the regulatory burden and administrative costs imposed upon the Commission and the other parties to this case…")

83 PEPCO (5C): Wolverton Rebuttal at 19, Table 3.

ratemaking and are primarily intended to compare the proposed plan to actual results.[84]

In an effort to be responsive to the parties' concerns, however, the MRP Enhanced Proposal adopted a different approach, incorporating a reconciliation process modeled after the process the Maryland Commission adopted in February 2020.[85] In fact, the Maryland reconciliation process was cited favorably in the direct testimonies of GSA, DCG, and AOBA.[86] It would appear from the parties' initial briefs, however, that they deemed the Maryland reconciliation process acceptable only until the Company embraced and proposed it.

For example, OPC now complains that the Annual Information Filing would be "*more* administratively burdensome" than the Annual Reconciliation Filing ("ARF"),[87] a complaint that has no basis in fact. Fundamentally, OPC seeks to have it both ways: first, they complained that the ARF in the Original MRP Proposal would not supply enough information leading them to have to seek it through administrative process,[88] and now they complain that the proposed Annual Information Filing would overwhelm them with information.[89] It is disingenuous for OPC to say it wants more information but then complain that it cannot process the volume of information it sought and that the Company proposes to provide.[90]

Rather than reiterate the testimony of Company witnesses or the arguments advanced in Pepco's Initial Brief, it may be helpful to the Commission to note that the Maryland Commission

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84 PEPCO (5C): Wolverton Rebuttal at 19, Table 3.

85 PEPCO (6C): Wolverton Surrebuttal at 14:3-12.

86 The Maryland reconciliation proposal was referenced favorably in the Direct Testimonies of DCG Witness Lane, DCG (A): Lane Direct at 17; AOBA Witness B. Oliver, AOBA (A): B. Oliver Direct at 36; and GSA Witness Goins, GSA (A): Goins Direct at 21, each of whom stated it was a preferable process to the Original MRP Proposal's proposed ARF.

87 OPC Brief at 144 (emphasis original).

88 OPC Brief at 97, citing OPC Witness DeCourcey's allegation that information would be "constrained."

89 OPC Brief at 144-145 ("proposed annual information filing will require Commission and stakeholder review of a comparison of projected to actual data that is *more* administratively burdensome than the annual reconciliation filing . . .")

90 As noted above, OPC has demonstrated no willingness to even consider an MRP. It appears that OPC will find fault with any proposal that is not based on traditional ratemaking and the sufficiency, or lack thereof, of information in an annual filing is not really a determining factor.

rejected nearly identical arguments when it adopted the reconciliation process that the Company recommends in the MRP Enhanced Proposal.[91]

Opposing parties' complaints about the sufficiency of information provided in the Annual Information Filing ring hollow because the Company's proposal provides more information, in greater detail, at an earlier stage in the Company's planning processes, than is ever made available in traditional ratemaking.[92] Likewise, their claims that the MRP reconciliations involve burdensome after-the-fact reviews strains credibility given their ardent support of traditional ratemaking, a process that provides only after-the-fact prudency reviews. The MRP Enhanced Proposal's reconciliation process is more transparent and more beneficial to consumers than the traditional ratemaking process the opposing parties support. The Commission and the parties will have more insight into the planning process than in traditional ratemaking and will have that information in advance of the expenditures being undertaken. As the Maryland Commission discussed:

> The Commission's goal is to strike the delicate balance of achieving increased transparency and accountability from the utility while realizing the other benefits enumerated in Order No. 89226, including "shortening the cost recovery period, providing more predictable revenues for utilities and more predictable rates for customers, spreading changes in rates over multiple years, and decreasing administrative burdens on regulators by staggering filings over several years" as well as "more transparency into a utility's planning process."
>
> To strike this balance, during the Pilot MRP, reconciliation of the Pilot Utility's costs will be conducted by three distinct means: (1) an annual information filing, (2) a consolidated reconciliation and prudency review in a subsequent rate case, and (3) a final reconciliation and prudency review after the conclusion of the Pilot MRP rate-effective period.[93]

[91] Case No. 9618, Order No. 89482 (MdPSC Feb. 4, 2020).

[92] This was true of the Annual Reconciliation Filing proposed in the Original MRP and is equally true of the Annual Information Filing.

[93] MdPSC Order No. 89482 at ¶77-78 (citing MdPSC Order No. 89226 at 54).

Opposing parties assert that the Original MRP Proposal and the MRP Enhanced Proposal would somehow disadvantage customers because rate increases would be determined in advance.[94] These parties either misunderstand or distort the reality that due to the very reconciliation process these parties denigrate, ***customers would only pay for what was actually invested***. If Pepco's investment falls short of projections or estimates, an MRP allows the Company to quickly adjust rates through either the Annual Information Filing or the ARF process to reflect actual spending.[95] The opposing parties' analyses ignore this inherent customer protection, a protection that is not available under traditional ratemaking.

In contrast, any rates developed under traditional ratemaking, in this case in particular, will be inherently problematic in light of the changes in circumstances between the test year and the current year. Traditional historic ratemaking has the inherent disadvantage of being backward looking and out of sync with the current period. In contrast, under the MRP Enhanced Proposal's reconciliation process, if investment is less than anticipated, the Commission or any party can seek to adjust rates appropriately. The Company's MRP proposals are the only realistic way to ensure that any changes in investment due to the pandemic are actually reflected in rates in the near term. It is this very flexibility inherent in an MRP that makes adoption of the Company's proposal, particularly its MRP Enhanced Proposal, preferable to a traditional rate case.[96]

D. The Company's Recommendations on Funding Rate Offsets to Benefit Customers Are Reasonable.

One of the key features of the MRP Enhanced Proposal is that it benefits customers by

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94 *See, e.g.,* Initial Brief at 29.

95 *See* PEPCO (B): McGowan Direct at 20:19 – 21:2; PEPCO (5B): McGowan Surrebuttal at 32:12-18; PEPCO (C): Wolverton Direct at 36:17-18; PEPCO (6C): Wolverton Surrebuttal at 15:7-13.

96 As noted above, the Maryland Commission recognized that the reconciliation process allows customers to be held harmless if there is a "significant disparity between revenues and costs to the detriment of customers" when discussing the use of an inflation factor. MdPSC Order No. 89678 at ¶126.

deferring overall base distribution rate increases until January 1, 2022[97] and significantly reducing rate increases during 2022.[98] In order to make this possible, it is necessary to provide a means for offsetting the rate increases to which the Company would otherwise be entitled.[99] The MRP Enhanced Proposal, if adopted as proposed, will provide $29 million of shareholder-funded benefits, pause regulatory asset amortization for two years; accelerate the Additional Subtraction Modification regulatory liability; and accelerate the EDIT liability.[100] While parties oppose flowing back these benefits to customers over the term of the MRP, none have proposed a reasonable alternative. Rather, the opposing parties simply assert that Pepco should go without the full rate increases to which it is entitled, without regard to the obligations of the Commission to protect the interests of all stakeholders, including the Company.[101] Ignoring the Company's right to recover a revenue requirement increase, even when OPC's own analyses show an increase is warranted, is irresponsible in the extreme.

E. The Company's Recommended Deferred Accounting and Re-Opener Proposals Are Reasonable.

The Company proposed in both the Original MRP and the MRP Enhanced Proposals that it could seek deferred accounting treatment of unexpected, one-time costs. The Commission then would determine whether the costs reflected in each deferred accounting request would be expensed

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97 PEPCO (5B): McGowan Surrebuttal at 15:11-13, 16:15-16; PEPCO (6C): Wolverton Surrebuttal at 9:11-12; PEPCO (5F): Blazunas Surrebuttal at 2:22-3:6; Revised PEPCO (5F)-7.

98 PEPCO (5B): McGowan Surrebuttal at 15:13-14, 20:16-19; PEPCO (6C): Wolverton Surrebuttal at 9:12-13; PEPCO (5F): Blazunas Surrebuttal at 4:5-8; Revised PEPCO (5F)-18. The proposed tariff for Rider "ERR" was included as Revised PEPCO (5F)-19.

99 It again should be noted that none of the other parties argue that the Company has not demonstrated a revenue requirement based on the June 2019 historical test period. For example, AOBA Witness T. Oliver supports a revenue requirement finding under a traditional test year approach of $50.2 million. AOBA (B) T. Oliver Direct at 49:1-3; AOBA (B)-5 at 1. OPC Witness Ramas testified that the traditional test year approach OPC favors would result in an increase of over $21 million. OPC (3B): Ramas Supp. at 13:14-17 and 20.

100 PEPCO (6C): Wolverton Surrebuttal at 9:23-12:17.

101 D.C. Code § 34-1504(d)(2).(To implement an AFOR, the Commission must find that it: (i) protects consumers; (ii) ensures the quality, availability, and reliability of regulated services; and (iii) is in the interest of the public, including the Company's shareholders.)

as incurred and included in the Company's final reconciliation and prudency review in the case of the MRP Enhanced Proposal or, alternatively, placed in a regulatory asset for consideration in Pepco's next base rate case.[102] The opposing parties assert that this provides limited opportunity for review,[103] ignoring the fact that the purpose of the proposal is to provide the Commission with the opportunity to thoroughly review and make a determination of the appropriate treatment of extraordinary costs,[104] a process that is clearly within the Commission's expertise. Again, opposing parties' objections seem rooted in their overall opposition to any AFOR, which by design is based on forward-looking cost projections or estimates. Denying the Company and the Commission the ability to account for major unexpected costs would undermine the entire structure of the MRP.[105]

Further, both the Original MRP Proposal and the MRP Enhanced Proposal include a re-opener provision, to be used as a last resort, allowing any party to petition the Commission to reopen the MRP.[106] Company Witness Zarakas made clear that the re-opener and the deferred accounting provision are not duplicative.[107] A re-opener would only be appropriate if there were unexpected changes that could not be reasonably addressed through the reconciliation process,

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102 PEPCO (6C): Wolverton Surrebuttal at 18:6-12.
103 *See, e.g.*, GSA Brief at 31.
104 PEPCO (6C): Wolverton at 18:16-20.
105 An example of such a cost would be storm restoration costs. PEPCO (C): Wolverton Direct at 33 n.23. In Order No. 89678, the Maryland Commission authorized BGE to establish a regulatory asset for tracking major outage event restoration expenses. The Maryland Commission explained that such costs can be significant and unpredictable in both amount and timing and thus this the regulatory asset would be helpful because (i) it would defer costs that would otherwise be imposed on customers during the first two years of the MRP and which would otherwise be especially impactful on customers during the pandemic; and (ii) ratemaking should prioritize aligning recovery of incremental costs related to major outage events with the actual incremental costs to restore service to customers as a result of those storms. MdPSC Order No. 89678 at ¶31. By contrast, Pepco's deferred accounting proposal is not automatic and the Company would be required to request Commission approval to use deferral accounting for storm costs (or other similar expenses that would permit such use). If approved, however, it would provide the benefits the Maryland Commission identified.
106 PEPCO (6C): Wolverton at 18:20 – 19:2.
107 PEPCO (3J): Zarakas Rebuttal at 17-18.

deferred accounting treatment or some other provision of the MRP.[108] Company Witness Zarakas testifies that

> re-opener provisions are included in several MRPs that I have reviewed. Re-opener provisions tend to be "last resort" options that is, to be triggered when the other provisions of the MRP are unable to address circumstances that cause financial distress. According to Company Witness Wolverton, the re-opener provision included in the Company's MRP proposal will serve this same last-resort purpose.
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> Because the re-opener is intended to be used for unforeseen circumstances, it is difficult to specify the conditions under which the re-opener can be used. Many regulatory frameworks include re-opener-type provisions as a general matter.[109]

Opposing parties' objections that the parameters of a re-opener are not sufficiently defined[110] are irrational; the entire point of the re-opener is to address issues that the Commission and the parties did not anticipate.

Other parties have argued that the current health emergency could be grounds for an immediate re-opener petition.[111] This makes little sense, however, since the entire design of the MRP Enhanced Proposal is to address the health emergency and its concomitant economic impact.[112] Moreover, the Company is not aware of any existing MRP that was reopened or terminated early due to the COVID-19 pandemic. Simply stated, the COVID-19 pandemic is not an unforeseen event at this time. Of course, under all circumstances, the Commission would be the arbiter of whether reopening the MRP was appropriate.[113]

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108 PEPCO (6C): Wolverton at 19:8-10 ("The Company views the re-opener as a provision of last resort, to be employed only in situations that may not be resolved through a deferred accounting request or the MRP Enhanced Proposal reconciliation process described above."); PEPCO (3J): Zarakas Rebuttal at 17-18.

109 PEPCO (3J): Zarakas Rebuttal at 18. Company Witness Zarakas did provide examples of ways in which triggers to reopeners are made explicit, such as deviations from allowed ROE.

110 *See, e.g.,* GSA Brief at 16-17.

111 AOBA seeks a finding of fact that the COVID-19 pandemic warrants a re-opener provision. AOBA Brief at 85.

112 The MRP Enhanced Proposal would defer base distribution rate increases, mitigate those that will occur during the term of the MRP and provide customer assistance programs to both residential and small business customers.

113 PEPCO (6C): Wolverton Surrebuttal at 19:5-7 ("As with the Company's Original MRP Proposal, the Commission would review any re-opener petition and ultimately make a decision based on the merits of the application before it.") In Order No. 89678, the Maryland Commission did not raise any concerns that its approval of an MRP in the midst of the COVID-19 pandemic would allow a comparable offramp provision to be triggered immediately. Indeed, the Maryland Commission did not even mention this as a possibility.

F. Parties' Claims That the MRP Enhanced Proposal Is Not a Rate Freeze Are Baseless.

AOBA's and OPC's assertion that the MRP Enhanced Proposal will not be a "rate freeze" and claim the Company has misrepresented its proposal[114] are patently false. As the record shows, Pepco's testimony regarding the rate impact of the MRP Enhanced Proposal in this proceeding has been consistent and accurate. Company Witness Blazunas, in describing the rate design for the first two rate years of the MRP, testified "the rates for RY1 and RY2 are designed to collect a flat level of target base distribution revenue, although the volumetric rates themselves may still change as a result of the use of forecasted billing determinants. Consequently, the rates have been designed such that there is no overall distribution rate increase in RY1 and RY2."[115] Similarly, Company Witness Wolverton stated "[t]he MRP Enhanced Proposal includes an offset to all customer overall distribution rate increases until January 1, 2022 . . . ."[116] Company Witness McGowan also indicated that "the MRP Enhanced Proposal allows the Company to offset overall distribution rate increases until January 1, 2022 in direct response to customers' desire for bill assistance during this public health emergency and the economic recovery period that will follow."[117]

In support of their opposition to the MRP Enhanced Proposal, OPC notes that rates will increase, but then offsets will be applied to mitigate these increases.[118] Although OPC does not dispute the effect on customers' bottom line bills, it asserts that customers will pay a high price for

[114] OPC Brief at 129-132; AOBA Brief at 24. AOBA refers to a rate freeze or frozen rates at other points in its initial brief. *See, e.g.,* AOBA Brief at 68, 79.
[115] PEPCO (5F): Blazunas Surrebuttal at 3:9-13.
[116] PEPCO (6C): Wolverton Surrebuttal at 9:11-12.
[117] PEPCO (5B): McGowan Surrebuttal at 20:4-7.
[118] OPC Brief at 128-129.

near-term rate relief.[119] OPC's position is perplexing, however, as it then argues that some of the same rate mitigation measures could be used in conjunction with the TTPCF.[120]

Semantics aside, if the Commission approves the MRP Enhanced Proposal, the increases in overall distribution rates as a result of any revenue requirement increase will be offset until January 1, 2022. This has not changed since Pepco presented the MRP Enhanced Proposal on June 1, 2020. Whether it is called a freeze, an offset, or a deferral, the Company's proposal will provide a significant benefit to customers now when they need it, especially given that it appears that one or more vaccines for COVID-19 will be available in the months ahead and that development should have a beneficial effect on the economy. As the Company indicated in the Initial Brief, by having base distribution rate increases offset in whole through January 1, 2022 and in part during 2022, the MRP Enhanced Proposal will provide demonstrable financial benefits to customers that they will receive now when, all parties concede, they most need it.[121]

G. Pepco's Proposal to Defer $60 Million of Capital Projects under the MRP Enhanced Proposal Is Reasonable and Should Be Approved.

Pepco's MRP Enhanced Proposal includes the deferment of $60 million in capital expenditures during the 2021-2022 time period, representing approximately 10% of the forecasted capital additions planned for this period.[122] In the Initial Brief, the Company explained why its proposal was reasonable and addressed the challenges that certain parties had raised in testimony.[123] On brief, the primary challenge OPC and other parties raise relates to the fact that the Company has not identified the specific projects that would be deferred from those included in

[119] OPC Brief at 131.
[120] OPC Brief at 140-141.
[121] Initial Brief at 44.
[122] PEPCO (5B): McGowan Surrebuttal at 24:12-15.
[123] Initial Brief at 63-67.

the Construction Report.[124] They challenge that this will be completed only after the Commission has rendered a decision in this proceeding, and Pepco has more certainty around the impact of the COVID-19 pandemic and its effect on the Company's construction program.[125]

OPC asserts that without specification of project the Commission cannot determine that Pepco's construction budget under the MRP Enhanced Proposal is reasonable.[126] OPC ignores the unprecedented amount of information the Company has provided during this proceeding through testimony as well as the more than 12 months available for discovery regarding the Construction Report and the individual projects it contains. There is more than sufficient information in the record on which the Commission can determine that Pepco's proposal is a reasonable approach given the COVID-19 pandemic. AOBA argues that "it is impossible for this Commission to properly assess the costs and benefits of Pepco's planned construction expenditures when the Company has not identified the specific projects it would defer."[127] This ignores the fact that these will be projects the Company does <u>not</u> complete during the MRP term, and, thus, Pepco will <u>not</u> be seeking recovery of these expenditures. It defies fundamental ratemaking principles to hold that Pepco has not met a burden for proving expenditures that are not sought for recovery in a proceeding. Further, the costs of the Company's planned expenditures are easily determined as it will be the total amount proposed in the Construction Report less $60 million.

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[124] *See* OPC Brief at 160-162; AOBA Brief at 41-42; GSA Brief at 30.

[125] PEPCO (5B): McGowan Surrebuttal at 24:17-19.

[126] OPC Brief at 161.

[127] AOBA Brief at 42. AOBA argues that "Pepco should be required to defer more substantial portions of its budgeted construction activity until such time that a better assessment can be made of the extent to which Covid-19 and climate-related reductions in energy use will alter Pepco's forecasted service requirements." *Id*. But AOBA's position assumes that the Company's forecasted service requirements will be reduced. As Company Witness McGowan testified, Pepco does not anticipate any material reductions in its capital expenditures for 2020 despite the COVID-19 pandemic. PEPCO (5B): McGowan Surrebuttal at 7:3-4.

OPC complains that the Company's proposal is not based on a new load forecast from which the MRP Enhanced Proposal's construction budget was then developed.[128] AOBA makes a similar argument.[129] This complaint ignores that the MRP Enhanced Proposal was developed and submitted to the Commission on June 1, 2020 in response to Order No. 20349 in which the Commission directed the parties to address the effects of the COVID-19 pandemic in their surrebuttal testimonies. Order No. 20349 was issued on May 20, 2020. As such, it would not have been feasible or even possible to prepare a new load forecast, develop a new construction budget and then create the MRP Enhanced Proposal as OPC appears to suggest.[130]

OPC's argument not only ignores the reality of how the MRP Enhanced Proposal came about but also that such an undertaking is not necessary given how the MRP Enhanced Proposal is structured. The Annual Information Filing and the prudence review and reconciliation processes will allow the Commission and the parties to review the Company's expenditures.[131] If the Company is over earning because it has cut capital expenditures by even more than the $60 million incorporated in the MRP Enhanced Proposal (or for any other reason), any party can request and the Commission can direct a decrease in rates as part of the Annual Information Filing.[132] Unlike the Original MRP Proposal, the Company does not share in any over earnings under the MRP

[128] OPC Brief at 160-161. OPC apparently agrees that the impact of the COVID-19 pandemic is not known at this point, yet it then assets that it will impact the in-service dates for projects. This is conjecture at this point. OPC Brief at 162-163. OPC also claims that Pepco's capital budget is inflated, noting in particular its blanket work orders and Paper-Insulated Lead Cable ("PILC") replacement project. These contentions were addressed in the Initial Brief and are further discussed in Section V.B and shown to be baseless.

[129] AOBA Brief at 41. AOBA characterizes Pepco's proposal to defer approximately 10% of its 2021-2022 capital budget as "essentially a meaningless gesture." AOBA Brief at 42.

[130] Even if the COVID-19 pandemic were to have some effect on forecasted load in 2021 and 2022 that resulted in the deferral of certain capacity projects, this category of capital projects accounts for only 15-17% of Pepco's capital budget and, therefore, would not render the entire MRP Enhanced Proposal's construction budget unreasonable.

[131] PEPCO (6C): Wolverton Surrebuttal at 15:4-16:12.

[132] PEPCO (6C): Wolverton Surrebuttal at 15:9-12.

Enhanced Proposal.[133] Customers ultimately will pay only for the actual expenses the Company incurs.

Additionally, the parties are able to challenge the prudency of the Company's costs during this proceeding, in any reconciliation process, and as part of the next rate case.[134] Pepco will identify variances from the capital spending plan it submits that incorporates the $60 million reduction, and the Company will be required to justify to the Commission the prudence of any new projects or spending on any projects that were materially over budget.[135]

OPC argues that the Company's proposal places no real cap or limit on capital spending and shifts the risk of such overspending to customers.[136] This is incorrect. The asymmetric nature of the reconciliation process provides an incentive to the Company to contain costs. In the Annual Information Filings, the Company would have no opportunity to recover overspending. With respect to the reconciliations at the end of the MRP term, the Company will have to justify any overspending on projects in the capital plan it submits to the Commission as well as spending on any projects that were not in the capital plan. Even if Pepco is able to demonstrate to the Commission's satisfaction the prudence of such costs, the Commission will determine over what period the under recovery of costs from the reconciliation process is appropriately recovered and the Company will not receive a return on these amounts.[137] In such circumstances, the Company has no incentive to overspend its capital budget because the risk of nonrecovery is on Pepco.

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133 PEPCO (6C): Wolverton Surrebuttal at 15:1-8.

134 PEPCO (6C): Wolverton Surrebuttal at 16:4-10.

135 The Annual Information Filing, the Consolidated Reconciliation and Prudency Review filing and the Final Reconciliation and Prudency Review filing will include a comparison of revenue requirement line items similar to that shown on PEPCO (C)-5 (with the attendant supporting schedules, and the additional schedule for capital additions variances in PEPCO (5C)-2 as discussed in Company Witness Wolverton's Rebuttal Testimony), but descriptions of variances would be based on Pepco's updated 2021-2022 projections. *See* Response to Staff DR 25-1(a) (Commission Cross Examination Exhibit No. 11).

136 OPC Brief at 166-167.

137 PEPCO (6C): Wolverton Surrebuttal at 16:13 – 17:12.

Finally, the procedure set forth in the MRP Enhanced Proposal will allow the Company to develop the listing of capital projects to defer with the benefit of the Commission's decision in this proceeding in a thoughtful and deliberate manner that allows the Company to maintain the strong distribution system reliability that customers value and the Commission requires, while also providing the bedrock on which many of the District of Columbia's innovative climate and energy policy goals can be anchored.[138] The Company's proposal to defer $60 million of capital projects as part of the MRP Enhanced Proposal is reasonable and should be approved.[139]

H. Pepco's Proposed Ratemaking Adjustments

As discussed in the Initial Brief,[140] the starting point for the development of the MRP Enhanced Proposal's revenue requirement was the test period ending June 30, 2019.[141] The ratemaking adjustments ("RMAs") from the TTPCF that related to post-test period items were then removed to avoid "double counting" these items in the projected MRP years.[142] The parties challenges to certain of the TTPCF's RMA and the associated Original MRP RMAs were discussed in the Initial Brief and shown to be baseless[143] and are discussed further under Section VI.A.

I. Pepco's Proposed Customer Assistance Programs Will Provide Needed Relief to Customers

In response to the pandemic and Commission Order No. 20349, the Company proposed several enhancements in the MRP Enhanced Proposal that will provide immediate relief to its

138 PEPCO (4B): McGowan Rebuttal at 6:17-21.
139 In its recent order approving BGE's MRP, the Maryland Commission directed the deferred spending of capital projects that are in line with the Company's proposal in this proceeding. MdPSC Order No. 89678 at ¶¶211-212.
140 Initial Brief at 50.
141 PEPCO (4D)-1; PEPCO (6C): Wolverton Surrebuttal at 4:16-18.
142 PEPCO (6C): Wolverton Surrebuttal at 5:6-20; PEPCO (6C)-1, pages 6-8. In addition, Pepco also adopted of several of OPC's and AOBA's suggestions to eliminate or modify certain of the TTPCF's RMAs. PEPCO (6C): Wolverton Surrebuttal at 6:4:5.
143 *See generally*, Initial Brief at 244-293.

customers during this extraordinarily difficult time. In addition to offsetting overall distribution rate increases for all customers until January 2022, Pepco proposes a series of program extensions, new programs and funds to help customers during this unprecedented time:

- The Company will extend the current Company-funded Customer Base Rate Credit ("CBRC") for residential customers an additional nine months, through the end of 2021.
  - The Company-funded Residential CBRC is currently forecasted to expire in March 2021.

- Pepco will extend existing plans or create new payment plans to provide up to 24 months for residential and small business customers to pay down any balances accrued during the pandemic and for a period of time following the health emergency.

- The Company will apply any residential and small business customer deposits on-hand to pay down balances accrued during the pandemic.

- The Company is proposing to increase the current cap on the Residential Aid Discount ("RAD") program to allow the RAD surcharge to account for more District customers may now qualify for the program.

- The Company's Budget Billing program will be extended to small commercial customers.

- The Company proposes to expand income eligibility limits for its existing Arrearage Management Program.

- Pepco will make a $100,000 contribution using shareholder funds to create a Good Neighbor Energy Fund. Pepco will match customer contributions to create additional energy assistance for eligible District residents. For the District of Columbia, funds will be distributed through an existing partnership.

- Pepco will propose temporary programs to help houses of worship, human services organizations and small business customers recover from the economic impacts of COVID-19.

- The Company will provide discounted rates for 12 months for houses of worship and human services organizations, e.g., those nonprofit organizations that provide food security, health, housing and other health and human services to District residents.

- Small business will have the ability to defer the distribution portion of their bills for a period of two months after the date of approval, where they will have the ability to have that balance be paid at a later date and/or over an 18-month period.
  - These customers include restaurants, small retail and other small businesses.

- Pepco proposes to work with the DC Sustainable Energy Utility ("DCSEU") and others to accelerate the creation of two energy efficiency programs for small businesses, with a particular focus on business in Opportunity Zones throughout the District.
    - This includes a zero-percent interest loan program and supplemental rebate program for small businesses on energy efficiency products, to help customers permanently lower their energy use and save money on the bills for years to come.

Notwithstanding the many valuable assistance proposals, OPC argues that customers will see no benefit. OPC asserts, on the one hand, that "Pepco's proposed customer assistance programs do not adequately address the needs of District consumers and should not be approved as a condition of adopting the Company's MRP,"[144] but it nonetheless argues that the programs are "needed immediately."[145] OPC has even gone so far as to ask the DC Council to mandate that the Commission remove the Company's proposed customer assistance programs from this proceeding and deliberate them in another proceeding, attempting to usurp the Commission's authority to adjudicate this issue on its merits.[146]

The Company proposed these customer assistance programs to meet the needs of its customers during this very challenging time. The programs can begin implementation as soon as the Commission reaches a decision in the instant case. Moving them to another proceeding will prolong the timeline for action, which is not in the interests of Pepco's customers. OPC's alleging that the programs are "not adequate" while simultaneously trying to mandate their adoption, is hypocritical and exposes the self-serving nature of their arguments.

OPC also objects that the Company would recover the costs of the proposed customer assistance programs through the creation of a regulatory asset.[147] The Commission already

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144 OPC Brief at 172.

145 OPC Brief at 173.

146 *See* December 11, 2020 Letter from Office of the People's Counsel, Sandra Mattavous-Frye, to Council of the District of Columbia, recommending the creation of a task force to address pandemic economic relief from Pepco and requesting that the Council require the Commission transfer COVID Relief Programs proposed in Pepco's rate case and examine them in Formal Case No. 1164.

147 OPC Brief at 131-132. Several of the proposed assistance programs, such as the RAD and AMP programs, would utilize existing funding streams. Moreover, the proposal to extend the CBRC would be funded by shareholders.

authorized utilities to create regulatory assets to address costs arising from the unusual circumstances of the pandemic.[148] OPC offers no logical reason why the Company should not recover the costs of these customer assistance programs in this manner. As discussed throughout this proceeding, there is no legal authority to require a regulated utility to provide any service without recovery of its costs. The health emergency, as challenging as it has been, has not eliminated this basic principle of utility regulation, as much as OPC apparently thinks that it should.

J. The MRP Enhanced Proposal's Proposed 9.70% ROE Is Reasonable.

For all of the reasons expressed in Section IV.E and in the Initial Brief, an ROE of 10.30% is a reasonable investor-required return for Pepco. Since the requested 9.70% ROE applicable to the MRP Enhanced Proposal is less than the already reasonable 10.30%, it stands to reason that an ROE of 9.70% is a conservative measure of the Company's ROE at this time. Moreover, as discussed in the Initial Brief,[149] this lower ROE was necessary to make the various elements of the MRP Enhanced Proposal work to provide its important customer benefits, in particular no overall distribution rate increase until January 1, 2022 as well as substantial mitigation of the increases through December 31, 2022.

K. Pepco's Proposed Tracking Mechanisms.

In the Original MRP Proposal the Company proposed five Performance Incentive Mechanisms ("PIMS") and one tracking metric. These were addressed in the Initial Brief and are also discussed under Section V.G.[150] In the MRP Enhanced Proposal, the Company proposed tracking metrics for all of the original proposed PIMs and added an additional tracking metric for

[148] *See*, GD2020-01, Order No. 20329 at ¶5.
[149] Initial Brief at 3; 67-68.
[150] Initial Brief at 154-178.

greenhouse gas ("GHG") emissions reduction.[151] These tracking metrics are reasonable and should be approved. As discussed below, the tracking metrics OPC and DCG propose should be rejected.

L. Pepco's proposed CEMI-4 tracking metric is reasonable and should be approved.

As Company Witness Clark explained, Pepco proposed the CEMI-4 tracking metric to "address neighborhood reliability and decrease or eliminate systemic issues"[152] that reveal a repetitive problem in a neighborhood.[153] OPC agrees that tracking and reporting CEMI metrics will provide valuable data to the Commission and stakeholders, but opposes Pepco's CEMI-4 tracking PIM and instead advocates for the use of a CEMI-3 standard.[154] In OPC's view, CEMI-4 would yield too small a number of customers to show neighborhoods with persistent problems.[155]

Pepco disagrees with OPC's proposed CEMI-3 standard, a point explained in detail in the Surrebuttal Testimony of Company Witness Clark. Company Witness Clark testified that, while he agrees that neighborhood reliability is a positive goal so that all customers in the District experience improvement in reliability similar to the improvement shown on a system-wide basis over the past several years, CEMI-4 is the more appropriate metric.[156] CEMI-4 assesses customers that experience multiple outages as a result of repetitive or systemic issues, as opposed to unique outages.[157] In contrast, tracking CEMI-3, as OPC proposed, would include outages that are not part of a larger trend or due to repetitive causes.[158] That is, if the point is to track and report on

151 PEPCO (5B): McGowan Surrebuttal at 34:16-17.
152 PEPCO (3I): Clark Surrebuttal at 4:7-8.
153 *See* PEPCO (3I): Clark Surrebuttal at 3:18-4:9.
154 OPC Brief at 231, 233-234. OPC also recommends that Pepco report a number of other factors along with CEMI-3 data, including the nature of each outage, the customers by zip code, date, and feeder, and a geographic representation of the locations of the outages in a heat map.
155 OPC Brief at 233-34.
156 PEPCO (3I): Clark Rebuttal at 3:12-18.
157 *See* PEPCO (3I): Clark Surrebuttal at 3:18-4:9.
158 PEPCO (3I): Clark Surrebuttal at 3:19-4:3.

systemic, non-recurring issues, it makes more sense to track, report on, and eliminate systemic issues.[159] As Company Witness Clark testifies, systemic issues present themselves at the CEMI-4 level as opposed to a lower CEMIx value.

