BEFORE THE
PUBLIC SERVICE COMMISSION OF
MARYLAND

IN THE MATTER OF THE APPLICATION OF POTOMAC ELECTRIC POWER COMPANY'S APPLICATION FOR AN ELECTRIC MULTI-YEAR PLAN	*	CASE NO. 9655
POTOMAC ELECTRIC POWER COMPANY'S APPLICATION FOR ADJUSTMENTS TO ITS RETAIL RATES FOR THE DISTRIBUTION OF ELECTRIC ENERGY	*	CASE NO. 9702

POST-HEARING INITIAL BRIEF
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INTRODUCTION

Pepco's reconciliation filing asks the Commission to approve the recovery of millions of dollars in capital and operations and maintenance (O&M) spending that the company has failed to demonstrate were prudent or necessary. Granting recovery for unsubstantiated or unneeded investments will perpetuate a cycle of overspending that has contributed to Pepco's ever-increasing rates. While Pepco customers today enjoy generally high levels of reliability, that reliability is funded through high rates, and no record evidence shows that continued, accelerated capital deployment is necessary to maintain current performance. Indeed, customer satisfaction with reliability may be high. Customer satisfaction with rates, however, is not.[1]

Despite this reality, Pepco continues to increase its spending—particularly on capital projects—without adequately considering its impact on rates, using reliability as a blanket justification. Reliability is the fallback justification for premature replacements and new investments—many of which Pepco fails to show address actual performance issues or deliver measurable benefits to customers. The company claims it takes affordability concerns into account. But Pepco's parent company, Exelon, appears to drive its investment priorities much more than a disciplined assessment of customer need or value.[2]

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[1] *See* Case No. 9702, Tr. 135:4-10 (Hightower, March 7, 2024) (agreeing that Pepco's customer satisfaction survey results show that "Pepco's customers are generally very satisfied with the reliability and quality of the electric service they receive but Pepco's customers are not very satisfied with the rates they must pay for that service.").

[2] *See* OPC Ex. 1 (noting Exelon's 6-8 percent earnings per share growth target and identifying rate base growth through Pepco's multi-year rate plans as growth drivers for 2022–2025); OPC Ex. 2 (showing that from 2022–2024, Pepco paid $1.074 billion in shareholder dividends to its parent company, Exelon).

Pepco's presentation in this proceeding compounds the concern. For a significant amount of the company's O&M and capital spending, the company has not met its burden of proof. This reconciliation case is a failure of transparency, substance, and clarity. The company omitted key information that could have been included in its direct case, forcing parties to rely primarily on burdensome discovery to evaluate the prudency of Pepco's spending. The testimony Pepco did file is fragmented, often omits basic justification for large variances between forecasted and actual spending, and presents spending information in a manner that frustrates meaningful review. Even with the benefit of extensive rebuttal and surrebuttal filings, Pepco has failed to adequately explain the majority of its excess O&M spending and significant portions of its capital expenditures.

The Commission has repeatedly emphasized that utilities must manage their operations and spending within the limits of approved multi-year rate plans. Yet Pepco's reconciliation filing suggests it views the budgets authorized in the Commission's Order No. 89868 as merely aspirational.[3] The Commission should reject the company's attempt to shift the focus away from authorized budgets and toward its own internal judgments.

This brief identifies major deficiencies in Pepco's reconciliation filing. It shows that Pepco has not provided sufficient justification for large O&M variances—particularly in FERC Accounts 588, 592, and 594—where unexplained overspending exceeds $14 million. It also demonstrates that Pepco failed to support the prudence of multiple capital projects, including its tree wire installations, substation transformer and

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[3] Order No. 89868, *Application of Potomac Electric Power Company for an Electric Multi-Year Rate Plan* (Case No. 9655, June 2021) (authorizing Pepco's MRP).

circuit breaker replacements, and services supporting the Livingston Road battery storage project. In each case, the company failed to show that the expenditures were necessary, cost-effective, or aligned with prudent planning practices.

Absent clear, project-specific evidence that spending variances were prudently incurred and consistent with customer interests, the Commission cannot—and should not—approve cost recovery. Doing so would shift unjustified costs onto ratepayers who are already bearing the burden of high electric rates. The Commission should disallow recovery of the unjustified costs identified in this brief and reinforce that utilities must demonstrate both need and prudence before recovering costs from captive customers.

STANDARD OF REVIEW

The Commission's task in this reconciliation proceeding is to review the prudence of Pepco's decisions and spending on operations and maintenance and capital projects placed into service in Rate Year 3 (RY3) that the company now proposes to move into rate base.[4] PUA § 3-112(b) places the burden of proof—including both the burden of production and the burden of persuasion—on the proponent of a new rate or change in rate.[5] As the Commission explains, the proponent of the rate increase "must produce

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[4] Order No. 89482 at 5, *In the Matter of Alternative Rate Plans or Methodologies to Establish New base Rates for An Electric or a Gas Company* (Case No. 9618, Feb. 2020) ("Within 120 days after the end of the initial MRP, the Pilot Utility must file a final reconciliation for any investments and costs in the MRP period not previously reviewed for prudency.") Investments that went into service during 2021 and 2022 were reviewed for prudence as part of Case No. 9702. *See* Order No. 91181, *Potomac Electric Power Company's Application for Adjustments to its Retail Rates for the Distribution of Electric Energy* (Case No. 9702, June 2024).

[5] PUA § 3-112(b); *In re Potomac Electric Power Company*, 99 Md.P.S.C. 125 (2008) (Order No. 82168, Case No. 9092, Phase II).

evidence sufficient to persuade us, by a preponderance of the evidence, that the proposed new rates are just and reasonable."[6] The Commission has further stated that meeting this burden of proof requires "a demonstration by the utility that its projects were appropriately selected, that they provided value to ratepayers, that good management judgment was exercised in the selection of the materials and methods used to execute the projects, and that the costs—by comparison with alternatives—were justified."[7]

ARGUMENT

I. The Commission's prudency inquiry should not unduly defer to Pepco's judgment.

Through its witnesses, Pepco asks the Commission to evaluate prudency in a manner that is excessively deferential to the utility. For capital projects, Pepco witness O'Donnell identifies three parameters the company uses to demonstrate prudence: (1) capital projects "must be used and useful and providing service" and O&M expenditures must be "reasonably incurred in fulfilling the obligations of the utility; (2) "projects must pass a reasonable business judgement decision process"; and (3) "project costs are managed in a reasonable manner."[8] Being "used and useful" is a prerequisite for cost recovery under Maryland law[9], but it is distinct from a prudence determination. A project

[6] 99 Md.P.S.C. 125.
[7] Order No. 91396 at 3–4, *Baltimore Gas and Electric Company's Application for an Electric and Gas Multi-Year Plan*, Case No. 9645 (Nov. 2024).
[8] Pepco Ex. 1-FR (Rebuttal Testimony of Elizabeth Morgan Downs O'Donnell) ("O'Donnell Rebuttal") at 14:4-10.
[9] Md. Code Ann., Pub. Util. Art. ("PUA") § 4-101(3).

that is serving customers—and went through the company's decision process—can still be found imprudent.

