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July 1, 2026

Mr. Andrew S. Johnston
Executive Secretary
Public Service Commission of Maryland
William Donald Shaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, Maryland 21202

Re: Case No. 9820- Potomac Electric Power Company's Application for Adjustments to its Retail Rates

Reply Brief of Potomac Electric Power

Dear Mr. Johnston:

Potomac Electric Power Company ("Pepco" or "Company") submits its reply brief in the above-reference case.

If you need additional information or have any questions, please do not hesitate to contact me.

Respectfully submitted,
Kimberly A. Curry
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Counsel for
Potomac Electric Power Company

Enclosure

cc: All Parties of Record

BEFORE THE
MARYLAND PUBLIC SERVICE COMMISSION

IN THE MATTER OF	*	
POTOMAC ELECTRIC POWER	*	
COMPANY'S APPLICATION	*	
FOR ADJUSTMENTS TO ITS	*	**Case No. 9820**
RETAIL RATES FOR THE	*	
DISTRIBUTION OF ELECTRIC	*	
ENERGY	*	

REPLY BRIEF OF POTOMAC ELECTRIC POWER COMPANY

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July 1, 2026

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REPLY BRIEF OF POTOMAC ELECTRIC POWER COMPANY

I. INTRODUCTION

In its Initial Brief, Potomac Electric Power Company ("Pepco" or the "Company") demonstrated that the record supports its requested $119.9 million increase in electric distribution rates based on the Traditional Test Year ("TTY") record. The Commission is presented with a traditional rate case supported by actual test-year data, known and measurable adjustments, and used-and-useful distribution assets that are providing safe and reliable service to Maryland customers.

The other parties' initial briefs ask the Commission to reduce, disallow, or condition recovery of significant portions of Pepco's TTY revenue requirement, but those recommendations do not overcome the record evidence supporting the Company's request. Utility investments are presumed to be prudent, and a party seeking to contest prudency must make a strong showing based on sound evidence to support a finding of imprudence.[1] Broad assertions that Pepco should have provided different documentation, performed a different study, or satisfied later-developed policy frameworks are not substitutes for record evidence showing that specific projects were imprudent, unreasonable, or not used and useful. The Commission should decide this case based on the legal standards governing traditional test-year ratemaking and the reliable substantial

[1] *See, e.g., State of Missouri ex rel. Southwestern Bell Tel. Co. v. Public Serv. Comm'n*, 262 U.S. 276, 289 n.1 (1923) (Brandeis, J., concurring) ("The term 'prudent investment' is not used in a critical sense. There should not be excluded, from the finding of the base, investments which, under ordinary circumstances, would be deemed reasonable. The term is applied for the purpose of excluding what might be found to be dishonest or obviously wasteful or imprudent expenditures. Every investment may be assumed to have been made in the exercise of reasonable judgment, unless the contrary is shown."); *West Ohio Gas Co. v. PUC*, 294 U.S. 63, 72 (1935) (Cardozo, J.) ("Good faith is to be presumed on the part of managers of a business ... In the absence of a showing of inefficiency or improvidence, a court will not substitute its judgment for theirs as to the measure of a prudent outlay.").

evidence in the record—not hindsight, speculation, or policy preferences better addressed in policy proceedings.[2]

This Reply Brief will address each portion of the Company's rate request that the parties contest in their initial briefs and explain why the other parties' positions lack evidentiary or legal support. Two issues warrant a brief introductory response:

First, the overwhelming weight of the evidence supports recovery of the White Flint Projects. The White Flint Substation and associated supply-line, distribution-feeder, terminal, and relay work are energized, operational, and providing Pepco's customers with capacity, redundancy, and reliability benefits.[3] Staff, as a party sponsoring a neutral engineering witness in this case, continues to support recovery of the core White Flint portfolio.[4] Staff's lead engineering witness, Christopher Lo, confirmed that Pepco's decision-making for White Flint was "consistent with sound engineering planning practices."[5]

Pepco fully supports Maryland's and the Commission's non-wire solutions ("NWS") goals, including battery storage, and there is no dispute that battery storage projects can be effective solutions in a variety of circumstances.[6] As to the specific capacity and reliability issues addressed by White Flint, however, all of the sound engineering testimony and record evidence in this case demonstrates that a battery storage project could not replace White Flint's durable capacity and reliability benefits for customers. In fact, at best, the hypothetical battery solution conceptualized by the Maryland Energy Administration's ("MEA") witness could have only

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[2] The Commission has recognized that "'prudent' does not mean 'clairvoyant' or 'perfect,'" and that a prudency review should not subject a utility to unfair "post hoc" review. *Re Baltimore Gas & Electric Co.*, Case No. 9406, Order No. 87591 at 67 (June 3, 2016) (quoting Order No. 83531 at 39).
[3] *See* Pepco Initial Br. at 27-32.
[4] Staff Br. at 18-21.
[5] Staff Ex. 12, Surrebuttal Testimony of Christopher Lo ("Lo Surrebuttal") at 3:6-19.
[6] *See In the Matter of the Maryland Energy Storage Pilot Program*, Case No. 9619, Order No. 89664 (Nov. 9, 2020) (approving certain energy storage proposals for the pilot program).

deferred White Flint by a few years, which means under MEA's scenario customers would have paid for <u>both</u> a battery <u>and</u> the substation, which is one of the reasons why Pepco reasonably rejected the NWS alternative for this capacity and reliability problem.[7] The Commission should give appropriate weight to MEA's prospective policy interest in more formal, Commission-approved NWS screening, but it should reject MEA's effort to convert a *post-hoc* hypothetical exercise into a basis for disallowing an energized, operational, used-and-useful substation that Staff's engineering witness approved of recovering.[8]

Second, the authorized rate of return ("ROR") to Pepco is not a "profit" that can be confiscated.[9] It is the regulated cost of attracting risk-bearing capital to finance a capital-intensive utility system over decades to reliably serve the utility's customers.[10] The proposals made in the other parties' briefs regarding Pepco's requested return on equity ("ROE")—in particular, OPC's extreme proposed 7.7 percent ROE—would violate this legal requirement and would fail to meet the financial-integrity and capital-attraction standards that govern a fair return.[11] The Commission's ROE decision must be based on the evidence and support a "financially healthy utility company."[12] Here, the record demonstrates that significant recent changes in economic conditions have increased the cost of capital and warrant an upward adjustment to the Company's

[7] Tr. at 547:17-548:8 (Alo).

[8] AOBA's White Flint arguments (*see* AOBA Br. at 11-20) do not supply an independent basis for relief. AOBA argues generally that Pepco must prove reasonableness, prudence, and cost-effectiveness of actual expenditures and points to corrections in plant-addition schedules, but those general documentation concerns do not rebut the project-specific evidence and Staff's engineering conclusion that White Flint should be recovered.

[9] OPC Br. at 5.

[10] *See Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944) (utilities must be compensated for financing public services by being repaid for both their costs of "service on the debt and dividends on the stock," including a "return to the equity owner").

[11] Pepco Ex. 41, Rebuttal Testimony of Elizabeth M. D. O'Donnell ("O'Donnell Rebuttal") at 7:9 – 8:15.

[12] *In re Potomac Elec. Power Co.*, Case No. 9286, 103 Md. P.S.C. 293 (2012) (recognizing "the importance of a financially healthy utility company and our obligation to ensure that Pepco will have the revenue it needs to provide safe and reliable electric service, as the law requires").

current 9.5% authorized ROE.[13] Since Pepco's last rate case, bond yields for utilities are 250 basis points higher and "logically, if bond yields go up, the ROE should go up."[14]

For these reasons, and as explained in the sections that follow, the Commission should approve Pepco's TTY revenue requirement of $119.9 million and the associated rates. The request is supported by actual historical data, appropriate known and measurable adjustments, and evidence demonstrating the prudence and used-and-useful status of the Company's investments. Approval will allow Pepco to continue providing the safe, reliable, and responsive electric distribution service that customers expect, while preserving affordability, supporting economic development, and maintaining the financial integrity required to fund the system Maryland customers depend upon.