Moreover, and to the extent that the Commission determines that CEMI-3 is the appropriate metric, Company Witness Clark testifies that the Company's MRP program budgets and management processes are currently aligned to tracking and controlling at the CEMI-4 level.[160] Thus, if the Company tracks at CEMI-3 and eventually decides to control at CEMI-3, additional investments would be necessary.[161]

M. Pepco's proposed GHG emissions tracking metric is reasonable and should be approved.

In conjunction with the MRP Enhanced Proposal, Pepco proposes to develop and track an annual GHG emissions goal for the Company's emissions sources over which it has direct operational control.[162] DCG claims that Pepco's GHG tracking PIM does not "adequately advance the District's public policy goals" and does not further "these goals beyond what Pepco is already required to do under Commission regulations or ongoing proceedings."[163] DCG also claims that any GHG emissions reduction goal should be specific to the District.[164]

As explained in the Initial Brief and in Company Witness Sanford's Surrebuttal Testimony, Pepco's proposed GHG tracking metric is District-specific and does directly support and advance the District's policy goals of reducing carbon emissions.[165] Pepco's proposal differs from DCG's GHG tracking PIM in that Pepco can only commit to, and should only be held to, a GHG goal that

159 PEPCO (3I): Clark Surrebuttal at 3:18-4:1.
160 PEPCO (3I): Clark Surrebuttal at 4:3-7.
161 PEPCO (3I): Clark Surrebuttal at 4:5-7.
162 PEPCO (3K): Sanford Surrebuttal at 4.
163 DCG Brief at 31.
164 DCG Brief at 31.
165 Initial Brief at 160-61; PEPCO (3K): Sanford Surrebuttal at 4:5-6.

is based on sources over which the Company has direct operational control.[166] These emissions sources include building electricity usage, emissions from fleet vehicles, emergency generator fuel usage, and emissions from SF6-containing operational equipment. Accordingly, DCG's claims are factually incorrect, and the Commission should accept Pepco's GHG tracking metric.

N. OPC's proposed CELID-8 PIM is unreasonable and should be rejected.

OPC proposes a tracking PIM for CELID-8, an acronym for customers experiencing interruptions lasting in excess of eight hours.[167] OPC explains that this tracking PIM is useful to identify resiliency concerns and could assist the Commission, Pepco, and OPC to identify approaches to resolve neighborhood reliability concerns.[168] OPC also recommends that granular data, similar to those it recommends for its CEMI-3 proposal, also be made in conjunction with CELID-8.[169]

Pepco opposes this tracking PIM. As explained in the Initial Brief and Company Witness Clark's Surrebuttal Testimony, the proposal is fatally flawed due to a lack of specificity.[170] Given this lack of specificity, and because many critical issues, such as the exclusion of Major Service Outages and/or planned outages as well as the level of detail in reporting, deserve further scrutiny and discussion, this proposed PIM is premature and should be denied.[171]

166 *Id.*
167 OPC Brief at 235-236; OPC (2E): Mara Rebuttal at 9:17-18.
168 OPC Brief at 236.
169 OPC Brief at 235-36.
170 Initial Brief at 168; PEPCO (3I): Clark Surrebuttal at 4:14-15.
171 PEPCO (3I): Clark Surrebuttal at 4:18-21.

O. The Commission should reject OPC's and DCG's proposed load forecasting PIMs.

OPC and DCG both propose PIMs related to the "accuracy of the Company's load forecasting."[172] Acknowledging that the Commission has recently approved Pepco's load forecasting methodology in Order No. 20274, OPC now complains that Pepco's "application" of the 90/10 load forecasting methodology "produces unreliable results that lean in the direction of a 'build more' approach" to the distribution system.[173] OPC's proposes to require Pepco to provide weather-normalized, 50/50 load forecasts in addition to its 90/10 forecasts on a substation basis.[174]

DCG's PIM is slightly different. DCG Witness Lane proposes:

> A penalty-only PIM based on the number of substation 90/10 forecasts that exceed actual load by more than a predetermined percentage (%). Specifically, I recommend that the penalty be assessed a 1 basis point per 90/10 substation forecast that exceeds actual load by 12% or more. If a load transfer was implemented, the substation would be excluded from the analysis.[175]

The Commission should reject these proposed load forecasting PIMs. As Company Witness Clark explains in detail, Pepco's load forecasting methodology is the industry standard, and Pepco continues to refine and enhance to account for the technological changes in the industry.[176] Moreover, the innovations that both DCG and OPC are seeking through the PIM are already occurring at Pepco.[177] Finally, as Company Witness Clark testifies, the only projects for

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172 OPC Brief at 236. Though DCG does not raise its load forecasting PIM in its initial brief, the PIM was a prominent part of its Rebuttal Testimony and, therefore, is likely to raise the PIM on reply brief. Pepco response herein to the testimony of DCG Witness Lane to avoid being foreclosed from responding.

173 OPC Brief at 237.

174 OPC Brief at 239. As Company Witness Clark testifies, it is ironic that OPC advocates for a 50/50 load forecasting methodology at the same time it advocates for a comparison of actual load to forecasted load. OPC's proposed PIM, carried to its logical conclusion, will necessarily result in a comparison of forecasted loads that exceed actual loads at least every other year. It is contradictory to advocate for both. PEPCO (3I): Clark Surrebuttal at 16-17.

175 DCG (2A) at 18. As Company Witness Clark testifies, it is also ironic that both DCG Witness Lane and OPC Witness Mara are advocating bringing the load forecast closer to the actual loads because the very NWA opportunities that they endorse will be more limited as a result. PEPCO (3I): Clark Surrebuttal at 12.

176 PEPCO (3I): Clark Surrebuttal at 6:11-12.

177 PEPCO (3I): Clark Surrebuttal at 6:12-16.

which Pepco uses the load forecast are capacity projects, constituting only 15%-17% of the projects during the MRP period.[178] The PIMs appear to be a solution in search of a problem.

a. The Company has proactively enhanced its load forecasting, mooting parties' criticisms.

The Company agrees with DCG Witness Lane that "it will be increasingly important to ensure that [the] planned deployment of DERs and electrification [is incorporated] into [Pepco's] load forecast."[179] The Company also agrees with OPC Witness Mara that "[m]odernizing the grid, developing new energy resources, and meeting sustainability goals . . . requires the utilization of more modern methods for system planning."[180] That is precisely what Pepco is already doing as it continues to enhance its load forecasting methodology.[181]

The load forecasting process will now incorporate the use of weather normalization to forecast peak loads by year per feeder as well as provide a weather-normalized hourly load profile (8,760) on a feeder-by-feeder basis.[182] The 8760 load profiles, which correspond to every hour of the year, will allow Pepco to better integrate DER and NWA into the system and to ensure the reliability and safety of the system,[183] aligning with industry advancement in load forecasting and further refining its load forecasts.[184] The enhanced load forecasting system also will allow Pepco to disaggregate customer load and DER, separating it into components (e.g., base load, customer-owned generation, storage, Demand-Side Management, and EV charging)[185] and improve the way the Company forecasts the effects of energy efficiency ("EE"), EV charging and DERs.[186] More

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178 PEPCO (3I): Clark Surrebuttal at 6:20-22.
179 DCG (2A): Lane Rebuttal at 13.
180 OPC (2E): Mara Rebuttal at 14.
181 PEPCO (3I): Clark Surrebuttal at 9:2-6.
182 PEPCO (3I): Clark Surrebuttal at 9.
183 PEPCO (3I): Clark Surrebuttal at 9.
184 PEPCO (3I): Clark Surrebuttal at 9.
185 PEPCO (3I): Clark Surrebuttal at 9.
186 PEPCO (3I): Clark Surrebuttal at 9.

specifically, DER and EE will be trended using load forecasting software/data analytics in the new system, allowing Pepco to better project DERs and EE trends into the future.[187] Finally, the enhanced process will allow for the use of either linear or stochastic methods for weather normalization of load.[188] The Company expects these refinements to be in place in 2020 and 2021.

The Company also is updating the Prospective New Business ("PNB") load estimation process to account for improvements in EE, conservation efforts, and construction standards.[189] This PNB enhancement will improve Pepco's process for accounting for developers' construction schedules as well as building load occupancy is more analytics-based and allows for future adjustments based on actual observations.[190] These refinements are also expected to be completed in 2021.

Finally, the more refined load forecasting process will also incorporate the impact of EV charging in the District, which is critically important as increasing loads are anticipated with the electrification of the transportation industry.[191] EV loading will be forecasted using predicted market penetration and the likely locations for fast chargers.[192] This enhancement will allow Pepco to localize transportation electrification load growth to individual substations and then identify those substations most at risk due to the growth of EV charging load.[193] This refinement is expected to be completed in 2021.

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187 PEPCO (3I): Clark Surrebuttal at 9.
188 PEPCO (3I): Clark Surrebuttal at 9.
189 PEPCO (3I): Clark Surrebuttal at 10.
190 PEPCO (3I): Clark Surrebuttal at 10.
191 PEPCO (3I): Clark Surrebuttal at 10.
192 PEPCO (3I): Clark Surrebuttal at 10.
193 PEPCO (3I): Clark Surrebuttal at 10.

b. *The Commission previously rejected OPC's "logic" regarding load forecasting and should reject it again.*

As OPC Witness Mara concedes in his Rebuttal Testimony and the Commission has recognized, the 90/10 method for load forecasting is an industry best practice.[194] Because customer demand in the District of Columbia peaks during the summer, Pepco uses the year with the highest summer system peak demand in the last ten years for developing a base load for each feeder, substation transformer, and substation to develop a load forecast.[195] Using this "90/10" approach creates a distribution system that is capable of providing reliable service to customers in the District of Columbia even during extreme weather conditions, which is even more important given the more extreme weather created by climate change.[196]

Pepco's 90/10 methodology withstood the test of an extensive record in Formal Case No. 1144, which spanned nearly two years, 800 data requests, and 3,700 megabytes of data and other information.[197] The Commission ultimately concluded that "Pepco's weather-normalized 90/10 load forecast methodology is appropriate and reasonable and is consistent with practices generally used in the utility industry for distribution system planning."[198] The Commission further concluded that:

> The Commission believes that the 90/10 weather normalization and the bottom-up approach components of Pepco's load forecasting methodology are reasonable, well-founded, and adhere to industry standards. The Commission realizes that accounting for energy efficiency, distributed energy resources, and prospective new business are still evolving and will continue to do so in the future. While the Commission believes that the load forecast as presented by Pepco in this case including the adjustments for energy efficiency, distributed energy resources, and prospective new business is reasonable to support the construction of the Mt. Vernon Substation, these adjustments may require further refinement in the future

194 PEPCO (3I): Clark Surrebuttal at 7:4-6; OPC (2E): Mara Rebuttal at 13:18-21.
195 PEPCO (3I): Clark Surrebuttal at 7:6-9.
196 PEPCO (3I): Clark Surrebuttal at 7:9-13.
197 PEPCO (3I): Clark Surrebuttal at7:16-19.
198 PEPCO (3I): Clark Surrebuttal at 8:5-7 (citing FC 1144, Order No. 20274 at ¶5).

> as new technology, usage patterns, and demands on the distribution system continue to emerge.[199]

OPC's the entire premise of the OPC "50/50" load forecasting PIM is illogical and demonstrates a fundamental misunderstanding of the purpose of load forecasting, as the Commission recognized in its previous rejections of OPC's challenges of Pepco's load forecasting methodology. Comparing actual load to forecasted load is an inapt comparison.[200] In fact, the point of a load forecast is to ensure that the system can withstand the most extreme conditions resulting in the highest load.[201] Pepco's load forecast is not a prediction of the actual load that Pepco expects to experience in a given year—unlike a weather forecast that provides the expected temperature and chance of precipitation in the next day or week.[202] If Pepco planned to actual forecasted load or even used the so-called "50/50" method, the system would be exposed and the risk of customer outages and damage to equipment during peak summer loading events would be increased.[203] The Commission recognized these risks in Order No. 20274:

> Through the affidavit of Donald Hall, manager of capacity planning for Pepco, Pepco explains in detail how the Company develops its "bottom-up" load forecast, using a weather normalized 90/10 approach. According to Mr. Hall "90/10" means that over the long run the peak or a value higher than it is expected to occur in one summer in every ten." To address stakeholders' assertions that Pepco should use a 50/50 load forecast as compared to Pepco's 90/10 approach, Mr. Hall includes a description of events on the Commonwealth Edison ("ComEd") system in 1999 that ultimately led to ComEd moving from a 50/50 forecast to a 90/10 forecast for distribution system planning. Mr. Hall also describes a report of the U.S. Department of Energy's Power Outage Study Team which investigated the above Chicago outages that attributed the failures to the use of a 50/50 load forecasting approach rather than a 90/10 load forecasting approach:
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> > **Load forecasting techniques and associated distribution planning tools failed to accurately accommodate the effects of unusual summer weather conditions as experienced in 1999**. Planning has been based on "average" weather conditions, meaning that load exceeds the design

199 FC 1144, Order No. 20274 at ¶74.
200 PEPCO (3I): Clark Surrebuttal at 15:8-9.
201 PEPCO (3I): Clark Surrebuttal at 15:12-13.
202 PEPCO (3I): Clark Surrebuttal at 15:14-15.
203 PEPCO (3I): Clark Surrebuttal at 15:16-19.

> criterion approximately once in every 2 or 3 years. A criterion of 1 in 10 years is more commonplace in the industry. These shortcomings were compounded by further uncertainty in predictions for individual substation load levels.[204]

The Commission dismissed the use of a 50/50 load forecast, concluding that:

> Pepco was correct in using the 90/10 load forecasting methodology rather than the 50/50 load forecast recommended by Mr. Mara. The 90/10 approach is regarded generally in the industry as providing an appropriate level of risk management against the possibility of equipment damage and failure, leading to prolonged and widespread outages during an extreme weather event.[205]

In this instance, OPC is simply making the same arguments the Commission dismissed in the Capital Grid proceeding. There the Commission rejected the arguments concerning comparisons of actual load to load forecasts and concluded that "Pepco's use of weather normalized 90/10 load forecasting methodology in the instant matter is reasonably calculated to create a distribution system that can provide reliable service to customers, including minimizing risks to customers during the most extreme weather."[206] Accordingly, the Commission should not adopt this proposed load forecasting PIM.

c. DCG's load forecasting PIM is unnecessary and duplicative.

The Commission should reject DCG Witness Lane's load forecasting PIM. The refinements that have been or are being implemented to Pepco's load forecasting and planning, as discussed above, address many of the stated concerns of DCG Witness Lane.[207] DCG Witness

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204 FC 1144, Order No. 20274 at ¶18 (emphasis in original, footnote omitted).

205 FC 1144, Order No. 20274 at ¶70 (footnote omitted).

206 FC 1144, Order No. 20274 at ¶70.

207 PEPCO (3I): Clark Surrebuttal at 17:8-15. To the extent that DCG adopts DCG Witness Lane's criticism that "DC SEU energy efficiency programs are not fully captured by Pepco's load forecasting methodology," Pepco has been seeking feeder-level energy efficiency data from DC SEU since August of 2017. PEPCO (3I)-1. For years, Pepco tried to obtain the data through informal means and did not receive it. As part of the Capital Grid proceeding, Pepco sought the data through a formal data request (see PEPCO (3I)-1). The Company was assured that the data would be provided through a "separate process outside of [Capital Grid] proceeding." As of June 1, 2020, Pepco has still not seen the data that it requested almost three years ago. DOEE has control over DC SEU and can direct the DC SEU to provide the data if it chooses. DCG Witness Lane, whose contract shows that she was hired by DOEE (PEPCO (3I)-3), criticizes Pepco for not integrating into its load forecast, the EE data that Pepco has been seeking from

Lane's claim that Pepco needs to "proactively plan" for increasing penetrations of DERs on Pepco's system is specious.[208] As discussed above, Pepco is already proactively planning for increasing penetrations of DERs on its system through enhancements to its load forecasting processes. In addition, and as discussed in response to DCG DR 5 and in Formal Case No. 1130, Pepco has implemented the stakeholder-informed distribution system planning process incorporating non-wires alternatives ("DSP/NWA Process").[209] As part of that process, Pepco is incorporating RFPs for locational capacity solutions, or NWAs, into its planning process this year, with results from the first RFP in early 2021.

To effectuate this process and inform stakeholders, Pepco held a workshop on load impacting factors that will be used in load forecasts starting in 2021 and encouraged the more than 50 organizations that participated to provide Pepco with granular data regarding parts of their internal operations that may either increase or decrease load.[210] Pepco held two additional, well-attended workshops regarding the request for information process and the RFP process and issued the RFP in early November 2020. Through use of the stakeholder-informed DSP/NWA Process, Pepco will be able to compare the use of locational constraint solutions and traditional solutions and incorporate more locational constraint solutions (NWAs) into the distribution system.[211]

Moreover, Pepco demonstrated its "proactive planning" by implementing a new tool which Quanta Technology discussed in Docket No. GD-2019-04 on April 30, 2020, that allows Pepco to assess the locational value of DER relative to a specific system constraint so that the DER's value to that constraint can be appropriately factored in the cost-benefit analysis.[212] The tool can also

DOEE/DC SEU since August 2017. In this case, her criticism may be better directed at DOEE/DC SEU who is aware the subject data has not yet been provided to Pepco.

208 DCG (2A): Lane Rebuttal at 12.

209 PEPCO (3I): Clark Surrebuttal at 12:18-13:5.

210 PEPCO (3I): Clark Surrebuttal at 13:6-12.

211 PEPCO (3I): Clark Surrebuttal at 13:12-14:4.

212 PEPCO (3I): Clark Surrebuttal at 14:8-13.

run a cost-benefit analysis that will be able to draw the information on the locational value of the various DER solutions into the cost-benefit analysis tool, allowing Pepco to incorporate locational constraint solutions that are cost-effective.[213] In addition, the load forecasting tool is currently being refined to incorporate trending of EE, EV and DERs on Pepco's system.[214]

Further, DCG Witness Lane's statement that "if stakeholders see that the weather normalized load forecasts match the actual loading when it occurs, there will be more confidence in the 90/10 forecasts as a result" ignores the purpose of load forecasting.[215] As discussed above, the point of a load forecast is to ensure that the system can withstand the most extreme conditions resulting in the highest load. Load forecasting does not attempt to "predict" load in a given year.[216] So, the fundamental premise of DCG Witness Lane's comparison is incorrect.[217] A PIM penalizing Pepco for the 90/10 methodology not aligning with actual loads is directly counter to the Commission's acceptance of Pepco's load forecasting methodology in Order No. 20274 and would incentivize Pepco to align its forecast with average loads, increasing the risk of customer outages and damage to equipment.[218] The risk of outages would only be compounded by the expense of replacing damaged equipment. For all these reasons, DCG Witness Lane's proposed PIM should be rejected.

DCG Witness Lane and OPC are rehashing the same arguments the Commission dismissed when it accepted Pepco's 90/10 forecast methodology.[219] In that proceeding, both DOEE and OPC

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213 PEPCO (3I): Clark Surrebuttal at 14:13-15.
214 PEPCO (3I): Clark Surrebuttal at 14:15-17.
215 PEPCO (3I): Clark Surrebuttal at 15:8-12.
216 PEPCO (3I): Clark Surrebuttal at 15:12-15.
217 PEPCO (3I): Clark Surrebuttal at 16:1-2.
218 PEPCO (3I): Clark Surrebuttal at 17:8-12. Moreover, the loads that DCG Witness Lane cites as a source for her Figure 1 of her testimony are Zonal Loads, which include loads from both Maryland and District of Columbia. To the extent she relied upon those loads in her chart, they have no relationship to the District load forecasts. PEPCO (3I): Clark Surrebuttal at 17:3-6.
219 PEPCO (3I): Clark Surrebuttal at 16:3-5.

raised concerns about the "growing gap" between Pepco's actual load and Pepco's load forecasts.[220] Rejecting the arguments that DOEE and OPC put forth regarding comparisons of actual load to load forecasts, the Commission concluded that "Pepco's use of weather normalized 90/10 load forecasting methodology in the instant matter is reasonably calculated to create a distribution system that can provide reliable service to customers, including minimizing risks to customers during the most extreme weather."[221] The Commission should reject all of the arguments again.

IV. PEPCO'S ORIGINAL MRP PROPOSAL REMAINS A REASONABLE ALTERNATIVE.

Pepco strongly supports its Original MRP Proposal in this proceeding and proposed the Original MRP Proposal in response to an evolution of the Commission's policies to embrace AFORs, an evolution that started as early as 2016 in FC 1139 when the Commission stated, "[w]e reemphasize that all parties should remain open to considering some non-traditional methods of moving forward during this period of growth and change in the District…."[222] The Commission has since affirmed its commitment to AFORs when, after a two-day, robust technical conference, the Commission issued the AFOR Order in which it stated, "[i]t is appropriate to move forward with implementing an AFOR in the District," and it determined that "[a] properly constructed MRP can produce just and reasonable rates and can be pursued at this time."[223] This journey has been years in the making.

The Company proposed an AFOR that protects consumers; ensures the quality, availability and reliability of utility service; and is in the interest of the public, including Pepco's

[220] PEPCO (3I): Clark Surrebuttal at 16:5-7.
[221] PEPCO (3I): Clark Surrebuttal at 16:7-16.
[222] FC 1139, Order No. 18550 at ¶59.
[223] FC 1156, Order No. 20273 at ¶7, 8, 92.

shareholders.[224] As set forth herein and in Company Witness McGowan's Direct, Supplemental Direct and Second Supplemental Direct Testimonies, the Company's Original MRP includes four core elements: 1) an Annual Reconciliation Filing with Earnings Share Mechanism; 2) deferred accounting treatment of certain costs; 3) a re-opener provision; and 4) PIMs.[225] Pepco's Original MRP Proposal included both Reliability and Customer Service PIMs that align with Commission priorities and support the District's clean energy goals. Had the COVID-19 pandemic not occurred, this would have been the only AFOR the Company proposed.[226]

An MRP provides flexibility to react to market changes, such as reducing the impact of a necessary rate increase, as demonstrated in the MRP Enhanced Proposal. The Original MRP Proposal structure provides this flexibility. Thus, if the Commission does not approve the MRP Enhanced Proposal, the Commission should approve the Original MRP Proposal as a reasonable alternative.

A. The Revenue Requirement Analysis in the Original MRP Proposal is Reasonable and Supported by the Record.

As discussed in detail in the Company's Initial Brief, the Company has justified a cumulative revenue requirement through 2022 of approximately $147.2 million under the Original MRP Proposal.[227]

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224 D.C. Code § 34-1504(d)(2).

225 PEPCO (4B): McGowan Rebuttal at 18:16-19.

226 After the issuance of a public health emergency, the Commission issued Order No. 20349, which directed all parties to include the impact of the pandemic in their respective surrebuttal testimonies. Pepco developed the MRP Enhanced Proposal.

227 PEPCO (5C): Wolverton Rebuttal at 2:1-2. When the Original MRP Proposal was filed the cumulative revenue requirement was approximately $162 million. PEPCO (C): Wolverton Direct at 3, Table 2.

B. The Annual Reconciliation Proposal Provides Sufficient Cost Containment Incentives and Protects Customers.

The Annual Reconciliation Filing ("ARF")[228] is intended to incentivize the Company to contain costs and ensure that customers pay only for the costs actually incurred during the term of the MRP. As noted in the Initial Brief, the purpose of the ARF is to meet the Commission's requirement that any AFOR the Company proposes must "provide a mechanism which allows parties to reconcile any forecasted components to subsequent actuals for the same test year."[229] The ARF, therefore, compares the Company's cost projections with actual spending and allows for rates to be adjusted only as the Commission deems appropriate.[230] To address parties' stated concern that in the absence of a full traditional rate case there would be insufficient information available to other parties, the ARF is intended to provide a detailed variance report at the time of filing.[231] Annual reconciliations ensure that Pepco is recovering only prudently incurred costs necessary to maintain and operate the Company.[232] The reconciliation process also allows for discovery, testimony and then Commission decision on any rate changes that might result.[233]

Several parties argue that the current health emergency and resulting economic disruption should lead the Commission to question the Company's capital plan and cost projections.[234] In light of the Company's position as an essential provider, however, it is unreasonable to expect the Company's costs to be drastically reduced. The critical nature of the services Pepco's customers rely upon means that efforts to ensure service quality and continue to improve reliability are even

[228] In response to the direct testimony of other parties, the Company modified its proposed reconciliation process in its rebuttal testimony.
[229] Order No. 18846 at ¶594.
[230] PEPCO (4B): McGowan Rebuttal at 24:19-22; 25:15-18.
[231] PEPCO (5C): Wolverton Rebuttal at 7:5-17.
[232] PEPCO (B): McGowan Direct at 20:19-21:2.
[233] PEPCO (4B): McGowan Rebuttal at 26:5-15.
[234] *See, e.g.*, DCG Brief at 2425; OPC Brief at 27; AOBA Brief at 12.

more important.[235] In addition, capital plans are based on long-term needs rather than short-term changes.[236] The long-term effects of the current economic challenges are not yet known, whether by Pepco or by the opposing parties.

The ARF will provide detailed information on variances between projected capital spending and actual capital spending, including identifying plant additions by Investment Tracking Number ("ITN").[237] The Company will report and reconcile with projections key aspects of its economic results and will provide the impact on the Company's revenue requirement.[238] Consistent with the Commission's instructions in Order No. 18846, the ARF provides transparency into the Company's operations and allows the Commission to review its performance.[239] As discussed in the Company's Initial Brief, the ARF also is necessary to allow the Commission to assess the Company's performance on any PIMs the Commission may adopt and to calculate the impact of the Earnings Sharing Mechanism ("ESM").[240]

C. The Proposed ESM, Deferred Accounting Mechanism and Re-Opener Are Reasonable.

The ESM is designed to incentivize cost control by allowing the Company to retain a small portion of any ROE upside, while requiring it to bear the downside risk of lower-than projected ROE results.[241] The asymmetrical design of the ESM favors customers since earnings above the deadband are shared automatically, but under-earnings are only shared if the Commission deems

235 PEPCO (4B): McGowan Rebuttal at 8:4-15; 50:9-14.
236 PEPCO (2I): Clark Rebuttal at 4:19-5:23;
237 PEPCO (5C): Wolverton Rebuttal at 6:14-17.
238 PEPCO (5C): Wolverton Rebuttal at 7:5-17.
239 PEPCO (B): McGowan Direct at 21:4-8; 24:13-19; PEPCO (4B): McGowan Rebuttal at 19:2-6.
240 PEPCO (B): McGowan Direct at 40:19-21; PEPCO (C): Wolverton Direct at 43:21-44:3; PEPCO (4B): McGowan Rebuttal at 48:21-24. The Company's proposal limits the maximum reward or penalty associated with PIMs in any rate period to plus or minus 25 basis points. PEPCO (B): McGowan Direct at 40:21-23; PEPCO (J): Zarakas Direct at 25:2-3.
241 PEPCO (B): McGowan Direct at 35:14-16; 41:20-22; PEPCO (3J): Zarakas Rebuttal at 7:10-8:20, 10:4-12.

it appropriate.[242] Contrary to party assertions, the ESM structure does not resemble a formula rate, instead demonstrating a "trade off" of potential earnings for a degree of risk mitigation relating to under earnings.[243] This balancing of the benefits to customers with those for the Company is reasonable.

The purpose of the deferred accounting mechanism is to spread the costs of any major unexpected expense over several years, thereby mitigating the immediate impact on customer rates. It is difficult to understand the opposition to this common-sense approach.[244]

For example, the Company is currently deferring both disconnections and collection actions for customers unable to pay their bills due to the economic impact of the health emergency. The Commission has allowed the Company to create a regulatory asset to reflect those prudently incurred incremental costs.[245] The deferred accounting proposal is intended to achieve similar results for other unanticipated and costly events, such as a major storm or natural disaster. The proposal provides a safeguard for customers as well as for the Company. It is a reasonable proposal that warrants adoption by the Commission.

Similarly, the re-opener provision provides a safeguard for both the Company and for its customers. The proposal allows the Company or any other party to petition the Commission to re-open the MRP in the event of unforeseen circumstances that cannot be accommodated under other provisions of the MRP.[246] As with re-opener provisions in other AFOR plans, the re-opener is intended as a "last resort" option.[247] It is a reasonable approach for ensuring that the MRP

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242 PEPCO (5C): Wolverton Rebuttal at 24:8-10; PEPCO (3J): Zarakas Rebuttal at 7:10-8:20, 10:15-11:6. *See also* PEPCO (4B): McGowan Rebuttal at 33:13-19.

243 PEPCO (3J): Zarakas Rebuttal at 9:5-21.

244 PEPCO (5C): Wolverton Rebuttal at 31:5-8;16-17.

245 *See* GD2020-0, Order No. 20329 at ¶5.

246 PEPCO (5C): Wolverton Rebuttal at 31:9-13.

247 PEPCO (3J): Zarakas Rebuttal at 18:9-11; PEPCO (C): Wolverton Direct at 44:16-17; PEPCO (5C): Wolverton Rebuttal at 31:12-13.

performs as anticipated, providing incentives for the Company to perform efficiently and effectively, while ensuring that customers pay only for those costs prudently incurred and approved by the Commission.[248] The re-opener is an essential component to the MRP, is reasonable and should be adopted as proposed.

D. Pepco's Capital Spending Plan Is Well Supported.

Attached to the Direct Testimony of Company Witness Clark is Pepco's Construction Report, PEPCO (I)-1 to (I)-3. The Construction Report provides information on the Company's distribution construction program in the format described and in the categories Order Nos. 16930 and 17424 required and in similar fashion to the Construction Reports the Company filed in FC 1139 and 1150. Along with explanations of the Company's planning process, load forecasting, and other categories of information prior Commission orders required, PEPCO (I)-2 lists and details the specific projects the Company has planned for the 2019-2023 timeframe.[249] PEPCO (I)-2 consists of 238 pages and 184 discrete projects. The 184 projects include numerous recurring work types, such as those covered under the term "blanket" projects.[250]

OPC, AOBA, and DCG each provide comments in opposition to Pepco's Construction Report. For its part, OPC claims that the Company's Construction Report and associated construction budget are unjust and unreasonable.[251] In support, OPC states that the Company's Construction Report was based on load projections and other economic assumptions that do not account for the economic disruption caused by the COVID-19 pandemic.[252]

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[248] PEPCO (5C): Wolverton Rebuttal at 32:17 – 33:3.

[249] PEPCO (I)-2: Consists of Project Schedules, providing historical expenditures since January 2018, as well as planned future expenditures for all projects with scheduled expenditures in 2019 and projected expenditures from 2020 through 2023 as of January 2019 and an overview of the projects, including scope and need. PEPCO (I): Clark Direct at 13:12-16.

