BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

IN THE MATTER OF THE APPLICATION OF POTOMAC ELECTRIC POWER COMPANY FOR AN ELECTRIC MULTI-YEAR PLAN	* * *	CASE NO. 9702

* * * * * * * * * * * * *

MOTION TO STRIKE PEPCO'S PROPOSED CLIMATE SOLUTIONS PROGRAMS

Pursuant to Maryland Annotated Code, Public Utilities Article §§ 4-101 and 4-102, the Maryland Office of People's Counsel requests that the Public Service Commission strike the "climate solutions programs" proposed by Potomac Electric Power Company in its Application for a Second Electric Multi-Year Plan ("MYP 2").

INTRODUCTION

Pepco's MYP 2 proposes a set of four "portfolios" that Pepco describes collectively as "climate solutions programs."[1] Two of these portfolios (Electrifying Transportation and Planning Efficient Electrification) are true portfolios, in that they contain multiple distinct programs.[2] The other two programs—Decarbonizing Buildings

---

[1] Direct Testimony of David S. Schatz ("Schatz Direct") at i and 6-7 (Table 1). Henceforth, OPC refers collectively to Pepco's four programs and portfolios as the company's "climate solutions programs" or "programs." OPC refers to Pepco's Decarbonizing Buildings portfolio, which contains one program (Beneficial Electrification), using the program name. Similarly, OPC refers to Pepco's Activating the Local Energy Ecosystem Portfolio, which contains one program (Smart Inverter Pilot), using the program name.

[2] Schatz Direct at i, 6-7 (Table 1).

and Activating the Local Energy Ecosystem portfolio—contain only program each, Beneficial Electrification and Smart Inverter Pilot, respectively.[3]

According to Pepco, the purpose of the programs is to "advance decarbonization across homes and businesses in its service territory,"[4] by advancing electrification "across multiple sectors."[5] Pepco proposes to spend nearly $151 million on the programs over the term of the MYP 2; to defer the expenditures to four regulatory assets (one for each portfolio); and to begin recovering the regulatory assets through base rates starting with the MYP 2.[6] More than half of the total budget, or around $77 million, would fund rebates for the purchases of electric equipment owned, maintained, and operated by customers and located on the customer side of the meter.[7] Another $36 million would fund rebates for customer- and utility-side make-ready work.

The Commission should strike Pepco's climate solutions programs for two reasons. *First*, while Maryland's building and transportation sectors must be generally electrified for the State to achieve the greenhouse gas reduction targets in the Climate Solutions Now Act ("CNSA"), consideration of Pepco's programs in the MYP 2 would require the Commission to make major policy decisions about electrification—and the

[3] *Id.*
[4] *Id.*
[5] *Id*. at 3, lines 2-15.
[6] Direct Testimony of Robert T. Leming ("Leming Direct") at 22, lines 2-14. As is discussed below, Pepco proposes to amortize its four regulatory assets over periods ranging from five to thirteen years. Consequently, each regulatory asset would have a revenue requirement extending well beyond the three years of the MYP 2. Schatz Direct at 50, line 8 – 51, line 5.
[7] Pepco's Decarbonizing Buildings program would offer around $75 million in rebates for heat pumps, while its Transportation Electrification portfolio includes $2.25 million in rebates for charging infrastructure associated with commercial fleet electrification.

utilities' and ratepayers' role in electrification—in a proceeding that is neither designed for, nor suited to, such decision-making. As the Commission stated in its order granting OPC's Motion to Strike BGE's customer electrification plan in Case No. 9692, "policy decisions to address and pay for electrification to meet the requirements of the CSNA should not be made in isolation in a single utility's MYP."[8] The Commission also observed that "it is prudent and consistent with past precedent for the Commission to consider major new policy proposals in a separate docket rather than in a base rate case, where the parties and the Commission are required to address a multitude of issues in a constrained time frame."[9]

Furthermore, at least two of Pepco's proposed programs clearly *are* appropriate for consideration in other active Commission dockets. By any measure, Pepco's Electrifying Transportation portfolio is a new phase of the company's electric vehicle ("EV") program approved in Case No. 9478, the Commission's EV pilot program docket, and should be considered there.[10] Pepco's Beneficial Electrification program belongs in Case No. 9705, the Commission's 2024-26 EmPOWER docket—in fact, as is discussed below, Pepco included the program its 2024-26 EmPOWER plan, only without a cost recovery request.[11]

---

[8] Order No. 90755 at 9.
[9] *Id.*
[10] Schatz Direct at 17, lines 9-17 and p. 19, lines 14-18. The program in the Planning Efficient Electrification portfolio to provide make-ready incentives for EV charging would also be appropriately filed in Case No. 9478.
[11] The program in the Planning for Efficient Electrification portfolio to provide make-ready incentives, technical support, and workforce development training for building electrification could also have been included in Pepco's EmPOWER plan.