II. WHITE FLINT SUBSTATION PROJECTS

A. The Commission Should Reject The Other Parties' White Flint Arguments And Approve Recovery For The White Flint Projects.

The White Flint Substation and associated supply-line, distribution-feeder, terminal, and relay work are energized, operational, and providing Pepco's customers with capacity, redundancy, and reliability benefits. Staff, and its neutral engineering witness in this case, continues to support recovery of the core White Flint portfolio.[15] Staff explained that White Flint was designed to address forecasted Parklawn overloads and improve reliability and redundancy, that the substation was placed in service and available for customer load as of December 31, 2024, and that the evidence supports Pepco's decision-making as reasonable based on the information available at the time and consistent with sound engineering planning practices.[16] By contrast,

[13] Pepco Ex. 25, Rebuttal Testimony of Adrien M. McKenzie ("McKenzie Rebuttal") at 6:7 – 15:18.
[14] Tr. 641:23 – 643:11 (McKenzie).
[15] Staff Br. at 18-21.
[16] *Id*. at 19-21; Staff Ex. 11, Direct Testimony of Christopher Lo ("Lo Direct") at 7:15-8:19; Staff Ex. 12, Lo Surrebuttal at 3:6-19.

MEA, OPC, and AOBA ask the Commission to disallow or defer recovery by relying on after-developed NWS or Benefit-Cost Analysis ("BCA") requirements that do not replicate the durable capacity, reliability, redundancy, transfer capability, and operational flexibility of a new substation asset.[17]

The Commission should therefore approve full recovery of White Flint. Pepco fully supports the Commission's continued development of a clearer NWS evaluation framework for the state's electric distribution companies going forward. However, the Commission should not convert a traditional test-year prudence review into a retroactive policy enforcement mechanism for planning tools that Maryland continues to develop on a prospective basis. That is not the applicable standard of review[18] and denying recovery for prudent, in-service, customer-benefiting infrastructure would create substantial uncertainty around long-lead capacity planning and discourage utilities from building the assets needed to support customers and economic development until overloads become reliability problems. The only record-based conclusion that applies a proper prudence review, then, is Staff's: White Flint should be evaluated based on the information available when Pepco made the decision, and there is no evidence "that any specific portion of the project was unnecessary, oversized, or capable of deferral without compromising the project's reliability and operational functions."[19]

B. MEA's Argument On Brief Regarding Pepco's Forecasted Load Analysis Has No Merit.

MEA's forecast argument should be rejected because it converts ordinary long-lead distribution planning into an after-the-fact requirement that Pepco prove, with hourly precision,

[17] MEA Br. at 8-10, 17-38; OPC Br. at 10-16; AOBA Br. at 16-18.
[18] See Section II of Pepco's Initial Brief for a discussion of the proper prudence review standards.
[19] Staff Br. at 21.

that forecasted load arrived precisely as expected.[20] That is not the prudence standard, and it is not how the Commission has previously evaluated White Flint. In Order No. 89868 in Case No. 9655, the Commission recognized that projects of this type have long lead times of numerous years, that planning must occur so utilities can safely and reliably serve future customers, and that decisions to proceed with large-scale projects necessarily must be based on forecasts whose accuracy cannot be known until after completion.[21] Nevertheless, MEA's argument asks the Commission to treat the inherent uncertainty of forecasting as proof of imprudence, even though that uncertainty is precisely why the Commission required Pepco to justify its decision in this proceeding rather than pre-approving or precluding recovery in Case No. 9655.

Pepco made that showing. After Order No. 89868, Pepco paused further construction, re-evaluated the project, and commissioned Quanta Technology ("Quanta") to perform an independent third-party load forecast for the White Flint Study Area.[22] Quanta confirmed that the White Flint/North Bethesda area remained one of Pepco's fastest-growing areas[23] and that redevelopment, electric vehicle adoption, and building electrification were driving increased load growth in the area.[24] MEA argues that the Quanta study was not an alternatives analysis, cost-benefit analysis, or hourly constraint analysis,[25] but that point does not undermine the forecast. MEA's point confirms only that Quanta was retained for the purpose it served: to review the load forecast and determine whether the capacity problem still existed.[26]

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[20] *See* MEA Br. at 10-16.
[21] *Re Potomac Electric Power Co.*, Case No. 9655, Order No. 89868 at 94-95 (June 28, 2021).
[22] Pepco Ex. 12, Rebuttal Testimony of Taiwo O. Alo ("Alo Rebuttal") at 15:15-16:7.
[23] Pepco Exhibit 17, admitted at hearing, showed active WMATA redevelopment involving three life-sciences buildings, a multifamily building, and two residential towers, and quoted Governor Moore describing the redevelopment as transforming North Bethesda into a "hub for innovation, opportunity, and growth." (Tr. at 426:7-427:17 (Alo)); Pepco Ex. 17 (WMATA Press Release).
[24] Pepco Ex. 11, Direct Testimony of Taiwo O. Alo ("Alo Direct") at 48:17 – 49:5; Pepco Ex. 12, Alo Rebuttal at 16:16-17:10.
[25] MEA Br. at 13-14.
[26] Tr. at 393:5-11, 477:1-19 (Alo).

MEA's claim that Pepco's forecasts did not show a "persistent and consistent" overload likewise has no record evidence support.[27] Witness Alo explained at the hearing that Pepco submitted several years of load forecasts showing a consistent, persistent, and increasing overload at Parklawn Substation, and that the forecasted overload increased year over year in a manner that was not minor.[28] Witness Alo further explained that, given the magnitude and increasing nature of the forecasted overload—from over one megawatt in the first year to approximately ten megawatts by the fourth year—the problem did not lend itself to a battery solution.[29] Batteries can be ideal solutions for peak shaving to support slow load growth that has exceeded capacity, but that was not the case for Parklawn, because forecasts available at the time showed substantial overloads within a few years.[30] MEA's focus on later forecast changes and later actual conditions is the type of hindsight critique that the Commission already warned against in Case No. 9655.[31] Later forecasts and later actual conditions cannot be used and do not show that Pepco acted unreasonably when it proceeded based on the forecasts, system conditions, and redevelopment expectations reasonably available at the time.[32]

Nor does the absence of an "hourly constraint analysis" make Pepco's load forecasts insufficient.[33] MEA Witness Balakumar—whose background is in regulatory policy, not engineering—overestimates the usefulness of hourly constraint data in capacity planning.[34] Pepco's distribution planning process evaluates whether each distribution system component is

[27] MEA Br. at 14-16.
[28] Tr. at 389:3-19 (Alo).
[29] Tr. at 392:12-21 (Alo).
[30] *See* Pepco Initial Br. at 28-31 (summarizing load forecasts and substantial economic development).
[31] Case No. 9655, Order No. 89868 at 94 ("Furthermore, the Commission recognizes that decisions to embark on such large-scale projects must be based on forecasts; the true accuracy of forecasts cannot be determined until after the project has been completed.").
[32] Pepco Ex. 12, Alo Rebuttal at 20:7-20; Staff Ex. 12, Lo Surrebuttal at 3:6-19.
[33] MEA Br. at 8-14.
[34] Pepco Ex. 12, Alo Rebuttal at 35:6-17; (TOA-R)-2 at 27 of 39.

adequately sized to serve maximum electrical demand under applicable operating conditions and to maintain safe and reliable service under normal and contingency conditions.[35] As Pepco's lead engineering witness, Mr. Alo, explained, hourly forecasting may be more granular, but that does not make it "better for purposes of solving a forecasted persistent substation overload"; rather, "the granularity gives a false sense [of] security" that it can predict the exact nature of an overload, while "any overload" is detrimental to the asset and, "regardless of the duration of the overload, there has to be a solution put in place to address the overload."[36] Witness Alo further explained that an hourly constraint analysis is, at most, a tool that can be used to size a battery if a battery is a viable solution, but if a battery is not viable to solve the persistent, increasing Parklawn overload, an hourly constraint analysis "wouldn't" be needed.[37] In short, an hourly constraint analysis is not a reliable tool for sound capacity planning because substations like White Flint are designed to provide firm capacity, redundancy, transfer capability, operational flexibility, and long-term reliability in a constrained and growing area.[38]