[250] *See, e.g.*, PEPCO (I)-2 at 4, 35 of 238.

[251] OPC Brief at 110-124.

[252] OPC Brief at 110.

Notably, no party claims that Pepco's Construction Report does not comply with prior Commission orders, an important point given the breadth of issues the Commission required and the level of detail included. As explained in the Initial Brief and above, the Construction Report consists of all projects planned for the 2019-2023 time period in the District and was necessarily compiled prior to the commencement of the case in May 2019.[253] Accordingly, and while this Reply Brief discusses the effect of changing economic conditions as a result of the COVID-19 pandemic, it is not a defect that the Construction Report relies on data that was accurate when the case was filed.

Nor is it accurate to argue that the Construction Report is unjust and unreasonable due to expected COVID effects. First, there is no record evidence demonstrating what, if any, effects that COVID will have on Pepco's load forecasting or "projections," as OPC has termed it, for the MRP term. Even if short-term trends may show a modest decline in demand and usage, no evidence shows that this short-term trend is permanent or would extend into all of 2021 and 2022. Relatedly, even if there were some effect on load forecasting, these effects would be manifested in deferments of capacity projects, which account only for 15-17% of Pepco's capital budget and, therefore, would not render the entire construction budget unreasonable.[254]

Moreover, OPC's claim that the Construction Report is somehow unreasonable is countered by Pepco's MRP Enhanced Proposal, including its commitment to defer $60 million of capital expenditures. Pepco's proposed deferment, which amounts to approximately 10% of its capital budget for the time period, is a substantive and significant proposal to decrease rates in the MRP term and should be accepted by the Commission.[255]

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[253] Initial Brief at 93.
[254] PEPCO (3J): Zarakas Surrebuttal at 7:4-10.
[255] PEPCO (5B): McGowan Surrebuttal at 24:12-15.

AOBA claims that Pepco has achieved its 2018 reliability results, which exceeded the merger commitment reliability standards, spending "$30 million or 24% less than" the merger commitment budgets; similarly, AOBA asserts that Pepco's 2019 reliability spending, which also met the merger commitments, was approximately 30% below the applicable merger commitment spending caps for reliability.[256] AOBA concludes this line of argument by again stressing that it is unclear why the levels of spending are necessary in light of recent reliability improvements and given Pepco's spending.[257]

As stated above, Company Witness Clark has testified that the Company requires the full suite of projects contained in the Construction Report in order to meet Commission reliability standards and the Company's proposed PIMs.[258] In addition, from 2016-2020, the Company was required to meet the merger commitments related to reliability within the budget caps agreed to in that case. Pepco has met these commitments. The fact that Pepco did not require to fully exhaust its reliability budget should be viewed as a positive and any amounts that were not required to be spent will be reviewed and considered in the reconciliation process.

Aside from its high-level opposition, OPC also provides more specific concerns with the Construction Report, including that: (1) the budget process lacks transparency and meaningful oversight; (2) the budget does not provide a link to Pepco's "unreasonable" PIMs targets that go well beyond the EQSS standards; (3) the budget relies heavily on "blanket" projects; (4) Pepco's budget for Paper Insulated Lead Covered ("PILC") cable appears overstated; (5) the budget fails to account for NWAs; and (6) the budget includes cost associated with capacity additions at Benning Road that have not shown to be just and reasonable.[259]

256 AOBA Brief at 38-39.
257 AOBA Brief at 40.
258 PEPCO (2I): Clark Rebuttal at 34:15-18.
259 OPC Brief at 111.

Like OPC, AOBA also claims that the Company has not provided support for the connection between reliability-related construction and reliability results and that Pepco's reliability-related spending "raises concerns" given that its recent reliability achievements, Pepco's construction budget may not be "necessary, appropriate and cost-justifiable."[260] Each of these claims lacks merit and will be taken in turn.

E. Pepco's Construction Report Provides Unprecedented Detail and Information and the Discovery Process in This Case Provided Further Detail and Oversight for the Commission and Parties.

As a threshold matter, it is beyond dispute that the Construction Report provides detailed insight into the Company's planning and budgetary process, complying with the Commission's previous directives.[261] The Construction Report includes 184 different projects, which do not include recurring work that is covered under the "blanket" projects that allow the Company to respond to emergent conditions and are critical to system reliability.[262] Moreover, OPC alone filed 61 sets of data requests, in many cases these data requests track point-by-point through each aspect of the specific projects in the Construction Report. OPC cannot credibly claim that the Construction Report lacked transparency or oversight.

F. Company Witness Clark Directly Ties the Capital Construction Budget to Pepco's Proposed Reliability PIMs.

While AOBA and OPC both seem to suggest that Pepco did not "link" Pepco's proposed reliability PIMs to its proposed budget,[263] record evidence proves otherwise. In fact, Company Witness Clark testifies that the Construction Report and reliability projects chosen are meant to meet the current EQSS as well as the Company's proposed PIMs for reliability.[264] OPC and

260 AOBA Brief at 37-39.
261 Initial Brief at 30.
262 PEPCO (I)-2.
263 AOBA Brief at 56; OPC Brief at 224.
264 PEPCO (2I): Clark Rebuttal at 5.

AOBA provide nothing but high-level criticism of Pepco in this regard and have no evidence to counter Company Witness Clark's expert testimony.

G. Pepco's Use of Blanket Projects Is a Reasonable and Appropriate Way to Maintain and Enhance Reliability.

With regard to Pepco's use of "blanket" projects, OPC again misses the point.[265] As Company Witness Clark explains, blanket projects are critical to allow Pepco to respond quickly in the field to such issues as needed replacements or failed equipment.[266] Generally, blanket projects cover older, vintage equipment that need to be replaced and cannot be planned in advance.[267] Instead of creating unique projects every time this type of equipment needs to be replaced, which would result in less budget certainty and require Pepco to realign budgets annually, Pepco created categories of projects that fit this need and estimate, based on previous years, the budgets for these categories of projects.[268] This is an entirely practical method of budgeting and is commonly used in the industry.[269]

Moreover, no party argued that these projects, or this work, is unnecessary or imprudent. By contrast, Company Witness Clark testified that these projects are necessary in order to enhance and maintain reliability and customer safety and, given their importance, "[f]ailure to make allowances in the reliability budget for these system needs would result in budget overruns, disruption of other necessary projects to shift budgets or failure to replace needed equipment."[270] Accordingly, OPC's challenges to the use of blanket projects should be rejected.

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265 OPC Brief at 115-116.
266 PEPCO (2I): Clark Rebuttal at 17:16-17.
267 PEPCO (2I): Clark Rebuttal at 17-18.
268 PEPCO (2I): Clark Rebuttal at 18:11-18.
269 PEPCO (2I): Clark Rebuttal at 6:8-18.
270 PEPCO (2I): Clark Rebuttal at 18:15-18.

H. Pepco's PILC Replacement Strategy Is Reasonable and the Commission's Consultant Supports Aggressive PILC Replacement.

Similarly, OPC's opposition to Pepco's planned PILC budget should be rejected out of hand.[271] This conclusion should be reached based both on Company Witness Clark's testimony—as explained in the Initial Brief[272]—and the position of the Commission's own consultant, who is tasked with studying and making recommendations on Pepco's underground system. Indeed, as Company Witness Clark testifies in his Rebuttal Testimony, Pepco based its decision to increase its replacement of PILC with EPR cable on the 2012 Audit Report submitted by the Commission's consultant, Siemens.[273] Later, in its 2019 Audit Report, Siemens concluded:[274]

> PILC is a major part of Pepco's aging underground electric distribution infrastructure. For several years, Pepco adopted and implemented its PILC replacement through targeted opportunities that integrated data from feeder failure analysis with maintenance and construction projects. While this was a rational approach, it did little to reduce the amount of PILC in the system, a goal which has also been pursued by other electric utilities. We have long believed and recommended that a pre-determined/planned approach to PILC replacement would enhance results and are pleased to see that Pepco has implemented such a program.

The Commission's expert's support of Pepco's more aggressive PILC replacement approach underscores that it is reasonable and will continue to result in benefits to customers. Accordingly, Pepco's PILC replacement budget is reasonable, and OPC's challenges should be rejected.

I. Pepco's Construction Report Adheres to Commission Directives.

Regarding OPC's contention that the Construction Report does not account for NWAs, OPC ignores Pepco's testimony in this case and is egregiously misleading.[275] As a threshold issue,

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[271] OPC Brief at 116-118.
[272] Initial Brief at 96-97.
[273] PEPCO (2I): Clark Rebuttal at 13.
[274] PEPCO (2I): Clark Rebuttal at 14 (citing Siemens Audit Report, PEPMIR (Jan. 18, 2019)).
[275] DCG's Brief makes similar claims. For example, as DCG advocates for an "Integrated Distribution Plan," or IDP, DCG appears to level its principle criticism at Pepco by complaining that the Company has no broader grid modernization plan, but rather relies on ongoing Commission proceedings that, as it states, address battery storage, public purpose microgrids, electric vehicle charging, community solar, energy efficiency and demand response programs, and AMI. DCG Brief at 10, 13.

Pepco's MRP and Construction Report do not delay the implementation of the District's clean energy and grid modernization policies. Instead, and as Company Witness Clark testified, the Company's plans in this case are a foundational element of these important policy objectives.[276] In his Rebuttal Testimony, Company Witness Clark explains that a reliable grid is a necessary first step to continuing to build a modern grid that is capable of hosting increasing amounts of Distributed Energy Resources ("DERs"), such as solar generation and battery storage.

OPC's comment also completely ignores that other proceedings are occurring in which the Commission is examining how it will implement the District's clean energy goals. None of these proceedings had definitively concluded by the time that Pepco filed its MRP and Construction Report. For example, as stated above, the Company filed its MRP in May 2019; however, the Commission's first substantive order in the PowerPath DC docket issued on January 24, 2020. In this context, the Company opted not to guess the outcome of the Commission's guidance and directives stemming from FC 1130 and risk incurring expenses that might not meet the Commission's ultimate policy objectives and could not reasonably be included in Pepco's Construction Report.[277] There are a number of proposed directives in FC 1130 that the Commission is still actively considering and may in the future result in additional Commission directives to implement.[278] Even so, Pepco moved forward with the DSP/NWA Process given the level of consensus among working group members and because of the Company's need to plan for incorporating NWAs into its planning process without further delay.[279]

In addition, and specific to NWAs, as part of Formal Case No. 1144 and the approval of the construction of the Mount Vernon Substation, Pepco proposed, and the Commission approved,

276 PEPCO (2I): Clark Rebuttal at 20:21-21:1.
277 PEPCO (4B): McGowan Rebuttal at 37:3-38:3.
278 PEPCO (2I): Clark Rebuttal at 23:20-22.
279 PEPCO (2I): Clark Rebuttal at 23:22-24:2.

the installation of a battery system to defer the need for a fourth transformer.[280] Given the span of the MRP period and the Mount Vernon Substation in-service date, this battery system was not included in the MRP. However, this example provides further context and demonstrates that the MRP in no way hinders the development of DERs in the District.

J. Pepco's Addition of a Fourth Transformer at Benning Substation Is Necessary.

Finally, OPC's recommendation to exclude costs related to the capacity addition at the Benning substation should be rejected.[281] As explained in the Initial Brief, which relies on the Rebuttal Testimony of Company Witness Clark, the installation of a fourth transformer at Benning is required because recent substation transformer failures, including at Florida Avenue Substation in 2019, have shown that this project is required to harden 69 kV facilities reliability purposes.[282]

K. The Company's Proposed RMAs under the Original MRP Proposal Are Reasonable.

As noted in the Initial Brief,[283] the Original MRP Proposal includes a number of items that must be removed from or added to the revenue requirement in order to properly reflect the projected costs during the MRP term. These were removed or added through the various Original MRP RMAs discussed in the Initial Brief.[284] Most of the parties did not address the Company's proposed MRP RMAs but, rather, challenged certain adjustments proposed in connection with the TTPCF. These challenges to the TTPCF's RMAs (and their associated Original MRP RMAs) were addressed in the Initial Brief and shown to be baseless[285] and are discussed further under Section VI.A.

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280 FC 1144, Order No. 20274 at ¶¶7, 94, 106.
281 OPC Brief at 119-120.
282 Initial Brief at 98 (citing PEPCO (2I): Clark Rebuttal at 17:10-13).
283 Initial Brief at 102.
284 Initial Brief at 102-117.
285 *See generally*, Initial Brief at 244-293.

L. The Commission Should Approve the Use of the Company's actual requested capital structure.

As discussed in the Initial Brief, Pepco proposes to use a capital structure of 50.68% common equity and 49.32% debt, which represents the actual capital structure for the Company for the twelve months ending June 30, 2019.[286] OPC claims this is "unjust and unreasonable" while, at the same time, noting that the "Commission favors a company's actual capital structure."[287]

The Company's use of its actual capital structure is consistent with Commission past precedent, consistent with historical equity ratios the Commission approved, and comparable to the capital structures maintained by the proxy group companies used to determine the ROE for the Company in this proceeding.[288] In view of this, the Commission should authorize the Company's requested capital structure.

M. Pepco's Proposed Return on Common Equity ("ROE") of 10.30% Is Reasonable.

For reasons established in the Company's Initial Brief,[289] the Company's requested ROE of 10.30%, within a range of 10.00% to 11.00%, is reasonable given the results of ROE models commonly considered by this Commission and current capital market conditions. The ROEs OPC and AOBA proffered are woefully inadequate. While OPC asserts that the Company's ROE analyses are "stale,"[290] the Company's updated ROE analyses were conducted at March 31, 2020, which was the most recent data available during the rebuttal phase of this proceeding. Using the market data as of March 31, 2020, Company Witness D'Ascendis confirmed that his initial

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286 Initial Brief at 117-119.
287 OPC Brief at 87.
288 Initial Brief at 117-119.
289 Initial Brief at 119-130.
290 OPC Brief at 69.

recommended range of ROEs applicable to Pepco, 10.00% to 11.00%, and the specific point estimate of 10.30% was still reasonable, yet conservative, given increased market instability.[291] As a reflection of the increased market instability, the average Bloomberg Beta coefficient (a measure of market risk) for Company Witness D'Ascendis' proxy group increased from 0.494 in his Direct Testimony analyses to 0.936, which indicates a significant increase in risk for electric utilities in general.[292]

Regarding capital market conditions, OPC statements reflect a fundamental misunderstanding of how markets react to uncertainty.[293] As discussed in the Initial Brief,[294] current capital market conditions necessitate all utilities, including Pepco, maintain efficient access to capital. As stated in Company Witness D'Ascendis' Rebuttal Testimony, "[a] recommended [ROE of 8.75%] would compound the significantly elevated risks utility investors currently face."[295] OPC's misinterpretation of capital market conditions is apparent in consecutive sentences on page 108 of OPC's Initial Brief: "Beyond the above-noted significant and unreasonable risk-shifting aspects of the Original MRP Proposal, it is also not in the public interest as it <u>fails to reflect the reality of the District's residents and the world suffering from a global pandemic caused by COVID-19</u>. In surrebuttal testimony, OPC Witness O'Donnell demonstrated that <u>while the equity financial markets declined during the COVID-19 pandemic, they also rebounded from their initial lows</u>." (emphasis added). OPC cannot have it both ways; the "reality" which Pepco and its customers are experiencing is either widespread suffering or a return to

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291 PEPCO (3G) D'Ascendis Rebuttal at 78:9-12.
292 *See* PEPCO (3G)-4 and PEPCO (G)-3.
293 *See* OPC Brief at 71.
294 Initial Brief at 128-130.
295 PEPCO (3G): D'Ascendis Rebuttal at 3.

normal. It is apparent that Pepco and its customers are experiencing the former.[296] As such, the increased risk faced by Pepco must be reflected in its authorized ROE.

As to the trend of authorized ROEs, Company Witness D'Ascendis demonstrates in his Rebuttal Testimony that there is no meaningful trend in authorized ROEs since at least 2015.[297] OPC's claim of a declining trend in authorized ROEs is demonstrably incorrect.

The Company recognizes that the Commission has the difficult task of balancing the interests of customers and investors and that doing so is even more difficult under stressed economic and financial conditions. However, it remains a common interest to both customers and investors to rely on a financially strong utility.[298]

N. The Company's ROE Should Not Be Reduced if the Commission Authorizes an MRP in this Proceeding.

As discussed in the Initial Brief, it would be inappropriate for the Commission to reduce the ROE due to the approval of an MRP for Pepco in this proceeding.[299] It would be inappropriate because of the prevalence of like mechanisms that is reflected in the market data in the proxy group companies. Because of this, approval of Pepco's MRP will make the Company more comparable to the proxy group, not less so. In addition, if the Commission approves a recovery mechanism, such as an MRP, that allows the Company the ability to actually earn its authorized ROE and move closer to the ROE of the comparable proxy group, then it would be inappropriate to penalize the Company by awarding a lower authorized ROE.

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[296] Initial Brief at 128-130.
[297] PEPCO (3G): D'Ascendis Rebuttal at 12-13.
[298] PEPCO (3G): D'Ascendis Rebuttal at 10.
[299] Initial Brief at 131-133.

O. Pepco's Proposed Performance Incentive Mechanisms Are Reasonable and Should Be Approved.

To be clear, and contrary to OPC's claims, as discussed in Section II there is no "legal standard" specific to PIMs. Rather, the Commission in the AFOR Order provided guidance regarding how any PIMs the parties might propose should be structured. In Paragraph 103 of its Order, the Commission set forth several "broad general" guidelines for any party that considered proposing PIMs:

(1) PIMs should advance or otherwise align with the District's public policy goals and the PowerPath DC objectives (such as grid modernization, energy efficiency, clean energy, and climate goals);

(2) PIMs should be clearly defined;

(3) PIMs should be able to be quantified by the utility using reasonably available data;

(4) PIMs should be sufficiently objective and free from external influences;

(5) PIM should be easily interpreted and easily verified;

(6) PIM should not duplicate a target or objective that is already addressed by any existing standards, metrics or requirements;

(7) PIMs should focus on outcome rather than input (costs);

(8) PIMs should have historical performance data;

(9) PIMs should be considered only when the utility lacks an incentive (or has disincentive) to align its performance with the public interest, there is evidence of under-performance, and evidence that improved performance will deliver incremental benefits;

(10) PIMs should be designed to maximize total quantifiable, verifiable net benefits; and

(11) PIMs should offer the utility no more financial benefit than is necessary to align its performance with the public interest (the utility should not be paid for performance above the value perceived by customers for that improvement).

As the record evidence demonstrates and further explained below, Pepco's proposed reliability and customer service PIMs meet these guidelines.

P. Pepco's Reliability PIMs Meet the Commission's AFOR Guidance in the AFOR Order and are reasonable.

OPC, DCG, and AOBA do not support Pepco's proposed SAIDI and SAIFI PIMs. OPC explains that because the PIMs go beyond the Commission's current EQSS, and the current regulation already provides the proper incentive for Pepco, the PIMs should not be adopted.[300] AOBA and DCG provide similar comments.[301] OPC further states that Pepco failed to provide any justification that the PIMs are cost-justified and that such standards should be imposed as a result of a Notice of Proposed Rulemaking ("NOPR") proceeding, such as the one the Commission has recently issued.[302] DCG also questions the cost justification of Pepco's reliability PIMs.[303]

As shown below, the Commission should adopt Pepco's reliability PIMs as part of the Original MRP. As Company Witness Clark explains, Pepco proposed the SAIDI and SAIFI PIMs because they are well-known to parties and represent important goals that are aggressive but can be attained.[304] This is the first MRP proposed in the District. Given this, the familiar and important reliability metrics are a good introduction into performance-based ratemaking. Moreover, and contrary to other parties' positions, these PIMs align directly with District policy goals.[305] Specifically, a reliable distribution grid will allow increasing amounts of DERs throughout the city, and as discussed in Section III, the aging infrastructure refreshing and smart grid investments that are accounted for in these metrics constitute the first stage of grid modernization—the stage in which the District currently sits. In a similar fashion, and acknowledging that the Company has made great strides over the past several years in terms of reliability, the Company has an obligation to deliver safe and reliable service to its customers.[306]

The fact that Pepco proposed these reliability-related PIMs and the Commission has issued a NOPR in RM36-2020 that will update its EQSS is not contradictory. The PIMs stand separate from any EQSS requirement the Commission imposes; rather, Pepco proposed its PIMs as an

300 OPC Brief at 221-222.
301 DCG Brief at 19; AOBA Brief at 56.
302 OPC Brief at 224-225.
303 DCG Brief at 20.
304 PEPCO (2I): Clark Rebuttal at 26:9-11.
305 PEPCO (2I): Clark Rebuttal at 26:1-36:8.
306 PEPCO (2I): Clark Rebuttal at 27:8-13.

introduction to performance-based ratemaking. In addition, the aggressive nature of the SAIFI and SAIDI standards proposed in the new EQSS NOPR supports Pepco's stringent reliability PIMs and, as a result, its capital construction budget.

Moreover, from a policy standpoint, Company Witness Zarakas testifies that service levels in core utility operations are being re-examined in response to changing customer preferences and the evolving role of utility services, leading to incentives structure for traditional PIMs similar to those the Company proposed.[307] Company Witness McGowan explains that these PIMs demonstrate that operational efficiencies will not be made at the expense of lower operating performance.[308] Company Witness McGowan testifies that, now more than ever, customers need and expect reliable performance, and Pepco's reliability PIMs deliver exemplary performance.[309] Given the present uncertainty and that many customers are now working from home, reliability of electric distribution service has never been more important. For all these reasons, the Commission should adopt Pepco's reliability PIMs.

Q. Pepco's Proposed DER PIM Is a Reasonable Emerging PIM.

OPC, DCG and AOBA all recommend the Commission not adopt Pepco's proposed DER PIM. AOBA argues that this PIM has "little value" to customers, claiming that Pepco already has personnel dedicated to meeting Commission regulations, that the Company has not provided evidence showing the value of improving the Authorizations to Install ("ATI") processing timeframe.[310] OPC's reasoning is similar, though it recognizes that "faster interconnection approvals will presumably further the District's energy policy goals."[311] DCG argues that Pepco

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[307] PEPCO (3J): Zarakas Rebuttal at 20:5-22:2.
[308] PEPCO (4B): McGowan Rebuttal at 48:16-20.
[309] PEPCO (4B): McGowan Rebuttal at 50:12-20.
[310] AOBA Brief at 60-61.
[311] OPC Brief at 230-231.

is already meeting the standard without an incentive and that, if the Commission approves this PIM, it should be penalty only.[312]

Pepco disagrees with each of these points and supports the need for the DER PIM, which would require Pepco to adhere to faster processing times for ATI for Level 1 applications. This PIM is an appropriate and meaningful step towards modernizing the grid and providing the foundation to allow the District to meet its clean energy goals.[313] Indeed, Company Witness Clark testifies in his rebuttal testimony that this PIM, like the other PIMs Pepco proposed in this proceeding, creates alignment with the District's and Commission's policy goals[314] and, thus, is a proactive step to assist the District in decarbonization. There is no record evidence suggesting that Pepco's work in processing Level 1 ATI's is unimportant, nor do parties contend that DER interconnection processing is unimportant to achieving District policy goals.

R. Pepco's Customer Service PIMs Are Consistent with the Commission's AFOR Order Guidance.

In addition to two reliability PIMs and one emerging PIM, Pepco has proposed two Customer Service PIMs: Service Level and Call Abandonment Rate, which were set forth in detail in the Direct Testimony of Company Witness Bell-Izzard.[315] The Company developed these PIMs after several stakeholder workshops in which Pepco heard from various groups regarding the development of performance-based mechanisms that would align Pepco's performance with District goals.

OPC and AOBA contend that the Company's proposed PIMs do not meet the guidelines set forth in the AFOR Order.[316] The Commission has placed a high priority on improving and

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312 DCG Brief at 23.
313 PEPCO (4B): McGowan Rebuttal at 52:14-17; .PEPCO (3J): Zarakas Rebuttal at 19:13-20:3.
314 PEPCO (2I): Clark Rebuttal at 34:14-15.
315 PEPCO (Q): Bell-Izzard Direct at 11:11-12.
316 OPC Brief at 6; AOBA Brief at 8-9.

maintaining reliability, resilience and customer service in the nation's capital, as evidence by its recent EQSS NOPR. The Company, therefore, has focused heavily on providing excellent customer service to District customers and committing to continuous improvement to meet customer needs. Moreover, the changing needs of customers and the evolving role of electric services requires evolved customer service efforts.[317] The Company's proposed customer service PIMs are clearly defined with objective, reasonably quantifiable data that is easily verified and interpreted.[318] These PIMs are not duplicative or already addressed in any existing standards, metrics or requirements, and in fact, build upon existing EQSS standards.[319] Each of these customer service PIMs is focused on outcomes rather than cost, and each of them has at least five (5) years of historical data.[320] The Customer Service PIMs were designed to increase Company responsiveness to Pepco customers.[321] Finally, the reward for these PIMs was not excessive and served to align Company performance with District goals.[322] The Company has demonstrated its diligence in meeting the Commission's AFOR guidelines.

Throughout this proceeding, OPC has objected to the Company's development of PIMs that include a penalty/reward structure,[323] yet in its Initial Brief, OPC also complains about the MRP Enhanced Proposal's offer to track these five metrics rather than assessing penalties or rewards.[324]

OPC Witness Mara contends that neither the available historical data for the Service Level or Call Abandonment Rate demonstrates that a PIM is needed to spur the Company's performance

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317 PEPCO (3J): Zarakas Rebuttal at 20:5-22:2.
318 PEPCO (B): McGowan Direct at 41:7-9.
319 PEPCO (Q): Bell-Izzard Direct at 13:15-17, 14:16-17.
320 PEPCO (J); Zarakas Direct at 23:2-4; PEPCO (Q): Bell-Izzard Direct at 14:20-21.
321 PEPCO (Q): Bell-Izzard Direct at 11:11-13.
322 PEPCO (Q): Bell-Izzard Direct at 15:6-8.
323 *See, e.g.,* OPC (A): Dismukes Direct at 71:16-72:5.
324 OPC Brief at 217-218.

with respect to either metric.[325] AOBA Witness B. Oliver also argues that Pepco does not bear enough of the risk in the development of the customer service PIMs and that the performance levels sufficient to receive an incentive under the Company's PIMs proposal "are small" compared to Pepco's recent performance.[326] Simply because the Company meets a certain target in one year does not guarantee it will meet or exceed the same performance in subsequent years. Indeed, looking ahead to 2021, achieving 90% service level will be challenging, as the collections moratorium is lifted. The Company is planning for a challenging year as it endeavors to assist a large number of customers with bill payment arrangements or assistance.[327] DCG acknowledges that there is substantial improvement with both Customer Service PIMs over current EQSS standards: a 20-point improvement over the current Service Level EQSS standard and a 8.5 point improvement over current EQSS standards for Call Abandonment Rate.[328]

S. OPC's Affordability Metrics Are Duplicative and Should Be Rejected.

In its Initial Brief, OPC suggests that adopting the affordability metrics proposed by OPC Witness Dismukes "will provide the information needed to allow the Commission's low-income household assistance programs to achieve maximum efficiency."[329] In her Surrebuttal Testimony, Company Witness Bell-Izzard discussed the overlapping metrics between Pepco's monthly reporting in its Arrearages and Disconnection Report that regularly provides detailed information regarding disconnections, arrearages, the number of residential customers on payment plans among other statistics.[330] Company Witness Bell-Izzard testified that requiring Pepco to file another report covering much of the same information would be "duplicative and inefficient."[331]

325 OPC (E): Mara Direct at 64:4-65:16, 67:2-68:8.
326 AOBA (A): B. Oliver Direct at 56:17-20.
327 DCG Brief at 20.
328 *See*, *e.g.*, PEPCO (5B): McGowan Surrebuttal at 4:7-17.
329 OPC Brief at 240.
330 PEPCO (2Q): Bell-Izzard Surrebuttal at 5:4-6:15.
331 PEPCO (2Q): Bell-Izzard Surrebuttal at 6:18-21.

Pepco strives to gain a better understanding of customer needs; indeed, it works regularly to compile this insightful information and to provide the same to the Commission.[332] The Company continues to monitor payments, arrearages, average balances and other meaningful metrics to better understand customer needs.[333] In addition, the Company has been an active participant in working groups focused on ways to get consumers the help they need.[334] The Company does not oppose this critical work. It is opposed to expending resources for expensive and redundant efforts.

V. THE TTPCF DEMONSTRATES THAT AN INCREASE OF $76.678 MILLION IS JUST AND REASONABLE UNDER TRADITIONAL RATEMAKING.

As discussed in Pepco's Initial Brief, the Company submitted the TTPCF to satisfy the Commission's mandate that Pepco file a traditional case in conjunction with an MRP. The Commission should grant Pepco's request to implement either the MRP Enhanced Proposal or the Original MRP Proposal at this time. Should the Commission decline to do so, the Company has through the TTPCF established that a $76.678 million increase in District of Columbia base distribution rates is reasonable. An increase in Pepco's base distribution rates is necessary to recover the significant investments the Company has made in its electric distribution infrastructure and other costs necessary to operate the system in a safe and reliable manner from 2018 into and through the COVID-19 pandemic in 2020.

As discussed in the Initial Brief, the Company showed that as of June 30, 2019, it was only earning a 7.22% unadjusted ROE, or 5.41% adjusted, significantly less than the ROE approved in either FC 1139, Pepco's last fully litigated base rate proceeding, or the ROE agreed to in the Non-Unanimous Full Settlement Agreement and Stipulation in FC 1150 and 1151 ("FC 1150/1151

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332 *See generally*, PEPCO (2Q): Bell-Izzard Surrebuttal at 3:10-6:7.
333 PEPCO (2Q): Bell-Izzard Surrebuttal at 5:4-6:7.
334 PEPCO (2Q): Bell-Izzard Surrebuttal at 4:4-16.

Settlement"). Pepco continues to invest heavily in the system throughout the COVID-19 pandemic to ensure that children who are remote learning, residents who are working remotely and businesses that are providing services to residents, workers and other businesses throughout the District of Columbia continue to have reliable service. Without an increase in rates, Pepco will not have the opportunity to earn a fair and reasonable ROR, as required by the United States Supreme Court's decisions in *Bluefield* and *Hope*. None of the parties' disputes that the Company has established that some level of increase in the Company's distribution rates is warranted. Pepco has established, and the Commission should find, that Pepco's TTPCF increase to base distribution rates is just and reasonable.

A. Pepco Has Established That the RMAs the Company Proposed in Connection with The TTPCF Are Reasonable.

In connection with the TTPCF, Company Witness Ziminsky demonstrated that the adjustments to the cost of service detailed in his testimony are reasonable.[335] As was noted in the Initial Brief, most of the parties did not address the Company's proposed Original MRP RMAs under the Original MRP Proposal but, rather, challenged certain corresponding adjustments proposed in connection with the TTPCF.[336] Moreover, several of the RMAs discussed below were included as part of the MRP Enhanced Proposal. The Company addressed all RMAs, many of which were not disputed, in its Initial Brief[337] and has only addressed below the RMAs—the TTPCF RMAs and their MRP counterpart—that parties challenged or raised in their initial briefs.

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[335] *See generally*, PEPCO (D): Ziminsky Direct at 9:10 - 50:3; PEPCO (D)-1; PEPCO (2D): Ziminsky Supp. Direct at 4:5-13:4; PEPCO (2D)-1; PEPCO (4D): Ziminsky Rebuttal; PEPCO (4D)-1.

[336] Initial Brief at 101.

[337] *See* Initial Brief at Section III.O.