Ms. O'Donnell's second two parameters are certainly part of any prudency evaluation, and—*assuming* reasonableness—nearly all of Pepco's capital projects can satisfy Pepco's parameters. But the mere fact that a project is currently in-service and went through the company's business judgment decision process with costs that have been managed cannot be dispositive of prudence. While an internal review process can reduce the likelihood of the company pursuing imprudent investments, the mere *existence* of such a process cannot be used to justify the prudence of projects subject to it if the process itself is not reasonable. The Commission's responsibility is to determine the prudence—i.e., the actual reasonableness—of the projects selected through Pepco's "business judgment decision process" and the company's project execution and cost management. Pepco has not demonstrated that reasonableness, which requires evaluating cost effectiveness and available alternatives.

In fact, cost-effectiveness appears to be an after-thought in Pepco's prudency paradigm. Only the third prudency parameter Ms. O'Donnell presents refers to costs, but without any mention of cost-effectiveness. When asked where Pepco assesses the value to customers of a proposed project, Ms. O'Donnell responded that such evaluation occurs as part of the "used and useful" inquiry.[10] It appears that Pepco assumes that a "used and useful" project is cost-effective, but that cannot always be true. A project can be "used

[10] Tr. 60:17-23 (O'Donnell, March 5, 2025).

and useful" but still high cost compared to alternatives, including the alternative of deferring any investment. Indeed, Ms. O'Donnell's response suggests that Pepco only considers the costs of a project in the context of how the project is executed, and not in determining whether the project should be approved or how the project is designed. This conclusion is underscored by Pepco's refrain that it performs no cost-benefit analysis for projects within the normal course of business.[11]

In short, Pepco would have the Commission defer to Pepco's project development and management processes without considering how Pepco's work impacts customers, both in terms of reliability *and* customer costs. Pepco's standard fails to account for cost-effectiveness and consideration of alternatives, which are missing from its processes, but certainly are required under any reasonableness standard.

In addition to considering the reasonableness of the company's business judgment decision, the Commission's prudence review in this proceeding should focus on how Pepco's capital investments and O&M spending compared to the RY 3 workplan and forecasted budgets the Commission authorized in Order No. 89868. Indeed, OPC witnesses Alvarez and Stephens raised several concerns about relying on Pepco's self-proclaimed "reasonable business judgment." *First*, because Pepco does not compare the benefits to costs for its capital investments, "[l]ower-cost alternatives appear not to be evaluated, or evaluated only superficially, and never quantitatively."[12] A competitive

[11] OPC Ex. 17-FR (Panel Surrebuttal Testimony of Paul J. Alvarez and Dennis Stephens) ("Alvarez/Stephens Surrebuttal") at 6:2-5, Exhibit PJA-4 at 27; Tr. 136:19-23 (Young, March 5, 2025).
[12] *Id.* at 6:1-2.

business, in exercising its business judgment, must evaluate lower cost alternatives and how a project affects its customers. If it doesn't, then it is not exercising reasonable business judgment and it will lose customers. The Commission should hold utilities to the same standard.[13] Here, among other problems, the evidence shows that customer perspectives are not adequately represented in the project concurrence committee review process,[14] That failure underlies Pepco's request for additional revenue recovery and, ultimately, harms customers.

Second, Pepco points only to O&M performance—which has little relationship to Pepco's capital project budgeting and decision-making—to support its claim that it exercises fiscal discipline, for *both* capital and O&M projects.[15] Moreover, Ms. O'Donnell's claim that Pepco has "demonstrated fiscal discipline" for RY3 is not reflected in the evidentiary record.[16] Pepco's 7.4 percent O&M growth for RY3 exceeded the 4.1 percent inflation rate for calendar year 2023.[17] And Pepco's filed testimony and exhibits did not include any project-specific budgets for its RY3 O&M spend[18] that would enable parties to fully assess how well Pepco adheres to its O&M budgets. As Pepco witness David M. Vahos testified during the evidentiary hearing, as a general

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[13] See *Delmarva Power & Light Co. v. Pub. Serv. Comm'n*, 370 Md. 1, 5–7 (2002) (explaining that a purpose of utility regulation is to provide the regulation that competition cannot bring).
[14] OPC Ex. 17-FR (Alvarez/Stephens Surrebuttal) at 6:7-11.
[15] OPC Ex. 17-FR (Alvarez/Stephens Surrebuttal) at 6:14 – 7:8; Pepco Ex. 1-FR (O'Donnell Rebuttal) at 18:5-17.
[16] Pepco Ex. 1-FR ("O'Donnell Rebuttal) at 18:5-17.
[17] OPC Ex. 12-FR (OPC DR 10-7, Attachment); Pepco Ex. 16-FR (Rebuttal Testimony of David M. Vahos) ("Vahos Rebuttal") at 9, n. 8.
[18] Tr. 694:17-23 (Vahos, March 7, 2025).

matter the company does not even keep budget information that would allow for such a comparison.[19]

Ultimately, Pepco asks the Commission to determine prudency the same way it would in a historic test year case.[20] But as Ms. O'Donnell acknowledged during the evidentiary hearing, this proceeding is not a standard test year rate case.[21] The Commission should ensure its review focuses not just on the "historical information" regarding need and justification for the costs Pepco seeks to recover, but on whether the company executed its projects prudently. For O&M spending and capital projects included in its proposed MRP workplan, the Commission should scrutinize Pepco's ability to stay within the spending limits the Commission authorized in Order No. 89868.

II. The Commission should deny Pepco's request for excess O&M spending recovery.

Excessive O&M spending is responsible for the majority of Pepco's requested RY3 reconciliation revenue requirement. In RY3, Pepco incurred an O&M variance of $15,620,007.[22] This amount, as Pepco witness Leming stated at trial, accounts for roughly 50 percent of Pepco's reconciliation revenue requirement.[23] Yet, despite the outsized effect O&M spending has on the revenue requirement the company seeks to recover, Pepco provided thin support to justify its O&M variance.

[19] Tr. 694:17 – 695:10 (Vahos, March 7, 2025).
[20] Pepco Ex. 1-FR (O'Donnell Rebuttal") at 13:15-17.
[21] Tr. 62:8-10 (O'Donnell, March 5, 2025).
[22] Pepco Ex. 12-FR (Direct Testimony of Robert T. Leming) ("Leming Direct) Exhibit RTL-1, Schedule 3.
[23] Tr. 622:12-16 (Leming, March 7, 2025). In contrast, additions to rate base comprise just under one-third. *Id.* at 622:20-21.

Part A below explains how spending within Pepco's control is responsible for the majority of its O&M variance. **Part B** shows that Pepco has not met its burden of showing its excess spending in Accounts 588, 592, and 594 was prudent. **Part C** addresses Pepco's efforts to avoid having to meet its burden of proving the prudence of its O&M spending variances.