Second, Pepco's proposal to rate-base the cost of rebates to fund customer-side equipment and upgrades is contrary to established ratemaking principles, which authorize utilities to collect a rate of return on property that *they* own and use to provide service to customers. To put the costs of its electrification plan into rate base, as Pepco proposes, would cause long-term rate increases that are—in the Commission's recent words—"dramatic."[12]

In Case No. 9692, the Commission struck BGE's customer electrification plan without prejudice to BGE's filing the same or an amended electrification plan in another docket, including the EmPOWER Maryland docket or a generic policy docket.[13] It would likewise be appropriate in this case for the Commission to strike Pepco's proposed climate solutions programs without prejudice to their being re-filed in appropriate dockets (or, in the case of the Beneficial Electrification program, without prejudice to its being considered as filed in Case No. 9705).

BACKGROUND

1. Procedural History Regarding Pepco's MYP 2 Application

On February 14, 2019, the Commission initiated an investigation concerning "Alternative Forms of Regulation" in Public Conference 51 ("PC51").[14] On August 9, 2019, the Commission entered an order finding that the record developed in PC51 supported the use of multi-year rate plans ("MYPs") as an alternative to traditional

[12] Order No. 90456 at ¶ 47.
[13] Order No. 90755.
[14] Notice of Technical Conference on Alternative Forms of Ratemaking, ML# 223975.

ratemaking methods and that "a properly constructed multi-year rate plan based on a historic test year and allowing up to three future test years can produce just and reasonable rates and can be implemented at this time, subject to developing the accommodating processes and procedures."[15]

On February 4, 2020, the Commission entered an order establishing a pilot program framework "for the Maryland utility that is the first to file an MYP application to serve as a 'Pilot Utility.'"[16] On May 15, 2020, Baltimore Gas and Electric Company ("BGE") became the "Pilot Utility" for the multi-year rate plan pilot when it filed its first multi-year plan ("MYP 1"), covering the years 2021-2023.[17] On December 16, 2020, the Commission entered an order approving BGE's MYP 1 "to acquire experience and develop 'lessons learned' relating to MYP filings, with the expectation that regulations regarding MYP filings would eventually be developed and adopted."[18] On February 17, 2023, BGE filed for its second MYP, which is currently pending before the Commission.

Though the Commission intended a "lessons-learned" analysis to follow the issuance of the BGE MYP order and the opportunity to develop regulations for MYP applications, the MYP pilot order did not expressly preclude other utilities from filing an MYP, and on October 26, 2020—before the Commission issued Order No. 89678 approving BGE's MYP—Pepco filed an application for its first MYP. The Commission issued Order No. 89868 approving Pepco's first MYP on June 28, 2021.

[15] Order No. 89226 at 56.
[16] *See* Order No. 89482.
[17] *See* Case No. 9645.
[18] Order No. 90401 at ¶ 3.

On May 1, 2023, Pepco filed its MYP 2. The programs and proposed expenditures in MYP 2 are generally similar to those that the Commission approved in MYP 1. One major difference is that the MYP 2 includes Pepco's climate solutions programs, which are the subject of this motion.

2. The Commission's Dismissal of BGE's Customer Electrification Plan in Case No. 9692.

In its application for a second MYP, BGE proposed a customer electrification Plan. The plan comprised building electrification, non-road electrification, and workforce development programs, which together had a budget of approximately $272 million over 2024-2026. BGE sought to defer the program costs to a regulatory asset that would be amortized over 12.5 years and recovered in MYP 2 base rates starting in 2024.[19] Customer rebates for purchases of new electric appliances and equipment accounted for approximately 90 percent of the cost of BGE's programs.

On June 6, 2020, OPC moved to strike, or alternatively, dismiss BGE's proposed electrification plan from Case No. 9692.[20] OPC argued that BGE's electrification program should be removed from the MYP because: (1) the plan represented a major policy proposal inappropriate for consideration in the context of a rate case, especially given the evident conflicts between the plan and Maryland's established building decarbonization policy; (2) the plan was untimely, given the Maryland Department of the Environment's ongoing work to develop the State climate plan; (3) the plan was

[19] *See* Direct Testimony of Mark D. Case at 63. BGE states that 12.5 years is the average lifetime of the electrification measures supported by the plan.
[20] ML# 304507.

essentially an EmPOWER plan that BGE sought to recover through base rates, rather than the Commission-directed EmPOWER surcharge mechanism; and (4) BGE's proposal to finance—and earn a return on—behind the meter equipment purchases contravened established ratemaking principles. Staff and the Maryland Energy Administration filed responses agreeing with and supporting OPC's motion.[21]

On August 9, 2023, the Commission issued Order No. 90755 granting OPC's Motion to Strike without prejudice to BGE filing its plan in another docket.[22] The Commission found that "it would be premature to consider and potentially approve BGE's electrification plan, in the current proceeding" given that MDE's State greenhouse gas reduction plan and the Maryland Build Code Administration building decarbonization report are not due until December, 2023.[23] The Commission further determined that "policy decisions to address and pay for electrification to meet the requirements of the CSNA should not be made in isolation in a single utility's MYP," and that considering new policy proposals in a separate docket, rather than in a base rate case, "is prudent and consistent with past precedent."[24] In short, the Commission found that the best avenue for addressing BGE's electrification plan "is through another proceeding."[25]

3. Pepco's Climate Solutions Programs

Pepco's proposed climate solutions programs consist of four portfolios: Electrifying Transportation, Decarbonizing Buildings, Planning Efficient Electrification,