B. *RMA 2 Is Reasonable and Consistent with Commission Precedent and Should Be Approved.*

OPC does not challenge the costs of projects in RMA 2 that were closed to plant by December 31, 2019, recognizing that they meet the test that the Commission uses to determine whether projects should be included in rate base.[338] Contrary to precedent, however, OPC does challenge projects included in RMA 2 that were included in plant through May 31, 2020.[339] All the costs of projects in RMA 2 are known and measurable, are not too remote from the end of the test year, and will be benefitting ratepayers for the entirety of the rate-effective period, meeting the Commission's long-standing standard for including the costs of reliability projects in rate base. As the Commission has made clear, "a party that seeks to change an existing Commission policy has the burden of persuasion and that burden is a heavy one."[340] OPC has failed that burden. OPC's objections should be rejected, and RMA 2 should be approved.

Relying on the testimony of OPC Witness Mara, OPC claims that the costs for projects that closed between December 31, 2019 and May 31, 2020 should not be included in rate base.[341] Significantly, OPC does not claim that it did not have sufficient time to review the projects. OPC could not credibly make such a claim given that Pepco provided OPC actual costs through May 31, 2020 in June 2020 in response to OPC Data Request 57-13.[342] As such, it is beyond dispute that the "parties were put on notice of the contents of the Company's adjustments and given a

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338 OPC Brief at 37. The Commission uses a three-part test to determine whether post-test year projects should be included in rate base: (1) the projects represent "known and certain changes that can be measured with precision," (2) the projects were placed in service not "too remote" from the end of the test year; and (3) the projects were needed, reasonable and beneficial to ratepayers during the rate-effective period. FC 1139, Order No. 18846 at ¶76.

339 OPC Brief at 37.

340 Order No. 17424 at ¶350. *See also*, FC 1076, Order No. 15864 at ¶¶34, n.90; 58, n.139 (burden is on the party seeking to change an earlier-approved Commission methodology).

341 OPC Brief at 35-41.

342 Commission Exhibit 20 (Pepco responses to Staff DR 26-15 and OPC DR 57-13).

reasonable opportunity to discover information related to any cost item that they sought to question."[343]

All the projects included in RMA 2 were used and useful and in service before the evidentiary hearing in this proceeding, and all of the actual costs for the projects in RMA 2 are in the record.[344] RMA 2, like RMA 1, reflects in EPIS the full value of projects placed into plant in service, removes retirements from both EPIS and accumulated depreciation and annualizes the associated depreciation expense.[345] In FC 1103, the Commission held that costs that were reflected in EPIS met the Commission's standard of known and certain changes that can be calculated with precision.[346] All projects in RMA 2 will be benefitting customers throughout the rate-effective period.[347]

Contrary to OPC's claims, the projects included in RMA 2 are not too remote from the test period. In FC 1139, the Commission approved reliability plant additions that were placed in service 11 months after the end of the test year.[348] Despite OPC's baseless assertions, Commission precedent establishes that 11 months is not too remote. Indeed, in FC 1139 the Commission found that the projects in the RMA were "not too remote in time, since [the RMA] contains 'known and certain' costs for projects placed in service within 12 months after the end of the test year."[349] OPC's arbitrary selection of a December 31, 2019 cut-off date would deny Pepco the opportunity to recover prudently incurred costs.[350]

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343 Order No. 17424 at ¶¶107-108.
344 Commission Exhibit 20 (Pepco responses to Staff DR 26-15 and OPC DR 57-13).
345 PEPCO (D): Ziminsky Direct at 12:7-11. Order No. 18846 (at ¶77) requires that "all the elements of Pepco's financial situation that are tied to new reliability plant—including depreciation expense, accumulated depreciation, and accumulated deferred income taxes related to both the plant additions and associated retirements —must also be accounted for."
346 FC 1103, Order No. 17424 at ¶111.
347 PEPCO (2D): Ziminsky Supp. Direct at 10:5-7.
348 FC 1139, Order No. 18846 at ¶¶94-95. *See also* FC 1103, Order No. 17424 at ¶115.
349 FC 1139, Order No. 18846 at ¶78.
350 PEPCO (4D): Ziminsky Rebuttal at 5:20-6:2.

Moreover, OPC's representation that the Commission cannot trust that projects between December 31, 2019 and May 31, 2020 will be in service in the time that Pepco claims is inaccurate.[351] As previously discussed, all of the projects in RMA 2 were subject to discovery during this proceeding, are in service and the actual costs have been entered into the record. There is no credible argument that the projects are not known and certain. As a result, RMA 2 satisfies the Commission's long-standing standard for the inclusion of post-test year ratemaking adjustments in rate base.

OPC identifies several projects that it claims were not completed by the filing of intervenor and OPC Direct Testimony.[352] These include UDLPLNW3, for Harrison Substation, which OPC states was not fully in service and UDLPRM8BY, for Harvard Substation 4- to 13-kV conversions.[353] OPC claims that, even though updated costs were provided in February 2020, these updates were too remote from the test period.[354] As discussed herein, the actual costs of these projects are all in the record, the projects are used and useful and will provide service to customers throughout the applicable rate-effective period and are not too remote. OPC's challenges to these projects should be rejected.

A. The Potomac River Crossing Emergency Rebuild Project Was Reasonable and Necessary to Continue Providing Reliable Service and Maintaining Adequate Capacity.

Along with advocating that the Commission should eliminate all projects included in RMA 2 OPC claims that Pepco's Potomac River Crossing Project should be disallowed entirely given the other options that were available to Pepco.[355] As described in Company Witness Clark's

351 OPC Brief at 38.
352 OPC Brief at 38.
353 OPC Brief at 38.
354 OPC Brief at 39.
355 *See, e.g.*, OPC Brief at 42.

Rebuttal Testimony, the Potomac River Crossing Emergency Rebuild project was required due to a failure of the then-existing 69 kV cable (Feeder 69019) underneath the Potomac River in October 2018.[356] This feeder supplied Georgetown Substation from Station C, and its failure decreased the Georgetown Substation from N-1 contingency, leaving Georgetown Substation at risk for expected summer peak loading.[357] Given the emergency situation, Pepco evaluated several options and decided to move forward with the plan to install new submarine cable across the river, which also required new manholes, transition joints, and duct banks.[358] The project also extended the new cable to tie in with an existing feeder. In addition to the river crossing, the project included supplying Feeder 69019 from F St. Substation temporarily to firm up the Georgetown Substation. This temporarily restored Georgetown Substation back to its normal contingency (N-1 during Summer Peak, N-2 at other times).[359]

On brief, OPC asserts that the solution Pepco selected was imprudent, citing two main arguments. First, OPC claims that the "lower-cost" option available could have been selected, would have allowed Pepco to avoid the river crossing project altogether and would have allowed Pepco to provide adequate supply.[360] Second, OPC suggests that risk of simultaneous outages at the F Street and Georgetown Substations was only temporary in nature and eliminated by the Downtown Resupply Project.[361] In making these arguments, OPC also attempts to refute the counterarguments Pepco presented in its rebuttal testimony, which discussed the longer-term nature of the submarine cable and the failure of the "lower-cost" option to address the loss of contingency to the Georgetown and F Street Substations. As demonstrated below, Pepco's

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356 *See generally,* PEPCO (2I): Clark Rebuttal at 7:5-10:9.
357 PEPCO (2I): Clark Rebuttal at 7:5-10:9.
358 PEPCO (2I): Clark Rebuttal at 7:5-10:9.
359 PEPCO (2I): Clark Rebuttal at 7:5-10:9.
360 OPC Brief at 43.
361 OPC Brief at 44.

Potomac River Crossing project is reasonable and prudent and OPC's arguments should be dismissed.

(1) <u>The lower-cost alternative would not have provided adequate supply and would have presented an unacceptable reliability risk</u>.

OPC claims in its brief, as OPC Witness Mara did in his Direct Testimony, that discovery from Pepco showed that the river crossing could be avoided altogether by supplying the Georgetown Feeder 69019 from the F Street Substation.[362] Contrary to OPC's assertions, the "lower-cost" alternative that OPC promotes would have eliminated the appropriate contingency supply to the Georgetown Substation and, as a result, presented the possibility that the loss of one cable could result in a simultaneous outage at both the Georgetown Substation and the F Street Substation.[363] The Company cannot seriously entertain this scenario, as Pepco has an obligation to plan its system to meet contingency standards.[364] Although OPC claims that a separate feeder could have been used to by-pass the failed section of cable and, thus, supply the Georgetown and F Street Substations with adequate supply, this was not a long-term solution, and could place both substations at risk for loss of contingency. Pepco did, however, employ it as a temporary solution to restore the Georgetown Substation to N-1 contingency until the permanent solution was in place.[365] Simply put, that configuration could not be maintained long term and was only adequate until the Potomac River Crossing project was constructed. Accordingly, OPC's proposed "solution" does not refute Pepco's need for the project.

Nor is it accurate to say, as OPC does in its Initial Brief, that Pepco's use of existing 69 kV feeders into the Georgetown Substation for another eight years proves that Pepco is overstating its

[362] OPC Brief at 43.
[363] PEPCO (2I): Clark Rebuttal at 8:8-11.
[364] PEPCO (2I): Clark Rebuttal at 8:19-9:6.
[365] PEPCO (2I): Clark Rebuttal at 8:6-11.

lack of "confidence" of these supply cables to supply the Georgetown Substation.[366] In fact, if anything, the failure of Feeder 69019 reinforces Pepco's concern with the age and condition of the related feeders and Pepco's decision to transition to the supply from the Downtown Resupply Project as soon as possible.

(2) The timing of the Downtown Resupply Project and Retirement of F Street Substation mean that the Potomac River Crossing Project is not a short-term solution.

While noting that losing N-1 contingency was a concern, OPC states that the risk of simultaneous outages at the Georgetown and F Street Substations was temporary in nature, and that, given that the Downtown Resupply Project called for the retirement of the F Street Substation in 2021, the load served from the F Street Substation would have moved to the L Street Substation.[367] According to OPC, once the L Street substation is rebuilt, two additional feeders will be available for resupply of the Georgetown Substation.[368]

Pepco disagrees with OPC's characterization of Pepco's previous testimony and the need for this project, particularly as it concerns the timing of the Downtown Resupply project and work (retirements) of related substations. As Company Witness Clark testified in his Rebuttal Testimony, the Downtown Resupply Project was delayed because the design could not be finalized until the Commission issued orders on all of the Capital Grid Project; accordingly, the Downtown Resupply Project will not be completed by 2021.[369] Moreover, OPC's assertions that Pepco could have chosen a "lower-cost" solution and that Pepco's solution was only to be in-service for three years is false. As Company Witness Clark testified, the river crossing supplies to the Georgetown Substation cannot be replaced until the entire Capital Grid Transmission Line is completed, the

[366] OPC Brief at 49.
[367] OPC Brief at 49.
[368] OPC Brief at 48.
[369] PEPCO (2I): Clark Rebuttal at 9:17-23.

Champlain Substation rebuild is completed, and the 69 kV supplies from the Champlain Substation to the F Street Substation and from the F Street Substation to the Georgetown Substation are completed. This will likely happen no sooner than 2028, meaning that the Potomac River Crossing project is needed for at least ten years (2018-2028).[370] And, as previously discussed, the feeder that failed, Feeder 69019, supplied the Georgetown Substation and placed that substation to N-1 contingency, meaning that the failure of another feeder or transformer serving that substation put the entire substation at substantial risk—until a permanent solution was found. The "lower-cost" solution would not have resolved the loss of contingency.

In addition, OPC's assertion that the retirement of the F Street Substation would free up two feeders that could be used to supply the Georgetown Substation[371] fails for timing reasons. Currently, Pepco does not expect the F Street Substation to be retired until 2026 at earliest. Therefore, the alternative supply that OPC advances simply cannot work. Contrary to OPC's assertions, it is reasonable and necessary to address an emergency situation to allow supply to continue until a long-term solution can be constructed.

RMA 2, including the Potomac River Crossing Project, is reasonable, consistent with precedent and should be approved.

C. RMA 3 Is Reasonable and Should Be Approved.

OPC argues that all of the costs for RMA 3 should be excluded as they are too remote from the test period and not "known and certain."[372] OPC's concerns are misplaced. Contrary to OPC's contention, Order No. 18846 supports approval of RMA 3.[373] The parties had over a year to seek

[370] PEPCO (2I): Clark Rebuttal at 10:6-8.
[371] OPC Brief at 48.
[372] OPC Brief at 41. OPC also claims that many of the projects in RMA 3 are blanket work orders for emergency repairs "as needed" or "as identified" and, thus, are not known and certain. Pepco addressed these claims in the Initial Brief at 249-250.
[373] FC 1139, Order No. 18846 at ¶¶92-95.

discovery regarding the costs related to the projects in RMA 3. Indeed, in response to Staff Data Request 26-16, Pepco updated RMA 3 to reflect: (1) plant placed in service and actual costs through September 30, 2020 and (2) plant that is forecasted to close by December 31, 2020 (but not placed in service as of September 30, 2020).[374] For all the projects included in RMA 3 that closed and were placed in service by September 30, 2020, the costs are the actual costs and each project is in service and benefiting customers. This is precisely the situation in FC 1139 in which the Commission approved actual costs through the month before evidentiary hearings began.[375]

For those projects included in RMA 3 that are forecasted to close after September 30 and by December 31, 2020, the costs represent known and certain costs that will have already been expended as of the date of the evidentiary hearings and will reside in CWIP. None of the costs for this latter group represents "budgeted" or "estimated" spending.[376] In addition, these projects are projected to be in service and providing benefit to customers by December 31, 2020 – well in advance of the rate effective date in this proceeding.

RMA 3 seeks to better align the rates set in this proceeding with the expected conditions in the rate-effective period.[377] Given the final procedural schedule for this proceeding, all of the projects in RMA 3 are projected to be completed and in service prior to the Commission's order in this matter. The reliability projects included in RMA 3 are essential to maintaining and improving system reliability and are non-revenue producing in that they are not associated with increased load or connecting new customers to the system.[378] Further, they represent measurable dollars that the Company will expend prior to the commencement of the rate-effective period.

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374 *See* Supplemental Response to Staff DR 26-16 Attachment (Commission Cross Examination Exhibit No. 21).

375 FC 1139, Order No. 18846 at ¶93 ("In response to a Commission Data Request, the Company provided its actual RMA No. 25 project costs for January 2017 and February 2017 on March 13, 2017, two days before the start of the evidentiary hearings").

376 PEPCO (D): Ziminsky Direct at 13:17-21.

377 PEPCO (4D): Ziminsky Rebuttal at 8:15-16.

378 PEPCO (4D): Ziminsky Rebuttal at 8:16-19.

Moreover, the reliability projects included in RMA 3 will be used and useful and providing service to Pepco's customers during the rate-effective period.[379] Given that the RMA 3 dollars have been expended, these expenditures are "known and measurable."

As Company Witness Ziminsky testifies, "the goal of utility ratemaking should be to set rates such that they are reflective of the conditions and related cost of service expected to prevail during the rate-effective period. Clearly, non-revenue producing reliability projects that will be placed in service through December 2020 will be in service and providing reliability benefits to customers throughout the rate effective period."[380]

The adjustments included in RMA 2 and 3 are the types of adjustments necessary so that rates and costs have a closer matching and that rates are reflective of the expected conditions in the rate effective period.[381] Due to the level of reliability-related capital expenditures required to meet the Electric Quality of Service Standards (EQSS) and comply with Formal Case No. 1119 Merger Conditions 54 and 55, if the Company does not receive approval for these types of adjustments (or some alternative recovery mechanism), there is certain to be a high level of attrition, or regulatory lag, denying the Company the opportunity to earn its authorized return on equity for the foreseeable future.[382] Even if the Commission were to approve RMA 3, there would still be a mismatch of costs and revenues related to reliability plant additions, as rates will be in effect late in 2020 and throughout 2021 but would only reflect plant additions through 2020.[383]

Given the reliability expenditures the Company is required to make, if adjustments such as RMA 3 (and RMA 2) are not allowed (or some alternative recovery mechanism put in place), the

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[379] PEPCO (D): Ziminsky Direct at 14:2-3.
[380] PEPCO (4D): Ziminsky Rebuttal at 9:4-8.
[381] PEPCO (4D): Ziminsky Rebuttal at 9:10-12.
[382] PEPCO (4D): Ziminsky Rebuttal at 9:12-17.
[383] PEPCO (4D): Ziminsky Rebuttal at 9:17-20.

Company will continue to be denied the opportunity to earn its authorized return on equity for the foreseeable future.[384] RMA 3 is reasonable.

Commission precedent supports approval of RMA 2 and RMA 3, including the Potomac River Crossing Project. The Commission should approve both RMAs, providing Pepco recovery for costs that are already expended for the benefit of customers and providing the Company the opportunity to earn a return closer to the approved return.

D. RMA 7: OPC's Overtime Expense Adjustment Defies Precedent and Should Be Rejected.

Despite the fact that OPC and OPC Witness Ramas did not contest this adjustment in the last litigated rate case (FC 1139), OPC now claims calculating overtime based on a three-year average is not reasonable and advocates for using the actual amount in the test year.[385] OPC's adjustment is self-serving and should be rejected. In FC 1103, Pepco proposed to include in the revenue requirement the actual amount of the overtime in the test year.[386] OPC objected to the use of the actual overtime costs in the test year because they were, OPC claimed, unusually high relative to the average overtime costs for the period 2008-2010.[387] Instead, OPC argued for an average over the 2008-2010 period.[388] In the end, the Commission determined that a three-year average was appropriate for overtime expense.[389] Based on that precedent, Pepco again used the three-year-average approach to calculating overtime expense in FC 1139.[390] OPC did not oppose

384 PEPCO (4D): Ziminsky Rebuttal at 9:10-17. Even if RMA 3 were approved, there would still be a mismatch of costs and revenues related to reliability plant additions, as rates will be in effect throughout 2021 but those rates would only reflect certain plant additions through 2020. PEPCO (4D): Ziminsky Rebuttal at 9:17-20.

385 OPC Brief at 51. For the first time on brief, AOBA now supports OPC's adjustment to RMA 7. AOBA Brief at 52. For the reasons discussed herein and in the Initial Brief at 252-253, AOBA's adopted challenge fails.

386 Order No. 17424 at ¶180.

387 Order No. 17424 at ¶184.

388 Order No. 17424 at ¶186.

389 Order No. 17424 at ¶194.

390 Order No. 18846 at ¶170.

this method of calculating overtime expense in FC 1139,[391] and the Commission approved Pepco's uncontested overtime adjustment.[392] OPC suddenly reverses course in this proceeding, upending its own argument in FC 1103, and argues that Pepco's overtime should be based solely on the test year as opposed to the historic three-year average expense.[393] OPC supplies a number of justifications for its disregard for the Commission precedent that OPC itself helped create, but the fundamental reason is clear. OPC has chosen to use the three-year average when it works in OPC's favor and abandons it when the methodology does not. The Commission should follow its clear precedent rather than the self-serving whims of OPC.

Moreover, although OPC references a number of changes that she claims to be the reasons for a decrease in overtime expense, she makes no attempt to quantify the impact of these changes on overtime expenses.[394] As discussed in Pepco's Initial Brief, PHISCO overtime expense represents only approximately 3% of Pepco's distribution overtime O&M expense over the three-year period used in RMA 7. As such, contrary to OPC's contention, PHISCO headcounts have very little impact on RMA 7.[395] In addition, a significant portion of the reduction in PHISCO headcount is related to the transfer of IT employees from PHISCO to EBSC.[396]

OPC has failed to demonstrate that the Commission's precedent for the use of a three-year average for overtime should be overturned. RMA 7 is reasonable and should be approved without modification.

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391 Order No. 18846 at ¶170.
392 Order No. 18846 at ¶599(o).
393 OPC Brief at 51-52.
394 PEPCO (4D): Ziminsky Rebuttal at 11:6-9.
395 PEPCO (4D): Ziminsky Rebuttal at 11:10-12.
396 PEPCO (4D): Ziminsky Rebuttal at 11:12-14.

E. RMA 20a (Original MRP RMA 10a): Benning Road Facility Environmental Remediation Effort Costs Are Reasonable and Should Not Be Adjusted.

RMA 20a includes two separate components to address the remediation efforts at the Company's Benning Road facility: 1) actual remedial investigation ("RI") costs from January 1, 2018 through September 30, 2020;[397] and 2) actual costs to remove the cooling tower basins and the contaminated soil surrounding them. The Company calculated the projected amortization expense using a 10-year amortization period, consistent with the period agreed to in the FC 1150/1151 Settlement and approved in Order No. 19433.[398] OPC argued that both components should be rejected. Each is discussed separately below and demonstrates that OPC's arguments are specious.

A. Pepco's Recovery of Its Prudently Incurred Costs for the Environmental Investigation at the Benning Road Property Is Appropriate and Consistent with Commission Precedent.

Company Witness Sanford provided extensive information in her Direct Testimony regarding the history of the Benning Road facility.[399] She discussed how the court-approved consent decree under which the Benning Road remedial investigation and feasibility study ("RI/FS") is being conducted came about and explained that the requirement to conduct the RI/FS was not the result of Pepco violating any environmental requirements.[400] Sanford explained in detail that the environmental investigation is being conducted in accordance with work plans that DOEE reviewed and approved that specify the nature and scope of the activities performed to ensure that Pepco satisfies the requirements of the consent decree.[401]

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[397] Supplemental Response to Staff DR 26-17 Supplemental Attachment (Commission Cross Examination Exhibit No. 22).

[398] FC 1150/1151, Order No. 19433 at ¶12; PEPCO (D): Ziminsky Direct at 22:11-18.

[399] PEPCO (K): Sanford Direct at 3:17-6:17.

[400] PEPCO (K): Sanford Direct at 6:21-9:17.

[401] PEPCO (K): Sanford Direct at 9:19-13:21.

Company Witness Sanford discussed the costs incurred in connection with the Benning Road RI/FS from January 1, 2018 and the estimated costs through December 31, 2020.[402] She testified that all Benning Road RI/FS work performed has been necessary to comply with the Company's legal obligations under the consent decree and directives DOEE issued in overseeing the RI/FS.[403] Moreover, the detailed work plans DOEE approved specify the nature and scope of the activities performed to ensure that the requirements of the consent decree are satisfied.[404] Company Witness Sanford emphasized that Pepco has also engaged in extensive technical discussions with DOEE to manage the scope of the environmental investigation work so as to avoid unnecessary effort and expense.[405] The Company has also closely overseen the work so that it is being completed cost effectively.

Company Witness Sanford also addressed Pepco's efforts to pursue insurance recovery of the RI/FS costs.[406] She also discussed these efforts during the evidentiary hearing held on October 27, 2020.[407] Company Witness Sanford testified that Pepco has identified 177 insurance policies related to environmental coverage or pollution coverage and is actively seeking recovery from any appropriate insurers.[408] The Company has put the policy holders on notice of a potential claim and has updated them as updates are available.[409] The Company's technical insurance experts and insurance legal counsel are actively working with the insurance carriers.[410] While Pepco is aggressively pursuing insurance recovery, Company Witness Sanford cautioned that resolving

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402 PEPCO (K): Sanford Direct at 14:4-15:14. As Company Witness Sanford noted, the costs incurred associated with the Benning Road RI through January 1, 2018 were included in the regulatory asset approved as part of the FC 1150/51Settlement. PEPCO (K): Sanford Direct at 14:14-15:2.
403 PEPCO (K): Sanford Direct at 16:18-20.
404 PEPCO (2K): Sanford Rebuttal at 3:3-6.
405 PEPCO (K): Sanford Direct at 16:18-17:4.
406 PEPCO (K): Sanford Direct at 17:14-18:13.
407 *See generally*, Tr. at 260-269.
408 Tr. at 261:9-263:1.
409 Tr. at 263:1-8.
410 Tr. at 263:8-11.

these claims with the insurance carriers will be a long process.[411] She did reiterate, however, that to the extent costs have been paid by customers for any environmental investigation or remediation costs at Benning Road, any money Pepco receives from insurance policies relating to such work would be returned to customers.[412] Moreover, under the FC 1150/1151 Settlement, Pepco updates the Commission regarding its efforts to obtain insurance recovery for remediation costs associated with its Benning Road facility bi-annually.[413]

OPC challenges the recovery of these environmental investigation costs.[414] Although OPC Witness Wittliff concedes that "prudently incurred expenditures for actions which are required by rule, regulation, or court order to clean historic contamination and restore the property to a reuse consistent with the historical industrial use of the property" are generally recoverable from ratepayers,[415] OPC Witness Wittliff argues that the Company should not be permitted to recover costs associated with the remedial investigation at the Benning Road property because: (1) "the end use of the property has not yet been decided to be consistent with electric power generation, transmission, or distribution;" (2) "the required cleanups may be held to even tighter standards depending on what happens with river sediments;" and (3) Pepco "has not demonstrated that its environmental investigation and cleanup activities will produce tangible or exclusive benefits for

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411 Tr. at 263:13-15.

412 Tr. at 269:1-5.

413 Paragraph 14(d) of the FC 1150/1151 Settlement provides:

> Pepco will diligently pursue recovery of these RI costs and will report to the Commission bi-annually, beginning on January 1, 2019, on the status of the Company's efforts to obtain insurance recovery, until such time as the Company indicates, in a bi annual report, that all insurance recovery efforts have been exhausted.

414 For the first time on brief, AOBA now supports OPC's adjustment to RMA 20. AOBA Brief at 52. For the reasons above, AOBA's adopted challenge fails.

415 OPC (G): Wittliff Direct at 54:11-16. Company Witness Sanford indicates that the costs Pepco has incurred in connection with the Benning Road RI/FS satisfy the standard set forth in OPC Witness Wittliff's testimony. PEPCO (2K): Sanford Rebuttal at 2:12-3:16.

District Ratepayers."[416] Company Witness Sanford refuted all of OPC Witness Wittliff's arguments in her Rebuttal Testimony.[417] OPC makes each of these claims again on brief.[418]

(1) Pepco should be permitted to recover RI/FS costs prudently incurred as a result of the Consent Decree.

OPC argues that DOEE's finding of liability (or lack thereof) is not the same as the Commission's consideration of whether the costs of the Benning Road RI/FS were necessary and prudently incurred.[419] However, as Company Witness Sanford testifies, the fact that these questions are distinct does not mean that one has no bearing on the other.[420] OPC offers no basis for holding that the costs of environmental actions (such as the Benning Road RI/FS) are not necessarily prudently incurred if they are undertaken to comply with a regulatory requirement to protect the public health and safety and are not based on any finding of Pepco negligence or noncompliance.[421]

(2) Pepco is legally obligated to conduct the RI/FS under the terms of the Consent Decree and the RI/FS and resulting remediation is not related to the Brownfields Law.

OPC questions whether the costs to perform the Benning RI/FS were "necessary" based on the mistaken belief that the cleanup is being undertaken under the DC Brownfields Law, which he characterizes as being a voluntary program.[422] Company Witness Sanford explained that OPC's assertions are wrong and that Pepco is legally obligated to conduct the RI/FS under the terms of the consent decree.[423] OPC's confusion appears to derive from fact that the complaint that the

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416 OPC (G): Wittliff Direct at 7:22-8:5. OPC Witness Wittliff claims that "the Commission should not make a decision about cost recovery until the costs are known and measurable and the end uses are decided." *Id*. at 8:6-8.
417 *See generally* PEPCO (2K): Sanford Rebuttal at 2:12-13:8.
418 OPC Brief at 67.
419 OPC Brief at 215-216.
420 PEPCO (2K): Sanford Rebuttal at 4:2-3.
421 PEPCO (2K): Sanford Rebuttal at 4:3-8.
422 OPC (G): Wittliff Direct at 51:5-7.
423 PEPCO (2K): Sanford Rebuttal at 4:12-13.

District filed that gave rise to the consent decree cited the D.C. Brownfield Revitalization Act of 2000 as one source of authority for the action. However, the statute is not limited to the establishment of a voluntary Brownfield cleanup program but includes broader authorities for the District to address environmental contamination that were the basis of the District's actions that resulted in the consent decree.[424]

(3) The only remediation costs being sought by Pepco in this proceeding relate to the removal of the CT basins.

OPC and its Witness Wittliff conflate Pepco's work on the Benning Road RI/FS with the ultimate environmental remediation at the Benning Road facility and the separate remediation to be performed as part of the Anacostia River Sediment Project ("ARSP").[425] The RI/FS phase at the Benning Road property has not yet been completed. Any environmental remediation that may be required as a result of the RI/FS will occur at a later date and is not at issue in this case.[426]

(4) The future use of the Benning Road site is irrelevant to this proceeding.

Regarding OPC's claim that the future use of the Benning Road property is uncertain,[427] Company Witness Sanford was clear that this assertion is both unfounded and irrelevant to the Commission's decision in this proceeding. The Benning Road facility serves an essential function as a service center supporting Pepco's transmission and distribution of electricity to the customers.[428] Pepco is the owner of the property and has no plans to change its current use of the

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424 PEPCO (2K): Sanford Rebuttal at 4:11-5:2.
425 PEPCO (2K): Sanford Rebuttal at 5:15-16.
426 PEPCO (2K): Sanford Rebuttal at 5:17-20. The only environmental remediation costs for which Pepco is seeking recovery are those related to the removal of the CT Basins. As discussed in Section B below, those environmental remediation costs are appropriately recovered. Pepco is not seeking any cost recovery in this proceeding for any costs associated with ARSP. *See* Initial Brief at 269-270.
427 OPC (G): Wittliff Direct at 41:14-44:2.
428 In addition to the facilities at the Benning Road noted by OPC Witness Wittliff (three substations, a repair shop for transformers and other electrical equipment, a transfer and storage facility for electrical equipment, a power pole laydown area, and fuel storage facilities), Company Witness Sanford indicated several other key functions that support the operation and maintenance of Pepco's electric transmission and distribution system that are located at the Benning Road facility, including a stores department, a fleet vehicle maintenance facility, and numerous laydown areas for

Benning Road facility, which will continue to be used to support transmission and distribution of electricity for the foreseeable future. Moreover, any change in the future use of the Benning Road property has no bearing on the costs to perform the RI/FS as it involves no environmental remediation action.[429]

(5) Future remediation standards are irrelevant to this proceeding.

Company Witness Sanford showed that OPC's claim that there is uncertainty regarding cleanup standards is also specious.[430] The RI/FS that is currently being undertaken at the Benning Road property does not involve any remediation.[431] DOEE will determine whether there is a need for remediation based on the results of the RI/FS and any such remediation will be implemented through further agreement or legal action between Pepco and DOEE and with the approval of the District Court that approved the consent decree. Any standards that may be applicable to such future remediation efforts have absolutely no bearing on the amount Pepco expended to perform the RI/FS or whether such expenditures have been prudently incurred.[432] No party has disputed the prudence of the environmental investigation costs the Company has incurred for the Benning Road property.

(6) Pepco's RI/FS and eventual remediation provide demonstrable health benefits to District residents and Pepco customers.

OPC Witness Wittliff's assertions that customers would receive no health benefit from the investigation and cleanup of the Benning Road facility different from the general public,[433] ignores

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transformers and other equipment used in Pepco's transmission and distribution system. PEPCO (2K): Sanford Rebuttal at 6:8-16.

[429] PEPCO (2K): Sanford Rebuttal at 6:16-19.

[430] *See, e.g.*, OPC (G): Wittliff Direct at 42:18-45:18; 47:16-17; 56:16-57:2.

[431] PEPCO (2K): Sanford Rebuttal at 8:5-6.

[432] PEPCO (2K): Sanford Rebuttal at 8:6-13. OPC Witness Wittliff also argues that future cleanup costs may be influenced by a change of use of the Benning Road facility as a source of uncertainty regarding cleanup standards. This claim is also baseless. Pepco is the owner of the Benning Road property. There is no reason to expect that the use of the property will change or that the future cleanup at the site will involve standards any more stringent than appropriate for the facility's current use.