A. Overspending on O&M within its control comprises most of Pepco's requested RY 3 reconciliation revenue requirement.

Pepco's reconciliation filing identifies a $15.6 million variance in actual versus forecasted operation and maintenance spending, representing 51 percent of the company's $30.6 million requested revenue requirement.[24] While Pepco attributes most of this excess to pension and minor storm costs—both of which it asserts are beyond its control—the record reveals that the vast majority of the company's O&M variance stems from spending in the categories Pepco acknowledges is fully within its control. In fact, much of this excess is driven by spending in distribution-related accounts such as Accounts 588, 592, and 594, which are discussed in detail in Part II.B, below.

Pepco attributes its O&M spending excess to two cost pressures: pension and other post-employment benefits ("OPEB") costs, and higher minor storm expenses. According to Mr. Leming, pension and storms account for about 60 percent of Pepco's excess O&M spending.[25] Pension costs account for about $5.55 million of Pepco's reported O&M variance.[26] As shown by Exhibit RTL-1, Schedule 3, the $5.55 million variance related to

[24] Pepco Ex. 12-FR (Leming Direct) Exhibit RTL-1, Schedule 3.
[25] *Id.* at 7:19–23.
[26] Tr. 662:5-10 (Vahos, March 7, 2025).

pensions includes two separately identified variances: a $3.75 million variance (line 50) and a $1.8 million variance (line 48).[27] Minor storms account for about $3 million, [28] although it is unclear from Pepco's witness testimonies in which accounts these storm variances are reflected.

Yet, in claiming that its O&M costs are driven by higher than originally projected pension costs and minor storm activity, Pepco downplays how much of the O&M variance is due to factors solely within its control. Pension costs are recorded as administrative & general (A&G) expenses. Exhibit RTL-1 Schedule 3 shows that A&G expense accounts for only $6.6 million of Pepco's recorded $22.8 million total operation and maintenance expense variance—about 37 percent.[29]

Despite Pepco's claims, costs within Pepco's control account for most of Pepco's O&M variance. Had Pepco controlled such costs, the rate impact due to higher-than-expected pension, OPEB, and minor storm costs would be minimal. As will be discussed next, Pepco has failed to demonstrate the prudence of the variances incurred for O&M projects with costs within Pepco control.

B. Pepco has not carried its burden of showing the prudence of O&M variances in the three accounts for spending within Pepco's control.

Variances in three accounts comprise the majority of Pepco's requested O&M recovery for the RY 3 reconciliation. Net of certain ratemaking adjustments Pepco

[27] Pepco Ex. 12-FR (Leming Direct).
[28] Tr. 662:5-10 (Vahos, March 7, 2025).
[29] Pepco Ex. 12-FR (Leming Direct), Exhibit RTL-1, Schedule 3.

proposes,[30] Accounts 588, 592, and 594 reflect a cumulative positive variance of $21.5 million.[31] Accounting for costs charged to those accounts but budgeted elsewhere reduces the cumulative variance for these three accounts to $17.8 million.[32] Despite the significance of the company's variances, record evidence does not sufficiently explain why the variances for each account were necessary and were prudently incurred. Because it failed to provide any explanation or justification for $14 million in costs for these accounts, as described below, the Commission should reduce Pepco's requested O&M recovery by $14 million.

1. Account 588 – Miscellaneous Distribution Expenses

Pepco's requested recovery of $19.5 million in miscellaneous distribution expenses recorded to Account 588 during RY3 reflects a significant $12.4 million variance from its $7.1 million MRP forecast.[33] While the company attributes this variance to several cost drivers, its pre-filed testimony and supporting documentation fail to provide adequate explanation or justification for the majority of the increased spending. Most notably, Pepco offers no meaningful support for the prudence of $4 million in costs tied to "job skills training" and "other" expenditures—both of which remain largely

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[30] *See id.* Exhibit RTL-1, Schedule 3, page 2 (lines 67–78).
[31] *Id.*, Exhibit RTL-1, Schedule 3.
[32] *See* Pepco Response to Bench DR 1-8, Attachment Electronic Only 1-8(a). For each of the O&M accounts, Pepco identifies costs it attributes to "geography"—a term used to refer to costs budgeted to one account but charged to a separate account. *E.g.,* Tr. 422:6-8 (Cantler, March 6, 2025) ("So we would call that a geography. The forecast was in another ITN, but the actual expenditures showed up in the new business commercial."). Though the support for cost recovery of the identified "geography"-related costs is lacking, OPC has removed the impact of such costs from the disallowances recommended below.
[33] Pepco Ex. 12-FR (Leming Direct) Exhibit RTL-1, Schedule 3.

unexplained despite discovery. As a result, the evidentiary record does not support inclusion of these costs in Pepco's reconciliation revenue requirement.

In the variance information provided in Exhibit RTL-1, Schedule 3, the company attributes the Account 588 variance to five factors: (1) strategic planning and business transformation costs originally budgeted to Account 923; (2) annual blanket review costs originally budgeted to Account 920; (3) accruals for the Anacostia River and Benning projects; (4) costs for street lights survey; and (5) increased costs associated with job skills training requirements.[34] This list of five factors in Exhibit RTL-1, Schedule 3 is the sole "explanation" for the variance. The costs originally budgeted to Accounts 923 and 920 reduce the variance for Account 588 by $2.1 million. Pepco removed the accruals for the Anacostia River and Benning projects and the street lights survey cost from their requested O&M recovery through ratemaking adjustments, which total $3 million.[35] Net of geography and ratemaking adjustments, the variance at issue for Account 588 is approximately $7.3 million. And, given Pepco's ratemaking adjustments and adjustments due to geography, the "job skills training" is the primary variance driver Pepco identifies.

Beyond the basic information on the Account 588 variance provided in Exhibit RTL-1, Schedule 3, Pepco's pre-filed testimony provided no explanation about the drivers underlying the variance for this account. Rather, the company merely states what

[34] *Id.* Exhibit RTL-1, Schedule 3.
[35] *Id.* Exhibit RTL-1, Schedule 3, page 2 (lines 75, 76, and 78).

costs are charged to this account.[36] These general descriptions of the costs charged provide no information on how those costs impacted the overall account variance. Indeed, excluding the schedule attached to Mr. Leming's direct testimony, one would not know whether the company incurred a variance for this account.