[21] Order No. 90755 at 5–6.
[22] Order No 90755 at 11.
[23] Order No. 90755 at 8.
[24] Order No. 90755 at 9.
[25] Order No. 90755 at 11.

and Activating the Local Energy Ecosystem. Pepco proposes to spend $150.8 million across the programs within these portfolios during the MYP, to defer the expenditures to regulatory assets amortized over periods ranging from five to thirteen years, and to begin recovering the regulatory assets in MYP 2 base rates at Pepco's authorized rate of return.[26]

The Beneficial Electrification program is the largest of the programs, with a proposed budget for 2024-2026 of $88,033,857, of which $74,826,620 would be for rebates for customer-owned heat pumps.[27] Pepco intends to target 44 percent of these rebates to low- and moderate-income ("LMI") customers.[28] Pepco's stated goal for this program is to promote building electrification in its service territory by providing "equipment electrification incentives that Maryland utilities historically have not offered through the EmPOWER Maryland programs."[29] Like BGE's customer electrification plan Pepco's proposal is mainly a heat pump rebate program, but would also provide funding for "customer and contractor awareness, analysis, training, and other support necessary to encourage eligible equipment adoption.[30] Unlike BGE's program, which would have required customers to retain their existing gas heating systems to back up rebated electric heat pumps, projects eligible for rebates must either "be replacing or partially offsetting the use of fossil fuel equipment with electric technologies."[31]

---

[26] Leming Direct at 22, lines 2-14.
[27] Schatz Direct at 35, Table 3; Schatz Direct at (DSS)-2, page 1.
[28] Schatz Direct at 35, lines 3-8 and Table 3.
[29] Schatz Direct at 30, lines 13-16.
[30] Schatz Direct at 30, lines 13-18.
[31] Schatz Direct at 30, lines 18-19.

The Electrifying Transportation portfolio is the second-largest of the four programs, with a proposed budget over the MYP 2 of $42,180,000.[32] Consisting of six programs, this portfolio is focused on "reducing the high up-front cost of make ready infrastructure" by offering "incentives to offset the cost of upgrading electric capacity and the make-ready work necessary to prepare a site for the installation and connection of EV chargers to the grid."[33] The incentives provided by this program would fund both utility-side and customer-side equipment. According to Pepco, these investments would enable customers and third-party providers to deploy charging stations to support light, medium, and heavy-duty EVs. This portfolio would also fund through 2027 Pepco's operation of the charging stations it has developed under the Commission's EV pilot program in Case No. 9478.[34]

The Planning Efficient Electrification portfolio has a budget of $18,741,859[35] and aims to provide both incentives and "a set of services that target infrastructure costs and lack of education barriers" directly impacting the speed of customer electrification.[36] Through this portfolio, Pepco proposes to offer make-ready incentives for "non-equipment" projects that residential and commercial customers need to electrify—such as

[32] Errata to Direct Testimony of Pearl Donohoo-Vallet at 28, Table 2.
[33] Schatz Direct at 16, lines 13-18.
[34] Although Phase I of the Commission's EV pilot program will formally end on December 31, 2023, Pepco currently has Commission authorization to operate its public charging program until the end of 2025. Letter Order, ML# 301131 (March 15, 2023). This authorization allows both completion of the build-out of Pepco's public EV charging station network and Pepco's operation of those stations. Although OPC moves to strike Pepco's Transportation Electrification program, OPC does not object to Pepco's recovering through MYP 2 rates the costs of its public charging program through 2025.
[35] Schatz Direct at 45, Table 4.
[36] Schatz Direct at 37, lines 9-11.

electric service panel upgrades, wiring, and conduit installation.[37] This portfolio also includes two planning and technical support service programs. Pepco's Electrification Technical Advisory Service aims to provide pre-interconnection technical support for customers seeking to add at least one megawatt of onsite generation associated with electrification. Pepco's EV Make-Ready Planning and Support program aims to provide siting assistance to owners of public and private EV fleets, as well as owners of DC fast charger ("DCFC") locations capable of providing demand of at least 600 kW. The Planning Efficient Electrification portfolio includes a Beneficial Electrification Workforce Development program, with the goal of training a workforce of HVAC technicians to support the number of heat pump installations required to achieve state and local clean energy goals.[38]

The fourth program of Pepco's proposed climate solutions program is a Smart Inverter Pilot program that aims to assess how "smart" inverters[39] can be used to mitigate localized reliability violations that would otherwise require distribution system upgrades and thereby to increase hosting capacity for solar PV interconnections.[40] The proposed budget of this program over the MYP 2 is $1,805,375.[41]

---

[37] Schatz Direct at 38, lines 14-23 and 40, lines 7-16.
[38] Schatz Direct at 43,
[39] Inverters convert the power generated by photovoltaic solar panels from direct current ("DC") to alternating current ("AC") so that the power can enter utilities' electric distribution systems, which operate on AC. "Smart" inverters have advanced functionalities like voltage and frequency ride-through, dynamic reactive/real power support, ramp-rate control, and the capacity to communicate with utility systems. Smart inverters can operate either autonomously or under the active control and management by a utility or third party.
[40] Schatz Direct at 45, line 12 through page 46, line 16.
[41] Schatz Direct at 49, Table 5.