[433] *See, e.g.*, OPC (G): Wittliff Direct at 51:3-7; 60:3-8.

the fact that these activities do not just provide generalized public health benefits, they also allow Pepco to continue to use and potentially expand the Benning Road facility as a service center supporting the operation and maintenance of its electric transmission and distribution system. As Company Witness Sanford explained, this is a direct benefit exclusive to customers.[434]

(7) Pepco is legally obligated to perform the RI/FS as a result of the Consent Decree. The source(s) of contamination is irrelevant to this proceeding.

OPC also argues that it would be difficult to distinguish between off-site sources, the generating station, and the service center operations in attempting to identify the sources of contaminants at the Benning Road site.[435] These claims ignore that the environmental investigation has indicated no reason to suspect that the conditions at the Benning Road facility are attributable to any significant extent to activities or releases at any of the surrounding properties.[436] Moreover, although it may be possible to allocate the contaminants at the Benning Road site between the former generating station operations and the service center operations, there is no need to do so for purposes of this proceeding. Regardless of the nature of the activities that may have caused the contamination, Pepco is legally obligated to conduct the RI/FS as the owner and operator of the Benning Road site, which is currently devoted entirely to Pepco's Service Center's operations and thus benefits its customers.[437]

(8) Prudently incurred investigation – and remediation – costs are recoverable according to Commission precedent.

In addition to being factually inaccurate, OPC's arguments are also contrary to well-settled Commission precedent. The Commission has consistently allowed recovery of prudently incurred environmental investigation as well as environmental remediation costs. Again, no party has

434 PEPCO (2K): Sanford Rebuttal at 8:18-9:2.
435 *See, e.g.*, OPC (G): Wittliff Direct at 28:9-18.
436 PEPCO (2K): Sanford Rebuttal at 9:15-20.
437 PEPCO (2K): Sanford Rebuttal at 9:20-10:13.

disputed the prudence of the environmental investigation costs the Company has incurred for the Benning Road property. OPC referenced no Commission decisions that would call recovery of these costs into question. Indeed, the Commission has long noted the importance of allowing the recovery of such costs, as discussed below.

(a) *WGL East Station litigation*.

In Order No. 10307, the Commission recognized that "it is important to encourage effective remediation efforts."[438] In that same order the Commission held that environmental assessment and remediation costs "will be recoverable upon the requisite showing of necessity and prudence."[439] At issue in that proceeding were the environmental investigation and remediation costs associated with the Washington Gas Light Company ("WGL")'s East Station, the site of a former manufactured gas plant that ceased operations several decades earlier.

Unlike the WGL East Station property situation, the environmental investigation at Benning Road is being undertaken on a site that the Company still uses in connection with its regulated distribution service. In FC 922, although the Commission Staff believed it was appropriate for WGL to recover its environmental remediation costs, Staff also believed that the circumstances the East Station site presented were unusual and thus justified ratepayers sharing in the net revenues realized from the sale or reuse of the property. Staff explained:

> First, the expenditures for environmental remediation which ratepayers are being called on to shoulder is a very unusual sort of expenditure. Although the pollution at the site was created during the production of gas for utility ratepayers, the Company did not reflect the costs of the current remediation work in its rates during the active life of the plant. Second, the environmental costs are being incurred nearly a decade after final shutdown of the plant, and nearly 23 years after the plant ceased to make a significant contribution to gas supply. Third, the costs of the environmental clean-up are not matched by any current or future revenues. In other words, ratepayers do not stand to receive any gas service benefit for their

438 FC 922, Order No. 10307 at 119.

439 *Id*. The Commission noted that "these costs are the result of gas service which was rendered to ratepayers in the normal course of business and should therefore be recoverable from ratepayers as incurred."

> investment in the East Station clean-up. Fourth, sale or lease revenues associated with reuse of the site are the only source of future revenue associated with the site. And, fifth, any significant value this site may have is largely made possible by the expenditures for environmental remediation, which ratepayers are being called upon to shoulder.[440]

In FC 922, the Commission ultimately determined that the environmental costs at issue were necessary and prudent and, therefore, permitted them to be recovered over a three-year amortization period. However, given the unusual situation the East Station property presented, the Commission held:

> In view of our decision to require ratepayers to share in the costs of the cleanup, we are also inclined to adopt a mechanism to allow ratepayers to share in any future revenues from the reuse of the property. In other words, the Company cannot have it both ways. It cannot collect funds from ratepayers for environmental cleanup that will enhance the marketability and value of its property and at the same time expect to keep all the proceeds from leases or sales of this property. Accordingly, if the ratepayers contribute to the costs of the remediation of the East Station site, the ratepayers should share in any profits from the reuse of this property. This result seems compelled by the fact that the ratepayers do not stand to receive any gas service benefit for their investment in the East station cleanup. Consequently, this approach considers the Company's investment in the land itself as well as ratepayers' investment in the environmental remediation which makes future revenue streams possible.[441]

Unlike the situation presented by the remediation of the East Station site, the Benning Road facility is being used by Pepco to provide distribution service to District of Columbia customers and serves as the Company's only service center located in the District of Columbia. As Company Witness Sanford testified:

> The Benning Road Service Center is a hub for employees supporting maintenance, operation, and construction of Pepco's electric transmission and distribution system; system engineering; vehicle fleet maintenance and refueling; and central warehousing for materials, supplies, and equipment needed to operate the Pepco electrical distribution system. The site currently accommodates approximately 700 Pepco employees.[442]

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440 FC 922, Direct Testimony of Staff Witness Huriaux, PSC (F) at 18.
441 FC 922, Order No. 10307 at 120.
442 PEPCO (K): Sanford Direct at 3:5-10.

WGL was allowed to recover additional costs related to the environmental remediation at the East Station site in FC 934 and 989. In FC 989, the Commission noted that "if WGL had not decided to build on the site, that ratepayers would have been liable for some, if not all, of the remediation costs associated with the property without any offsetting gain."[443]

(b) *Other Commission precedent also permit the recovery of environmental costs*.

The Commission's decisions regarding WGL's East Station are not unique. In FC 869, for example, the Commission designated an issue to examine whether Pepco's application to increase rates reflected any costs associated with the disposal of PCBs, and, if so, whether such costs were reasonable. Pepco indicated that it had sent PCB capacitors to a contractor for disposal in accordance with then existing EPA regulations. However, after the contractor ceased operations, a "Superfund" proceeding was initiated with respect to the disposal site the contractor had operated. Ultimately, Pepco paid $288,463 as its share of the cost of disposing of the PCBs and cleaning up the site. $131,770 was allocated to the District of Columbia jurisdiction and included in Pepco's rate base as a "Cost of Removal" in FC 869.

Additionally, Pepco sold junk transformers in accordance with then applicable EPA regulations to the operators of two other sites for which Superfund proceedings were also subsequently initiated. The litigation expenses associated with one of these matters were also reflected in Pepco's cost of service in FC 869. $517,950 was allocated to the District of Columbia for the cost of cleaning up this second site and certain associated litigation expenses and also included in rate base as Cost of Removal. In Order No. 9216, the Commission allowed the Company's treatment of these costs.[444]

443 FC 989, Order No. 14241 at ¶13.
444 FC 869, Order No. 9216 at 147-152.

That the Commission precedent on the issue of the recovery of environmental costs was clear was noted approximately two years ago when the Commission chairman clarified a point during the hearings regarding the proposed merger between Altagas and WGL:

> CHAIRMAN KANE: That turns out so then this issue of environmental clean-up is not new. I've pulled from our records going all the way back to 1992-1993 when the first issue of environmental cleanup at [East] station was raised.
>
> And let me take note of this is Commission Order Number 10307 in Formal Case 922 which was issued on October 8th, 1993. And it's the Washington Gas's proposal to recover or remediation costs to [East] station site.
>
> And a decision by the Commission that recovery of environmental expenses are to be recovered from ratepayers and amortized over a 3 year period and that the unamortized balances would be continued to be deferred and earn a return. You talked about deferred, they're put into a regulatory asset – is that your understanding of how that --
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> MR. HAMMOND: That is my understanding.
>
> CHAIRMAN KANE: Was set up then in 1993, and is it your understanding that that's the way it's continued to be treated?
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> MR. HAMMOND: Yes, that's consistent all through the jurisdictions of Washington Gas rates.
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> CHAIRMAN KANE: And in our most recent rate cases -- last 3 rate cases, there was recovery for environmental costs?
>
> MR. HAMMOND: Yes, that's right.
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> CHAIRMAN KANE: Allocated to ratepayers. So we say again that the costs associated with providing and maintaining this performance guarantee shall not be recovered in rates. You're not referring to the 20 million dollars or whatever the costs are for environmental mediation not being recovered?
>
> MR. HAMMOND: That's correct, we're not referring to --
>
> CHAIRMAN KANE: You're not referring to that at all, okay. And we have in the record it's been several hundred thousand dollars in each of our rate cases in recovery of those environmental costs, okay.
>
> So your anticipation would be as a result of any future remediation the company would be coming to the Commission for recovery of that remediation in rates guarantee or no guarantee?

MR. HAMMOND: That's correct.[445]

The Company has established that the costs for the environmental investigation at the Benning Road property are necessary, as they have been incurred to comply with the consent decree overseen by the District Court. They are also prudent, as it is unchallenged that these costs have been incurred pursuant to work plans DOEE reviewed and approved. Moreover, the Company engaged in extensive technical discussions with DOEE to manage the scope of the environmental investigation work undertaken at Benning Road to avoid unnecessary effort and expense. Finally, no party disputes that Pepco has closely overseen the environmental investigation work so that it is being completed cost effectively. The Commission should approve Pepco's recovery of the full amount of the Benning Road RI/FS costs.

B. Pepco's Recovery of the Costs to Remove the Cooling Tower Basins and the Surrounding Contaminated Soil from the Benning Road Property Is Reasonable, Consistent with Commission Precedent and Not Barred by the FC 945 Settlement Agreement.

As a result of prior site investigations, as part of the Benning RI/FS, DOEE required the Company to conduct a comprehensive investigation of the area beneath and adjacent to the cooling tower basins to fully delineate the extent of PCB-contaminated soils in this area.[446] Based on the results of this delineation, Pepco determined that the most cost-effective approach was to remove the concrete cooling tower basins and the contaminated soil surrounding them. DOEE approved

[445] FC 1142, June 13, 2018 Tr. at 77-79.

[446] PEPCO (K): Sanford Direct at 15:16-16:6. As Company Witness Sanford explained,

> In 1995, Pepco discovered that the caulk used to seal the joints for the cooling tower concrete basins when they were constructed in 1968 and 1972 contained PCBs. All of the exposed caulk was removed at that time and PCBs that had leached into the basins, without the Company's prior knowledge or expectation, were cleaned up in accordance with EPA requirements. Any residual PCB contamination that may have leached from the caulk to soil beneath the basins was effectively encapsulated so no further action was necessary at that time as long as the cooling tower basins remained in place.

this environmental remediation and oversaw completion of the work.[447] The Company's actual costs of approximately $3.43 million for this work were included in RMA 20a. These are the only environmental remediation costs Pepco is seeking to recover in this proceeding. All of the other costs included in RMA 20a and RMA 20b relate solely to environmental investigation activities.

OPC challenges the recovery of these costs.[448] OPC does not dispute that the environmental remediation costs Pepco incurred to remove the cooling tower basins and the contaminated soil surrounding them were reasonable and prudent. Instead, OPC Witness Wielgus argued that, based on his "expert technical opinion" regarding the meaning of Section 1.05 of the Non-unanimous Agreement of Stipulation and Full Settlement in Phase I of FC 945 ("FC 945 Settlement"), the Company was barred from seeking recovery of these costs. Indeed, OPC's Initial Brief claims that the FC 945 Settlement prohibits Pepco from recovering costs associated with the Benning Road Generating Plant. In doing so, OPC cites several portions of the FC 945 Settlement and related order and concludes that Pepco cannot collect any costs related to the cooling towers or associated removal because those items were related solely to Pepco's former generation function.[449]

OPC's position is baseless and should be rejected. First, contrary to OPC's claims, the cooling tower basin remediation was related to surface and subsurface conditions at the Benning Road real property as distinguished from any "plants, facilities, and equipment used in the generation of electricity."[450] All of the Benning Road property is now devoted to activities that support Pepco's current operations.[451]

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447 PEPCO (K): Sanford Direct at 16:6-14. This remediation project is documented in a completion report submitted to DOEE dated September 11, 2017.

448 OPC Brief at 213-217. Again, AOBA, for the first time in its initial brief, adopts OPC's position. AOBA Brief at 52.

449 *See, e.g.*, OPC Brief at 210-11.

450 PEPCO (2K): Sanford Rebuttal at 15:4-6.

451 PEPCO (K): Sanford Direct at 3:3-10; PEPCO (2K): Sanford Rebuttal at 15:7-8.

Moreover, OPC Witness Wielgus' "expert technical opinion," reiterated in OPC's Initial Brief, regarding the meaning of Section 1.05 of the FC 945 Settlement is wrong.[452] Although couched as a technical opinion, as Company Witness Sanford noted, OPC Witness Wielgus really is providing a legal opinion regarding the meaning of Section 1.05 of the FC 945 Settlement. This is particularly ironic given that OPC Witness Wielgus professes to have no knowledge of the discussions that lead to the FC 945 Settlement. This is doubly so given that his client OPC was not a party to the FC 945 Settlement.

(1) Background concerning divestiture of Pepco's Benning Road and Buzzard Point generating stations.

In 1999, at the time Pepco was seeking approval to divest its generation assets, concerns were raised regarding the operation of the Benning Road and Buzzard Point generating stations if a third party purchased them. These concerns led the Chair of the Council Committee with oversight over the Commission to request that the Commission hold in abeyance the evidentiary hearings regarding Pepco's divestiture application. Ultimately to assuage these concerns and allow consideration of the divestiture to proceed, the Company agreed that it would not transfer the generating stations located in the District as part of the divestiture unless it could do so in a manner that addressed these concerns.[453] As a result, on August 20, 1999, the Company amended its

[452] Section 1.05 of the FC 945 Settlement states:

> Nothing in this Settlement Agreement shall be construed as requiring Pepco to include in the sale of the Assets, the Company's generating stations located at Benning Road and Buzzard Point in the District of Columbia; provided, however, that if the Benning Road and Buzzard Point generating stations are not included in the sale of the Assets, the Company shall be thereafter barred and estopped from asserting or exercising any legal right that it might otherwise have to recover from customers located in the District of Columbia any stranded costs associated with those generating stations. In connection with any Pepco base rate proceeding in the District of Columbia instituted after June 30, 2000, the Benning Road and Buzzard Point generating stations shall not be included in the cost of service for purposes of determining the Company's District of Columbia jurisdictional revenue requirement.

[453] As Pepco indicated in its Amended Divestiture Application:

> The Company notes that, but for the June 22, 1999 request of the Chair of the Commission on Consumer and Regulatory Affairs of the District of Columbia Council to hold in abeyance the then scheduled July 1999 hearings on the Company's March 16, 1999 Application, this case would now

divestiture application and filed additional direct testimony. In that direct testimony, Pepco addressed how the Company proposed to recover the stranded costs associated with the Benning Road and Buzzard Point generating plants and how the costs to continue to operate the plants would be treated following the divestiture:

> If the District of Columbia adopts customer choice, then the District of Columbia allocable portion of any above-market costs associated with these two plants will become "stranded" and will have to be recovered from all District of Columbia customers through a non-bypassable Competitive Transition Charge (CTC). The system above-market costs, grossed-up for income taxes, associated with these two plants is about $40 million (approximately $16 million on a District of Columbia jurisdictionally allocated basis). The plants would no longer be subject to cost of service regulation.[454]

On November 8, 1999, some of the parties executed the FC 945 Settlement regarding the divestiture of Pepco's generating assets. OPC was not a party to the FC 945 Settlement. At the time the FC 945 Settlement was executed, the Council had not enacted the Retail Electric Competition and Consumer Protection Act of 1999. That legislation was not enacted until December 24, 1999 and did not become law until May 9, 2000.[455] Indeed, the first reading of that legislation had not yet occurred when the FC 945 Settlement was reached.[456] Moreover, the legislation, as introduced, did not include the language that was eventually enacted as Section 119(b)(2)(A) and which statutorily eliminated the stranded cost issue as well as the issue of how the continuing costs to operate these generating facilities would be addressed in distribution rates

> be before the Commission for decision. In an effort to obtain the rescheduling of the hearings on the Company's March 16, 1999 Application, on July 12, 1999 John M. Derrick Jr., Pepco's Chairman and Chief Executive Officer, informed the Chair of the Committee on Consumer and Regulatory Affairs that Pepco would not sell the Benning Road and Buzzard Point plants so that a public dialogue could be conducted regarding the implications of such a sale. In accord with Mr. Derrick's commitment, in rebuttal testimony of July 30, 1999, Mr. Wraase states that the Company will not sell the Benning Road and Buzzard Point plants until such a sale is acceptable to the District of Columbia.

Amended Application at p.2-3. *See also* FC 945, Additional Direct Testimony of Dennis R. Wraase at 1-2 (August 20, 1999).

454 FC 945, Additional Direct Testimony of Dennis R. Wraase at 12.

455 https://lims.dccouncil.us/Legislation/B13-0284.

456 The Council's LIMS site indicates that the first reading on the legislation was held on December 2, 1999.

by requiring that any generating facilities Pepco retained following divestiture be transferred to an affiliate at net book value.[457]

It was, therefore, necessary for the FC 945 Settlement Agreement to address how to handle the stranded costs of the Benning Road and Buzzard Point generating facilities as well as the ongoing costs to operate those plants. As Pepco had indicated when it amended its application to address the potential removal of the Benning Road and Buzzard Point generating facilities from the divestiture, one of the options available to the Commission was:

> to move the non-fuel related components of the two stations into base rates, rather than to continue to include them in the energy procurement adjustment clause. If the Commission elects to do this, the capital costs of the Benning Road and Buzzard Point stations would be included in rate base with the transmission and distribution rate base components and the ongoing operation and maintenance costs would be included in the cost of service, as they are today.[458]

In Section 1.05 of the FC 945 Settlement Pepco agreed that, if the Benning Road and Buzzard Point generating facilities were not included in the divestiture, the Company would not be permitted to recover any of the estimated $40 million in stranded costs associated with the Benning Road and Buzzard Point generating facilities from District of Columbia customers. It also agreed that the ongoing costs to operate the Benning Road and Buzzard Point generating plants would not be included in Pepco's future base rate proceedings. However, this has nothing to do with the environmental remediation costs at issue.[459]

At the time the divestiture was approved, the contemporaneous record in FC 945 reflects that it was understood that, after the divestiture had closed, the issue of the environmental risks relating to the prior operation of generating facilities that would be retained by Pepco (and thus

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457 *See* https://lims.dccouncil.us/downloads/LIMS/7745/Introduction/B13-0284-INTRODUCTION.pdf. Section 119(b)(2)(A) is currently codified in Section 34-1519(b)(2)(A) of the District of Columbia Official Code.

458 FC 945, Additional Direct Testimony of Dennis R. Wraase at 12.

459 The record in FC 945 is clear that the risk of environmental remediation costs was entirely separate and distinct from stranded costs.

potentially customers) was to be addressed in the asset purchase agreements governing the transfer of the generating assets.[460]

(2) The FC 945 Settlement Agreement was carefully drafted and did not transfer the CT basins or the contaminated soil.

In the case of the Benning and Buzzard generating stations, the Commission reviewed the asset purchase agreement for these generating assets in conjunction with its approval of the transfer of these assets just as it did with the agreements for the purchase of the generating assets that were sold in the divestiture auction.[461] These agreements contain extensive and detailed provisions addressing the responsibility of the parties for different categories of environmental costs. As explained in the testimony of Company Witness Sanford, the agreement related to the Benning generating station assets did not transfer the cooling tower basins or any of the real property at the Benning site.[462] Thus, under that agreement, the environmental remediation costs included in RMA 20a for the removal of the cooling tower basins at Benning Road, as well as the contaminated soil that surrounded them, remained Pepco's responsibility. OPC does not contend otherwise.[463]

Contrary to OPC's claims, Section 1.05 of the FC 945 Settlement was never intended to eliminate the Company's ability to recover from customers the reasonable and prudently incurred costs to remediate environmental issues for which Pepco retained responsibility under the asset purchase agreement for the Benning and Buzzard generating plants. Such a reading is not supported by the contemporaneous record in FC 945 and would be unreasonable, especially given that this would not be the case for all the other generating assets sold through the divestiture

[460] *See, e.g.*, FC 945, September 29, 1999 Evidentiary Hearing Transcript at 750-756.
[461] FC 945, Order No. 11834.
[462] PEPCO (K): Sanford Direct at 6:4-7.
[463] OPC Witness Wielgus testified that Pepco did not seek permission from the Commission before the removing cooling tower basins. OPC (F): Wielgus Direct at 14:13-15. This statement erroneously implies that Commission approval was necessary before Pepco was authorized to remove the cooling towers. This is not the case and OPC points to no Commission regulation that indicates otherwise. PEPCO (2K): Sanford Rebuttal at 15:14-17.

auction. Section 1.05 provided that Pepco would not seek to recover any stranded costs associated with the Benning and Buzzard generating plants from District of Columbia customers and the Company would not include any ongoing costs to operate those generation plants in its future base rate proceeding in the District of Columbia. The Company is not seeking to do either of these through RMA 20a.

As such, these reasonable and prudently incurred costs are, consistent with well-established Commission precedent, appropriately recoverable through RMA 20a.[464]

F. RMA 20b (Original MRP RMA 10b) Is Similarly Reasonable and Consistent with Commission Precedent and Should Be Approved.

In OPC's Initial Brief, OPC recommended denial of RMA 20(b) in its entirety for the same reasons as RMA 20(a).[465] As shown in the previous section with respect to RMA 20(a), Pepco has addressed each of OPC's baseless claims. As such, the Commission should approve RMA 20(b) because it represents costs that will be incurred to comply with the consent decree with DOEE, which under long-standing Commission precedent are recoverable.

G. RMA 26 (Original MRP RMA 21) Complies with the FC 1150/1151 Settlement and Avoids Double Counting Benefits.

The calculation of excess deferred income tax ("EDIT") balances and liabilities in this proceeding are complicated issues that OPC appears to be making more complicated through using mismatching numbers and misleading statements.[466] At bottom, there are two discrete issues relating to EDIT in the TTPCF portion of this proceeding: (1) What EDIT balances should be

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464 Based on OPC Witness Wielgus' testimony that Pepco's recovery of the remaining Benning Road RI costs regulatory asset should cease (OPC (F): Wielgus Direct at 20:6-9), OPC Witness Ramas removes this portion of RMA 5. OPC (B): Ramas Direct at 76:3-7; OPC (B)-4, Schedule 19. As is discussed in connection with RMA 20a, OPC Witness Wielgus' assertions regarding the Benning Road RI/FS costs are wrong and should be rejected. OPC Witness Ramas' removal of this portion of the regulatory asset should also be rejected. As was discussed in the Initial Brief, RMA 5 is reasonable. Initial Brief at 251-252.

465 OPC Brief at 67.

466 OPC Brief at 52-56.

amortized; and (2) What is the correct amount of EDIT liability that should be reflected in the TTPCF 13 month average rate base as of June 30, 2019?

In FCs 1150 and 1151, the Commission approved the following amortization periods associated with the EDIT liability as a result of the Tax Cuts and Jobs Act of 2017 ("TCJA"): for Protected Property-related plant EDIT, the Average Rate Assumption Method ("ARAM"); for Non-Protected Property-related plant EDIT, a 10-year amortization period; and for Non-Protected Non-Property-related plant EDIT, a five-year amortization period.[467] Prior to August 13, 2018, the effective date of the FC 1150/1151 Settlement, the Pepco DC EDIT liability was amortized on Pepco's books based on Pepco's proposed amortization periods rather than the Commission-authorized periods.[468] As a result, the first month and 13 days of the TTPCF test period do not reflect the amortization periods for Commission-approved Non-Protected EDIT. RMA 26 is necessary to annualize the impact of the Commission's authorized EDIT liability amortization periods.[469]

A. *The EDIT Balances the Company Proposes to Amortize Are Appropriate.*

The EDIT balances that Pepco uses comply precisely with the FC1150/1151 Settlement. OPC's EDIT balances, on the other hand, are the result of mismatching EDIT balances and would result in double counting.[470] OPC's recommended adjustments to RMA 26 should be rejected, and RMA 26 should be approved.

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[467] FC 1150/1151, Order No. 19433 at ¶6.

[468] PEPCO (D): Ziminsky Direct at 34:12-14; PEPCO (3D): Ziminsky Second Supp. Direct at 5, n.1.

[469] PEPCO (D): Ziminsky Direct at 34:14-35:2; PEPCO (D)-1, page 30 of 46. Company Witness Ziminsky updated RMA 26 to reflect actual data for the 12 months ended June 30, 2019 in his Supplemental Direct Testimony. PEPCO (2D)-1, page 32 of 52. This update reflected amounts in RMA 26 that were based on the final federal tax return filed for 2017. PEPCO (3D): Ziminsky Second Supp. Direct at 3:10-12.

[470] PEPCO (3D): Ziminsky Second Supp. at 2:6-12 & Table 1.

The issue of what EDIT balances should be amortized arises from the fact that the EDIT balances changed between Company Witness Ziminsky's Supplemental Testimony and Second Supplemental Testimony. Specifically, after Company Witness Ziminsky filed Supplemental Testimony, Order No. 20293 directed Pepco "to revise its application and workpapers to conform to the [FC 1150/1151] Settlement Agreement so that the Company would flow back to ratepayers $137.5 million in non-protected property-related excess deferred income taxes ("EDIT") using a 10-year amortization period…"[471] In compliance, Company Witness Ziminsky filed his Second Supplemental Testimony on February 20, 2020 and updated the revenue requirement to reflect the exact EDIT amounts and amortization periods agreed to in the FC 1150/1151 Settlement.[472] These changes resulted in an updated TTPCF revenue requirement of $81.3 million, as reflected in PEPCO (3D)-1.[473] Table 1 demonstrates that Company Witness Ziminsky's Second Supplemental Testimony reflects the exact amounts and amortization periods agreed to in the FC 1150/1151 Settlement.

Table 1
(In Millions)

	FC 1150/1151 Settlement		**FC 1156 Supplemental(filed 9/16/19)**		**FC 1156 Second Supplemental (filed 2/20/20)**	
	FC 1150/1151 Settlement	**Flow Back Period**	**FC 1156 PEPCO (2D)-1**	**Flow Back Period**	**FC 1156 PEPCO (3D)-1**	**Flow Back Period**
Protected Property-Related (ARAM)	**$134.1**	**ARAM**	$142.1	ARAM	**$134.1**	**ARAM**
Non-Protected Property-Related (10 Yrs)			$109.2	10 Years		
Non-Protected Property-			$17.0	Useful		

[471] FC 1150/1151/1156, Order No. 20293 at ¶1. The Commission directed the Company to "include all relevant workpapers, provide a detailed description of the adjustment to non-protected property-related excess EDIT, and include an amortization schedule of the EDIT regulatory liabilities with a reconciliation and true-up of the customer refunds made to date." *Id.*

[472] PEPCO (3D): Ziminsky Second Supp. Direct at 2:6-8.

[473] PEPCO (3D): Ziminsky Second Supp. Direct at 2:8-9.

Related Flow Through				Life		
Total Non-Protected Property-Related	**$137.5**	**10 Years**	$126.2		**$137.5**	**10 Years**
Non-Protected Non-Property-Related	**$20.1**	**5 Years**	$20.2	5 Years	**$20.1**	**5 Years**
Total Benefits	**$291.7**		$288.5		**$291.7**	

In his Second Supplemental Testimony, Company Witness Ziminsky detailed the amendments made to RMA 26 to comply with Order No. 20293. He divided RMA 26 into two sections—Section One: Amortization of Excess Deferred Income Taxes and Section Two: Adjustment to Tax Flow Through.[474]

Section One: Amortization of Excess Deferred Income Taxes

Section One takes the difference between the TCJA EDIT amortization included in Pepco's test period per books cost of service and the TCJA EDIT amortization utilizing the FC 1150/1151 Settlement amounts and amortization periods.[475] The change to RMA 26 (i.e., the amounts in the "FC 1156 Second Supplemental (2/20/20)" column in Table 1) reflects the use of the exact FC 1150/1151 Settlement amounts (i.e., the amounts in the "FC 1150/1151 Settlement" column in Table 1) as opposed to Pepco's TTPCF Supplemental Testimony (i.e., the amounts in the "FC 1156 Supplemental (filed 9/16/2019)" column in Table 1), which updated the amounts based on the final 2017 Federal Tax Return.[476] Additionally, Pepco has adjusted the 13-month average EDIT liability included in its rate base based on the difference between the amount included in Pepco's per books cost of service and the amounts based on a straight-line amortization of the exact FC 1150/1151 Settlement amounts, as shown in PEPCO (3D)-2.[477] The amortization of

474 PEPCO (3D): Ziminsky Second Supp. Direct at 3:3-4.
475 PEPCO (3D): Ziminsky Second Supp. Direct at 3:5-8.
476 PEPCO (3D): Ziminsky Second Supp. Direct at 3:8-12.
477 PEPCO (3D): Ziminsky Second Supp. Direct at 3:12-16.

Protected Property-related EDIT balances is based on the ARAM method and will change every year.[478]

In making the changes in Company Witness Ziminsky's Second Supplemental Testimony to reflect the exact amounts in the FC 1150/1151 Settlement, the specific amounts of Protected Property EDIT, Non-Protected Property EDIT, and Non-Protected Non-Property EDIT all changed. Table 2 shows the amounts in these categories for each of Company Witness Ziminsky's Supplemental Testimony and Second Supplemental Testimony.

Table 2
(In Millions)

	Filed: September 16, 2019	Filed: February 20, 2020
Type of EDIT	**FC 1156 Supplemental (PEPCO (2D)-1)**	**FC 1156 Second Supplemental(PEPCO (3D)-1)**
Protected Property	$(142.1)	$(134.1)
Non-Protected Property	$(109.2)	$(137.5)
Non-Protected Non-Property	$(20.2)	$(20.1)
Total EDIT before Flow Through Adjustment	**$(271.5))**	
Non-Protected Property-Relate Flow Through	$(17.0)	
Total EDIT	**$(288.5)**[479]	**$(291.7)**

The amounts in the three types of EDIT in Table 3 are critical to understanding how the mismatching of EDIT amounts that OPC uses results in double counting EDIT benefits. OPC takes issue with Pepco's adjustment of its Protected Property EDIT balance back to the amount originally estimated in FC 1150, asserting that the Protected Property balance is below the ARAM and not in line with the 1150/1151 Settlement.[480] As a result, OPC uses OPC Witness Ramas'

478 PEPCO (3D): Ziminsky Second Supp. Direct at 3:16-17.

479 Company Witness Ziminsky explains that the "$3.2 million variance results from the difference between Pepco's estimated EDIT benefits and the actual EDIT benefits based on the final tax return for 2017." PEPCO (3D): Ziminsky Second Supplemental at 8:16-18. In this case, the estimated taxes are reflected in the Second Supplemental Testimony column in Table 2 and the actual taxes are reflected in the Supplemental Testimony column in Table 2.