Staff's own engineering testimony confirms the point. Staff recognized that White Flint is a long-lead capacity project, that Pepco must plan for customer load before those load conditions fully develop.[39] Staff's lead engineering witness, Mr. Lo, confirmed that Pepco's decision-making for White Flint was "consistent with sound engineering planning practices."[40] On the other hand, MEA's forecast critique provides no engineering planning based rationale that the Commission can reasonably rely upon to disallow costs for a substation that is now energized, operational, and providing capacity and reliability benefits to customers.[41]

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[35] Pepco Ex. 11, Alo Direct at 41:1 – 42:4, 47:23 – 48:1.
[36] Tr. at 528:12 – 529:6 (Alo); Pepco Ex. 12 Alo Rebuttal at 41:14-22: 42:1-3.
[37] Tr. at 531:17 – 532:13 (Alo).
[38] Pepco Ex. 11, Alo Direct at 46:17 – 47:9; Pepco Ex. 12, Alo Rebuttal at 19:19 – 20:20, 30:15 – 31:12.
[39] Staff Ex. 11, Lo Direct at 7:3-12; Staff Ex. 12, Lo Surrebuttal at 3:6-19.
[40] Staff Ex. 12, Lo Surrebuttal at 3:6-19.
[41] Pepco Ex. 11, Alo Direct at 46:17 – 47:9; Staff Ex. 11, Lo Direct at 8:4-19.

C. OPC's Argument On Brief Regarding Pepco's Forecasted Load Analysis Also Has No Merit.

OPC's argument regarding the Quanta study rests on a false premise: that the Quanta study alone justifies recovery of White Flint.[42] Pepco has not claimed that the Quanta study was a standalone alternative or prudence-review analysis. Rather, after Order No. 89868, Pepco paused further construction, re-evaluated the project, and retained Quanta to provide an independent third-party load forecast for the White Flint Study Area. OPC's criticism that Quanta modeled scenarios rather than probabilities also does not show imprudence.[43] The fact that Quanta modeled scenarios merely shows that Quanta performed the forecasting function it was retained to perform in an area where load growth depends on redevelopment timing, electrification, and customer adoption patterns.[44] That is precisely the kind of long-lead planning record the Commission and Staff have recognized is necessary for substation projects, because utilities must plan before load conditions fully materialize and before system reliability is placed at risk.[45]

D. MEA's And OPC's Arguments On Brief Regarding Pepco's Evaluation Of Alternatives Are Without Merit.

The record shows that Pepco did in fact evaluate alternatives and reasonably selected the only option that addressed the full planning problem with which the Company was confronted. Pepco considered rebuilding or expanding Parklawn, installing energy storage, and using energy management tools such as demand response, but those alternatives did not satisfy the capacity, constructability, reliability, and operational-flexibility criteria that White Flint was designed to meet.[46] Rebuilding Parklawn could not support existing Parklawn load during construction,

[42] OPC Br. at 14-16 ("The Quanta study itself reinforces why the forecast could not substitute for a prudence showing.")
[43] *Id.* at 14-15.
[44] Pepco Ex. 12, Alo Rebuttal at 16:16 – 17:10.
[45] Staff Ex. 11, Lo Direct at 7:3-12; Staff Ex. 12, Lo Surrebuttal at 3:6-19.
[46] Pepco Ex. 12, Alo Rebuttal at 36:18-37:14, 39:10-40:14.

adjacent substations lacked sufficient capacity to carry transferred load, did not provide adequate area capacity for future growth, and failed to separate critical cable junction points that left the system vulnerable to extended outages from faults on 69 kV pipe-type supplies.[47] NWS such as energy storage, distributed energy resources ("DERs"), and targeted energy management tools were considered but were not capable of reliably meeting the 2027 Parklawn capacity requirement, were subject to space, load-growth, and operational limitations, and did not mitigate the 69 kV cable-junction reliability risks that White Flint addressed.[48] In short, Witness Alo explained that a battery solution would not provide a long-term substitute for the substation, would become invalid within a few years as the overload increased, and would require Pepco to begin construction of the substation while customers were also paying for the battery solution.[49] That testimony is consistent with Staff's unbiased engineering review and there is no other engineering-based testimony in the record to contradict that analysis.[50] Therefore the record support for White Flint is overwhelming: Pepco's sworn engineering testimony, Staff's independent engineering review, the contemporaneous and updated load-forecast record, the Quanta re-confirmation, Pepco's internal governance reviews, and the undisputed fact that White Flint is energized, operational, and providing system benefits.

MEA's analysis does not overcome the fact that a NWS for White Flint could not have solved the capacity and reliability issue Pepco's customers were facing. As Pepco Witness Alo testified, the White Flint project was driven by the need for firm capacity, operational flexibility, and mitigation of single point of failure risks affecting multiple substations.[51] NWS-like battery

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[47] Pepco Ex. 12, Alo Rebuttal at 39:18 – 40:3.
[48] *Id.* at 40:4 – 41:9.
[49] Tr. at 546:4 – 548:8 (Alo).
[50] Staff Ex. 11, Lo Direct at 7:3-12; Staff Ex. 12, Lo Surrebuttal at 3:6-1.
[51] Pepco Ex. 12, Alo Rebuttal at 40:15-22.

storage cannot provide the same level of reliability and contingency performance at the levels of load growth forecasted. Storage resources can be depleted during prolonged peak events, and demand response depends on sustained customer participation. While these tools can be effective for managing daily peaks or short duration overloads, they could not address long duration, high load scenarios or mitigate equipment failure.[52]

MEA's criticism therefore focuses less on whether Pepco substantively considered reasonable alternatives and more on whether Pepco used MEA's preferred <u>form</u> of alternatives analysis, which was not known prior to this case.[53] MEA's proposed framework may inform future NWS policy directives and pre-approved Commission screening and rate-recovery requirements, but it does not show that Pepco acted imprudently when it selected a durable substation solution based on the system needs, engineering realities, load and development forecasts, reliability risks, and regulatory requirements known at the time.[54]

MEA's strawman arguments that Pepco "had a duty to" assess alternatives and that Pepco was "capable of performing a CBA at the time" does not undermine Pepco's sound engineering basis for concluding that NWS could not and cannot provide the durable capacity and reliability solution that customers in the White Flint area need.[55] Pepco has not argued that it was legally prohibited from considering alternatives, or that prudent utility planning never includes the evaluation of alternatives. However, the Company did consider an NWS as an option, but ruled it out for several reasons, including that the Parklawn substation footprint was not sufficient for a storage system large enough to alleviate the overload, that storage would only be a temporary

[52] *Id.* at 41:3-9.
[53] MEA Br. at 20-23.
[54] Pepco Ex. 12, Alo Rebuttal at 38:19 – 39:9, 48:11 – 49:9.
[55] MEA Br. at 17-20.

measure, and storage would not overcome the decreased reliability of the aging infrastructure.[56] Pepco's point is that, when the Company made the relevant White Flint decisions, Maryland had not adopted a formal NWS screening, hourly-constraint, competitive procurement, or NWS-specific benefit-cost framework that could be retroactively converted into a condition of cost recovery.[57] MEA itself acknowledged in discovery that Witness Balakumar "does not assert that the Commission has adopted a formal NWA screening methodology requirement as a prerequisite to cost recovery," and instead recommends adoption of such a requirement prospectively.[58] That distinction matters: Order No. 89868 required Pepco to justify its decision if it proceeded with White Flint, but it did not prescribe the ComEd-style NWS process, hourly battery-dispatch modeling, RFP process, or UBCA framework that MEA now claims should have governed a project initiated years earlier.[59] Witness Alo therefore framed the issue correctly: Maryland's NWS planning expectations are continuing to evolve, and Pepco supports prospective refinement of those processes, but White Flint must be judged under the information, tools, and regulatory expectations that existed when Pepco made the investment decision—not under later-developed frameworks applied after the fact.[60]