Pepco's treatment of the "job skills training" variance driver exemplifies Pepco's failure to justify the Account 588 variance. The only mention of this variance driver is one sentence in Ms. Cantler's testimony. Ms. Cantler identifies that the $9.132 million of O&M expense incurred under the "electric operations responsibility area" charged to Account 588 is "generally related to job skills training for craft personnel, which ensures work is properly performed in a safe and efficient manner."[37]

Accordingly, only through discovery could parties obtain information that might explain how "job skills training" costs contributed to a $12.5 million variance. Data requests provided a bit more clarity, but not enough to fully explain the prudence of the variance. The company's response to AOBA Data Request ("DR") 12-12(c) explains that "[a]dditional requirements for job training created a variance of $1.8 million."[38] But, as Ms. Cantler confirmed during the evidentiary hearing, the company provides no

[36] This explanation is scattered across the testimony of three Pepco witnesses: Ms. Jacklyn Cantler, Mr. David L. Vosvick II, and Mr. David M. Vahos. The majority of the Account 588 costs—$11.7 million—are addressed in Ms. Cantler's testimony. Mr. Vosvick's testimony identifies, but does not discuss or explain, the Account 588 costs within his responsibility area. Pepco Ex. 4-FR (Rebuttal Testimony of David L. Vosvick II) at 35, Table 1. Ms. Cantler and Mr. Vahos provide only limited and generalized information about the costs within their responsibility area charged to Account 588. Both witnesses identify a dollar figure for the total cost within their responsibility charged to Account 588 but provide no more than a few sentences explaining what each of the identified costs entail. Pepco Ex. 16-FR (Vahos Rebuttal) at 26:5 – 27:16, 35:9 – 36:6, 47:8 – 48:5; Pepco Ex. 8-FR (Rebuttal Testimony of Jaclyn Cantler) ("Cantler Rebuttal") at 48:3-7, 62:12-17.
[37] Pepco Ex. 8-FR (Cantler Rebuttal) at 62:12-13.
[38] OPC Ex. 7 (AOBA DR 12-12(c)).

explanation about what these "additional requirements" were and why they were necessary.[39] In short, no information in the record fully explains why Pepco needed to spend an additional $1.8 million to train its own employees.

Moreover, responses to discovery identified further variance drivers for which no context was provided. AOBA DR 12-12 asked the company to identify "each component of Pepco's 2023 Miscellaneous Distribution Expense that equals or exceeds $500,000" and to "document in detail and explain the basis for the reported 175 percent variation from the budget."[40] The information Pepco provided on "each component" of the expenses charged to Account 588 reflected annual total spending and did not include any information on the forecasted budgets for each project described.[41] The explanation Pepco provided on the variances merely reiterated the variance statement already provided by Pepco in Exhibit RTL-1, Schedule 3.[42]

Only in response to a separate data request (AOBA DR 13-15) did the company identify the specific amount that each driver contributed to the reported variance.[43] This response included two *additional* drivers not detailed in the variance statement: change in jurisdictional allocator and "other."[44] The jurisdictional allocation change—which accounts for $2.3 million of the Account 588 variance[45]—refers to the impact from Pepco

[39] Tr. 451:17 – 452:9 (Cantler, March 6, 2025).
[40] OPC Ex. 7-FR (AOBA DR 12-12(a) and (c)).
[41] OPC Ex. 7-FR (AOBA DR 12-12(a)).
[42] OPC Ex. 7-FR (AOBA DR 12-12(c)),
[43] OPC Ex. 11-FR.
[44] *Id.*
[45] *Id.*

updating the jurisdictional allocators at the end of RY3.[46] While Pepco provided the jurisdictional cost of service study used to adjust the allocations, Mr. Leming confirmed that the company provided no information explaining how the revised allocators resulted in the $2.3 million increase to expense recorded to Account 588.[47]

The "Other" driver accounts for roughly $2.2 million of the Account 588 variance—more than the amount attributable to "job skills training."[48] Yet, as Mr. Leming admitted during the evidentiary hearing, the company does not identify what costs fall into this "other" category.[49] Absent any information about what these "other" costs entail, the Commission has no basis to find that the additional $2.2 million incurred related to those "other costs" was prudent.

Taken together, the "job skills training" and "other" variance drivers account for $4 million in unexplained and unjustified O&M spending charged to Account 588 that Pepco seeks to recover through its reconciliation revenue requirement. The evidentiary record provides no basis for the Commission to determine whether these variances were prudently incurred, and the Commission should disallow Pepco from recovering those expenses through the RY 3 reconciliation revenue requirement.

2. Account 592 – Equipment Maintenance

Pepco incurred a $7.9 million variance between its actual and forecasted RY3 spending for Account 592. The company attributes this variance "primarily to the high

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[46] Tr. 609:8 – 610:21 (Leming, March 7, 2025).
[47] Tr. 610:22 – 611:7 (Leming, March 7, 2025).
[48] OPC Ex. 11-FR.
[49] Tr. 612:8 – 613:2 (Leming, March 7, 2025).

rate of Corrective Maintenance and Preventative Maintenance completions as well as the Livingston Road battery energy [storage] system project writeoff."[50] Accounting for the $1.75 million Livingston Road BESS writeoff—which Pepco removes from recovery through a ratemaking adjustment—reduces the variance for Account 592 to approximately $6.1 million. There is no adequate explanation or justification for the remaining $6.1 million of the variance. Without record evidence substantiating the prudence of this increase, the Commission cannot reasonably approve recovery of the variance through Pepco's reconciliation revenue requirement.

Expenses recorded to Account 592 are addressed primarily by Ms. Cantler's rebuttal testimony.[51] Maintenance of Station Equipment constitutes the largest single category of expenditures for Account 592, at a cost in RY 3 of $8.849 million.[52] In her testimony, Ms. Cantler gives only a brief explanation of what the expenses generally entail and a conclusory sentence stating the costs were "necessary for ensuring the reliability and safety of the electric power supply."[53]

However, beyond stating the general necessity of the Account 592 costs incurred, the company does not explain whether, and to what extent, those maintenance of station equipment costs contributed to the overall account variance. As Ms. Cantler

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[50] Pepco Ex. 12-FR (Leming Direct) Exhibit RTL-1, Schedule 3.

[51] Pepco witness Vahos identifies, but does not discuss, $507,000 in expenses recorded to this account within his responsibility area. *See* Pepco Ex. 16-FR (Vahos Rebuttal) at 26 (Table 3), 35 (Table 5), 38 (Table 6), and 47 (Table 9). Apart from $2,000 identified, but not discussed, in Mr. Vosvick's rebuttal, *see* Pepco Ex. 3-FR (Vosvick Rebuttal) at 35 (Table 1), the remaining expenses recorded to Account 592 fall within the scope of Ms. Cantler's testimony.

[52] Pepco Ex. 8-FR (Cantler Rebuttal) at 50:5-6.

[53] *Id.* at 50:8-9.

acknowledged at trial, her testimony on this account does not include any information that would enable parties to compare the forecasted budget for these expenses to the company's actual spending.[54] Such a comparison would allow parties to assess how well Pepco adhered to its budget forecast for station equipment maintenance costs.