480 OPC Brief at 52-54.

modifications to RMA 26 that only adjust the Non-Protected EDIT balances back to the FC 1150/1151 Settlement estimates but leave the Protected Property amounts unchanged.[481] Specifically, as demonstrated in Table 3, OPC Witness Ramas uses the amount of Non-Protected Property EDIT and her Non-Protected Non-Property EDIT in the FC 1150/1151 Settlement. However, for the Protected Property EDIT, she uses the amount from PEPCO (2D)-1 in Company Witness Ziminsky's Supplemental Testimony.[482]

Table 3
(In Millions)

Type of EDIT	**OPC (OPC (2B)-4, Schedule 8, page 1 of 2**	**Source**	**Second Supplemental Testimony (PEPCO (3D)-1)**	**Source**
Protected Property	$(142.1)	PEPCO (2D)-1 at 32	$(134.1)	FC 1150/1151 Settlement
Non-Protected Property	$(137.5)	FC 1150/1151 Settlement	$(137.5)	FC 1150/1151 Settlement
Non-Protected Non-Property	$(20.1)	FC 1150/1151 Settlement	$(20.1)	FC 1150/1151 Settlement
Total EDIT	**$(299.7)**		**$(291.7)**	
Non-Protected Property-Related Flow Through	$(17.0)		$0	
	$(318.7)			

As is clear from Table 3, the $8 million difference in the Total EDIT balance about which OPC complains is due to OPC Witness Ramas' picking numbers that are most beneficial to OPC. Either the EDIT amounts are all based on the FC 1150/1151 Settlement, or they are all based on Company Witness Ziminsky's Supplemental Testimony. To use the amount of Protected Property EDIT from Company Witness Ziminsky's Supplemental Testimony and the amounts of Non-Protected Property EDIT and Non-Protected Non-Property EDIT from the FC 1150/1151

481 OPC Brief at 52-54.
482 *See* PEPCO (4D): Ziminsky Rebuttal at 16:17-18:2.

Settlement results in double-counting of TCJA benefits.

Further, it is disingenuous of OPC to claim that the $134.1 million in Protected Property EDIT is not part of the FC 1150/1151 Settlement.[483] It is clear that the $291.7 million in total EDIT liabilities was presented in FC 1150 in PEPCO (2C)-1, RMA 39.[484] This exact same information was provided in FC 1151.[485] OPC agrees that the FC 1150/1151 Settlement amount for Non-Protected Property was $137.5 million and that the FC 1150/1151 Settlement amount for Non-Protected Non-Property was $20.1 million.[486] At that point, it is merely a math problem: $291.7-($137.5+$20.1) = $134.1—the amount that Pepco used for its Protected Property EDIT liability. This amount can be found in PEPCO (3D)-1. The Commission should reject OPC's challenges to Pepco's Protected Property amount.

Section Two: Adjustment to Tax Flow Through

Section Two modifies the tax "flow-through" adjustment from the amount included in Pepco's September 2019 Supplemental Testimony to a revised amount in order to offset the movement of these benefits back to the Non-Protected Property-related EDIT liability 10-year amortization.[487] Since Section One of RMA 26 provides all the EDIT benefits in the FC 1150/1151 Settlement, Section Two of RMA 26 is required to remove EDIT benefits within the TTPCF cost of service to avoid double counting.[488] Specifically, a tax flow-through adjustment is required that adds back taxable income related to "book" depreciation attributable to assets placed in service prior to January 1, 1981.[489] Prior to the TCJA, the tax impact of this flow-through adjustment was calculated at the 35% corporate federal income tax rate, and after the TCJA the tax impact of this

483 OPC Brief at 54-55.
484 PEPCO (4D): Ziminsky Rebuttal at 17:10-12.
485 PEPCO (4D): Ziminsky Rebuttal at 17:12.
486 OPC Brief at 53.
487 PEPCO (3D): Ziminsky Second Supp. Direct at 3:18-21.
488 PEPCO (3D): Ziminsky Second Supp. Direct at 3:21-4:1.
489 PEPCO (3D): Ziminsky Second Supp. Direct at 4:2-4.

flow-through adjustment was calculated at the 21% corporate federal income tax rate.[490] In Company Witness Ziminsky's Second Supplemental Testimony, the adjustment to RMA 26 serves to gross up the tax flow-through adjustment such that it continues to use the 35% corporate federal income tax rate.[491] This gross up is necessary so that customers receive the excess benefits resulting from the corporate federal income tax rate change under the TCJA in only one place: the 10-year amortization of Non-Protected Property-Related EDIT balances.[492]

OPC's proposal to continue to use a tax rate of 21% in setting a tax flow-through adjustment for assets placed in service prior to January 1, 1981 would result in double counting.[493] Contrary to insinuation, Pepco is in no way negating the Non-Protected EDIT benefits agreed to in the FC 1150/1151 Settlement.[494] OPC overlooks the nuance discussed above that the pre-1981 asset depreciation flow through was included in the Non-Protected EDIT balances in FC 1150, and the very same pre-1981 asset depreciation flow through is also treated as a flow-through item in the calculation of income tax in the TTPCF cost of service.[495] The pre-1981 asset depreciation flow through should be included in the calculation of the revenue requirement; however, not in two places.[496] Because Pepco has reverted back to the FC 1150/1151 Settlement Non-Protected EDIT amounts, the pre-1981 asset depreciation already is included in the Non-Protected EDIT amounts.[497] As such, Pepco must adjust the pre-1981 asset depreciation flow through to reflect a 35% tax rate so that the difference in the tax rates between 35% and 21% is only included once.[498] If Pepco did not modify the flow-through adjustment, customers would receive this very same

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490 PEPCO (3D): Ziminsky Second Supp. Direct at 4:4-6.
491 PEPCO (3D): Ziminsky Second Supp. Direct at 4:6-8.
492 PEPCO (3D): Ziminsky Second Supp. Direct at 4:8-11.
493 OPC Brief at 56-57.
494 PEPCO (4D): Ziminsky Rebuttal at 18:5-7.
495 PEPCO (4D): Ziminsky Rebuttal at 18:7-10.
496 PEPCO (4D): Ziminsky Rebuttal at 18:10-11.
497 PEPCO (4D): Ziminsky Rebuttal at 18:11-13.
498 PEPCO (4D): Ziminsky Rebuttal at 18:13-15.

benefit twice.[499] Table 3 shows the impact of incorporating the flow-through adjustment in reverting to FC 1150/1151 Settlement amounts.

B. Pepco has Reflected the Correct Amount of EDIT Liability in Rate Base as of June 1, 2019.

OPC's claims that Pepco's EDIT Regulatory Liability offset to rate base should be $290.176 million.[500] This is the result of (1) using the wrong start date for the amortization of EDIT liabilities and (2) the wrong starting point for protected property. In fact, as shown in PEPCO (3D)-2 and Table 4, the correct amount of EDIT liability in rate base is $277.8 million.

Table 4
(In Millions)

	EDIT Liability in Rate Base	
Type of EDIT	**Ramas Rebuttal Testimony (OPC (2B)-4)**	**Ziminsky Second Supplemental Testimony (PEPCO (3D)-2)**
Protected Property	$(139.5)	$(129.1)
Non-Protected Property	$(132.2)	$(129.7)
Non-Protected Non-Property	$(18.5)	$(19.0)
Total EDIT Liability in Rate Base	**$(290.2))**	**$(277.8)**

As Company Witness Ziminsky testified in his Second Supplemental Testimony, the Company provided a one-time payment of $24.1 million that "provided customers with TCJA benefits from January 1, 2018 through August 13, 2018 – the rate-effective date of FC 1150/1151 Settlement order (Order No. 19433)."[501] As shown in Commission Cross Examination Exhibit No. 16, OPC was a signatory to the settlement that provided the $24.1 million payment. This payment—broken into Protected Property EDIT, Non-Protected Property EDIT, and Non-Protected Non-Property EDIT—is found on Tab 2 of PEPCO (3D)-2. This one-time payment is a critical piece of the EDIT liability because it is how customers were provided with EDIT benefits

499 PEPCO (4D): Ziminsky Rebuttal at 18:15-16.
500 OPC Brief at 54-55.
501 PEPCO (3D): Ziminsky Second Supp. Direct at 4-5, n.1.

starting January 1, 2018 through the effective date of the FC 1150/1151 Settlement (August 13, 2018). Pepco's liability in rate base reflects all EDIT amortization starting January 1, 2018, which is appropriate. OPC's EDIT liability is flawed because OPC Witness Ramas ignores the one-time payment and begins the EDIT liability on the effective date of the FC 1150/1151 Settlement,[502] ignoring more than half of the year in which Pepco provided TCJA benefits to customers. The EDIT liability amortization is triggered by providing the TCJA benefits to customers, not by the settlement effective date. As a result, all of the EDIT liability associated with all of the TCJA benefits provided to customers must be properly taken into account.[503] Pepco's calculation of EDIT liability in rate base accounts for all amortization of the EDIT liability resulting from all of the TCJA benefits to customers and should be approved by the Commission.

Moreover, as discussed above, OPC uses the wrong Protected Property EDIT balance ($142.1 million vs. $134.1 million). The $139.5 million, OPC references is the 13-month-average amortized liability amount of the $142.1 million, which is inappropriate to use as it double counts EDIT benefits, as described above.

In summary, OPC's proposal would result in a double counting of EDIT benefits by providing the very same benefits in two places, through: 1) the Non-Protected EDIT as well as 2) the Protected EDIT and flow through adjustment.[504] Significantly, neither OPC nor OPC Witness Ramas disputes that OPC's adjustment in OPC Schedule 8 would result in a double counting.[505] They cannot dispute it because the facts are clear. To put it plainly, it is inappropriate to adjust one portion of the EDIT (Non-Protected) back to the FC 1150/1151 Settlement estimates without adjusting other affected items, namely Protected EDIT balances and the flow through

502 OPC (2B)-4 and OPC (2B): Ramas Rebuttal at 28.
503 *See* FC 1156 Staff DR 26-25 Attachment (Commission Cross Examination Exhibit No. 16).
504 PEPCO (4D): Ziminsky Rebuttal at 17:13-15.
505 PEPCO (4D): Ziminsky Rebuttal at 17:16-17.

adjustment.[506] Adjusting all affected items constitutes sound ratemaking practice. RMA 26 complies in every way with the FC 1150/1151 Settlement, avoids double counting benefits, applies the correct offset to rate base, and correctly flows the tax benefits back to customers. RMA 26 is reasonable and should be approved.

H. RMA 28: Including the Frederick Douglass Memorial Bridge Project Costs in a Regulatory Asset Is Reasonable.

OPC's challenges to RMA 28 should be rejected.[507] RMA 28 would establish a regulatory asset for Pepco to recover the costs it has already incurred as a result of the $3.4 million payment to the District Department of Transportation ("DDOT"). As discussed in the Initial Brief,[508] Pepco and DDOT entered into an agreement regarding replacement of the current Frederick Douglass Memorial Bridge to allow for the construction of two eight-way subtransmission duct banks and cables through the new bridge.[509] In conjunction with the agreement, Pepco was required to make a $3.4 million payment to DDOT on February 19, 2019 to allow DDOT to reinforce the new bridge to enable it to support the duct bank and cable.[510] Currently, the cost incurred for this project is in CWIP, and the project is not currently in service. In the Initial Brief,[511] Pepco demonstrated that a regulatory asset for the costs incurred on reinforcing the Frederick Douglass Bridge is reasonable.

I. **RMA 29 (Original MRP RMA 12*) Has Been Appropriately Adjusted and Should Be Approved.***

As discussed in the Initial Brief,[512] consistent with the amortization periods agreed to in the FC 1150/1151 Settlement, RMA 29 amortizes PHISCO's recoverable deficient deferred tax asset balances allocated to Pepco over 10 years for the Property-related EDIT liability and over 5

506 PEPCO (4D): Ziminsky Rebuttal at 17:17-18-2.
507 OPC Brief at 36-37.
508 Initial Brief at 276-277.
509 PEPCO (I): Clark Direct at 36:19-37:2.
510 PEPCO (D): Ziminsky Direct at 35:18-36:6.
511 Initial Brief at 276-277.
512 Initial Brief at 277-278.

years for the Non-Property-related EDIT liability.[513] OPC disagrees with the adjustment asserting that it (1) includes components that should not be in rates, and (2) should include PHISCO Non-Property-related ADIT balances.[514] OPC is cherry picking items that reduce revenue requirement, and its adjustment should be rejected.[515]

With regard to OPC's first claim, Company Witness Ziminsky updated RMA 29 to remove the Non-Property PHISCO EDIT amounts that have historically not been recoverable in the District of Columbia.[516] As Company Witness Ziminsky testified, however, the amounts that needed to be removed were far lower than OPC Witness Ramas claims.[517] Specifically, Company Witness Ziminsky testified that the vast majority of the $1,510,459 OPC Witness Ramas lists as being associated with PHISCO's LTIP is related to the Annual Incentive Plan ("AIP") and Performance-Based Long-Term Incentive Plan ("LTIP") and are recoverable from customers.[518] Further, the majority of the $676,035 in severance benefits is related to non-executive merger severances that OPC Witness Ramas supports recovery of through the Cost to Achieve ("CTA") regulatory asset.[519] Finally, the majority of the $2,096,969 of "deferred compensation" costs that OPC Witness Ramas discusses is actually not related to deferred compensation at all and, instead, is related to the Edison Place monthly lease accrual.[520] Company Witness Ziminsky provided a workpaper as part of the compliance filing updates that categorizes the Non-Property PHISCO

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513 PEPCO (D): Ziminsky Direct at 37:9-13; PEPCO (D)-1, page 33 of 46. Consistent with Order No. 20204, Company Witness Ziminsky updated RMA 29 to reflect the actual results for the period January 1, 2019 through June 30, 2019 in his Supplemental Direct Testimony. PEPCO (2D)-1, page 35 of 52. He updated RMA 29 to exclude from the non-property PHISCO EDIT amounts related to items that historically have not been recoverable in the District of Columbia. PEPCO (4D) at 34:16-19; PEPCO (4D)-1, page 35 of 54.

514 PEPCO (4D): Ziminsky Rebuttal at 20-22. OPC apparently abandoned OPC Witness Ramas' argument that RMA 29 was "untimely," which was rebutted in full in Company Witness Ziminsky's Rebuttal Testimony. PEPCO (4D): Ziminsky Rebuttal at 20-21.

515 PEPCO (4D): Ziminsky Rebuttal at 20:10-12.

516 PEPCO (4D): Ziminsky Rebuttal at 34:16-19; PEPCO (4D)-1, page 35 of 54.

517 PEPCO (4D): Ziminsky Rebuttal at 21:22-22:1.

518 PEPCO (4D): Ziminsky Rebuttal at 22:1-4.

519 PEPCO (4D): Ziminsky Rebuttal at 22:5-7.

520 PEPCO (4D): Ziminsky Rebuttal at 22:7-9.

amounts between recoverable and non-recoverable items.[521] Company Witness Ziminsky adjusted RMA 29 appropriately, and OPC Witness Ramas' calculations should be rejected.

With regard to the second assertion that the Non-Property related EDIT balances have not been included in rates, OPC's argument is equally misguided. Specifically, OPC argues that Non-Property related PHISCO ADIT balances have not been included in Pepco's rate base, and Pepco customers should not pay for any Non-Property-related PHISCO EDIT balances.[522] This ignores the fact that OPC had no problem including Pepco Non-Property EDIT balances that were not included in Pepco's rate base. As Company Witness Ziminsky testifies, OPC Witness Ramas attempts to create a new, erroneous standard—whether the ADIT was included in rate base.[523] Instead, the correct standard is whether the underlying basis amount is included in customer rates (not specifically the ADIT in rate base).[524] For example, customer rates include accrued vacation expense (but Pepco's ADIT does not), so to the extent there is an EDIT balance relating to accrued vacation (resulting from tax vs. book differences in the recognition of vacation expense), that amount should be included in customer rates.[525] As such, RMA 29's amortization of both Property-related and Non-Property-related PHISCO EDIT balances is both factually correct and consistent with the Commission's treatment of Pepco EDIT in FC 1150/1151.

While OPC Witness Ramas had the last word on this issue in her Surrebuttal Testimony, she merely restated her direct testimony and pointed to Pepco data requests that were subsequently corrected as being the source of her over-estimated LTIP and deferred compensation, conceding that her amounts were too high.[526] RMA 29 is reasonable and should be approved.

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[521] PEPCO (4D): Ziminsky Rebuttal at 22:10-12; Section 206.9, Attachment B29 RMA 29 - PHISCO DDIT_UPD 4-8-20.
[522] OPC Brief at 57-58.
[523] PEPCO (4D): Ziminsky Rebuttal at 20:14-18.
[524] PEPCO (4D): Ziminsky Rebuttal at 20:18-20.
[525] PEPCO (4D): Ziminsky Rebuttal at 20:20-21:2.
[526] OPC (3B): Ramas Surrebuttal at 27-28.

J. RMA 33 (Original MRP RMA 9): Rate Case Costs Are Reasonable and Should Be Approved.

AOBA asserts MRP-related costs and "mismanagement" of rate case filings drove the rate case costs in this proceeding, and, as such, the rate case costs should be reduced.[527] AOBA's claim that the cost of this case is disproportionately large, when compared to previous cases in misleading. As Company Witness McGowan testified, "the incremental cost incurred by Pepco in the last litigated rate case (FC 1139) was approximately $4.4 million."'[528] That $4.4 million represents the cost of a single test year traditional case. The Commission required that Pepco file a traditional case alongside an MRP. While Pepco is not proposing the TTPCF in this case, as previously discussed, all other parties have spent almost 18 months litigating the TTPCF, choosing to only superficially address the MRPs, themselves, while focusing much of their efforts on traditional parts of the case, like ROE and capital additions. Thus, the cost of the TTPCF and the MRP are intertwined and cannot be separated. Moreover, to be properly compared to the $4.4 million in FC 1139, the costs of this case should be divided over three years, showing the efficiencies gained in filing for a three-year rate change.

AOBA's demand that the Company bear the costs of this proceeding is both inconsistent with governing law and irrational under the circumstances. District of Columbia law requires regulated utilities to pay the costs of both the Commission and OPC in Commission proceedings involving "any investigation, valuation, revaluation, or proceeding of any nature by the Commission of or concerning any public utility operating in the District of Columbia, and all expenses of any litigation, including appeals, arising from any such investigation, valuation, revaluation, or proceeding or from any other order or action of the Commission."[529] The law

527 AOBA Brief at 51.

528 PEPCO (4B): McGowan Rebuttal at 12; *See also,* Exhibit PEPCO – S1 (Pepco Response to OPC DR 12-4).

529 *See* D.C. Code §34-912(a)(1).

further provides that any such costs "**shall** be allowed for in the rates to be charged by each utility."[530] The statute does not provide that inclusion of such costs in rates is at the discretion of any party, much less OPC and intervenors. The Commission should affirm that the costs of this proceeding, as with all rate proceedings, will be treated in accordance with applicable law by rejecting AOBA's proposal and approving RMA 33 in its entirety.

In addition, established case law prohibits the Commission from imposing the costs of an intervenor party on the regulated utility. In *Pepco v. Public Service Commission*, 455 A.2d 374 (D.C. 1982), the District of Columbia Court of Appeals held

> It is the statutory duty of the Public Service Commission to assess the reasonableness of expenses of the Office of People's Counsel. On remand, the Commission must ensure that the fees of attorneys and consultants do not relate to duplicative, unnecessary work. It must also satisfy itself that OPC is not improperly requesting that the utility here be charged with regular and basic operating expenses, with expenses outside the scope of Commission proceedings, or expenses of intervenors.[531]

The Commission recognized this limitation in a prior decision involving C&P Telephone, when it concluded that the predecessor statute to D.C. Code §34-912 "did not contemplate[] payment of an intervener's expenses under any circumstances."[532] The Commission continued,

> Rather, it merely provides that the expenses incurred by this Commission and by OPC in the course of either a Commission proceeding or litigation arising from action by the Commission are to be borne by the affected utility. The money needed for this purpose is collected from the utility through a special franchise tax. Seven years ago, the District of Columbia Court of Appeals upheld the Commission's rejection of TUA's demand for counsel fees under Section 43-412 of the D.C. Code, the predecessor of Section 43-612. *Telephone Users Association, Inc. v. Public Service Commission*, No. 11264 (Slip op. Nov. 3, 1977). The court noted that as a rule, litigants before an administrative agency had to pay their own expenses, and that an agency needed specific statutory authority to order one party to reimburse another. Section 43-412, which referred explicitly only to the Commission and

[530] *Id*. (emphasis added).
[531] *Pepco v. Public Service Commission*, 455 A.2d at 384(emphasis added). *See also, C& P Telephone v. Public Service Commission*, 339 A.2d 710 (1975) (Commission cannot require utility to pay intervenors' costs for a hearing transcript).
[532] FC 827, Order No. 8106 at 11.

> OPC, did not authorize the Commission to order C&P to compensate TUA for its legal expenses. *Id*. at 2. Based upon our belief that the court's reasoning is equally applicable to Section 43-612, TUA's motion will be denied.[533]

Consistent with past precedent, the Commission should deny all requests for the Company to pay intervenors' costs.

K. RMA 35: Inflating Non-Labor Operation and Maintenance by GDPPI Is Reasonable.

RMA 35 adjusts non-labor O&M expense in the TTPCF for the impacts of price inflation, based on the five-year average national Gross Domestic Product Price Index ("GDPPI") for the years 2014-2018.[534] OPC, having very little to say about this adjustment, and AOBA appear to argue that it should be rejected primarily because it is a new adjustment.[535] However, the Commission has a history of approving "new" or "novel" ratemaking adjustments and repeatedly approving them in future cases. For example, in FC 1103, the Commission approved post-test year reliability projects, which Pepco had proposed for the first time.[536] The Commission subsequently has approved the same adjustment in FC 1139.[537] "Novelty" is not a reason to reject a ratemaking adjustment.

Moreover, contrary to OPC's and AOBA's assertions,[538] the Company has met its burden providing support for this adjustment. As Company Witness Ziminsky testified, the empirical data demonstrates that Pepco clearly has experienced cost increases in its non-labor O&M expense and an inflationary adjustment is warranted.[539] While there are a number of inflation measures that

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533 *Id*.

534 GDPPI is a reliable, accurate and easy-to-obtain index and was selected as it: (i) measures the changes in price of consumer goods and services, investment goods, government services, imports and exports; (ii) is measured by U.S. Commerce Department; and (iii) is readily available and calculated on a timely basis every quarter. PEPCO (D): Ziminsky Direct at 48:1-4.

535 OPC Brief at 59-60; AOBA Brief at 48.

536 FC 1103, Order No. 17424 at ¶¶106-115.

537 FC 1139, Order No. 18846 at ¶¶76-81.

538 OPC Brief at 60; AOBA Brief at 49-50.

539 PEPCO (4D): Ziminsky Rebuttal at 25:12-13.

could be applied, the GDPPI is a common inflation measure for addressing trends in inflation in a verifiable and measurable manner.[540] AOBA's own analysis shows that use of GDPPI is not only warranted but is conservative. In AOBA (B)-5, AOBA Witness T. Oliver concluded that the average annual change in Pepco's actual Non-Labor O&M costs is 7.64%, which is 4.7 times more than Pepco's GDPPI proposal.[541] OPC Witness Ramas herself admits that some costs are, in fact, subject to inflationary pressures, though she attempts to downplay this fact by claiming, without evidence, that approving this RMA would disincentivize the Company to control its costs.[542] This argument fails to address the fact that the Company's O&M non-labor costs are, in fact, subject to inflationary pressures and that Pepco has met its burden on the issue.[543]

Pepco's adjustment is reasonable and should be approved as proposed, and AOBA's and OPC's challenges should be rejected.

L. RMA 36 (Original MRP RMA 15): A Regulatory Asset Is Reasonable for Costs to Optimize ("CTO").

As was discussed in the Initial Brief,[544] CTO represent up-front costs incurred to achieve future savings through EBSC's Transformation Initiative, a process in which EBSC has identified O&M savings in 2021 and beyond.[545] To better match the recovery of CTO with the projected savings, RMA 36 removes the CTO from the Company's TTPCF O&M expense and defers it to a regulatory asset to be amortized over a period of five years.[546] OPC and AOBA each challenged

540 PEPCO (4D): Ziminsky Rebuttal at 25:13-16.

541 PEPCO (4D): Ziminsky Rebuttal at 23. OPC Witness DeCourcey suggests increasing rates at the rate of inflation, recommending a rate of 2.17% derived using data from the Federal Reserve Bank of Philadelphia's Q4 2019 survey for inflation forecasters.

542 OPC (B): Ramas Direct at 55:12-17.

543 OPC also, for the first time on brief, argues, without citation to evidence, that RMA 35 should be rejected because "productivity and cost saving measures can offset inflation." OPC Brief at 59-61. This argument has no support in the record and showed be rejected.

544 *See generally*, Initial Brief at 285-287.

545 PEPCO (D): Ziminsky Direct at 48:20-49:1.

546 PEPCO (D): Ziminsky Direct at 49:5-7; PEPCO (D)-1, page 40 of 46. Company Witness Ziminsky updated RMA 36 to reflect actual data for the 12 months ended June 30, 2019 in his Supplemental Direct Testimony. PEPCO

RMA 36, asserting that Pepco has not provided sufficient information to establish a regulatory asset.[547] As discussed in the Initial Brief and as further discussed below,[548] Pepco has established that use of a regulatory asset with carrying costs for CTO is reasonable and should be approved.

Pepco is requesting a regulatory asset for costs that it has shown it already has incurred. PEPCO (D)-1 shows on page 40 that Pepco incurred an actual expense in the test period of $2.849 million. Neither OPC nor AOBA disputes that these costs were incurred in the test period. Company Witness Ziminsky testified that by 2021, the rate-effective period in this proceeding, "PHI is expected to realize $13 million of run-rate savings as part of EBSC Transformation," which he broke down further into three buckets.[549] Contrary to OPC's and AOBA's assertions, Pepco has provided the available information regarding EBSC's Transformation Initiative. RMA 36 only addresses actual up-front costs that EBSC has already incurred to achieve savings in 2021 and beyond. These savings will result in lower operating expenses.[550] There is no basis on which the Commission can reject recovery of the costs as part of a regulatory asset.

In FC 1139, the Commission approved a regulatory asset for Costs to Achieve ("CTA"). In that proceeding, like here, Pepco incurred actual costs that would result in future savings. The Commission permitted Pepco to "record verifiable costs in the CTA regulatory asset."[551] This regulatory treatment is equally appropriate with respect to the CTO. A regulatory asset with carrying costs for CTO costs is reasonable, and OPC's and AOBA's arguments that regulatory asset treatment is not appropriate should be rejected.

(2D)-1, page 42 of 52. Finally, he updated RMA 36 to correct the test period CTO expense in Rebuttal Testimony. PEPCO (4D): Ziminsky Rebuttal at 36:13-14; PEPCO (4D)-1, page 43 of 54.

547 OPC Brief at 60-62; AOBA Brief at 43-45.

548 Initial Brief at 110-111, 285-287.

549 PEPCO (4D): Ziminsky Rebuttal at 27:3-10.

550 PEPCO (4D): Ziminsky Rebuttal at 26:16-18.

551 FC 1139, Order No. 18846 at ¶363.

M. RMA 41: OPC's Arbitrary Adjustment to Manhole Inspection Costs Should Be Rejected.

As was discussed in the Initial Brief,[552] RMA 41 appropriately adjusts test period O&M expense to reflect the expected run rate of DC Manhole Inspection Program costs under the rebid program that started in January 2020.[553] OPC's arbitrary 50% reduction of RMA 41 is unreasonable, unfounded and should be rejected.[554]

OPC falsely claims that Pepco failed to provide support for the additional costs of the program.[555] OPC DR 47-24 and Attachment C thereto supports the amount included in RMA 41.[556] The budget estimate for the entire program in Attachment C is $8.552 million and represents the District and Maryland combined. Contrary to OPC's assertions, Attachment C shows that 90% of the $8.552 million is attributable to the District of Columbia.[557] Moreover, the manhole inspection budget in 2019 shown on Attachment C is $8.552 million as it includes both preventive maintenance and corrective maintenance.[558] Given that the number of District of Columbia manholes included in the estimate is around ninety percent, Attachment C is supportive of the $7.7 million included in RMA 41.

Moreover, Company Witness Sullivan detailed the expanded scope of work under the Company's new manhole inspection program compared to the prior program.[559] Specifically, Company Witness Sullivan testified that:

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552 Initial Brief at 289-290.

553 Pepco is required to inspect manholes in the District of Columbia at the rate of 10,000 manholes a year and to file quarterly inspection reports with the Commission in the Potomac Electric Power Company Manhole Inspection Reports ("PEPMIR") docket. *See* FC 991, Order No. 12735 at ¶¶35 and 133.

554 OPC Brief at 64-65.

555 OPC Brief at 65. For the first time on brief, AOBA now supports OPC's adjustment to RMA 41. AOBA Brief at 52. For the reasons above, AOBA's adopted challenge fails.

556 OPC (2B)-17.

557 OPC (2B)-17.

558 OPC Witness Ramas inaccurately asserts that the $7.7 million estimate represents the District and Maryland combined. OPC (2B): Ramas Rebuttal at 37:2-6.

559 PEPCO (2M): Sullivan Rebuttal at 5:13-7:12. According to Company Witness Sullivan, the limited scope of work under the old manhole inspection program includes (1) Use Pepco-provided computer to input data, per Pepco

the scope of work under the new manhole inspection program is expanded from the prior scope. Under the new manhole inspection program, the contractor will take the following actions:

- Develop inspection platform to be used on contractor-provided Tablets – to be used in conjunction with Pepco-provided inspection plan, which is based on GIS exports
- Collect still and 360-degree pictures of all manholes inspected as well as after any corrective maintenance has taken place
- Conduct thermography using the Pepco-approved procedure. Contractor to provide all approved thermography equipment
- Develop and implement a dashboard for all inspection information collected – to be used by Pepco personnel to view all pictures and inspection reports
- Provide all data and reporting to Pepco including:
  - Weekly, Monthly, and Yearly Schedules and Productivity, Workdown Curves
  - Crew Information and Training, as further mentioned in the scope document
  - Material Usage and Management
  - Financial Spend and Cost Forecasts
  - Detailed Invoice Breakdowns
  - Missing Manhole Tracking – To Update Records In GIS
  - Daily Deficiency Summaries
- Develop (for Pepco review and approval) a plan and schedule for manhole inspection for the entire year
- Develop (for Pepco review, approval, and assistance) classroom and on-the-job training documents regarding the inspection platform, Pepco system configuration, and manhole deficiencies
- Provide 30% QA/QC on all inspections completed (mix of picture auditing of inspection reports, corrective maintenance quality monitoring, and inspection report in field monitoring)
- Control and direct all subcontractors of the project – Lead contractor is the prime contact with Pepco. The lead contractor will select a District of Columbia CBE contractor to work as a subcontractor and mentor the subcontractor
- Contractor will direct critical emergent corrective maintenance work (P10 work) to the Pepco control center and report findings to Pepco.[560]

direction and schedule; (2) Visual assessment of cables, manhole structures, equipment, transformers; (3) Provide nominal traffic control and manhole pumping, as needed to complete inspections; and (4) Attend Pepco-provided training on system configuration and inspection processes. PEPCO (2M): Sullivan Rebuttal at 5:13-20.

[560] PEPCO (2M): Sullivan Rebuttal at 6:1-7:12.

He also addressed the key incremental benefits that the new program will provide over the prior program, including:

- CBE mentoring;
- Greatly improved data collection of manhole information;
- Better visibility that increases safety;
- Better visibility that reduces field visits; and
- Increased efficiency[561]

As Company Witness Sullivan demonstrated, there is no reasonable dispute that the new manhole inspection program provides significant enhancements and benefits over the prior program. Likewise, there is no dispute that Pepco has entered into a contract for the new program that is now in effect and providing the benefits Company Witness Sullivan described to customers. OPC's suggestion to arbitrarily reduce RMA 41 by 50% should be rejected.