OPC's alternatives-analysis argument should likewise be rejected because it also improperly equates the absence of OPC's preferred *post hoc* documentation with the absence of a prudent planning decision.[61] Pepco does not rely on public comments or the Quanta study alone

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[56] Pepco Ex. 12, Alo Rebuttal at 37:11-12, 39:10-17.
[57] *See* Pepco Initial Br. at 34-36.
[58] Pepco Ex. 12, Alo Rebuttal, Schedule (TOA-R)-2 at 30-31.
[59] MEA Br. at 17-20. ComEd's NWS framework may be a useful prospective policy comparator, but it is not a Maryland prudence standard. Witness Alo confirmed that PHI now has an NWS evaluation process in place and that Witness Balakumar acknowledged that fact, which supports prospective process development rather than retroactive disallowance. (Pepco Ex. 12, Alo Rebuttal at 44:11 – 46:7; Tr. at 527:12 – 528:11 (Alo)).
[60] Pepco Ex. 12, Alo Rebuttal at 48:7 – 49:9.
[61] OPC Br. at 12-14.

to justify White Flint—as OPC argues on brief[62]—Pepco relies on the full engineering record discussed above and in the Company's Initial Brief.[63]

Lastly, MEA's point that "batteries were a commercially viable and available option,"[64] and OPC's criticism that Pepco did not implement a "competitive procurement process to identify and consider alternatives,"[65] are not relevant. Pepco has not argued that batteries were not commercially available.[66] NWS alternatives were reviewed as an alternative, and subsequently rejected here for concrete engineering reasons, not because NWS equipment was unavailable in the market or was too costly. Witness Alo explained at hearing that Order No. 89868 in Case No. 9655 did not require Pepco to conduct a BCA, and that Pepco did not perform a "full-blown" BCA because the alternative was deemed infeasible and would not address the Parklawn overload problem.[67] Therefore, it would be illogical and imprudent to conduct a formal RFP or NWS-specific BCA of an infeasible alternative. Staff's engineering witness therefore reached the correct conclusion: "Pepco's decision-making was reasonable based on the information available at the time and consistent with sound engineering planning practices."[68]

E. MEA's Battery-Cost Comparison Supports The Conclusion That White Flint Was Prudent.

MEA's assertion that batteries could have been a "lower cost" alternative rests on an apples-to-oranges comparison between a short-term battery deferral and a long-lived substation

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[62] *Id*. at 12 (discussing public comments supporting the White Flint project) and 15 (discussing Quanta).
[63] Pepco Ex. 12, Alo Rebuttal at 15:15 – 17:10 & Schedule (TOA-R)-1 at 105-06.
[64] MEA Br. at 25-28.
[65] OPC Br. at 13.
[66] MEA's citation to testimony in a 2019 BGE rate case regarding BGE's Coldspring battery project that is not part of the evidentiary record in this case is inappropriate. *See* MEA Br. at 26-27. There is no dispute over whether battery storage projects can be effective solutions in a variety of circumstances and Pepco fully supports the state's battery storage project goals. That does not change the fact that from an engineering standpoint, a battery storage project could not replace White Flint's durable capacity and reliability benefits for customers.
[67] Tr. at 417:10 – 418:6 (Alo).
[68] Staff Ex. 12, Lo Surrebuttal at 3:6-19.

portfolio that is now in service and providing customers with capacity, redundancy, transfer capability, operational flexibility, and reliability benefits.[69] The fact that MEA modeled a battery to cost $32.3 million to $49.2 million, or that Witness Alo estimated for the sake of argument that a more realistic battery cost would be approximately $50 million to $60 million, does not prove the battery could have been a prudent substitute for White Flint because those cost estimates do not provide the same service, useful life, or reliability functions as the White Flint Projects.[70] Witness Alo explained the central problem during the hearing: even under MEA's framing, the battery would provide only a short deferral, while the substation would still take more than four years to construct, meaning Pepco would need to begin the substation project while customers also paid for the battery.[71] That is not a lower-cost solution to the White Flint planning need—it is a path to customers paying for <u>both</u> a temporary battery <u>and</u> the long-term substation the system would still require.[72]

MEA's cost analysis also fails to compare assets over a comparable life cycle. Chair Barve asked MEA Witness Balakumar whether his analysis accounted for multiple battery sets to align a 15-year battery life with the substantially longer substation life, and MEA Witness Balakumar answered "yes," but MEA's written analysis shows that is not true.[73] Instead, MEA only modeled one phased battery portfolio and calculated only a 15-year deferral period.[74] That omission is

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[69] MEA Br. at 29-33. It is worth noting that MEA witness Lombardi admitted that MEA had not identified flexible, optimized, lower cost grid solutions that are lower cost than the capital projects included in Pepco's filing. (Pepco Ex. 12, Alo Rebuttal at 35:1-5 & Schedule (TOA-R)-2 at 39).
[70] MEA Br. at 29; Tr. at 547:5-16 (Alo). Nor does MEA's reliance on West Warwick establish that Pepco acted imprudently. *See* MEA Br. at 29-30. MEA uses West Warwick as proof that a battery could have been procured at lower cost, but that project arose under a New York NWA framework with different regulatory requirements, cost-recovery mechanisms, and project-specific conditions that did not exist in Maryland when Pepco made the White Flint decisions. *See* Pepco Ex. 12, Alo Rebuttal at 44:18 – 46:21, 48:11 – 49:9; Tr. at 1146:1 – 1151:19 (Balakumar).
[71] Tr. at 547:17 – 548:8 (Alo).
[72] Tr. at 547:17 – 548:8 (Alo); Staff Ex. 12, Lo Surrebuttal at 3:6-19.
[73] Tr. at 1190:7 – 1191:5 (Balakumar).
[74] *See* Pepco Initial Br. at 37; MEA Ex. 8C, Balakumar Surrebuttal at 32:21 – 33:18, 35:11-20, 36:15 – 37:6.

material because a 15-year battery deferral cannot be treated as a lower-cost substitute for a 40-to-45-year substation unless the analysis includes the additional battery replacements, continued operating risk, and eventual substation costs needed to serve customers over the entire 40-year period. Furthermore, MEA's assumption of a 15-year deferral is not supported by their own analysis. MEA's after-the-fact hypothetical analysis shows that the proposed battery solution would defer White Flint about four years, not 15 years.[75] MEA's cost comparison therefore does not establish that customers would have paid less for an equivalent solution.[76]

MEA's purported lower-cost battery solution analysis also improperly relies on later-developed hind-sight data that could not have been used by Pepco to evaluate the decision to construct White Flint. MEA acknowledges on brief that its hourly constraint analysis used actual Parklawn SCADA data from 2020 through 2024—data that was not available when Pepco decided to resume construction of White Flint after Case No. 9655—and used that later information as a "stand-in" for what MEA contends could have informed an earlier NWS analysis.[77] That after-developed policy model may illustrate MEA's preferred prospective NWS methodology, but it is not the contemporaneous decision record on which prudence must be judged.[78]

MEA's argument that a hypothetical battery solution could have been in place around the same time White Flint was energized is similarly insufficient.[79] MEA assumes a parallel NWS

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[75] Tr. at 547:17 – 548:8 (Alo).