Nor did the company provide information in discovery to enable parties to assess the prudence of the expenditures and ensuring variance for Account 592. When asked by AOBA to explain the factors that contributed most substantially to the reported 135 percent variance incurred for Account 592, the company responded by noting that reliability enhancements for transformers, breakers, and relays "are responsible for 76 percent" of the total expense recorded to that account.[55] But the company did not provide any information that explains whether such work adhered to the company's forecasts. And though Pepco did provide information showing that the preventative maintenance spending, in general, was higher in RY 3 than in prior years,[56] no information explains how Pepco's corrective and preventative maintenance work ultimately contributed to the overall variance for Account 592. Ms. Cantler acknowledged this fact during the evidentiary hearing.[57]

The information Pepco *did* provide does little to show whether Pepco prudently managed its equipment maintenance costs. As shown in the company's response to AOBA DR 12-13, the company's RY 3 corrective maintenance spending was consistent

[54] Tr. 459:22 – 460:2 (Cantler, March 6, 2025).
[55] OPC Ex. 8-FR (AOBA DR 12-13(a)).
[56] OPC Ex. 8-FR (AOBA DR 12-13(b)).
[57] Tr. 461:20 – 463:14 (Cantler, March 6, 2025).

with or *lower* than spending over the past 5 years.[58] Preventative maintenance spending, however, *increased* by about 40 percent compared to prior years.[59] Preventative maintenance refers to planned inspections that the company budgets for.[60] Corrective maintenance is responsive to emergent work and maintenance work identified through the company's planned inspections.[61] Despite identifying a sharp increase in maintenance costs for planned inspections relative to prior years, Pepco provided no information explaining the factors driving the increase. Though Pepco could have "potentially provided" information about its RY 3 budgets for preventative maintenance, Ms. Cantler admits that the company did not include such information "in rebuttal or surrebuttal or any of the data requests that we were responsive to."[62]

The lack of context or explanation for a forty percent increase in spending on planned inspections is alarming, especially when the spending on corrective maintenance expenses remains flat. Unlike the factors affecting pension and OPEB expense, preventive maintenance spending is entirely within Pepco's control. The company's apparent failure to contain those costs—and the lack of any explanation about why those costs increased so dramatically—calls into question the prudence of the variance.

The evidentiary record lacks any detailed discussion of the drivers behind the increased maintenance spending, particularly the 40 percent increase in preventative maintenance relative to prior years—a cost fully within the company's control. The

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[58] OPC Ex. 8-FR (AOBA DR 12-13(b)).
[59] OPC Ex. 8-FR (AOBA DR 12-13(b)).
[60] Tr. 464:6-19 (Cantler, March 6, 2025).
[61] Tr. 464:6-13 (Cantler, March 6, 2025).
[62] Tr. 465:2-6 (Cantler, March 6, 2025).

Commission should not approve recovery of these costs as there is no record evidence that explains and supports the prudence of $6.1 million of the variance the company incurred for Account 592.

3. Account 594 – Underground Line Maintenance

Pepco's actual RY3 spending for Account 594—covering maintenance of underground lines—exceeded its budget by $5.8 million.[63] The company attributes this variance to geographic accounting differences, increased emergent underground residential distribution (URD) cable fault work, and raw material price fluctuations.[64] However, Pepco's filed testimony contains no substantive discussion of these factors, and the limited information provided through discovery fails to quantify how each factor contributed to the variance and does not justify the prudence of the additional spending. The evidentiary record does not support a finding that the variance was reasonably or prudently incurred. Adjusting for the geography, the Commission should disallow recovery of $3.9 million of the variance for Account 594.

Pepco recorded an actual RY 3 spend of $9.7 million for account 594 against a budget of $3,877,660, resulting in a variance of $5.8 million.[65] The only information for this variance included in the company's reconciliation filings—provided in Exhibit RTL-1, Schedule 3—is as follows:

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[63] Pepco Ex. 12-FR (Leming Direct), Exhibit RTL-1, Schedule 3.
[64] OPC Ex. 9-FR (AOBA DR 12-14).
[65] Pepco Ex. 12-FR (Leming Direct), Exhibit RTL-1, Schedule 3.

> Variance is primarily driven by geography with costs budgeted to FERC 596 and actuals charged to FERC 594, as well as an increase in Emergent URD Cable Fault work.[66]

The extent to which the change in project geography impacts the variance for this account is unclear. In response to AOB DR 12-14, the company identified $1.9 million costs budgeted to account 596 but charged to account 594.[67] But, in the response to a bench data request, the company identified $3.1 million in geography-related expenditures.[68] No record evidence explains this discrepancy. Given the unexplained conflict between the company's filed schedules and its bench DR, the Commission lacks the clear evidence required to properly assess the prudence of the variance incurred on this account. To remedy this issue, this Commission should disregard the anomalous geography impact identified—for the first time—in the company's bench data request response, and evaluate the project based on the evidence in the evidentiary record.

Pepco's filed testimony does not explain the factors driving the variance for Account 592. As with Account 592, expenses charged to Account 594 fall primarily within Ms. Cantler's responsibility area. Ms. Cantler's written testimony fails to even acknowledge that the company incurred a variance for this account.[69] Ms. Cantler identifies three responsibility areas with work charged to Account 594: electric operations, projects and contracts, and substation.[70] Within Account 594, Pepco spent $7.9 million on electric operations expenses, $1.2 million on projects and contracts, and

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[66] *Id.*
[67] OPC Ex. 9-FR.
[68] Pepco Response to Bench Data Request 1-8, Attachment Electronic Only 1-8(a).
[69] *See* Pepco Ex. 8-FR (Cantler Rebuttal) at 54:12 – 55:4, 64:8-14.
[70] *Id.* at 48 (Table 1), 54–-55, 63.

$445,000 on substations.[71] The information provided on electric operations expense is limited to two sentences that generally state how the expenses relate to maintaining underground distribution and mainly concern "emergent corrective maintenance repairs."[72] There is no information, however, explaining how this work contributed to the Account 594 variance.

The company provides more information on projects and contracts costs than it does for electric operations, despite projects and contracts comprising substantially less of the expenses charged to Account 594. That testimony also does not explain the variance incurred. Rather, Ms. Cantler simply notes that the expenses primarily relate to manhole assessments that Pepco must conduct in compliance with COMAR 20.50.12.10.[73] And, again, Pepco does not provide information as to whether the costs of these manhole assessments adhered to forecasts and, if not, whether any cost exceedances were prudently incurred. In short, Ms. Cantler's testimony alone provides no basis for the Commission to assess, let alone conclude, that *any* of the variance incurred for Account 594 was prudent.

Pepco only provided additional information about the drivers of the Account 594 variance through responses to discovery. In addition to the costs the company attributes to project geography, the company identifies two "key factors" driving the Account 594 variance: "Emergent URD Cable Work" and "Raw Material Price Fluctuations."[74] Yet,

[71] *Id.*
[72] *Id.* at 63:10-14.
[73] *Id.* at 54:14 – 55:4.
[74] OPC Ex. 9-FR (AOBA DR 12-14).

even after identifying these drivers, the company still does not provide information to determine how much each driver contributed to the variance and that the increased expenses caused by these drivers were necessary and prudently incurred.