N. RMA 42 (Original MRP RMA 22) Reflects the Fair Market Value of an Arm's-Length Transaction and Is Therefore Reasonable.

As discussed in the Initial Brief,[562] OPC's and AOBA's challenges to RMA 42 are meritless.[563] The purchase price of The Parks at Walter Reed ("TPWR") Distribution System Assets is reasonable and should be approved.

OPC claims that the Commission should reject the RMA 42 on the basis of a comparison with an asset evaluation Pepco performed, asserting that any amount above Pepco's value represented an acquisition premium.[564] Company Witness Ziminsky made clear, however, that the Pepco assessment did not represent fair market value,[565] a point OPC's Initial Brief supports

561 PEPCO (2M): Sullivan Rebuttal at 7:15-8:13.
562 Initial Brief at 290-293.
563 OPC Witness Mara initially argued that RMA 42 should be rejected in its entirety as he erroneously claimed that, as of December 31, 2019, the contract for the sale of assets at TPWR to Pepco had not yet been executed, and, therefore, the costs of the acquisition were not known and certain. OPC (E): Mara Direct at 6:15-7:2, 36:1-6. In Surrebuttal Testimony, OPC Witness Mara amended his position that RMA 42 be rejected in its entirety. While he no longer contested the inclusion of the TPWR distribution system assets, he did argue that the amount included in rate base should be reduced substantially. OPC (3E): Mara Surrebuttal at 2:20-22, 17:17-18:13.
564 OPC Brief at 50.
565 PEPCO (4D): Ziminsky Rebuttal at 31:4-7.

when describing the process Pepco used for determining value that, as discussed below, does not align with a valuation of fair market value.[566] Instead, Pepco hired a valuation consultant, Gannett Fleming, to determine the fair market value of the assets Pepco was purchasing from TPWR.[567] Gannett Fleming's determination was that the "fair market value" for the acquisition of the TPWR electrical distribution assets should be between $4.2 million[568] and $6.7 million (based on the original cost less depreciation).[569]

As described in OPC (E)-23 page 8 of 21, Gannett Fleming employed a straight-line depreciation method to estimate the net book value of the assets at TPWR. Straight-line depreciation is consistent with the method used in Pepco's DC revenue requirement and Pepco's GAAP accounting. As described in OPC (E)-24, page 7 of 33, Pepco's engineering department employed a double-declining depreciation method to estimate the net book value of the assets at TPWR. Double declining depreciation is an accelerated depreciation method which is not used for Pepco's GAAP accounting nor in Pepco's DC revenue requirement.

This difference in the method of calculating accrued depreciation on the TPWR assets is a major factor in the differences between the two estimated valuations. It also shows that Pepco's initial estimate for the value of the TPWR assets is clearly under-valued and inappropriate to use for ratemaking purposes and that the acquisition price of $4.95 million is within the range of Gannett Fleming's more accurate estimate and appropriate for inclusion in rate base. Contrary to the representation of OPC,[570] the purchase price of $4.95 million for these assets, which was

566 OPC Brief at 50.
567 PEPCO (4D): Ziminsky Rebuttal at 29:19-30:2; 31:6-7.
568 The $4.126 million that OPC points to is deceptive as that represents the bottom of the range that Gannett Fleming found reasonable but rounded up to $4.2 million (original cost less depreciation). OPC (E)-23 at 16.
569 PEPCO (4D): Ziminsky Rebuttal at 29:19-30:2.
570 OPC Brief at 50.

negotiated as part of an arms-length transaction, falls squarely within the valuation expert's range.[571]

Apparently abandoning its witnesses' argument that RMA 42 is subjective, AOBA now claims, without evidence or explanation, that the transaction was not a market-based transaction.[572] This argument makes no sense. As previously discussed, the purchase price was negotiated as part of an arms-length transaction and the purchase price fell at the lower end of the range that an independent evaluator determined was the fair-market-value range.[573] Whether or not a microgrid went forward in conjunction with the transaction has no bearing on this fact.[574] Further, AOBA's assertion, without citation to a single piece of evidence, that RMA 42 is premature is equally baseless.[575] The purchase closed on February 28, 2020,[576] at which point the electrical distribution infrastructure within the TPWR site became part of Pepco's electric distribution system in the District of Columbia. The full purchase price of $4.95 million was entered on Pepco's GAAP books.[577] RMA 42 reflects in EPIS the acquired value of the electrical distribution assets at TPWR. The adjustment includes the impact on depreciation (both expense and accumulated) and reflects the estimated impact on ADIT.[578] The Walter Reed facility was already a Pepco customer, and the costs in RMA 42 are not associated with the immediate addition of any new customers, thus no revenue adjustment is warranted.[579] Finally, while Pepco does expect to incur additional capital

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571 PEPCO (4D): Ziminsky Rebuttal at 30:2-3.
572 AOBA Brief at 45.
573 PEPCO (4D): Ziminsky Rebuttal at 29:19-30:3.
574 AOBA Brief at 45.
575 AOBA Brief at 46.
576 PEPCO (4B): McGowan Rebuttal at 32:9-10.
577 PEPCO (4D): Ziminsky Rebuttal at 30:5-9.
578 PEPCO (2D): Ziminsky Supp. Direct at 9:4-9; PEPCO (2D)-1, page 50 of 52.
579 PEPCO (4D): Ziminsky Rebuttal at 30:14-16.

costs in order to support the planned development of the TPWR site, Pepco is not seeking recovery of any of those additional capital costs in RMA 42.[580]

RMA 42 is reasonable and should be approved as it reflects a purchase price of the existing electric distribution assets at TPWR negotiated in an arm's-length transaction that falls squarely within Gannett Fleming's "fair market value" range.

O. OPC Schedule 14: OPC's Adjustment Removing EBSC Charges for Residual Income Taxes Should Be Rejected.

OPC proposes to disallow certain O&M expenses related to "EBSC Charges for Residual Income Taxes."[581] Relying on OPC Witness Ramas' testimony, OPC asserts that, because the income tax expense for Pepco is already fully factored into revenue requirements, EBSC charges for residual income taxes add an additional layer of income tax expense associated with EBSC operations and must be removed.[582] As discussed in the Initial Brief, this adjustment was misleading and should be rejected.[583] Company Witness Ziminsky testified that

> The O&M expenses in question is related to residual EBSC Income Taxes booked in account 923 – "Outside Services Employed" with $224,000 allocated to Pepco DC. EBSC incurs income taxes that are then allocated to PHI (and to all other Exelon Operating Companies based on their proportional share of the billings). However, when the original income tax entry is booked at the end of the year it does not factor in various other Post-Close entries made at EBSC and therefore Pepco has to create a residual entry. This adjustment does not represent an additional layer of income tax expenses but a true up to account for post-close adjustments. It is a recurring and warranted charge appropriately recorded in Pepco's books as part of the normal course of business.[584]

While given the opportunity to respond to Company Witness Ziminsky on Surrebuttal Testimony, OPC Witness Ramas failed to do so, though she still adjusted her revenue requirement to remove

580 PEPCO (4D): Ziminsky Rebuttal at 30:17-19.
581 OPC Brief at 62-63.
582 OPC Brief at 62-63.
583 Initial Brief at 294.
584 PEPCO (4D): Ziminsky Rebuttal at 31:20-32:7.

these costs.[585] OPC has the burden of proving its adjustment. Company Witness Ziminsky's Rebuttal Testimony demonstrated that this adjustment was unreasonable and should be rejected. OPC has not met its burden, and its adjustment removing EBSC charges for residual income taxes should be rejected.

P. *OPC Schedule 15: OPC's Out of Period Service Company Cost Allocations Adjustment Should Be Rejected.*

OPC identifies three O&M expenses allocated from PHISCO and EBSC to Pepco that she recommended be disallowed because they pre-dated the TTPCF test year: (1) PHISCO Gross Receipts Tax reserves for years pre-dating the test year; (2) EBSC allocation for pre-test year liability insurance; and (3) Software Cloud Use Taxes.[586] As discussed in the Initial Brief, each of the charges is appropriately included in the TTPCF and OPC's adjustment should be rejected.[587]

In Rebuttal Testimony, Company Witness Ziminsky testified that each of these costs is a normal-course-of-business expense that is appropriately included in the test year.[588] With regard to the PHISCO gross receipts, Company Witness Ziminsky testified that in Pepco's response to OPC Data Request No. 36-4, Pepco confirmed that the charges pertaining to PHISCO Gross Receipts Tax is attributable to prior open tax years pre-dating the test year; however, the obligation was appropriately accrued during the test year.[589] The Company's books are frequently audited in the normal course of business, and it is part of Pepco's yearly process to adjust tax expense accordingly as amended returns are finalized and filed and audits arise.[590] As Company Witness

585 OPC (2B)-2 at 5.
586 OPC Brief at 63-64.
587 Initial Brief at 294-295.
588 PEPCO (4D): Ziminsky Rebuttal at 32:18-34:2.
589 PEPCO (4D): Ziminsky Rebuttal at 32:18-21.
590 PEPCO (4D): Ziminsky Rebuttal at 32:21-33:1.

Ziminsky testified, it is inappropriate to remove O&M expenses incurred in the normal course of business from the test year.[591]

Company Witness Ziminsky further testified that he explained in response to OPC Data Request 26-23 that the EBSC allocation for pre-test year liability insurance was booked in November 2018 and pertained to seven months of amortization for liability insurance allocated to Pepco.[592] These costs were related to a true-up for ongoing liability insurance applicable from May 2018 to November 2018 and, therefore, are mostly within the test period (five out of seven months).[593] It is not unusual to record true-up entries in the normal course of business, and this entry should not be removed from the test year.[594]

Similarly, "Software Cloud Use Taxes" represented an EBSC allocated expense charged to Pepco for costs partially pre-dating the test year.[595] The referenced expense charge originated from an accounting audit that led to a "true-up" expense charge for taxes associated with Software Cloud Use Taxes.[596]

Further, while OPC suggests that these costs are not representative of normal recurring costs,[597] the Company has a recurrent obligation to pay the three referenced expense charges and has appropriately included each one of them in test period in this case.[598] Company Witness Ziminsky testifies that it is common for utilities to perform audits involving prior months, even for months prior to the test period and perform accounting "true-ups" when an obligation is present and recurrent.[599]

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591 PEPCO (4D): Ziminsky Rebuttal at 33:1-2.
592 PEPCO (4D): Ziminsky Rebuttal at 33:5-7.
593 PEPCO (4D): Ziminsky Rebuttal at 33:7-9.
594 PEPCO (4D): Ziminsky Rebuttal at 33:9-10.
595 PEPCO (4D): Ziminsky Rebuttal at 33:12-14.
596 PEPCO (4D): Ziminsky Rebuttal at 33:14-15.
597 OPC Brief at 63-64.
598 PEPCO (4D): Ziminsky Rebuttal at 33:20-34:2.
599 PEPCO (4D): Ziminsky Rebuttal at 33:18-20.

OPC's proposal to remove these charges would unreasonably disallow prudently costs incurred in the test period and should be rejected.

VI. PEPCO'S PROPOSED RATE DESIGNS ARE REASONABLE AND CONSISTENT WITH COMMISSION POLICY AND DIRECTIVES.

In the Initial Brief, the Company addressed the rate designs proposed for each customer class and explained how they were reasonable and consistent with the Commission's policies.[600] Although it concedes that Pepco's rate design approach is consistent with the Commission's prior decisions,[601] GSA nonetheless argues that the Commission should reduce the percentage of residential rates recovered through the customer charge from the 40% the Company proposed to 25% or less.[602] GSA's concern is self-serving and relates to the impact on DC PLUG cost recovery. As GSA concedes under that the DC PLUG statute customer charge revenues are subtracted in allocating costs among the customer classes.[603] Thus, if GSA's suggestion were implemented, it would reduce the percentage of DC PLUG costs allocated to it and other commercial class customers.

The Commission's policy regarding placing a greater emphasis on customer charges is clear and unambiguous. In Order No. 15710, the Commission held:

> We indicated in Formal Case No. 1053 that Pepco is now a "wires only" distribution company; therefore, the rate designs for Pepco's customers should shift away from volumetric recovery to recovery based on fixed customer charges and distribution charges. Consistent with this pronouncement, our Order today increases the customer charge for residential and RAD customers in order for Pepco to more gradually recover actual customer and fixed costs. Otherwise, Pepco's proposed rate designs would not adequately progress towards recovering customer and fixed costs directly (not through energy-delivery charges). Accordingly, the Commission directs the Company to present rate designs in its next rate case that (consistent

600 *See generally*, Initial Brief at 208-223, 295-296.
601 GSA Brief at 49.
602 GSA Brief at 49.
603 GSA Brief at 38.

with gradualism) place a greater emphasis on customer charges and demand rates and less emphasis on volumetric (kWh) charges.[604]

Subsequently, in Order No. 17424, the Commission indicated: "This decision continues the Commission's policy of moving the design of residential distribution rates away from volumetric (kWh) rates, and towards rates that are based more on customer and demand charges. Placing the increase on Customer Charges is appropriate because, after deregulation, Pepco is primarily a 'wires only' distribution company, whose major costs are fixed costs that should be recovered through fixed charges."[605] Finally, in Pepco's last fully litigated rate case, the Commission reaffirmed its policy, stating:

> As in our last three rate cases we will recover the revenue increase through the customer charge. Customer Charges intend to recover the costs incurred by a utility for fixed costs and our decision here reaffirms the Commission's policy of moving the design of residential distribution rates away from volumetric (kWh) rates, and towards rates that are based more on customer and demand charges. Placing the increase on Customer Charges is appropriate because, after deregulation, Pepco is primarily a "wires only" distribution company, whose major costs are fixed costs that should be recovered through fixed charges.[606]

The Company's rate design approach in this proceeding is reflective of the Commission's rate design policies and directives and takes into consideration the Commission's guiding ratemaking principles of cost causation and gradualism.[607] The Company's proposal to increase the customer charge for Residential customers is consistent with the Commission's well-established policy and is reasonable. GSA's suggestion to reduce the percentage recovered through the customer charge is self-serving and should be rejected.

OPC argues that Pepco's proposed customer charges are too high compared to those of other regional electric utilities.[608] As Company Witness Blazunas indicated in Rebuttal

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[604] Formal Case No. 1076, Order No. 15710 at ¶355.
[605] FC 1103, Order No. 17424 at ¶450.
[606] FC 1139, Order No. 18846 at ¶459. *See also id*. at ¶484.
[607] PEPCO (F): Blazunas Direct at 27:9-19.
[608] OPC Brief at 187-191.

Testimony, OPC's position is contrary to the Commission policy discussed above that was the basis for the Company's proposal.[609] OPC also claims, based on Company Witness Dismukes analysis of costs commonly associated with customer charges, that the current customer charge for some classes cover these customer-related costs.[610] Company Witness Blazunas testified, however, that Pepco "is not proposing a customer charge increase for any rate schedule for any year in the MRP that would exceed that rate schedule's Unit Cost."[611] He also testified regarding the rate design for the MRP Enhanced Proposal that "proposed customer and demand rate components are calculated using the same rate design methodology proposed by the Company in my Direct Testimony."[612]

OPC also challenged the increase in the discount volumetric block rate for the first 400 kwh of use for the Residential class, claiming it is disproportionate to the proposed increase to rates for use greater than 400 kwh/month and will more significantly impact low-income residents and will not advance the goals of energy efficiency and conservation.[613] To address this, OPC Witness Dismukes recommended that volumetric rates for the Residential class "should be increased proportionally, thereby maintaining the existing relationship between usage blocks."[614] As Company Witness Blazunas indicated in Rebuttal Testimony, Pepco was not opposed to OPC's suggestion "to increase all the residential volumetric rates proportionally, thereby maintaining the existing relationship between usage blocks."[615] Moreover, Company Witness Blazunas incorporated the suggestion into the rate design for the MRP Enhanced Proposal thereby

609 PEPCO (4F): Blazunas Rebuttal at 8:4-24.
610 OPC Brief at 191.
611 PEPCO (F): Blazunas Direct at 29:3-4.
612 PEPCO (5F): Blazunas Surrebuttal at 3:21-4:2.
613 OPC Brief at 191-192. OPC does acknowledge that the proposed increase under the MRP Enhanced Proposal is less than under the Original MRP Proposal.
614 OPC (A): Dismukes Direct at 9:7-8.
615 PEPCO (4F): Blazunas Rebuttal at 8:24-27.

maintaining the existing relationships between these volumetric rate components, and testified that the methodology was consistent with OPC Witness Dismukes' recommendations.[616] It would, therefore, appear that there is no dispute regarding this issue.

AOBA takes issue with several aspects of the Company's proposed rate design. Although all were addressed in the Initial Brief and shown to be unfounded, they are each briefly addressed. With respect to the revisions to demand rates that resulted from Pepco's correction of the demand billing determinants, AOBA challenges the Company's decision to recover the full amount through proposed kWh charges.[617] As Company Witness Blazunas explained, this has been the Company's approach to rate design as it relates to the use of the energy charge in the first and second years of the MRP Enhanced Proposal since it was presented in Surrebuttal Testimony. Pepco's methodology has remained consistent.[618] AOBA fails to suggest any other approach to the Company's and instead has elected merely to attack Pepco's proposal and assert that the Company's rate design must be rejected.[619]

AOBA also challenges the customer charge proposed for the MMA class.[620] However, not only did Company Witness Blazunas indicate in Rebuttal Testimony that Pepco was not opposed to reducing the MMA customer charge per dwelling unit per month along the lines AOBA had suggested,[621] but he also subsequently incorporated it into the rate design for the MRP Enhanced Proposal.[622] AOBA complains that this is reflected only in RY 3,[623] ignoring that, as a result of

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616 PEPCO (5F): Blazunas Surrebuttal at 4:11-14.
617 AOBA Brief at 72.
618 PEPCO (7F): Blazunas Fourth Supp. at 21:12-14.
619 AOBA Brief at 73. As Company Witness Blazunas testified, AOBA's "disagreement with the approach the Company used does not render the Company's approach unreasonable." PEPCO (7F): Blazunas Fourth Supp. at 22:3-4.
620 AOBA Brief at 73-74.
621 PEPCO (4F): Blazunas Rebuttal at 9:15-17.
622 PEPCO (5F): Blazunas Surrebuttal at 4:17-20.
623 AOBA Brief at 73.

the offsets customers received under the MRP Enhanced Proposal, RY 3 is the only year in which there is an overall distribution rate increase for classes.[624] Although AOBA acknowledges that the MMA class will "see a net reduction in its distribution revenue requirement due to the Company's proposed ERR credits,"[625] AOBA nonetheless complains that Pepco did not examine the impact on individual MMA accounts of accepting AOBA's suggestion regarding the MMA customer charge.[626] AOBA's concerns are baseless.

AOBA challenged the seasonal differentials in the rate design for Schedule T.[627] Again, however, Company Witness Blazunas testified that Pepco was not opposed to AOBA's recommendation to maintain the existing seasonal differential in the Schedule T energy charge rate.[628] Moreover, the Company incorporated this approach into the rate design for Schedule T in the MRP Enhanced Proposal.[629] Although AOBA acknowledges this, it still complains on brief that Pepo did not explain the basis for the change.[630] Company Witness Blazunas was clear in his Surrebuttal Testimony that the Company was maintaining the existing relationships between volumetric rate components for this rate schedule based on the recommendation of AOBA Witness T. Oliver.[631]

Finally, AOBA also complains that the allocation of the ERR credits among classes is uneven.[632] Pepco described Rider "ERR" and addressed AOBA's concerns in the Initial Brief.[633]

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624 AOBA also complains that the Company presented no testimony regarding the manner in which individual MMA customers would be affected but then cites to the information provided in PEPCO (5F)-7 that shows the rate impact for varying levels of usage. Although AOBA acknowledges that the MMA class would see a net reduction as a result of the ERR credits in Year 3, AOBA complains that Pepco did not examine the increases individual MMA customers will experience once the term of the MRP has ended and the ERR has ceased. AOBA Brief at 74.

625 AOBA Brief at 74.

626 AOBA Brief at 74.

627 AOBA Brief at 74-76.

628 PEPCO (4F): Blazunas Rebuttal at 9:17-19.

629 PEPCO (5F): Blazunas Surrebuttal at 4:11-17.

630 AOBA Brief at 75-76.

631 PEPCO (5F): Blazunas Surrebuttal at 4:11-17.

632 AOBA Brief at 68.

633 Initial Brief at 209-210.

The Company's approach to the allocation of credits under Rider "ERR" was designed to exhaust the available benefits for each rate class by the end of the MRP term.[634] Under this approach, the value to customers was maximized by crediting each rate class its full allocated revenue offset derived from each benefit stream. This methodology is consistent across classes and represents a reasonable basis on which to structure the Rider "ERR" credits.[635] Moreover, while AOBA challenges Pepco's proposed allocation, it fails to offer an alternative solution.

VII. PEPCO'S BILL IMPACT ANALYSES APPROPRIATELY ISOLATE AND ACCURATELY REFLECT THE IMPACT OF THE REVENUE INCREASES PROPOSED IN THIS PROCEEDING.

AOBA erroneously claims that the Company's bill impact analysis in this proceeding has been distorted.[636] As Pepco explained in the Initial Brief, AOBA's arguments regarding the Company's bill impact analyses are misplaced.[637] Pepco has repeatedly testified that its bill impact analyses have been appropriately developed to reflect only the impact of the change in the proposed revenue requirements that result from this proceeding and not from any changes to base distribution rates due to the application of current billing determinants to the existing Commission-approved revenue requirement from FC 1150/1151.[638] AOBA's on-going confusion is manifest in its discussion on brief of the concept of the "imputed BSA adjustment" in the bill impact analyses.[639] AOBA states that these adjustments are not the same as the monthly Bill Stabilization Adjustment ("BSA") adjustments. This is correct; however, they are not intended to be, and AOBA is conflating two separate and distinct adjustments.

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[634] PEPCO (7F): Blazunas Fourth Supp. at 26:3-5; PEPCO (6F)-22.
[635] PEPCO (7F): Blazunas Fourth Supp. at 25:13-26:6.
[636] AOBA Brief at 70, 77.
[637] Initial Brief at 225-226.
[638] *See* PEPCO (7F): Blazunas Fourth Supp. at 19:4-7; PEPCO (2F): Blazunas Supp. Direct at 4:13-15. *See also* PEPCO (5F): Blazunas Surrebuttal at 3:9-12.
[639] AOBA Brief at 77-78.

Contrary to AOBA's assertions, the "imputed BSA adjustments" are not intended to forecast future monthly BSA adjustments and the 10% cap that is part of the BSA has no relevance in this context.[640] Company Witness Blazunas has been clear that the purpose of his bill impact analyses in this proceeding has been to isolate the change to a customer's bill resulting solely from increases to the revenue requirement Pepco is requesting.[641] Thus, the analyses he presented do not incorporate any changes that may result from the application of current billing determinants to the revenue requirement approved in FC 1150/1151. The adjustments that AOBA has focused on relate to current billing determinants, including those changes to correct the error in demand billing determinants.

AOBA points to the Company's Response to Bench Data Request No. 6 and inaccurately claims that it supports AOBA's position that there is no "rate freeze" for any portion of the MRP Enhanced Proposal.[642] AOBA conveniently ignores the Surrebuttal Testimony of Company Witness Blazunas in which he described the rate design for the first two rate years in the MRP Enhanced Proposal: "the rates for RY1 and RY2 are designed to collect a flat level of target base distribution revenue, ***although the volumetric rates themselves may still change as a result of the use of forecasted billing determinants***. Consequently, the rates have been designed such that there is no overall distribution rate increase in RY1 and RY2."[643] AOBA's position appears to be that unless there are no changes whatsoever from current rates that the Company is being duplicitous. However, the Company has been clear in the testimony filed in this proceeding what the MRP Enhanced Proposal provides, i.e. no overall distribution rate increase until January 1, 2022. This

640 AOBA Brief at 77-78.
641 *See, e.g.*, PEPCO (2F): Blazunas Supp. Direct at 4:13-18.
642 AOBA Brief at 78-79.
643 PEPCO (5F): Blazunas Surrebuttal at 3:9-13 (emphasis added).

has remained consistent and, despite the claims of AOBA and others, is an accurate description of the effect of the MRP Enhanced Proposal.

AOBA also asserts that "the Company's July 2020 billing determinants revisions for its demand-metered rate classes in the District were the product of a change in the assumptions and methodology that Pepco used to develop its estimates of demand billing determinants for future periods."[644] This is not the case. As the Company explained in the Initial Brief, Pepco has used the same methodology for forecasting its demand billing determinants throughout this proceeding.[645]

In connection with the MRP Enhanced Proposal, OPC argues the bill impact is based on changes to the Company's revenue and that changes to the tariffed charges are a function of the BSA, citing to an exchange between OPC's counsel and Company Witness McGowan during the evidentiary hearing.[646] However, OPC misconstrues the testimony in question. During his testimony, Company Witness McGowan acknowledged that there were changes in rates during RY1 and RY2 of the MRP Enhanced Proposal but explained that this "is due to the change in the billing determinants that are used to calculate these rates."[647] He subsequently indicated that changes could occur as a result of either (1) the application of current billing determinants to the revenue approved in the Company's last rate proceeding or (2) an adjustment from the operation of the BSA.[648] These are not considered to be rate increases. As Company Witness McGowan explained:

> A The rates, as I mentioned, the rates could change, as well as the BSA adjustment over that time based on the billing determinants and based on the customer usage. But again, it is, the rates are adjusting such that we are

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644 AOBA Brief at 71.
645 Initial Brief at 207.
646 OPC Brief at 133.
647 Tr. at 67:2-4.
648 Tr. at 67:7-68:9.

> collecting the rate increase that was approved by the Commission in the prior rate case.
>
> Q So would you consider that a bill increase for these customers?
>
> A I would not. And the reason is in the last rate case, you know, the parties review the Company's application and the Commission approved a rate increase and the customer bill impact at that time was evaluated and ultimately approved by the Commission.
>
> Over time, as the billing determinants change and as usage change and the BSA amount changes, those changes aren't rate increases, they are just adjustments to collect the revenues that the Commission previously approved.[649]

Company Witness McGowan's testimony is, therefore, consistent with the testimony of Company Witness Blazunas on this issue.

Finally, AOBA and others have raised concerns regarding the impact on distribution rates when the credits provided under Rider ERR end on January 1, 2023.[650] During the evidentiary hearing, the Commission inquired whether Pepco had "any proposals it can put to the Commission to address the possibility of rate shock in 2023?"[651] In response, the Company identified three potential offsets that the Commission could direct be used to offset 25% of the revenue requirement in 2023 thus delaying by one additional year the application of the full requested revenue requirement.[652]

The bill impact analyses the Company presented for the MRP Enhanced Proposal, as well as the Original MRP Proposal and the TTPCF, are reasonable.

VIII. PEPCO'S USE OF CURRENT BILLING DETERMINANTS, INCLUDING CORRECTED DEMAND BILLING DETERMINANTS, IS REASONABLE.

During this proceeding, the Company has consistently advocated that current billing determinants should be used as the basis for establishing rates. This is reasonable as it allows the

649 Tr. at 69:20-70:14.
650 AOBA Brief at 79-80; OPC Brief at 137.
651 Tr. at 120.
652 Pepco Response to Bench Data Request No. 4 (October 30, 2020).

rates designed in this proceeding to be reflective of current information.[653] The Initial Brief discussed that Pepco discovered an issue with the demand billing determinants used not only in this proceeding but also two prior proceedings.[654] The Company determined that there was an error in a demand billing determinant report variant that had been used since 2015 that resulted in demand being overstated.[655] As detailed in the Company's testimony, the Initial Brief and further discussed below, this report variant has been replaced and Pepco has proactively taken steps to confirm the accuracy of its current billing determinants as well as to implement additional procedures to avoid such errors in the future.[656] Contrary to the claims of some parties, the Company's actions in bringing this issue to the attention of the Commission and the other parties have been forthright and timely.

OPC's claims on brief that Pepco has been unable or unwilling to clearly describe the error are simply not accurate.[657] Pepco has described the issue regarding the variant report's overstatement of demand and how it was manifest in the Company's testimony, at a September 10, 2020 technical conference, in response to data requests and in the Initial Brief. OPC points to Company Witness Blazunas' testimony during the evidentiary hearing as "evidence" to support its claims.[658] An objective reading of Company Witness Blazunas' testimony shows that he was explaining in detail how the error was reflected in the original report variant given how customers are billed.[659] There was nothing contradictory with his Fourth Supplemental Testimony on this point. There certainly was no lack of candor, as OPC asserts.[660]

653 As discussed in the Initial Brief this is also why Pepco's proposal for an Annual Billing Determinant Update is reasonable. *See* Initial Brief at 226-228.
654 *See generally*, Initial Brief at 202-208.
655 PEPCO (7F): Blazunas Fourth Supp. at 3:19-4:2.
656 Initial Brief at 205-206.
657 OPC Brief at 204.
658 OPC Brief at 204.
659 Tr. at 172:23-176:9.
660 OPC Brief at 204 & n.886.

Company Witness Blazunas testified that because customers are not all billed on a single day of the month but rather throughout a month,[661] there will not necessarily be a double counting for the entire class within one month as a result of the time slice issue with the variant report,[662] particularly when the change in Commission-approved rates becomes effective in the middle of month, as was the case in FC 1150/1151.[663] As he explained, "[s]o while we've talked about before a double counting, it is not necessarily two to one, it is just that in a period for certain customers when a rate change was taking place, you would have a general over statement of demands."[664] Company Witness Blazunas expanded on this point stating "I would say that double counting is probably, you know, from a class perspective, too simple of a way to look at it. It is more for an individual customer when the report is pulling it, if there's a time slice, it is double counting it for that individual customer."[665] Company Witness Blazunas was unambiguous that the primary driver of the time slice issue was the result of a rate change.[666] OPC's efforts to muddy this issue should be rejected.

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[661] Tr. at 175:14-17 ("not all of your customers are on the same billing cycles. So because of that rate changes fall into various months differently.")

[662] A "time slice" occurs when there are multiple price values within a bill period (such as a month within which a rate change occurs), and that price is set up to be prorated within that period. PEPCO (7F): Blazunas Fourth Supp. at 4:1-4.

[663] The rates approved in FC 1150/1151 became effective on August 13, 2018. The evidentiary hearing transcript indicates that this period was the focus of the questions Company Witness Blazunas was responding to on pp 174-176. As Company Witness Blazunas explained:

> So just to be clear, the traditional test period compliance filing in this instance is affected by the time slice that took place during historical test period related to Formal Case 1150 rates going into effect.
>
> For Formal Case 1150, its test year had a time slice related Formal Case 1139 rates going into effect. I want to say August of 2017.
>
> It is the same underlying issue for different periods of time.

Tr. at 183:11-20.

[664] Tr. at 174:17-21.

[665] Tr. at 175:25-176:5.

[666] Tr. at 180:3-10 ("The primary time slice driver is the distribution rate change that took place in the test period for the traditional test period compliance filing.") He did not note that the issue could also arise if there was a cancellation and rebill for a customer, but that would be on an individual customer basis and not for an entire class as when there is a rate change. Tr. at 175:1-4.