[76] Pepco Ex. 12, Alo Rebuttal at 30:15 – 31:12, 43:15 – 44:9. MEA's siting and cost assumptions further confirm that its battery proposal is not a basis for disallowance. *See* MEA Br. at 32. Witness Balakumar acknowledged that he is not an engineer, that his analysis was high-level rather than a full land-availability analysis, and that land in Montgomery County would be more expensive than the Baltimore-area land-cost assumptions used in his model. (Tr. at 1163:23 – 1165:21, 1166:9 – 1168:15, 1188:16 – 1189:4 (Balakumar)). MEA's claim that Pepco should have pursued dispersed third-party sites at lower cost therefore remains a theoretical concept, not a demonstrated, contemporaneously available project that would have solved Pepco's capacity, contingency, reliability, and operational-flexibility needs at lower cost.

[77] MEA Br. at 34 & n.153.

[78] Pepco Ex. 12, Alo Rebuttal at 20:7-20, 48:11-49:9.

[79] MEA Br. at 36-37.

procurement path modeled on Orange & Rockland's West Warwick project, including assumed solicitation, developer selection, regulatory review, construction, and commissioning milestones, and then uses that assumed timeline to conclude that Pepco could have had a battery resource in service before or around the White Flint energization date.[80] But <u>under MEA's own analysis</u>, the West Warwick project took <u>over 7 years</u> from the time it was first proposed to the New York Public Service Commission until it was placed into service.[81] Therefore, by MEA's own admission, a similar regulator-pre-approved battery solution for the Parklawn overload problem would not have been a viable option when Pepco was re-considering White Flint after the Commission's June 2021 decision in Case No. 9655. Regardless, a hypothetical schedule modeled on another utility's project in another jurisdiction does not prove that a comparable project was available, approvable, sited, interconnected, contracted, and operational in Maryland on the same schedule when Pepco made its decisions.[82] The Commission's task is not to determine whether MEA can re-construct a hypothetical battery implementation scenario years later using selected later data;[83] it is to determine whether Pepco acted reasonably at the time based on the information then available.[84]

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[80] *Id*.

[81] MEA Ex. 8C, Balakumar Surrebuttal at 38:11 – 41:1.

[82] Pepco Ex. 12, Alo Rebuttal at 44:11-46:21, 48:11-49:9. MEA also argues that another Maryland utility, Baltimore Gas and Electric Company ("BGE"), constructed a battery at Coldspring substation to address forecasted overloads at Coldspring substation and that somehow demonstrates that Pepco should have done something similar with regard to White Flint. This argument should be rejected for two reasons. First, this argument consisted of hearsay claims offered by a non-expert witness on the stand and should be given no weight. (Tr. at 1047:13 – 1048:1). Second, in support of this argument, MEA's brief makes several citations to testimony from BGE's case in Case No. 9610, which is not in the evidentiary record this case and therefore should not be relied upon. *See* MEA Br. at 26-27.

[83] MEA attempts to disclaim as irrelevant the fact that the West Warwick battery project experienced fires since becoming operational. *See* MEA Br. at 30. The Company pointed this out not to besmirch battery storage as a generally-available technology, but rather to point out that at the time the Company was making planning decisions related to White Flint battery storage was still a developing technology with its own set of risks, which must be considered when determining how to solve serious and growing capacity and reliability issues with a major substation asset.

[84] Pepco Ex. 12, Alo Rebuttal at 20:7-20; Staff Ex. 12, Lo Surrebuttal at 3:6-19.

In sum, even accepting MEA's *post-hoc* battery storage cost analysis for argument's sake, the battery option would not have been a prudent customer solution in this case because MEA's analysis suffers from a core fallacy. MEA's hypothetical battery solution remains a <u>deferral</u> model, not a <u>like-for-like replacement</u> for the White Flint Projects. MEA itself states that its battery storage assumptions were designed to test feasibility and cost-effectiveness, "not to optimize or finalize a specific NWS portfolio design."[85] Witness Alo explained the practical consequence at hearing: because the Parklawn overload increased rapidly across the forecast horizon, the MEA hypothetical battery solution would stop being a valid solution within roughly four years, and would force Pepco to begin the substation before the battery was even providing meaningful deferral because substation construction itself takes more than four years.[86] Customers would have therefore paid for <u>both</u> a battery <u>and</u> the substation, which is one of the reasons why Pepco reasonably rejected the NWS alternative for this capacity and reliability problem.[87] The Commission should give appropriate weight to MEA's prospective policy interest in more formal, Commission-approved NWS screening, but it should reject MEA's effort to convert a *post-hoc* hypothetical exercise into a basis for disallowing an energized, operational, used-and-useful substation that Staff does not oppose recovering.[88]

F. OPC's Partial Disallowance Proposal Has No Merit.

OPC's alternative partial disallowance is equally unsupported. OPC asks the Commission to disallow $44.279 million, or 64.2 percent, of the core White Flint Substation costs associated with ITN 74120 based on a calculation comparing one later forecast of combined Parklawn/White

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[85] MEA Br. at 34 n.156.
[86] Tr. at 547:17 – 548:8 (Alo).
[87] *Id.*
[88] AOBA's White Flint arguments (*see* AOBA Br. at 12-18) do not supply an independent basis for relief. AOBA argues generally that Pepco must prove reasonableness, prudence, and cost-effectiveness of actual expenditures and points to corrections in plant-addition schedules, but those general documentation concerns do not rebut the project-specific evidence and Staff's engineering conclusion that White Flint should be recovered.

Flint load to the combined capacity of both Parklawn and White Flint.[89] Witness Alo explained why that calculation is not a valid distribution planning analysis: it relies on a single forecast document published after significant project completion, uses the new White Flint Substation capacity itself in the denominator, and converts that arithmetic result into a disallowance untethered to any specific imprudent scope, equipment selection, or management decision.[90] OPC did not identify any discrete design element Pepco should have removed, any component that is not serving the project's capacity and reliability function, or any lower-cost configuration that would have provided the same firm capacity, redundancy, transfer capability, and operational flexibility.[91]

OPC's use of the "used and useful" principle does not cure that defect.[92] White Flint is energized, operational, connected to the surrounding 69 kV and 13 kV system, and is providing capacity relief, reliability, redundancy, and operational flexibility for the White Flint/North Bethesda area.[93] A substation is not rendered partially "unused" merely because every MVA of capacity is not loaded immediately upon energization. Capacity headroom, contingency capability, and operational flexibility are core functions of prudent substation planning.[94] Accepting OPC's utilization-based disallowance would penalize Pepco for planning ahead to serve a growing area and would discourage the long-lead infrastructure planning necessary to maintain safe and reliable service.[95] The Commission should therefore also reject OPC's partial White Flint disallowance proposal.

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[89] OPC Br. at 15-16.
[90] Pepco Ex. 12, Alo Rebuttal at 18:5 – 19:17, 20:7-20, 24:18 – 25:18.
[91] *Id.* at 25:10 – 26:10, 30:15 – 31:12.
[92] OPC Br. at 15.
[93] Pepco Ex. 11, Alo Direct at 46:3 – 47:16; Staff Ex. 11, Lo Direct at 8:4-19.
[94] Pepco Ex. 12, Alo Rebuttal at 19:19 – 20:20, 30:15 – 31:12.
[95] Staff Ex. 11, Lo Direct at 7:3-12; Staff Ex. 12, Lo Surrebuttal at 3:6-19.

G. The Record Demonstrates That Pepco Acted Prudently Based On The Information Pepco Knew Or Should Have Known At The Time The Company Made The Decision To Build The White Flint Substation.

The record evidence demonstrates that based on the facts and circumstances known—or that should have been known—at the time, Pepco constructed the White Flint substation in a prudent manner.[96] The multi-year process to construct White Flint reflects the careful planning decisions the Commission expects from an electric utility. Pepco identified a long-term capacity and reliability need, monitored it through repeated forecasts, paused it after the Commission declined pre-approval in Case No. 9655, obtained independent expert third-party analysis, considered alternatives, reauthorized the work through internal reviews, and constructed a facility that is now serving and benefiting Pepco's Maryland customers. For these reasons, Staff found Pepco's decision-making for White Flint was "consistent with sound engineering planning practices"[97] and Staff supports placing these important assets into rate base. The Commission should therefore approve recovery of White Flint.