Pepco describes emergent URD cable fault work as "[i]ncreased frequency of emergent underground residential (URD) cable faults led to higher maintenance expenses. This operational challenge necessitated more frequent and costly repairs or replacements, driving up overall maintenance costs significantly"[75] But, the frequency of cable faults across Pepco's system for RY 3 is not documented anywhere in the evidentiary record. Nor is there information on the frequency of "costly" repairs or replacements. While Pepco identifies the total actual spend of $4.4 million for Emergent URD cable fault work, the company provides no information to confirm whether overall maintenance costs "significantly" increased relative to prior years.[76] The significance of emergent URD cable fault cost increases could be evaluated, in part, by comparing the company's forecast to its actual costs. Yet, as Ms. Cantler confirmed during the evidentiary hearing, the information Pepco provided in discovery does not allow parties—or the Commission—to conduct such analysis.[77]

The support for the company's claim about raw material price fluctuations is equally lacking. The only information provided on materials cost impacts concerned emergent URD cable fault work and Account 596 costs charged to Account 594.[78] In

[75] *Id.*
[76] *Id.*
[77] Tr. 472:11 – 473:8 (Cantler, March 6, 2025).
[78] OPC Ex. 9-FR (AOBA DR 12-14(a), (c)).

total, these costs totaled only $107,000 out of $6.3 million.[79] During cross examination, Ms. Cantler indicated that the materials costs detailed in this DR response were not all-inclusive, but provided no further information on how much raw materials prices affected the variance the company incurred.[80] Without record evidence documenting how increased material price increases contributed to the variance the company incurred, the Commission has no basis to conclude that material price fluctuations render any of the Account 594 variance reasonable and prudent.

As with Accounts 588 and 592, the evidentiary record is insufficient to support a finding that the variance incurred for Account 594 is prudent. Adjusting for the $1.9 million geography-related expense, the Commission should disallow recovery of $3.9 million of the variance for this account incurred in RY 3.

C. Pepco offers arguments and testimony that do not and cannot support its burden of proving the prudence of its excessive O&M spending.

Pepco witnesses seek to downplay the significance of the variances. They attribute factors purportedly outside of the company's control as responsible for the majority of the variances. First, the company obfuscates the sharp increase in O&M spending in RY 3 by presenting it in the context of the reconciled—and lower—O&M spending for rate years 1 and 2.[81] Yet lower spending for year 1 and 2 cannot justify—or satisfy Pepco's burden regarding—the company's RY 3 variance.

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[79] *Id.*
[80] Tr. 473:22 – 474:5 (Cantler, March 6, 2025).
[81] *See,* e.g., Pepco Ex. 16-FR (Vahos Rebuttal) at 9:7-7, Table 1; OPC Ex. 12-FR (OPC DR 10-7, Attachment).

Second, and more troublingly, the company's witnesses downplay the significance of O&M spending levels the Commission authorized for Pepco's MRP in Order No. 89868. Pepco apparently would have the Commission look at the company's RY 3 O&M spending without reference to the O&M budgets used to set the RY 3 base rates.[82] But as the Commission stated in Order No. 90948, "Commission-approved budgets and spending are not aspirational. The Commission expects utilities to manage their operations and spending within the limits the Commission has approved."[83]

Significant positive variances—with no explanation—show that Pepco did not "manage" its spending within Commission-approved limits and are highly probative of imprudent cost containment. Without evidence fully explaining how a variance was incurred and why it was necessary and prudent for Pepco to spend at a level above the company's forecast, the Commission has no basis to find that such spending over budget is prudent and eligible for cost recovery. The company bears sole responsibility for explaining and justifying the additional O&M cost recovery it is seeking. Merely identifying the variances is not sufficient for demonstrating prudence.

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[82] Mr. Leming claimed during the hearing that "variances are not a reflection of prudence or imprud[ence]." Tr. 615:14-16 (Leming, March 7, 2025).

[83] Order No. 90948 at 181, *Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan,* Case No. 9692 (Dec. 14, 2023).

III. Pepco has failed to demonstrate the prudence of certain capital projects.

A. Pepco's RY3 tree wire installations were not prudently incurred and should be disallowed.

The Commission should disallow recovery of Pepco's RY3 spending on tree wire installations because Pepco has not demonstrated that these projects were necessary, appropriately targeted, or cost-effective.

As set forth in the testimony of OPC witnesses Alvarez and Stephens, tree wire is an expensive solution primarily intended to mitigate vegetation-related service interruptions.[84] Tree wire costs 42 percent more per mile than bare, uninsulated conductor.[85] Despite the significantly higher cost, Pepco failed to demonstrate that the feeders on which it installed tree wire in RY3 were experiencing vegetation-related outages sufficient to justify such investment. In several instances—such as projects under ITNs 72220 and 72252—Pepco undertook costly tree wire installations despite the absence of evidence showing recent vegetation-related outages or full consideration of the historic reliability data specific to the affected circuits. For example, for the circuits on which Pepco conducted the largest (exceeding $300,000) tree-wire installation projects, OPC witness Stephens evaluated the causes of customer interruptions over the three-years immediately preceding the tree wire installation.[86] For 11 projects, with a total cost of $9.75 million, vegetation or animal contact accounted for no more than 12.5

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[84] OPC Ex. 15-FR (Panel Direct Testimony of Paul J. Alvarez and Dennis Stephens) ("Alvarez/Stephens Direct") at 20:10-21:3; 21:13-18.
[85] Pepco Ex. 5-FR (Rebuttal Testimony of Amber C. Young) ("Young Rebuttal") at 28:15-17.
[86] OPC Ex. 15-FR (Alvarez/Stephens Direct) at 22:9-12.

percent of the customer interruptions; for two of these projects, no customer interruptions were caused by vegetation or animal contact.[87]

Moreover, the record calls into question whether the interruption frequency and duration on the affected circuits necessitated the installation of tree-wire. For instance, Pepco spent $2.328 million to install miles of tree wire on a circuit with an interruption frequency and duration significantly better than Pepco's system wide average.[88] Pepco's work on this circuit did not respond to a history of service interruptions. Rather, it was prompted by a single service interruption impacting 97 customers for 5.75 hours.[89]

Further, Pepco presented no analysis showing that tree wire installations were the least-cost, best-fit solutions to any identified risks. Pepco witness Young states that the company's tree wire/spacer cable installation program was "designed to address areas of feeders with repeated outages caused by temporary phase-to-phase contact from bare primary conductors."[90] But there are less costly alternatives to tree wire installation to address phase-to-phase bare wire contact, like installing crossarms, insulators, or spacers between conductors.[91] And vegetation or animal contact issues can be mitigated through more aggressive vegetation management and the installation of animal guards, both of which are less expensive than installing tree-wire.[92] There is no indication that Pepco evaluated such alternatives. Nor did Pepco present a benefit-cost analysis or quantify the

[87] OPC Ex. 15-FR (Alvarez/Stephens Direct) at 22:9-16 and 23, Table 3.
[88] OPC Ex. 17-FR (Alvarez/Stephens Rebuttal) at 26:3-5.
[89] *Id.* at 26:8-9.
[90] Pepco Ex. 5-FR (Young Rebuttal) at 26:16-18.
[91] OPC Ex. 17-FR (Alvarez/Stephens Surrebuttal) at 23:2-6.
[92] *Id.* at 22:16 – 23:2.

risk reduction associated with tree wire installation. This absence of comparative or analytical justification for the company's tree wire installation deprives the Commission of any evidentiary basis to conclude that the company's investments were prudent.