Across Pepco's climate solutions programs, approximately $113 million of the total budget, or about 75 percent, would fund rebates for the purchase of electric equipment that will be owned, maintained, and operated by customers and located on the customer side of the meter and incentives for make-ready electrical work. As noted above, the cost of these rebates and incentives would be recovered through base rates, an unprecedented expansion of the use of regulatory assets to recover the costs of rebates.

Pepco's application does not explain why the company is proposing its climate solutions programs in the MYP 2. Nor does Pepco identify any statute, regulation, or Commission order as its basis for including its electrification plan. Pepco only asserts that its programs are necessary to "address the urgency" of State and local climate and clean energy goals.[42]

ARGUMENT

I. The Commission should strike Pepco's climate solutions programs from the MYP 2 because they raise major policy questions and technical issues that are not appropriate for a base rate case.

Like BGE's electrification plan struck by the Commission in Case No. 9692, Pepco's climate solutions programs present major new policy proposals that are wholly inappropriate for consideration in a base rate case. Pepco contends that its programs aim to "lower the barriers" for achieving state and local climate and clean energy goals.[43] The fact that at least two of the programs proposed by Pepco are clearly more appropriate in other existing dockets suggests that Pepco may also be motivated by the

[42] Schatz Direct at 13, lines 12-16.
[43] Schatz Direct at 5.

opportunity in the MYP 2 to include its program costs in base rates. But whatever Pepco's intent—and whatever the substantive virtues and shortcomings of its programs—any decision by the Commission to approve, modify, or deny them entails major decisions about the role utilities will play in achieving state and local decarbonization policies.

Pepco's Beneficial Electrification and Planning for Efficient Electrification programs implicate a number of questions similar to those presented by BGE's customer electrification plan, including whether utilities should be allowed to rate base the costs of investments in behind-the-meter infrastructure the utility does not own, what rates of return would be appropriate for non-capital program costs, and the extent to which proactive "make-ready" investments are appropriate. Pepco's Transportation Electrification portfolio raises questions about what services and incentives utilities should provide in today's rapidly evolving EV market landscape to facilitate transportation electrification And Pepco's smart inverter pilot raises both technical issues about the functionality of smart inverters and policy issues regarding utility control and management of DERs.

These issues are inappropriate for consideration in a base rate case. A base rate case has a narrow purpose: to set just and reasonable rates that provide "a reasonable return on the fair value of the public service company's property used and useful in providing service to the public."[44] Base rate cases are not a suitable vehicle for

[44] PUA § 4-101.

establishing new policies—especially ones that entail a significant expansion of the utility business model—or new pilot programs that involve complex technical questions concerning DER integration.

The Commission's MYP pilot did not change the narrow purpose of a base rate case. The Commission initiated the MYP pilot because of the perceived harms from "regulatory lag" of the standard ratemaking process and to make revenues more predictable for utilities, rates more predictable for customers, decrease administrative burdens on regulators, and promote transparency concerning utility planning processes.[45] Although the Commission found that "one or more forms of [alternative forms of regulation] may be helpful, if carefully implemented, 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,"[46] the Commission did not, in approving the use of MYPs, authorize utilities to use MYPs as vehicles for entirely new programs unrelated to the determination of "the fair value of the public service company's property used and useful in providing service to the public."[47]As the Commission found in Order No. 90755, "it is prudent and consistent with past precedent for the Commission to consider major new policy proposals in a separate docket rather than a base rate case."[48] Just as the Commission struck BGE's customer electrification plan from Case No. 9692 for being inappropriate for

---

[45] Order No. 89226 at 52-54.
[46] *Id*. at 53.
[47] PUA § 4-101.
[48] Order No. 90755 at 9.

consideration in a base rate proceeding, the Commission should strike Pepco's climate solutions programs from this case.

II. All of Pepco's climate solutions programs could be appropriately considered in other Commission dockets.

A. Pepco's Beneficial Electrification and Planning for Efficient Electrification programs should be considered in the Commission's EmPOWER docket.

Pepco's Beneficial Electrification program is an EmPOWER[49] program: in fact, Pepco has included this program in the middle and maximum scenarios of its 2024-26 EmPOWER plan submitted in Case No. 9705, only without the cost recovery proposal included in this MYP 2.[50]

The building programs within Pepco's Planning for Efficient Electrification portfolio were not included in Pepco's EmPOWER plan but are EmPOWER-type programs. These programs intend to supplement projects incentivized through the Building Electrification program. As Pepco explains, "From a customer's perspective, Pepco intends to implement this program in tandem with the Beneficial Electrification program and other EmPOWER programs."[51]

[49] The EmPOWER Maryland Energy Efficiency Act of 2008, codified at PUA § 7-211, requires, subject to Commission review and approval, electric and gas companies to develop and implement cost-effective energy efficiency and conservation services. The Commission's current EmPOWER docket, in which utilities are developing their EmPOWER plans for the 2024-2026 program cycle, is Case No. 9648.
[50] Pepco 2024-2026 EmPOWER Maryland Program Filing, (ML# 304395) at 3.
[51] Schatz Direct, Schedule DSS-3 at 1.