OPC also stated on brief that "ratepayers will see bill increases due to Pepco's proposed correction of an error in how the Company accounted for billing determinants in implementing its BSA."[667] As discussed in Section XII in connection with the BSA, the correction of demand billing determinants has nothing to do with the implementation of the BSA. Rather, because the demand billing determinants used in FC 1150/1151 overstated demand, but the target revenues approved by the Commission for classes with demand rates were accurate, the rates implemented, all things equal, would not collect the Commission-approved target revenue.[668] The BSA operated as it was intended to address this under recovery.

OPC also claims that the Company assumes no responsibility for the error with demand billing determinants and sidesteps the impact of its corrections.[669] AOBA advances similar assertions.[670] This is a distortion of what has occurred and should be rejected. To be clear, the result of the use of the variant report that overstated demand was the Company under collected the amounts that otherwise would have been billed to customers.[671] The revenue targets the Commission approved for the classes with demand rates were not affected and were accurate.[672] Company Witness Blazunas estimated that the annual under recovery following FC 1150/1151 is approximately $12.7 million.[673] As discussed in the Initial Brief and also below,[674] the BSA operated as designed to address this under recovery of the target revenue the Commission had approved; however, because of the BSA's 10% monthly cap on adjustments, the deferred revenue balances for the affected classes have grown over time in accordance with the operation of the

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[667] OPC Brief at 135.
[668] PEPCO (4F): Blazunas Rebuttal at 17:17-18:2. *See also* Initial Brief at 240-241.
[669] OPC Brief at 135, 205.
[670] AOBA Brief at 83.
[671] PEPCO (4F): Blazunas Rebuttal at 17:17-18:2; PEPCO (6F): Blazunas Third Supp. at 5:12-14.
[672] PEPCO (7F): Blazunas Fourth Supp. at 3:5-9.
[673] PEPCO (6F): Blazunas Third Supp. at 5:12-13.
[674] *See generally*, Initial Brief at 230-242.

Commission-approved tariffs.[675] This issue will continue until rates are approved with corrected demand billing determinants in this proceeding.[676] The use of a demand variant report that overstated demand has already resulted in a significant under recovery from the target revenues the Commission approved in FC 1150/1151 for the classes with demand rates. For the period from August 2018 (when the FC 1150/1151 Settlement was approved) through December 2020 the amount of this under recovery is estimated to be approximately $30 million.[677] Moreover, under the rates proposed in the MRP Enhanced Proposal, Company Witness Blazunas testified that, all else equal and assuming a rate effective date of April 1, 2021, the MGT-LV and GT-LV BSA deferral balances will be eliminated in July 2022 and October 2024, respectively.[678] Pepco does not earn a return on these balances.

OPC Witness Dismukes argued that Pepco should be required to implement quality control measures to ensure the accuracy of customer billing data going forward.[679] Although OPC downplays them on brief,[680] as was detailed in the Initial Brief,[681] the Company has already implemented additional quality control measures in light of the errors discovered in the demand billing determinant data in this proceeding. Specifically, the Company already has:

- Created a new demand report variant and conducted a quality control to verify that it accurately reflects the demands billed to individual customers.
- Verified that the underlying cause of the errors in the report variant originally used to determine demand billing determinants is not present in the report variants used to aggregate customer counts and volumetric energy usage for use as billing determinants in the Company's rate design.

[675] PEPCO (4F): Blazunas Rebuttal at 18:2-7; PEPCO (6F): Blazunas Third Supp. at 5:14-19.
[676] PEPCO (6F): Blazunas Third Supp. at 5:14-19. *See also* PEPCO (4F): Blazunas Rebuttal at 18:14-18.
[677] PEPCO (6F)-22, page 1 of 344.
[678] PEPCO (7F): Blazunas Fourth Supp. at 14:14-15:1; PEPCO (7F)-28.
[679] OPC (5A): Dismukes Second Supp. at 2:16-17.
[680] OPC Brief at 204-205.
[681] Initial Brief at 205-206.

- Included an additional step in its verification process in which the revenue requirements and rate design witnesses conduct a joint review and sign-off to ensure that they utilize the same customer counts.
- Completed a Key Financial Control ("KFC") designed to ensure that the approved rates yield the Commission-approved level of distribution revenue. The KFC relates to the Company's financial statement internal controls and is assurance tested by Exelon Audit Services.
- Used billing determinant data in the reports pulled from the Company's billing system and subject to Sarbanes Oxley ("SOX") controls around access and change management of the underlying code used to extract the data. The design and operating effectiveness of these controls are evaluated annually as a part of the Company's SOX program and by an external audit.[682]

Moreover, the Company has also identified the following additional quality controls that it intends to implement for future proceedings:

- Verify the reasonableness of the actual billing determinants used in the reconciliation process using a revenue proof in which distribution revenue calculated using approved distribution rates and actual billing determinants will be compared to actual booked distribution revenue to ensure minimal variances. The use of the revenue proof will coincide with a KFC related to the evaluation of billing determinants used in rate design.
- Include revenue proofs and the calculation of the monthly BSA revenue per customer targets for each year of the MRP as a part of the compliance filing following an order in this proceeding.
- Implement a "Billing Determinant Verification Process" based on a randomized selection of customer bills. Essentially, Pepco will verify that the customer usage and demand data in billing determinants used for rate design match the data shown on a random sample of customer bills.
- Provide a comparison of forecasted billing determinants at the class level to the previous three calendar years' historical billing determinants at the class level.
- Submit these analyses to the Commission and the parties as a part of future rate case filings.[683]

OPC did not address these latter quality controls on brief. Rather it claimed that Company Witness Blazunas testified during the evidentiary hearing that the measures Pepco has already implemented "offer no qualify-control benefits whatsoever."[684] Company Witness Blazunas said

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682 Initial Brief at 205; PEPCO (7F): Blazunas Fourth Supp. at 11:1-19.
683 Initial Brief at 206; PEPCO (7F): Blazunas Fourth Supp. at 11:20-12-19.
684 OPC Brief at 205.

no such thing. In fact, he explained that the first item in the listing of prospective changes Pepco has identified, "[t]he key financial control that's more tied into the billing determinant issue . . . Regarding the use of, your essentially checking the reasonableness of the actual billing determinants by comparing how much revenue they produce based on approved rates versus actual book to distribution revenue. And then you are aiming to insure minimal variances."[685] Contrary to OPC's claims, the quality control measures the Company has identified are reasonable.

Moreover, to be clear, the error at issue was not an "egregious mathematical" error as OPC claims. It was a coding error in how a variant report treated the data it was pulling from the Company's billing system data. As Company Witness Blazunas testified:

> So the issue with the time slice was primarily related to essentially the coding that would pull this information from the data, I'm sorry, from the Company's billing system. What essentially happened is that within the code for the demand billing determinant report, you had to pull the demand in such a way in that it was not, it was essentially for customers that had the time slice. It was pulling the information twice, or however many time slices there were.[686]

The underlying bill system data was accurate.[687] Company Witness Blazunas testified that there are a number of SOX controls around the billing system data and the designs and controls associated with it are also evaluated by external auditors.[688] Pepco appropriately corrected its demand billing determinants in light of the demand variant report that erroneously overstated demand. The Company's use of current billing determinants in this proceeding is reasonable.

IX. PEPCO'S CUSTOMER CLASS COST OF SERVICE STUDY IS REASONABLE AND SHOULD BE APPROVED.

In the Initial Brief, the Company established that its Customer Class Cost of Service Study ("CCOSS") was reasonable and was prepared in a manner consistent with other such studies the

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685 Tr. at 189:24-190:6.
686 Tr. at 195:8-17.
687 PEPCO (7F): Blazunas Fourth Supp. at 10:6-9; Tr. at 197:1-5. *See also* Initial Brief at 204-205.
688 Tr. at 185:20-186:1.

Commission has approved.[689] AOBA was the only party to directly challenge the CCOSS on brief. The sole substantive issue AOBA presented on brief regarding Pepco's CCOSS related to the allocation of income taxes under the CCOSS.[690] The Company showed this concern was unfounded in the Initial Brief. As Pepco explained in its Initial Brief as well as the testimony of Company Witness Schafer,[691] the Company followed the approach the Commission has approved in prior proceedings and allocated income tax based on taxable income for each customer class at the Company's overall effective tax rates.

Surprisingly, AOBA claims that Pepco's testimony did not "explicitly address the manner in which the Company allocates responsibility for Federal and State Income Taxes among rate classes."[692] This ignores Company Witness Schafer's Rebuttal Testimony in which he stated "[t]he Company allocates income tax based on taxable income for each customer class at the Company's overall effective tax rates. This method, which the Commission has approved in the past, ensures that the same tax rate is applied to all customer classes."[693] He also confirmed that Pepco's "CCOSS model used in the present case employs the same methodology that has been utilized in the past" contrary to AOBA's claims that it departed from the past practices the Commission had found to be appropriate.[694]

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689 Initial Brief at 191-196.

690 AOBA Brief at 64-65. Although AOBA notes that it "raises three concerns regarding the CCOSS results that Pepco presents in this proceeding," *id*. at 64, it only addressed the allocation of income taxes. The Initial Brief addressed all of the concerns AOBA raised in testimony and showed them to be without merit. Initial Brief at 194-195. In addition to addressing the Company's CCOSS, on brief AOBA also disputed OPC Witness Dismukes testimony relating to the CCOSS and the allocation of the revenue requirement among classes. AOBA Brief at 65-66.

691 Initial Brief at 195-196; PEPCO (2E): Schafer Rebuttal at 6:14-8:11.

692 AOBA Brief at 64 n.74.

693 PEPCO (2E): Schafer Rebuttal at 6:14-16.

694 PEPCO (2E): Schafer Rebuttal at 6:19-22.

Consistent with the Commission precedent, the Company allocated income tax based on taxable income for each customer class at the Company's overall effective tax rates.[695] AOBA has challenged this approach in each of Pepco's last three litigated rate cases and, in each, the Commission has rejected AOBA's arguments to modify this methodology.[696]

In FC 1087, AOBA had suggested that taxes should be allocated in the CCOSS among the classes based on the rate base responsibility of each class rather than using Pepco methodology of allocating on the basis of customer class taxable income with the tax rate reflecting the total Company tax rate.[697] In Order No. 16930, the Commission held that Pepco's allocation based on the sums of money paid by customers for electric service was appropriate. Specifically, the Commission stated:

> We are not persuaded by AOBA's claim that the Company's CCOSS erroneously allocates federal tax responsibility among the classes. Taxes are levied on the sums of money paid by customers for electric service, not on the basis of class rate base or something underlying "costs" of the seller to provide the service.[698]

AOBA raised the same argument in FC 1103.[699] In once again rejecting AOBA's position, the Commission held:

> AOBA questions Pepco's allocation of Federal and State income taxes in the CCOSS. The Commission rejects AOBA's claims that tax responsibilities are misallocated among customer classes in Pepco's CCOSS, for the same reasons that we stated in our earlier decisions. AOBA's tax allocation argument points out, at bottom, that if the revenues for a particular customer class fall short of what they should be, then taxes on the understated amount will themselves fall short of what that class's taxes should be, which accentuates the revenue "shortfall" for that class. With respect to AOBA's concerns about negative class RORs, the Commission is committed to addressing this issue and setting more appropriate class RORs for Pepco's customer classes, by other means. Here, AOBA is advocating for this Commission to adopt a new policy with respect to tax allocation, so AOBA bears the burden of persuading the Commission to depart from its policy of accepting,

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695 PEPCO (2E): Schafer Rebuttal at 6:14-15.
696 PEPCO (2E): Schafer Rebuttal at 8:1-2.
697 FC 1087, Order No. 16930 at ¶¶294, 303.
698 *Id.* at ¶306.
699 FC 1103, Order No. 17424 at ¶389.

> based on the evidentiary record, the Company's method used to allocate Federal and State income taxes in the CCOSS. Since AOBA has [not] presented information in this record that would persuade this Commission to adopt its novel proposal, we accept Pepco's proposed allocation of taxes in its CCOSS among customer classes as reasonable and consistent with our prior decisions on this issue.[700]

AOBA then reprised the argument in Formal Case No. 1139 – to similar results. There the Commission held: "[o]ur past decisions rejected AOBA's claims that tax responsibilities are misallocated among customer classes in Pepco's CCOSS. AOBA presented no new information that would warrant reversing our position on this issue."[701]

AOBA has again failed to present any reasonable new argument to justify the Commission modifying its well-established policy on this issue. AOBA's efforts to rehash an argument the Commission has considered and repeatedly rejected should be rebuffed. The Company has established that the CCOSS is reasonable and was developed consistent with Commission precedent. The Commission should approve the use of the Company's CCOSS in this proceeding.

X. PEPCO'S PROPOSED ALLOCATION OF THE REVENUE REQUIREMENT FOLLOWS THE GUIDANCE THE COMMISSION HAS PROVIDED AND IS REASONABLE.

In the Initial Brief, the Company showed that its allocation of the revenue requirement in this proceeding in accordance with the Four-Step method Company Witness Blazunas presented was reasonable and consistent with the Commission's guiding principles of cost-causation and gradualism.[702] Under this approach, the classes with negative RORs (R and SL-E) are allocated 1.8 time the system average increase.[703] Pepco also addressed the proposals the other parties

[700] FC 1103, Order No. 17424 at ¶398.
[701] FC 1139, Order No. 18846 at ¶427.
[702] Initial Brief at 196-199.
[703] This was the upper limit the Company established after considering the results of the Class Rates of Return Analysis, an evaluation of recent UROR movements in previous cases for the under-contributing rate schedules, and a review of the level of revenue increase the Commission has allocated to these particular rate schedules in the past relative to the total system increase. PEPCO (F): Blazunas Direct at 16:13-18:8; PEPCO (F)-2.

presented and showed that they were skewed to favor the customer class on which the particular party was focused.[704] Although no one conceptually challenges the Four-Step method, the parties diverge on the appropriate allocation to customer classes that have a negative class rate of return – in particular the Residential class.

While it acknowledges the Commission's long-standing policy of seeking to address negative class rates of return, OPC argues the policy should be suspended, at least in the near term.[705] OPC believes that the policy is not achievable given Pepco's substantial investments to improve and maintain reliability in the District.[706] OPC, therefore, advocates that, rather than the 1.8 times the system average increase Pepco proposes, classes currently having a negative ROR be allocated a smaller share of the increase – 1.25 times the system average increase.[707]

In stark contrast, GSA and AOBA argue that Pepco's allocation to the Residential class does not go far enough. In testimony, AOBA argued that the Commission should require a positive ROR for the residential class at the close of this proceeding and, by the end of the MRP term, the residential ROR should be 33% of the system average ROR.[708] To accomplish this AOBA argued that 50% of the increase in each MRP year should be allocated to the residential class.[709] GSA proposes that, at a minimum, classes with a negative ROR receive 2.0 times the system average

[704] Initial Brief at 199-201.
[705] OPC Brief at 182.
[706] Although OPC argues that reliability is the policy on which the Commission should be focused, at least in the near term, OPC nonetheless challenges the Company's recovery of expenditures on reliability projects that will be in service and providing benefit to customers throughout the rate effective period.
[707] OPC Brief at 185-186.
[708] AOBA (A): B. Oliver Direct at 114:17-115:5.
[709] AOBA (B): T. Oliver Direct at 67:5-10; AOBA (B)-8. Under the TTPCF, AOBA recommends that all of the rate increase should be allocated to the residential rate class in order to address its class subsidy. AOBA (B): T. Oliver Direct at 66:5-7; AOBA (B)-7. AOBA does not discuss these allocations on brief but rather suggests that "OPC's concerns regarding rate impacts for residential customers should be addressed by lowering the Company's overall revenue increase request as opposed to shifting even greater cost responsibility to Pepco's already heavily burdened commercial customer classes." AOBA Brief at 66. There is no basis for such a reduction that is determined to be reasonable. AOBA does still indicate on brief that there is no "perceived need to maintain a negative rate of return for the entire residential rate class." AOBA Brief at 89.

increase.[710] GSA claims that the residential class is being subsidized by approximately $112 million annually and, if this interclass subsidization is allowed to continue, it will result in rates that are unjust, unreasonable and discriminatory.[711] GSA argues that the Commission's policy of addressing negative class RORs by allocating a greater percentage of the increase to such classes is not a failed strategy but rather one that "has not been fully and aggressively implemented to the level necessary to achieve the ultimate goal."[712]

The proposed allocation Company Witness Blazunas presented using the Four-Step Method that applies 1.8 times the system average increase to the customer classes with a negative ROR presents the best approach among these competing proposals as it permits the negative class rates of return to be addressed but does so in a manner that appropriately balances the need to do this gradually so as to avoid rate shock. In contrast to the positions of other parties, the Company's proposal presents a reasonable and balanced approach that is consistent with the Commission's guiding principles of cost-causation and gradualism. The Company's proposed allocation falls between the more extreme positions of other parties and should be approved by the Commission.

XI. THE BSA IS OPERATING AS DESIGNED AND SHOULD CONTINUE.

Contrary to the claims of some other parties, as the Company showed in the Initial Brief,[713] the BSA the Commission approved in FC 1053 has operated as it was designed to do. The error discussed at length in the Initial Brief as well as above, that resulted in demand being overstated was caused by a report variant -- not the BSA or how it operated. The Commission examined the

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710 GSA Brief at 47. GSA also states that AOBA's more aggressive approach is not unreasonable and if the Commission wished to move more quickly to eliminate the interclass subsidy, it could adopted a middle ground between GSA's and AOBA's proposals. GSA Brief at 48. GSA also proposes as a means of addressing the negative class ROR issue that, if the Commission were to adopt the Original MRP Proposal in some form, any decreases resulting from the ESM and/or PIMs penalties, "should be flowed back only to rate classes with an UROR of at least 0.9." GSA Brief at 35.

711 GSA Brief at 37.

712 GSA Brief at 44.

713 *See generally*, Initial Brief at 230-242.

BSA in Pepco's last fully-litigated rate case, FC 1139 and concluded that it served an important function and should be continued.[714] Indeed, continuation of the BSA is even more appropriate now with the expansion of energy efficiency programs, to include Company operated programs and the expanding use of DER.[715]

Although OPC on brief signaled its support for AOBA's claims that the BSA should be terminated,[716] it also continues to argue that the Commission should open another proceeding in which to examine the BSA.[717] AOBA's concerns were addressed in the Initial Brief and are further discussed below.[718] The Initial Brief also discussed why opening another proceeding to examine the BSA is not warranted.[719]

As has been the case in many prior proceedings, AOBA is seeking to terminate the BSA or, at least, exclude many of the commercial classes to which AOBA's members belong from the BSA. In particular, AOBA has seized on the error Pepco brought to light in the demand billing determinants produced by a variant report as a justification for ending the BSA.[720] However, the BSA is operating as intended when it was approved by the Commission in FC 1053.[721] The error was not in the BSA or how it operated. Rather, as discussed above, the use of the variant report's demand billing determinants resulted in demand being overstated.[722] Thus, all things being equal, the rates implemented as a result would not collect the target level of revenue the Commission approved for classes with demand rates (which was set at the correct level).[723] The BSA

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714 FC 1139, Order No. 18846 at ¶306.
715 PEPCO (4F): Blazunas Rebuttal at 20:11-14; PEPCO (4B): McGowan Rebuttal at 45:8-10.
716 OPC Brief at 201 ("calls for the discontinuation of the BSA are well-founded"), 206 ("appropriate outcome may be discontinuation of the BSA.")
717 OPC Brief at 206-207.
718 Initial Brief at 235-242.
719 Initial Brief at 234-235.
720 AOBA Brief at 80-84.
721 PEPCO (4F): Blazunas Rebuttal at 17:23-18:4; PEPCO (7F): Blazunas Fourth Supp. at 13:14-15.
722 PEPCO (7F): Blazunas Fourth Supp. at 2:12-3:7.
723 PEPCO (4F): Blazunas Rebuttal at 17:17-18:2.

appropriately adjusted as a result. Despite AOBA's assertions, the mechanism is neither flawed nor outdated. Moreover, given that Pepco will soon be implementing energy efficiency programs again as well as the increasing availability and options for DER, there is now an even stronger case for continuation of the BSA than when the Commission last approved its continued use in FC 1139.

AOBA points to the growth in the deferral balances for the GT LV and MGT LV rate classes;[724] however, as discussed in the Initial Brief, these balances are in large part the result of an error in the demand billing determinants used in FC 1150/1151.[725] This error in combination with the 10% monthly cap under the BSA, resulted in customers with demand rates being billed less than they otherwise would and growth in the BSA deferral balances. Company Witness Blazunas estimated that the demand billing determinant error has resulted in an under recovery of billed distribution revenue of approximately $12.7 million per year for the affected classes.[726] The BSA operated as it was designed to do. There was no flaw in how the BSA addressed this issue.

AOBA argues that the BSA is no longer appropriate, at least for large commercial buildings due to the energy efficiency requirements established in the Clean Energy Act.[727] As the Company explained in the Initial Brief,[728] the provision in the Clean Energy Act to which AOBA points will have little, if any, impact during the term of the MRP. Moreover, the Council has already extended the implementation dates for these provisions that relate to smaller commercial buildings. AOBA

724 AOBA Brief at 84.
725 As was noted in the Initial Brief at n.1324, it is ironic that AOBA points to these balances as evidence the BSA is flawed but then argues against the Company being able to use corrected demand billing determinants in its rate design. If adopted, AOBA's position would contribute to higher BSA deferral balances than would otherwise be the case if the Company is able to use corrected demand billing determinants in its rate design.
which would contribute to higher BSA deferral balances than would otherwise be the case.
726 PEPCO (6F): Blazunas Third Supp. at 5:12-14.
727 AOBA Brief at 81-82.
728 Initial Brief at 236-237.

has consistently sought to eliminate the BSA since the Commission approved it. Yet, each time the Commission has examined the BSA it has concluded that the BSA should be continued.[729]

Nor is it appropriate to terminate the BSA with approval of an MRP because the two do not serve the same function. As Company Witness Zarakas testified, "[t]he BSA provides a mechanism that addresses volatility in sales, while the MRP provides Pepco with the opportunity to address transitional issues, without falling behind in cost recovery or needing to file a new rate case. As noted by Company Witness McGowan, Pepco's proposed MRP also provides the parties with the opportunity to review the utility's capital plans at the onset of the MRP."[730] Indeed, a number of utilities that have MRPs in place also had full or partial decoupling, as of the date of the reports, including BGE, since the Maryland Commission recently approved its MRP and left its decoupling mechanism in place.[731]

Finally, the Commission has held that, as the proponent of a change to a Commission-approved mechanism, AOBA has the burden of persuasion on this issue.[732] For the reasons set forth herein, in the Initial Brief and the Company's testimony on this issue, AOBA has failed to meet that burden. The BSA should be not be terminated as it continues to operate as the Commission approved, and it has a critical role to play in achieving the District's and the Commission's energy efficiency and usage-reduction goals as it enables the Company to promote energy efficiency and DER.[733]

[729] For example, in FC 1139, the Commission concluded that the BSA serves an important function and should be continued. Order No. 18846 at ¶306. The Commission also noted that the majority of the companies in the Company's proxy group have some form of decoupling mechanism. *Id.* at ¶294.

[730] PEPCO (3J): Zarakas Rebuttal at 7.

[731] *See generally*, MdPSC Order No. 89678. Earlier this year, the Maryland Commission held that it was appropriate to retain its BSA as part of its MRP Pilot. MdPSC Order No. 89482 at ¶57.

[732] FC 1139, Order No. 18550 at ¶28.

[733] PEPCO (4F): Blazunas Rebuttal at 20:11-14; PEPCO (4B): McGowan Rebuttal at 45:8-10.

XII. BWLDC'S PIMS ARE UNTIMELY, VIOLATE PEPCO'S DUE PROCESS RIGHTS AND ATTEMPT TO FORCE THE COMMISSION TO HEAR MATTERS THAT ARE NOT PROPERLY BEFORE IT.

Order No. 20273 directed the parties to "include in their Rebuttal testimony those PIMs which they believe are trackable and achievable in this case"[734] more than six months ago on April 8, 2020. BWLDC failed to do so. At the evidentiary hearing, BWLDC advised the Commission that it planned to file its proposed PIMs "on or before November 2nd."[735] BWLDC failed to do so. Recognizing that BWLDC had failed to shoehorn its contractor issues inappropriately into a rate case regarding Pepco's cost of service, in its initial brief BWLDC introduced for the first time what it purported were PIMs. The alleged PIMs are not actionable, in addition to being based on subject matter that is irrelevant to the Commission's proceeding and untimely.

Although BWLDC did not reference a particular order at the hearing, it appears that BWLDC was referring to Order No. 20375 in which the Commission allowed proposed PIMs to be submitted for its consideration until the close of the record (which at that point was scheduled to be November 2, 2020).[736] However, this was in response to a request in the Joint Report filed on April 17, 2020 regarding the first two PIMs meeting held pursuant to the AFOR Order. The Joint Report indicated:

> While the parties to Formal Case No. 1156 proceeding have had an opportunity to submit in testimony their thoughts on Pepco's proposed PIMs and PIMs to be considered in the current case, participants that are not Parties have obviously not submitted testimony. The participants to the PIM Meetings respectfully request that the Commission provide a deadline for and accept into the record comments from any participant in the first two PIMs meetings that is not a Party to Formal Case No. 1156, so that these participants also have an opportunity to provide their own specific views on Pepco's proposed PIMs, and their organization's desired outcomes, proposed metrics, potential PIMs, and supporting justification.[737]

734 FC 1156, Order No. 20273 at ¶106.
735 Tr. at 107:10.
736 FC 1156, Order No. 20375 at n.32.
737 Joint Report at 7.

In Order No. 20375 the Commission noted that it had not acted on this request and, therefore, allowed until the close of the record (November 2) for proposed PIMS to be submitted. There is no indication, that the Commission was altering its earlier directive in Order No. 20273 regarding the timing for participants, such as BWLDC, to submit proposed PIMs in FC 1156. Thus, proposing PIMs on brief on December 9 is untimely.

The fact that BWLDC presented its proposed PIMs for the first time on Initial Brief deprives Pepco of due process and is contrary to the applicable requirements of the District of Columbia Administrative Procedure Act ("DCAPA").[738] In a contested proceeding such as this, the DCAPA requires that "Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."[739] Pepco was not able to seek discovery regarding BWLDC's PIMs, to address them in testimony, or to cross examine any BWLDC witness sponsoring the PIMs.

Moreover, the matters about which BWLDC complains belong at an agency specifically established to hear those issues. Only by presenting evidence to the bodies that have the specialized knowledge and expertise and enforcement powers can wage and labor allegations be fully vetted and fairly resolved. As discussed in Pepco Response to BWLDC DR 1-1 Attachment,[740] wage matters relating to third-party labor contractors are already regulated at the District and Federal level. District and Federal agencies enforce wage and other labor standards

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738 The District of Columbia Court of Appeals has held that other than with regards to appellate procedure and standard of review, the DCAPA is applicable to the Commission. *Chesapeake & Potomac Tel. Co. v. Public Serv. Comm'n*, 339 A.2d 710, 713-14 (D.C. 1975). The Court held that because the DCAPA was applicable to proceedings before the Commission, the "procedures established by the Commission must conform with the minimum requirements set forth in the [DCAPA]." *Id*. at 715. The Court concluded that Commission actions that failed to satisfy this requirement are a "mere nullity." *Id*.

739 D.C. Code § 2-509(b).

740 Cross Examination Exhibit BWLDC-1.

and give contractor employees the right to complain about wages and other labor issues and give the employers the right to defend themselves against such complaints. For example, the Labor Standards Bureau of the District Department of Employment Services:

> [A]dministers and enforces the District of Columbia labor laws. The office investigates wage complaints, evaluates employee and employer safety/health in the workplace and adjudicates compensation/medical care claims for sector employees injured in the course of employment. In addition, the office provides administrative and semi-judicial proceedings to assist in resolving disputes that may arise in connection with claims filed for workers' compensation benefits.[741]

Similarly, at the Federal level, the Wage and Hour Division of the U.S. Department of Labor enforces Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act, enforces the Family and Medical Leave Act, and enforces the prevailing wage requirements of the Davis Bacon Act and the Service Contract Act and other statutes applicable to Federal contracts for construction and for the provision of goods and services.[742] These agencies are focused specifically on enforcing wage and other labor laws and the complaints and disputes that arise between employees and employers under those laws. Accordingly, these agencies (and others) currently have District and Federal jurisdiction and the specialized knowledge and expertise to address any potential wage and other employment disputes that may arise with respect to contractors and their employees.

The alleged evidence BWLDC presented in this proceeding, comprised largely of unverifiable hearsay, would be able to be fully vetted and ruled upon by the agencies established to decide these very issues. Those agencies have the expertise in labor law to determine whether there are, in fact, legal violations. For example, BWLDC claims that under its purported survey,[743]

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[741] D.C. Department of Employment Services website - https://does.dc.gov/service/labor-standardsworker-protection.

[742] U.S. Department of Labor website - https://www.dol.gov/agencies/whd/about.

[743] As Company Witness Sullivan testified, "[t]hat the survey itself was not included in the information, some of the results from the survey were there. I can't validate any information on the survey nor was I asked to validate any information in the survey. There is a lot of redacted information on the subsequent spread sheets and it's not really

22% of the employees of Pepco's contractors were paid less than the District's minimum wage.[744] However, it is not clear from the purported evidence in the record whether any of the survey responders met the legal requirements for District minimum wage. The law in this area is nuanced and highly fact specific. For example, D.C. Code § 32-1003, which establishes the requirements for the minimum wage and addresses cross-border employment provides:

> A person shall be employed in the District of Columbia when: (1) The person regularly spends more than 50% of their working time in the District of Columbia; or (2) The person's employment is based in the District of Columbia and the person regularly spends a substantial amount of their working time in the District of Columbia and not more than 50% of their working time in any particular state.

In support of its proposed PIMs, BWLDC also raises the fact that contractor employees working for DDOT on a DC PLUG initiative project, for DC Water or on Washington Gas projects may be paid more than contractors for Pepco projects.[745] As Company Witness Sullivan testified, however, in these cases, contractors were required by law to pay employees at a higher level.[746] That there is a difference in wage rates is not a violation of law; instead, it is a differentiation of requirements that Congress or the Council has determined is appropriate. These are not issues that can be determined in this forum.[747]

Finally, it is notable that BWLDC did not bring forward a single case in which a claimed Pepco contractor wage violation has been adjudicated in an appropriate forum and the contractor has been determined to be in violation of the law. It strains credibility that if the minimum wage violations were as rampant as BWLDC's alleged survey purports, none of the agencies tasked with

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clear what questions were asked and what some of the columns stand for. So, I can't validate any information or was I asked to." Tr. 288-289. The purported evidence is nothing more than an incomprehensible spreadsheet of undefined data.

744 BWLDC Brief at 7.

745 BWLDC Brief at 9.

746 PEPCO (2M): Sullivan Rebuttal at 2:15-3:7.

747 *Washington Gas Light Co. v. Public Service Comm'n*, 450 A.2d 1187, 1203 (D.C. 1982)(social legislation best left to the legislative branch of government).

enforcement of these laws have found any such violations. BWLDC has made a lot of unsubstantiated allegations before the Commission but has failed to establish with any outside credible, objective evidence that there are employee wage and labor violations that warrant action on the part of the Commission – and certainly not the PIMs that BWLDC is now proposing.

XIII. CONCLUSION

For the reasons set forth herein and in Pepco's Initial Brief, the Company respectfully requests that the Commission approve the implementation of an MRP as an AFOR pursuant to DC Code § 34-1504(d)(2) and in particular the MRP Enhanced Proposal that provides needed customer assistance or, in the alternative, the Original MRP.

Respectfully submitted,

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December 23, 2020

CERTIFICATE OF SERVICE

I hereby certify that a copy of Potomac Electric Power Company's Reply Brief has been served this December 23, 2020 on:

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