Pepco's defense of the spending, as offered in the rebuttal and surrebuttal testimony of Pepco witness Young, rests heavily on general assertions about tree wire's value in mitigating multiple outage risks, including animal contact and conductor clearance.[93] However, broad claims about tree wire's multi-functionality do not substitute for project-specific justification. While tree wire can be useful under the right circumstances; the issue is whether its installation on these feeders was justified by the available data. The Commission should reject blanket justifications in the absence of evidence demonstrating the specific need for and cost-effectiveness of tree wire on a case-by-case basis.

Staff witness Austin initially did not recommend disallowance for these projects, but in his surrebuttal acknowledged that his review was necessarily limited in scope due to the volume of projects and that he did not affirmatively find the spending prudent.[94] Indeed, he clarified that a decision not to recommend disallowance should not be mischaracterized as a prudence finding.[95] OPC agrees and reiterates that the burden of proof remains with Pepco. In the absence of feeder-specific reliability data, risk quantification, or meaningful exploration of alternatives, the company has failed to meet

[93] Pepco Ex. 5-FR (Rebuttal Testimony of Amber Young) ("Young Rebuttal") at 30:9-18.; Pepco Ex. 6-FR (Surrebuttal Testimony of Amber Young) ("Young Surrebuttal") at 6:9-17, 8:7 – 9:2.
[94] Staff Ex. 8-FR (Direct Testimony of Roger F. Austin) ("Austin Direct") at 70:18 – 71:2; Staff Ex.9-FR (Surrebuttal Testimony of Roger F. Austin) ("Austin Surrebuttal") at 4:14 – 5:5.
[95] Tr. 921:12-22 (Austin, March 10, 2025).

this burden. Accordingly, the Commission should disallow recovery of $9.753 million in RY3 capital costs associated with Pepco's unnecessary tree wire installation projects.[96]

B. Pepco prematurely replaced substation transformers in RY3 and failed to justify the prudence of replacement costs.

The Commission should also disallow recovery of Pepco's substation transformer replacement costs placed into service in RY3 because the company failed to demonstrate that these replacements were warranted based on objective assessments of asset condition and failure risk, or economic justification.

Equipment age is, by itself, an insufficient justification for replacing substation equipment. Yet, it appears to be the determinative factor driving Pepco's transformer replacement decision. In the projects reviewed by OPC, each of the transformers replaced in RY3 had passed recent diagnostic testing and showed no evidence of imminent failure.[97] Pepco did not identify any specific operational concerns, documented failures, or substandard performance associated with the units at issue.[98] Instead, Pepco generally explained how "planned replacement of transformers, under controlled conditions, based on asset health is a prudent and reasonable action to minimize violent in-service failure events."[99] However, prudent asset management requires adequately weighting objective evidence showing deteriorating condition or elevated risk, not basing replacement

[96] OPC Ex. 15-FR (Alvarez/Stephens Direct) at 24:6-13.
[97] *Id.* at 27:6-9.
[98] *Id.* at 26:8 – 27:3, 27:18 – 28:6.
[99] Pepco Ex. 5-FR (Young Rebuttal) at 176:9-11.

decisions on subjective assumptions about the likelihood of failure, and the record evidence does not *show* how Pepco takes that approach.

As OPC witnesses Alvarez and Stephens note, Pepco's approach leads to the premature replacement of functioning equipment that is shown to be in safe and reliable condition—a particularly cost-ineffective practice.[100] Ad-hoc, qualitative transformer assessments are inadequate for making multi-million-dollar replacement decisions, and Pepco's reliance on such assessments do not indicate reasonable business management practices.[101]

Pepco did not present failure probability estimates, asset condition indices, or comparative analyses showing that replacement was more cost-effective than alternatives such as enhanced monitoring or deferred capital investment.[102] Nor did the company quantify the value of avoided outages or provide a benefit-cost justification.[103] Instead, the company provided narrative explanations lacking objective, quantitative support.[104] Without analytical evidence, there is no basis on which the Commission can find that these capital expenditures were prudently incurred.

Further, Pepco does not show the reasonableness of the business judgment decision process that led to Pepco's approval of these transformer replacements. The record contains no evidence that Pepco seriously evaluated alternatives, weighed timing considerations, or considered ratepayer cost impacts in determining whether to replace

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[100] OPC Ex. 15-FR (Alvarez/Stephens Direct) at 25:3-15.
[101] *Id.* at 27:19 – 28:1.
[102] *Id.* at 26:8-16.
[103] *Id.* at 30:16 – 31:2.
[104] *Id.* at 26:17 – 27:3.

these assets. The decision-making process was not guided by risk-informed prioritization or performance-based planning, essential features of a prudent planning process.[105]

Without specific evidence demonstrating that the transformer posed a threat to reliability or that alternatives were not feasible, the Commission cannot reasonably conclude that the costs were prudently incurred. For these reasons, the transformer replacement Pepco placed into service in RY3 was premature and not justified by the available data. The associated $3.568 million in costs should be disallowed.[106]

C. Pepco's circuit breaker replacements were not necessary or cost-effective.

Pepco's capital expenditures to replace oil-filled distribution circuit breakers placed into service in RY3 should also be disallowed.[107] The company has not demonstrated that the breaker replacements were required by regulation, warranted by equipment condition, or were the most cost-effective way to address any identified risks.

The operational concerns purportedly driving Pepco's oil breaker replacements are not fully substantiated by the evidentiary record. The company's stated rationale was to replace oil breakers with "increased risks due to the lack of replacement parts, frequent maintenance failures, and the potential for environmental damage from spills caused by catastrophic failures."[108] But the company did not show that the breakers in question were leaking or failing, nor did Pepco provide any objective, quantified data about

[105] OPC Ex. 17-FR (Alvarez/Stephens Rebuttal) at 31:18 – 32:7.
[106] OPC Ex. 15-FR (Alvarez/Stephens Direct) at 29:7-13.
[107] *Id.* at 29:14-18.
[108] Pepco Ex. 5-FR (Young Rebuttal) at 50:9-12.

maintenance failures, the risks of oil spills, or the potential environmental damage that could be caused by such spills.[109] OPC witness Stephens found that none of the 694 oil spills Pepco reported from 2018 to 2023 were caused by circuit breakers.[110]

Further, Pepco refused to provide circuit breaker test results to confirm whether the breakers replaced were no longer capable of operating safely and reliably, claiming that since "breakers are not replaced based on condition concerns . . . such test results are not of relevance in this context."[111] Pepco did not show that other alternatives besides replacement are insufficient to address the lack of replacement parts Pepco claims. As OPC's witnesses note, "replacement parts can be found in the secondary market, even for very old circuit breakers, and customer manufacturing is also an option."[112] In short, Pepco's replacements appear to have been discretionary and not based on documented deficiencies.