In its EmPOWER plan, Pepco explains why it is seeking cost recovery for the Beneficial Electrification program through MYP 2 rates, rather than through the EmPOWER surcharge, as follows:

> Pepco's Middle and Maximum Scenarios include the Beneficial Electrification Program as proposed in its Multi-Year Plan…. Pepco recommends that cost recovery for the Beneficial Electrification Program be in base rates as proposed by Pepco in Case No. 9702. The bill impacts over the 2024-2026 cycle are approximately 42% lower for Pepco's residential customers under a base rate recovery approach, which is aligned with the historic cost recovery model, as compared to the alternative of expensing Pepco's proposed electrification programs.[52]

Pepco's approach, however, contravenes the Commission's directive in December, 2022 for EmPOWER to be transitioned from a program in which costs are amortized over five-year periods, with utilities collecting carrying charges on the unamortized balance, to a program in which costs are fully expensed on an annual basis.[53] Pepco attempts to distinguish electrification measures—and justify their being rate-based—on the grounds that they are "more complex than traditional energy efficiency measures because they induce a conversion from one technology to a different technology rather than an installation of the same technology but at a higher efficiency."[54] But the Commission has already rejected this argument from Pepco and the other Exelon utilities three times: first in the Order transitioning EmPOWER to an expensing model;[55] then in the goal-setting order for the 2024-26 EmPOWER cycle;[56] and finally in the order denying the Exelon

[52] Pepco 2024-2026 EmPOWER Maryland Program Filing, (ML# 304395) at 3.
[53] Order No. 90456.
[54] Schatz Direct at 34, lines 14-17.
[55] Order No. 90456 at ¶ 25.
[56] Order No. 90546 at ¶¶ 42-43 and FN 72.

utilities request for rehearing of Order No. 90456.[57]

By proposing to rate-base the costs of an EmPOWER program, Pepco attempts to use its MYP 2 to circumvent the Commission's clear directive on how energy efficiency program costs should be treated. Moreover, Pepco's idea of "affordability" comes at a high cost for utility customers.[58] Like the credit card customer who makes minimum payments and then must pay interest on the unpaid balance, Pepco's proposal would drastically increase ultimate costs for customers because customers would pay Pepco's rate of return on the unpaid balance. Further, these high costs disproportionately impact low-income customers, who face barriers that prevent them from benefitting from energy efficiency programs to the same extent as more affluent customers.[59] Pepco's proposal would exacerbate those impacts just when the General Assembly and the Commission are endeavoring to make EmPOWER more equitable.[60]

Like BGE's electrification plan proposed in Case No. 9692, Pepco's proposal is yet another request to overrule the Commission's holding that utilities move to an EmPOWER model in which all program costs are expensed. The Commission should reject that effort and reaffirm its conclusion that putting EmPOWER costs into the rate base would impose dramatic increases in rates for customers.

---

[57] Order No. 90592 at ¶ 13.
[58] Schatz Direct at 10, line 13.
[59] *See* Future Programming Work Group Report, Case No. 9648 (April 15, 2022) at 25 (discussing study findings that low-income customers annually contribute about $49 million to energy efficiency programs but receive only $28 million in benefits).
[60] *See* Maryland Laws of 2023, Ch. 572 (modifying the EmPOWER program to require low-income energy-savings goals).

Pepco's proposal also undercuts another fundamental and longstanding principle of the EmPOWER program: the transparency that results from the line-item surcharge on customer bills. Since the start of EmPOWER, all program costs have been recovered through that surcharge line-item. The surcharge serves the important purpose of informing customers of the amounts they are paying toward rebate and other related programs that are separate from the utilities' core service of delivering electricity and gas to customer homes. The Commission recognized the surcharge's transparency benefits in Order No. 90456 when it rejected the Exelon utilities' proposal to continue amortizing EmPOWER costs, stating that it "would eliminate the EmPOWER Maryland surcharge line item on customer bills and embed the EmPOWER program costs in base rates, *effectively hiding the cost and presence of the program in distribution rates and to the benefit of no one*."[61] Pepco's proposal to embed its proposed electrification plan in base rates would similarly hide program costs in base rates to the benefit of no one.

B. Pepco's Electrifying Transportation portfolio is a new phase of the company's electric vehicle pilot it should be considered in Case No. 9478 after the Commission's review of Phase I.

Pepco's Electrifying Transportation portfolio represents a significant new phase of the company's current electric vehicle pilot program and for that reason should be considered in Case No. 9478, the Commission's EV pilot program docket.