III. COST OF CAPITAL

A. Opposing Parties' Cost Of Capital Recommendations Will Not Provide Pepco With The Opportunity To Earn A Reasonable Rate Of Return.

The overwhelming weight of the evidence establishes that the opposing parties' ROE recommendations are unduly low, falling well below recently-authorized ROEs for comparable utilities—and in OPC's case, as discussed further *infra*, falling so unreasonably low as to effectively be *per se* confiscatory. All opposing ROE recommendations are inconsistent with the current capital market environment and Pepco's regulatory and investment risk, as well as the benefits that inure to customers from the Company maintaining its financial strength. The record

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[96] Pepco Initial Br. at 6-9 (discussion standards of law for reviewing TTY rate case applications).

[97] Staff Ex. 12, Lo Surrebuttal at 3:6-19.

shows that utility bond yields and capital costs have increased materially since Pepco's last ROE was authorized; principles of gradualism thus support moving Pepco's authorized ROE upward, not downward. For these reasons alone, the ROE recommendations made by OPC (7.70%), MEA (9.00%), AOBA (9.40%), and Staff (9.50%) should be rejected.

B. Opposing Parties' ROE Recommendations Are Inconsistent With Current Capital Market Conditions.

Staff, OPC, AOBA, and MEA all ask the Commission either to hold Pepco's ROE at 9.50% or reduce it, notwithstanding the undisputed increase in bond yields and long-term capital costs comprising the current market conditions in this case.[98] Pepco Witness McKenzie demonstrated that key interest rate benchmarks cited by Staff and OPC have increased approximately 251 to 279 basis points since the Commission last established Pepco's authorized return, while the midpoint of the Federal Funds target range increased by 350 basis points.[99] Mr. McKenzie further demonstrated that allowed ROEs for electric utilities historically increase approximately 56 basis points for each 100 basis point increase in Baa utility bond yields, confirming the interconnected relationship between bond yields and authorized ROEs.[100] Simply put, Pepco's currently authorized ROE has not kept pace with market changes, evidenced by the fact that Baa utility yields have increased by more than 260 basis points since 2021 while Pepco's allowed ROE has decreased by seven basis points.[101]

The opposing parties largely ignore this evidence and instead baselessly ask the Commission to treat Pepco's existing 9.50% ROE as an upper bound.[102] That approach is inconsistent with the *Hope* and *Bluefield* requirements that the Commission base its authorized

[98] *See* Staff Br. at 24-26; OPC Br. at 2-8; AOBA Br. at 56-60; MEA Br. at 39-47.
[99] Pepco Ex. 25, McKenzie Rebuttal at 8:1-5.
[100] *Id.* at 8:6 – 9:5.
[101] *Id.* at 12:6 – 13:6.
[102] *See* Staff Br. at 24-26; AOBA Br. at 56-60; OPC Br. at 2-8; MEA Br. at 39-47.

return on maintaining the Company's' financial integrity, supporting its creditworthiness, ensuring its ability to attract capital, as well as providing a return commensurate with comparable-risk investments.

Perhaps most troubling is that certain opposing parties' ROE recommendations appear intended to scapegoat Pepco for a recent rise in utility bills across Maryland and cast an ROE reduction as a cure-all for Maryland ratepayers' affordability concerns.[103] The only record evidence in this case on this topic shows that a lower ROE in fact harms customers over the long-term.[104] Overall, continued support for Pepco's financial integrity and flexibility will be instrumental in attracting the capital necessary to fund needed investments in an effective manner.[105] The utility sector also faces increasing risks from high capital spending, cash flow deficits, supply-chain constraints, tariff pressures, and weakening credit quality.[106] These circumstances reinforce the need for an ROE and capital structure that support Pepco's financial strength and access to capital at competitive rates.

C. The Commission Should Adopt Pepco's ROE Recommendation.

The Commission should give substantial weight to the benchmark evidence in Mr. McKenzie's rebuttal testimony, which demonstrates that opposing parties' ROE recommendations fall below reasonable market indicators, and in the case of OPC, well below.[107] Adjusting national average allowed ROEs to reflect current interest rates supports a cost of equity of 9.93% to 10.30%,

[103] *See* OPC Br. at 7 (baselessly contending that awarding a reasonable, non-confiscatory ROE results in "a substantial wealth transfer from ordinary ratepayers to corporate shareholders"); AOBA Br. at 56.

[104] While the immediate effect of lowering the Company's ROE may initially lower customers' costs, ultimately, customers will pay higher costs in the form of higher levels of debt costs and less favorable borrowing terms. OPC concedes that a lower ROE could lead to "a credit rating downgrade and a slightly higher cost of debt," OPC Br. at 6, but disregards the real capital-market consequences for Pepco resulting from an ROE reduction, which will in turn affect the Company's customers.

[105] Pepco Ex. 24, Direct Testimony of Adrien M. McKenzie ("McKenzie Direct") at 11:21-23.

[106] *Id.* at 14:1 – 15:12, 29:20 – 31:6.

[107] Pepco Ex. 25, McKenzie Rebuttal at 5:6-11 & Figure AMM-R1; *id.* at 20:19 – 26:2, 28:7-20.

while comparable capital market conditions support an ROE of approximately 10.33%, and comparable risk premiums support an ROE of approximately 10.79%.[108] The expected earnings evidence relied upon by Mr. McKenzie also indicates expected earned rates of return of approximately 11.08% for the opposing witnesses' proxy groups.[109] These benchmarks confirm that Pepco's 10.50% ROE is reasonable and that opposing recommendations are too low.[110]

D. The Commission Should Reject OPC's Unreasonable ROE And Capital Structure Recommendations.

OPC recommends a 7.70% ROE and a hypothetical capital structure of 43% equity and 57% debt.[111] These proposals are unreasonable, disconnected from Pepco's actual financing needs and credit metrics, and violate Commission precedent as well as the Company's merger obligations. Proposing the lowest ROE for any Maryland utility in several decades, OPC essentially seeks a finding that this Commission, along with public service commissions across the country, have gotten it all wrong for decades. For three main reasons, the Commission should reject OPC's meritless proposals.

First, OPC's 7.70% ROE recommendation is so unduly low as to be confiscatory. OPC's proposed ROE falls almost 100 basis points below the lowest ROE authorized for an electric utility in 2023, 2024, or 2025, and a full 180 basis points below Staff's recommended ROE in this case.[112] It falls more than 200 basis points below the average authorized ROE for any electric utility in this country over the twelve months ending September 30, 2025, as reported by S&P Global's Regulatory Research Associates ("RRA").[113] It falls far below 2025 national average ROEs of 9.77% in general rate cases, and 9.56% in distribution rate cases. Reducing Pepco's ROE at all,

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[108] Pepco Ex. 25, McKenzie Rebuttal at 4:15-20, 20:19 –23:6.
[109] *Id.* at 5, Figure AMM-R1; *id.* at 25:19 – 26:2.
[110] Pepco Initial Br. at 56.
[111] OPC Br. at 2-10.
[112] *See* Pepco Ex. 25, McKenzie Rebuttal at 2:20 – 3:4.
[113] Pepco Initial Br. at 58 (citing Pepco Ex. 25, McKenzie Rebuttal at 66:10-19).

let alone to 7.70%, would threaten the Company's financial integrity and its ability to attract capital under reasonable terms to discharge its public duties, and would accordingly violate *Hope* and *Bluefield* regulatory standards.[114] Indeed, OPC Witness Garrett concedes that his ROE recommendation is an "*unprecedented departure from the norm*" and that he is not aware of any state regulatory commission approving an ROE as low as the one he recommends for Pepco here.[115]

To support its recommended drastic reduction to Pepco's ROE, OPC baldly and without evidence argues that Pepco is "financially secure" and "extremely low-risk."[116] Importantly, the record verifies that Pepco is not as low risk as OPC claims. For instance, Ms. O'Donnell discussed the jurisdiction-based regulatory environment risks Pepco faces and explained that regulatory risk heightens earnings and cash-flow risk, which "must be appropriately reflected when evaluating Pepco's business risk and determining a just and reasonable return."[117] And in response to questions from Commissioner Linton, Pepco Witness McKenzie explained that ROE is tied to investor risk perceptions, which can be driven by the perceived regulatory environment in the

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[114] *See Bluefield Water Works & Imp. Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 692-93 (1923); *Hope*, 320 U.S. at 603.