Ultimately, the company has not provided the information needed to objectively demonstrate the necessity and prudence of its circuit breaker replacements. The benefits resulting from Pepco's circuit breaker replacements are all provided in narrative form. The company has not quantified any of these benefits, nor attempted to place a dollar value on the reliability improvements Pepco claims will result from these projects.[113] Moreover, Pepco has not clearly linked the replacements to any reliability improvements. Staff witness Austin likewise did not identify or provide any analysis showing that these

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[109] OPC Ex. 15-FR (Alvarez/Stephens Direct) at 30:1-31:2.
[110] OPC Ex. 17-FR (Alvarez/Stephens Surrebuttal) at 32:15-16.
[111] *Id.* at 32:10-12.
[112] OPC Ex. 15-FR (Alvarez/Stephens Direct) at 31:8-11.
[113] *Id.*at 30:3-18.

replacements were mandatory or cost-effective. Instead, his conclusion to not recommend disallowances for this project is based solely on the age of the equipment that was replaced.[114] The record does not show that the breakers replaced were causing service interruptions or posed an unacceptable operational risk.

Without evidence of equipment failure, reliability impact, or regulatory necessity, the prudence of the expenditures cannot be substantiated. Accordingly, the Commission should disallow the $2.654 million in RY3 capital costs associated with Pepco's distribution circuit breaker replacements.[115] The company has not met its burden to demonstrate that these expenditures were prudently incurred and reasonable for recovery from ratepayers.

D. The Commission should disallow Pepco's requested recovery for the Livingston Road Battery Energy Storage System.

Pepco is seeking to recover $2.0 million for abandoned costs related to the Livingston Road Battery Energy Storage Pilot Project ("Livingston Road BESS"). The company attributes these costs to internal labor and overheads and materials and contracting costs.[116] Pepco's sole theory for recovery has little to do with the justification for the project and the prudence of Pepco's project execution. Instead, the company claims it is entitled to recovery because "the costs were incurred for the purposes of complying with a legislative mandate and the costs would have been incurred regardless of the ultimate siting that was selected for the BESS project and vendor selected for the

[114] Staff Ex. 7-FR (Austin Direct) at 100:13 – 101:10.
[115] OPC Ex. 15-FR (Alvarez/Stephens Direct) at 32:1-10.
[116] Pepco Ex. 5-FR (Young Rebuttal) at 55:7-8.

system."[117] Both Staff and OPC's witnesses oppose any form of cost recovery for this project.

As OPC witnesses Alvarez and Stephens note, the basis for the selection of this project is questionable. Pepco's project application indicates that the company selected this project in large part to defer the replacement of the Livingston Road substation driven by load growth forecasted for that substation.[118] Yet, at the time Pepco filed its application, the company should have known that the substation replacement was not necessary, as the substation's load had been flat since at least 2013 and was forecasted to remain so through 2032.[119] The company further knew that a large customer served by that substation was planning to install a significant generating unit as part of a microgrid, further reducing the need for substation replacement and any benefit from deferring that replacement.[120] That microgrid was installed in 2018—two years before the company filed its proposal for the Livingston Road BESS.[121] In short, when Pepco started to incur capital costs for the project, there were multiple indications that the load relief the project would offer was not actually required.[122]

Additionally, Pepco did not adequately manage the performance of its contractor. Though Pepco actively monitored the project status and may have timely identified contractor performance issues, Pepco failed to take steps to enforce the remedies

[117] *Id.* at 55:8-12.
[118] OPC Ex. 15-FR (Alvarez/Stephens Direct) at 16:17–19.
[119] *Id.* at 17:3-5; *see* Case No. 9702, Direct Testimony of Paul J. Alvarez and Dennis Stephens at 63–68.
[120] OPC Ex. 15-FR (Alvarez Stephens Direct) at 17:6-13.
[121] *Id.* at 17:10-12.
[122] OPC Ex. 17-FR (Alvarez/Stephens Rebuttal) at 16:4 – 17:11.

available to the company under the contract to minimize the impact to ratepayers resulting from the contractor performance issues.[123]

Staff witness Austin's testimony further explains that Staff deemed the project to not be cost effective and, in Case No. 9702, recommended disallowing any and all cost recovery associated with the Livingston Road BESS project. As Mr. Austin's testimony explains, "prior to the [Commission's] approval of the project, Staff had concluded the project would not be cost effective and recommended the Commission direct Pepco to examine other distribution locations."[124] In Case No. 9702, Staff witness Wilson determined that Pepco had not provided any evidence that project-related expenditures were prudent.[125] In this reconciliation proceeding, the company did not provide evidence to change Staff's conclusion.

Staff witness Austin further disagrees with the company's theory justifying cost recovery for this project. Mr. Austin notes that while the company would have incurred the internal labor and overhead costs regardless of whether the Livingston Road BESS were pursued, "those internal labor and overhead costs could have been directed towards pursuits that were beneficial to ratepayers as opposed to the wasted efforts on this project."[126]

The fact that Pepco incurred these costs pursuant to a pilot project does not make the costs prudent. Both Staff and OPC's witnesses identify multiple reasons why all of

[123] *Id.* at 17:12 – 18:13.
[124] Staff Ex. 7-FR (Austin Direct) at 204:3-6.
[125] *Id.* at 204:9-10.
[126] *Id.* at 205:17 – 206:2.

the costs for the Livingston Road BESS were imprudently incurred. Regardless of the impetus for a project, Pepco is still responsible for making prudent decisions to incur project costs. The risks of imprudent project planning and execution should not be borne by Pepco's customers. The Commission should disallow Pepco's request to recover $2.0 million in capital costs incurred on this project.[127]

CONCLUSION

Pepco has not satisfied its burden to justify the recovery of millions in O&M and capital spending through this reconciliation proceeding. While the company claims its spending was driven by factors outside its control—such as pension costs and storm events—the record shows that the bulk of Pepco's overspending stems from categories entirely within its control. O&M variances in Accounts 588, 592, and 594 alone account for over $14 million in unexplained and unjustified O&M spending. Pepco provided little to no evidence explaining how those costs were incurred or why they were prudent.

For its capital investments, Pepco failed to show that its RY3 tree wire installations ($9.753 million), transformer replacements ($3.568 million), and circuit breaker upgrades ($2.654 million) were necessary, appropriately targeted, or cost-effective. In many cases, the company relied on generalized narratives and internal process references instead of data-driven justifications or cost-benefit analysis. The company's approach reflects a broader pattern of prioritizing capital deployment over

[127] OPC Ex. 17-FR (Alvarez/Stephens Surrebuttal) at 19:15-20:8.

cost containment, and its presentation of evidence throughout this proceeding hindered transparency and accountability.

Approving cost recovery in the absence of clear, credible justification would normalize imprudent spending and further erode affordability for Pepco's customers. The Commission should disallow recovery of the contested costs identified in this brief and make clear that prudence, transparency, and cost discipline remain essential conditions for rate recovery.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of April, 2025, the foregoing Post-Hearing Initial Brief of the Maryland Office of People's Counsel was either hand-delivered, e-mailed, or mailed first-class, postage prepaid to all parties of record to this proceeding.

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