In 2019, the Commission issued an Order in Case No. 9478 establishing a statewide EV portfolio "to incentivize the deployment of charging infrastructure in

---

[61] Order No. 90456 at ¶ 51 (emphasis added).

furtherance of state policy goals and commitments for electrification of Maryland's transportation sector."[62] The Commission's Order approved Phase I EV pilot programs for Pepco, along with Maryland's other investor-owned electric utilities and the Southern Maryland Electric Cooperative, and directed the utilities to file program offerings consistent with the Order.[63] Pepco filed its program offerings on April 19, 2019 and has operated Phase I of its EV pilot program continuously since, while making various program modifications over the years.[64]

Phase I of the Pepco's EV pilot program will end on December 31, 2023, though the Commission has authorized Pepco to continue building and operating a network of Pepco-owned EV chargers until the end of 2025.[65] Pepco must file a final EV program report on March 1, 2024,[66] and the Commission has directed a final review of all of the utilities' EV pilot programs via legislative-style hearing in May, 2024.[67]

In this MYP 2, Pepco proposes an Electrifying Transportation portfolio consisting of five programs intended "to accelerate the deployment of EV charging stations for a variety of use cases."[68] The first program would extend through 2027—i.e., for two additional years—the operation of Pepco's network of public EV charging stations. The

---

[62] Order No. 88997, *In re Statewide Electric Vehicle Portfolio* at 36.
[63] *Id*. at 81-83.
[64] Most recently, Pepco obtained Commission authorization to reallocate funds originally targeted to the buildout of Pepco-owned EV charging stations to other programs. Commission Letter Order, October 11, 2023 (ML# 305533) noting Pepco's August 1, 2023 semi-annual report (ML# 304387) and accepting alterations proposed therein.
[65] Commission Letter Order, March 15, 2023 (ML #301809), noting Pepco's February 1, 2023 semi-annual report (ML # 301131) and accepting alterations proposed therein, including extension of the timeframe for building out Pepco's public EV charger network to the end of 2025.
[66] Order No. 88997 at 74.
[67] *Id.*
[68] Schatz Direct at 14, line 6.

other four programs are new incentive-based programs to provide rebates for the purchase of customer-side EV equipment and to subsidize the costs of utility-side make-ready work necessary for EV equipment installations. [69] Incentives for customer-side equipment account for more than half of the portfolio's $42.4 million total cost.[70]

Pepco's Electrifying Transportation portfolio is one of two utility Phase II EV pilot proposals to be filed this year. In May, BGE submitted a Phase II proposal in Case No. 9478,[71] and in February BGE included a request in Case No. 9692, the company's second multi-year plan, to recover the costs of that program through base rates.[72] OPC filed comments that supported with modifications some parts of BGE's Phase II proposal, including two make-ready incentive programs, but asked the Commission to defer decision on other parts of the proposal until after next year's evaluation of Phase I of the EV pilot program.[73] OPC opposed BGE's cost recovery request in Case No. 9692 as premature and at odds with Commission precedent.[74]

Pepco's submission of both its substantive Phase II proposal and its associated cost recovery request in this MYP 2 is administratively simpler than BGE's bifurcated approach—but the proposal and cost recovery request both clearly belong in Case No. 9478, not this MYP 2.

---

[69] Schatz Direct at 14, lines 3-13.
[70] Schatz Direct at 28, Table 2.
[71] Electric Vehicle Program Phase II Proposal of Baltimore Gas and Electric Company, ML# 303131.
[72] Application of Baltimore Gas and Electric Company for a Second Electric and Gas Multi-Year Plan, ML# 301409.
[73] OPC Comments on BGE Phase II EV Pilot Program Proposal, ML# 305424.
[74] OPC Initial Post-Hearing Brief, ML# 305510.

As previously noted, Pepco's proposal raises important questions about the role utilities should play in the deployment and use of EV charging infrastructure. The MYP 2 does not provide a platform where these questions can be debated by all interested stakeholders—including state and local elected officials, EV industry stakeholders, and EV-driving utility customers[75]— and thoroughly considered by the Commission. Case No. 9478 provides exactly that platform,[76] enabling a more focused and deliberative review of the merits of Pepco's proposed EV incentives than is possible in this rate case, given the multitude of issues that the rate case presents. Consequently, Pepco's proposed Electrifying Transportation portfolio should be struck from this MYP 2.

C. Pepco's Smart Inverter Pilot Program should be considered in a separate docket.

The fourth of Pepco's climate solutions programs is a pilot program with the stated purpose of investigating how smart inverters could better optimize solar PV interconnections to potentially prevent the need for distribution system upgrades.[77]

OPC agrees that with a well-designed pilot, Pepco could gain valuable experience regarding how smart inverters interact with its distribution system, and ultimately deploy pilot learnings to reduce barriers to DER adoption, minimize grid impacts, and potentially

[75] A number of customers (whose interests OPC represents) frequently provide valuable information to the Commission in Case No. 9478 proceedings, both through written comments and through oral presentations and answers to Commission questions at administrative meetings and hearings.
[76] *See Notice and Opportunity to Comment on BGE Electric Vehicle Program Phase II Proposal,* ML# 30333 (June 5, 2023); *see also* ML# 303131 (Comments of Anne Arundel County Executive), ML# 303332 (Joint Comments of Members of the Maryland General Assembly), ML# 305408 (Comments of ChargerHelp), ML# 305414 (Comments of Weave Grid, Inc.), ML# 305415 (Comments of SWITCH Energy, Inc.), ML# 305424 (Comments of ev.energy).
[77] Schatz Direct at 46, lines 7-11.

lower customer interconnection costs in the future. However, this MYP 2 is the wrong forum for Pepco to propose this pilot for two reasons.