[115] *See* Tr. at 1198:5-10 (Garrett) (emphasis added). Notably, OPC also argues without any support that "Pepco does not dispute that it would be able to attract sufficient capital at Mr. Garrett's recommended ROE." In fact, the opposite is true: as Commissioner Suchman noted, Pepco Witness O'Donnell explained at hearing that Pepco is challenging OPC's confiscatory proposal precisely because Mr. Garrett's recommended ROE would prevent the Company from attracting sufficient capital at competitive rates. *See* Tr. 1220:21 – 1221:5 (Comm. Suchman) ("Witness O'Donnell didn't challenge the ability to raise capital, her concern was being able to raise it at the rate that they're getting it now. . . . They'll always be able to borrow, they're always going to be able to secure debt, but the question is can they secure it at the favorable rates that they're seeing now.").

[116] Mr. Garrett's discovery responses confirm that his "low-risk" assertion was based primarily on utility proxy-group beta estimates and that his cost-of-equity estimates were not influenced by RRA risk assessment reports. *See* Pepco Ex. 41, O'Donnell Rebuttal at 8 n.10 & Sch. (EMDO-R)-1 at 9. OPC's argument that its drastic ROE recommendation would not impact Pepco's financial health also appears to hinge on a single historical example—that "Duke Energy grew into the third largest utility in the U.S. with ROEs below 8 percent for over a decade." (OPC Br. at 6) (citing MEA Ex. 8, Kihm Direct). This anecdotal example is unpersuasive and cannot support OPC's confiscatory proposal, as OPC fails to explain even basic details about the credit environment under which Duke operated at those ROEs and whether they are similar to Pepco's circumstances now, whether and how Duke's credit ratings or cost of debt were affected, or whether Duke's situation was comparable to Pepco's, to name just a few critical missing data points.

[117] *See* Pepco Ex. 41, O'Donnell Rebuttal at 6:16 – 8:15.

operating state.[118] Accordingly, the Commission should reject OPC's attempt to reduce Pepco's ROE based on a risk characterization that ignores Pepco's specific regulatory risks, and should not be misled by OPC's baseless claims.[119]

Second, the Commission should reject OPC's ROE recommendation because it improperly conflates general market return expectations with utility-specific investor expectations. OPC asserts that investors would not expect a 10.50% return a utility when the entire stock market is projected to return only 6-7%.[120] However, this argument defies economic logic and demonstrates a fundamental misunderstanding of principles underlying authorized ROEs and should be rejected accordingly. OPC's contention that investors expect market returns of 6-7% makes no sense, in light of the fact that ROEs authorized for utilities exceed 9.5%.[121]

Pepco does not dispute that utility investments may be generally lower risk than many competitive-sector investments. But the relevant legal standard is not whether Pepco is lower risk than the broader market; it is whether Pepco is provided an opportunity to earn a return commensurate with investments of corresponding risk and sufficient to maintain financial integrity and attract capital.[122]

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[118] *Id.* at 23:5 – 24:3 (discussing regulatory risk); Tr. 663:10 – 664:23 (McKenzie). For example, historical test years are viewed less favorably by investors because they can contribute to earnings attrition and an inability to earn the authorized return. *See* Pepco Ex. 24, McKenzie Direct at 23:5 – 24:3.
[119] In addition, OPC misleadingly frames its 7.70% ROE recommendation as "measured" because Mr. Garrett's (flawed) model produced a 7.2% average ROE. *See* OPC Br. at 8-9. In essence, OPC argues, because it could recommend an even lower ROE than it did here, its recommendation of 7.70% incorporates principles of gradualism". *Id.* This argument distorts the concept of gradualism into a concession, not a floor, and implies there is no basis for a higher ROE when everything in the record suggests otherwise. This is a strawman argument that should be rejected.
[120] *See* OPC Br. at 5.
[121] OPC's argument is contradicted by the testimony of its own witness, Mr. Garrett, who supported a market return of 9.8%. OPC Ex. 31, Direct Testimony of David Garrett ("Garrett Direct"), Attachment DJG-11, citing a risk-free rate of 4.8% and an equity risk premium of 5.0%.
[122] *See* Pepco Ex. 25, McKenzie Rebuttal at 23-30.

Moreover, OPC's recommendation is wholly disconnected from underlying capital market conditions.[123] It is uncontroverted that long-term capital costs have increased substantially since the Commission authorized Pepco's current 9.50% ROE. As the Commission is well aware, authorized ROEs are interconnected with bond yields, with regression evidence showing that allowed ROEs increase approximately 56 basis points with each 100 basis point increase in Baa utility bond yields, a relationship that is statistically significant at a level exceeding 99%.[124] And when bond yields move higher, investors naturally demand a higher return for common stocks as well. Yet, despite these increases, Pepco's authorized ROE *decreased* by seven basis points even as bond yields have trended upward over 260 basis points since 2021, confirming that the Company's currently allowed ROE does not reflect the higher returns now required by investors.[125] Finally, OPC's citation to expected market rates of return for all common stocks of 5.9% only serves to highlight the extreme nature of Mr. Garrett's recommendation, given that investors can earn that same return by buying a utility first mortgage bond.

Third, OPC's ROE and capital structure recommendations should be rejected because they are based on fundamentally flawed analyses and run contrary to the record evidence and the realities of the current capital markets. As Pepco detailed in its Initial Brief, OPC's misguided capital structure recommendation is based on Mr. Garrett's "double leverage" method, which Mr.

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[123] For example, Baa bond yields were highest at the time Mr. Garrett submitted his testimony in this case, but he recommends a significantly lower ROE for Pepco than he did for a comparable utility (PSO) in 2023 and 2024. OPC Witness Garrett's recommendations also violate the standard set forth in *Hope*, where the Court stated, "the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks." *Hope*, 320 U.S. at 603. PSO's Moody's and S&P credit ratings are identical to Pepco, indicating comparable risk. Yet despite corresponding risks, OPC Witness Garrett recommended an ROE for Pepco that is significantly lower, and this inconsistency cannot be explained by changes in underlying capital costs. *See* Pepco Ex. 25, McKenzie Rebuttal at 63:12 – 64:4.

[124] Pepco Witness McKenzie explained at hearing that bond yields are "an observable benchmark for changes in capital costs, both magnitude and direction. They're widely reported in the investment press. They're observable. We don't need to debate about how to apply models like the DCF and the CAPM. And so they're also very easily understood by investors and accepted." (Tr. at 642:8-16).

[125] Pepco Ex. 25, McKenzie Rebuttal at 13:1-6.

Garrett admitted he has never used in any prior case and no state regulatory commission has ever adopted.[126] Among other fatal flaws, the double leverage method improperly equalizes Pepco's cost of equity to its Weighted Average Cost of Capital "WACC"—resulting in a cost of equity that is less than the cost of bonds.[127] Moreover, OPC proposed a hypothetical capital structure for Pepco, which contravenes the Commission's longstanding practice of basing rates on a utility's actual capital structure.[128] More importantly, adopting OPC's proposed capital structure would require Pepco to violate Exelon-PHI Merger Condition No. 31, which requires the Company to maintain a rolling 12-month average annual equity ratio of at least 48%.[129] Accordingly, the Commission must reject OPC's proposed capital structure.