First, the subject matter of the pilot is highly technical, and Pepco's proposal raises novel issues under the Commission's new smart inverter regulations that require more stakeholder and Commission attention than is reasonably available within the constrained timeframe of a rate case. For example, Pepco states that during this pilot, it will gather data from smart inverters for the duration of the program and in limited circumstances may control the inverters to maintain grid stability.[78] The question of whether utilities should be allowed to monitor and control smart inverters was considered in the PC44 Interconnection work group, and at the work group's recommendation[79] the Commission promulgated regulations that establish standards for utility monitoring and control.[80] Pepco's proposed pilot complies with those regulations[81] but provides scant detail regarding either the circumstances in which it will monitor and control, or what devices it will use to do so.[82] In a recent pilot program concerning smart inverters conducted by the Pennsylvania utility PPL, these were subjects of significant discussion and debate.[83]

---

[78] Company Exhibit DSS-4 at 2.
[79] PC44, Docket Entry 308, *Phase IV Workgroup Report* at 27–28.
[80] *See* COMAR 20.50.09.06J.
[81] The regulations permit a utility to monitor and control a customer DER under 2 megawatts if the customer consents or the Commission approves a utility monitoring and control plan. COMAR 20.50.09.06J.(3). Pepco proposes to obtain customer consent for any monitoring and control it performs. Company Exhibit DSS-4 at 2.
[82] Pepco says only that "[i]n limited circumstances," it will "control the inverters to maintain grid stability through the end of the pilot." Company Exhibit DSS-4 at 2.
[83] Pennsylvania Public Utility Commission Case No. P-2019-3010128, PPL Electric Utilities Corporation Petition for Approval of Tariff Modifications and Waivers of Regulations Necessary to Implement its

Second, the design of the pilot program—which is in an early stage of development—could benefit from input from stakeholders that are not parties to this proceeding. Pepco's proposal vaguely refers to "test and evaluation plans" that the pilot will have," and that evaluation metrics "will be developed."[84] Pepco states that it will "publicly share key pilot program data" but does not explain what data will be shared. The results of this pilot may provide significant insight for other Maryland utilities evaluating how to implement and optimize smart inverters on their systems, and it may also provide crucial information to non-utility stakeholders—such as solar developers and DER aggregators—operating in Maryland. No such parties have intervened in this rate case, and their engagement would ensure that the pilot is optimally designed to yield the maximum benefit for the proposed costs.

For both of these reasons, Pepco's proposed Smart Invertor Pilot should be considered (assuming Pepco wishes to resubmit it) within PC 44 or in a stand-alone docket, not in this MYP 2. While OPC supports Pepco's evaluation of innovative solutions to help advance Maryland's climate goals—such using smart inverters to reduce the need for distribution system upgrades—those solutions are better developed outside of the rate case context.

Distributed Energy Resources Management Plan, docket available at https://www.puc.pa.gov/docket/P-2019-3010128.

[84] Schedule DSS-4 at 2.

III. The Commission should reject Pepco's proposal to rate base customer-side equipment because it is contrary to established ratemaking principles and at odds with the monopoly function of regulated utilities.

Pepco's proposal to rate base the costs of rebates and other non-capital electrification program costs is inappropriate because it would entail a radical and improper expansion of the electric utility business model in Maryland. The primary role of an electric and gas utility is to safely and reliably deliver electricity and gas to customers.[85] But Pepco's proposal entails putting the cost of rebates—money—into rate base, effectively casting Pepco in the role of electrification financier. Specifically, Pepco proposes to rate base (among other expenses) more than $100 million in electrification rebates for equipment and infrastructure that will be owned and maintained by customers and located on the customer side of the meter. Alternatively, one could consider the proposal as putting into rate base the appliances and EV chargers that the rebates help customers acquire, but that also would be inconsistent with core ratemaking principles because the utilities do not own customer equipment and cannot depreciate it.

In either case, Pepco's proposal raises the same significant public policy questions about the role of the utility and whether such a utility program would constitute unfair competition with non-utility market actors in electrification markets that this Commission has recently deemed inappropriate to consider in a rate case.[86]

[85] *See* PUA § 1-101(i)(1) ("'Electric company' means a person who physically transmits or distributes electricity in the State to a retail electric customer."); *id.* at (m)(1)("'Gas company' means a public service company that . . . transmits, sells, supplies, or distributes artificial or natural gas….").
[86] Order No. 90755.

Pepco's proposal also violates well-established ratemaking principles. For example, it is well-established that the rate base on which a utility earns a rate of return generally consists of its prudent investment, net of depreciation, in capital assets used to provide useful utility services to customers.[87] In Maryland, these principles are codified in PUA § 4-101, which provides that just and reasonable rates are those that yield "a reasonable return on the fair value of *the public service company's property* used and useful in providing service to the public" after reasonable deduction for depreciation and other necessary and proper expenses and reserves.[88] Here, Pepco proposes to receive a return on money—the cost of rebates—not company *property*. This fact exposes Pepco's proposal largely akin to the role of a bank, rather than a utility.

The proposal is also contrary to Commission ratemaking principles concerning regulatory assets. In extraordinary circumstances, the Commission sometimes allows utilities to include expenditures on non-capital assets in their rate bases through the vehicle of "regulatory assets." When a utility is granted regulatory asset treatment for a class of non-capital expenditures, the utility defers the expenditures to its accounting books. Then, if the Commission determines in the utility's next rate case that the expenditures were prudent and useful to the utility's customers, the regulatory asset is moved into the rate base, as though it were a physical asset, and the utility earns a return on it, either at the utility's authorized rate of return for investments in capital assets or at

---

[87] *See Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 364-65 (1986).
[88] PUA § 4-101 (emphasis added).

some alternative rate.[89] To qualify for regulatory asset treatment under the Commission's decisions, a class of expenditures must be both extraordinary, i.e., not a normal utility operating expense, and non-recurring.[90]

Recent examples of Commission authorization of regulatory assets include Case No. 9369, where the Commission authorized utilities to create regulatory assets for expenditures related to the COVID-19 pandemic;[91] Case No. 9478, where the Commission authorized regulatory assets for utilities' non-capital expenditures on time-limited EV pilot programs; and Case No. 9645, BGE's MYP 1, where the Commission authorized regulatory assets for Major Outage Event Restoration and an Underground Fault Detector Program.

In MYP 2, Pepco seeks to create a regulatory asset for, and earn a return on, the costs of its electrification programs. Pepco has failed, however, to explain how its proposed spending is extraordinary. Nor has Pepco stated that it will end its electrification programs after the three-year term of the MYP.

COMAR 20.07.04.08 illustrates how Pepco's proposal conflicts with well-established ratemaking policy. That regulation provides that "[r]evenues and expenditures credited or charged to Accounts 415 through and including 418 of the Uniform System of Accounts, as prescribed by the Federal Energy Regulatory Commission, relating to

---

[89] *See, e.g.,* Order No. 89542, where the Commission stated that it would consider in subsequent utility rate cases "issues such as the appropriate period of recovery for the approved amount of the regulatory asset, any amount of carrying costs thereon, and other related matters."
[90] *See, e.g.,* Order No. 89542 (authorizing establishment of a regulatory asset for COVID-19-related incremental costs).
[91] *See* Order No. 89542.

merchandising, jobbing, and contract work will not be allowed for rate making purposes in rate matters."[92] Account 416 is described in FERC's regulation to include expenditures for "[p]remiums given as inducement to buy appliances,"[93] a category that includes rebates for appliances, which constitute most of the costs that Pepco seeks to recover through base rates in this case. In Maryland, customer rebates provided through the EmPOWER program and paid for through the EmPOWER surcharge are an exception to this general requirement, but as explained above, Pepco's proposal avoids the EmPOWER process and the transparency of the surcharge, and it deviates from the Commission's ratepayer-protective decision to move to an all-expense model for EmPOWER costs.

Pepco's proposed electrification plan would, if approved, significantly expand Pepco's business, effectively transforming it into a bank, while also marking a major change in Commission policy concerning the establishment of regulatory assets—both changes that create new risks for customers. For these reasons, Pepco's plan should be removed from this case.

CONCLUSION

Building and transportation electrification are essential components of reducing GHG emissions in Maryland, and electric utilities have an important role to play in electrification. But the nature of that role and the electrification strategies utilities should implement are major policy questions that cannot be adequately addressed in base rate

[92] COMAR 20.07.04.08(A).
[93] 18 C.F.R. § 367.4160(b)(6).

cases. That is because base rate cases have established purposes and statutorily limited timeframes commensurate with those purposes. Electrification issues are better addressed in policy proceedings that allow for public comment, broad stakeholder input, hearings, and sufficient time for the Commission to develop a record and make fully informed decisions. For this reason, the Commission should strike Pepco's climate solutions programs from the MYP 2.

Moreover, the individual components of Pepco's programs are better considered in other Commission dockets. Pepco's building electrification and make-ready incentives are EmPOWER and EmPOWER-type programs, respectively, and should also be struck or dismissed because their inclusion in this rate case contravenes the Commission's decisions on cost recovery for EmPOWER programs in Order No. 90456. Pepco's Electrifying Transportation program is a proposed expansion of its established EV program that would be better considered in Case No. 9478. Pepco's Planning for Beneficial Electrification should be removed because it includes programs to support the building decarbonization and electric vehicle programs that are better considered in EmPOWER or Case No. 9478. And Pepco's Smart Inverter Pilot program raises technical questions better suited for PC 44 or a stand-alone docket than a rate case.

Finally, Pepco's proposal to rate-base $151 million in program costs—mostly for rebates for electric equipment owned operated by customers—would, if approved, constitute a radical and expensive expansion of Pepco's business model into finance.

For all these reasons, OPC respectfully requests that the Commission strike Pepco's proposed climate solutions programs from this case.

Respectfully submitted,

DAVID S. LAPP
PEOPLE'S COUNSEL

William F. Fields
Deputy People's Counsel

/electronic signature/
Jacob Ouslander
Assistant People's Counsel

/electronic signature/
Michael Sammartino
Assistant People's Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of November 2023, the foregoing "Motion to Strike Pepco's Proposed Climate Solutions Programs" was e-mailed to all parties of record to this proceeding.

<u>/electronic signature/</u>
Jacob M. Ouslander
Assistant People's Counsel