In addition, OPC's Initial Brief fails to cure the methodological defects and inconsistencies in its witness's DCF and CAPM analyses used to derive its ROE recommendation, which were previously addressed by Pepco Witness McKenzie.[130] For instance, without explanation, OPC

[126] Pepco Witness McKenzie's review of OPC Witness Garrett's ROE analysis and recommendations over six recent rate cases revealed numerous inconsistencies in Mr. Garrett's model selection and implementation. *See* Pepco Ex. 25, McKenzie Rebuttal at 61:13 – 63:5 & Table AMM-R4; *id.* at Schedule (AMM-R)-16. The most telling example of these inconsistencies is that Mr. Garrett retained his "analyst growth" DCF result when it generated a 7.6% ROE for Delmarva Power in July 2025, but threw out his 9.0% result from the same model for Pepco six months later, and recommended an ROE 100 basis points above his average model result for Delmarva Power while recommending only 50 basis points above his average for Pepco, despite comparable risk profiles and higher bond yields at the time he submitted his Pepco testimony. *Id.* at 62:18 – 63:5. Mr. Garrett's inconsistency over these cases undermines the credibility of OPC's ROE recommendation.

[127] Tr. 1200:12 – 1204:1, 1205:13 – 1206:17 (Garrett); *see also* Pepco Ex. 59 (OPC Response to Pepco Data Request 7-3).

[128] *See* Tr. at 895:4-10 (O'Donnell) ("There's a long-standing precedent with the Commission to approve actual capital structure. In fact, in the last Commission's Order in [Case No.] 9702 they made the note of saying that they're approving our capital structure based on that longstanding practice of using the Company's actual capital structure.").

[129] Pepco Ex. 41, O'Donnell Rebuttal at 54:2-11 (citing *Re Exelon Corp. & Pepco Holdings, Inc.*, Case No. 9361, Order No. 86990 at A-37 (May 15, 2015) ("Delmarva and Pepco shall maintain a rolling 12-month average annual equity ratio of at least 48%."). Ms. O'Donnell explained that Pepco cannot pay dividends to its parent company if, immediately after the dividend payment, its common equity level would fall below 48%, and the Company must file reports after each dividend payment to demonstrate compliance. Notably, OPC Witness Garrett admitted that he was not aware of this Commission's required merger condition when he filed his testimony. *See id.* & Schedule (EMDO-R)-1 at 10 (OPC Response to Pepco Data Request 7-9).

[130] *See* OPC Br. at 2-8; Pepco Ex. 25, McKenzie Rebuttal at 60:3-12.

Witness Garrett discarded his 9.0% analyst-growth DCF result despite his incorrect claim that his 7.70% ROE recommendation considered all of his model results.[131]

Likewise, Mr. Garrett's CAPM analysis relied on outdated and subjective equity risk premium inputs, rather than a direct assessment of current investor expectations, which downwardly bias his results.[132] Mr. Garrett failed to base his equity risk premium on current forward-looking expectations, as is required for a proper CAPM analysis. Rather, he subjectively selected three outdated sources culled from the internet, giving them primary (75%) weight in his ERP estimation—including a unreliable mass solicitation survey from the IESE Business School in Barcelona and a "black box" Kroll Bond Ratings Agency report that offers no transparent indication as to how the ERP is calculated.[133] Similarly, OPC's claim that "market risk is the only type of risk that is rewarded by the market and is thus the primary type of risk the Commission should consider when determining the allowed return" is incorrect. Regulatory commissions routinely consider firm-specific risks—including financial risks, business risks, and regulatory risks—in setting allowed equity returns. Mr. Garrett's misapplication of CAPM theory to dismiss firm-specific risk constitutes a fundamental flaw in his analysis that warrants its rejection.

E. The Commission Should Reject MEA's ROE Recommendation.

MEA continues to recommend a 7.70% WACC while recommending that Pepco be awarded a 9.0% ROE.[134] MEA's proposal should be rejected because, like OPC's recommendation, it is based on the faulty premise that its witness has precisely determined investor-required returns, whereas regulatory commissions have consistently been wrong.[135] Mr.

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[131] Pepco Ex. 25, McKenzie Rebuttal at 60:3-12.
[132] *See* OPC Br. at 4-8; Pepco Ex. 25, McKenzie Rebuttal at 66:10-19, 80:1-24.
[133] *See* Pepco Ex. 25, McKenzie Rebuttal at 81:18 – 82:21.
[134] *See generally* MEA Br. at 39-47.
[135] Pepco Ex. 25, McKenzie Rebuttal at 3:5-19; *see* MEA Br. at 39-47.

McKenzie explained that, unlike the cost of debt, the cost of equity is not specified by contract and is predicated on investor expectations that are not directly observable or known with certainty.[136] That is why regulatory proceedings rely on multiple witnesses, multiple models, and an extensive evidentiary record rather than a single claimed mathematical cost-of-equity estimate.[137]

Similar to OPC, MEA improperly relies on long-term GDP growth and its critique of analyst growth rates should also be rejected.[138] However, as Mr. McKenzie established, there is no basis to assume that investors rely upon long-term GDP forecasts to develop utility growth expectations. Mr. McKenzie also showed that MEA's reliance on backward-looking or overly constrained growth assumptions fails to capture the required forward-looking expectations of investors. These flaws bias MEA's ROE recommendation downward.[139] MEA's recommendation should therefore be rejected because it produces a return materially below the market benchmarks in the record and fails to satisfy *Bluefield*'s and *Hope*'s end-result standard.[140]

F. The Commission Should Reject AOBA's ROE And Capital Structure Recommendations.

AOBA's proposed 9.40% ROE and capital structure recommendations should be rejected entirely. As an initial matter, AOBA's 9.40% ROE also included a "risk reduction adjustment" of 10 basis points based on T. Oliver's opinion regarding "the reduced risk engendered by Pepco's use of forecasting." Since the FFTY is no longer in this case, this "risk reduction adjustment" no longer applies, and AOBA should be recommending no change to Pepco's ROE rather than a downward adjustment. Yet AOBA neither acknowledges this baseline flaw in its recommendation nor changes its recommendation on brief.

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[136] Pepco Ex. 25, McKenzie Rebuttal at 3:9-14.
[137] *See id.* at 3:12-19; *see also* Staff Br. at 25-26.
[138] *See* MEA Br. at 45-47.
[139] Pepco Ex. 25, McKenzie Rebuttal at 4:21-40, 103:1 – 104:24.
[140] MEA Br. at 39-47; *see also* Pepco Ex. 25, McKenzie Rebuttal at 5:1-5, 28:14-20.

AOBA argues that Pepco's 10.50% ROE is inconsistent with the authorized return in Case No. 9702, rate affordability, and Pepco's regulated distribution risk.[141] AOBA's arguments should be rejected because they ignore current capital market data and are based on unsupported conjecture regarding Pepco's relative risks as well as the Commission's actual findings in Case No. 9702. Specifically, AOBA cites the Commission's decision in Case No. 9702 as a basis to again reject Pepco's requested ROE of 10.5%, but that looking backward to historical allowed ROEs established when long-term bond yields were materially lower ignores accepted financial principles and understates the return required by investors today.[142] Gradualism clearly requires an increase to Pepco's ROE in light of the sustained increase in capital costs.[143] AOBA's use of rate base growth and affordability claims to understate Pepco's cost of capital are equally meritless.[144] As noted above, affordability should be addressed through prudent cost review and rate design, not by authorizing an inadequate return. Finally, AOBA's Initial Brief also ignores the fact that AOBA Witness T. Oliver performed no objective ROE analysis or necessary modeling before recommending a 9.40% ROE and therefore provides no empirical support for its ROE recommendation. A recommendation unsupported by an independent quantitative ROE analysis should be disregarded, particularly here where, in contrast to AOBA, Pepco has presented a multi-method cost-of-equity analysis supporting its recommended 10.5% ROE.[145]

AOBA's proposed capital structure argument should likewise be rejected because it fails to exclude debt financing associated with EmPOWER program costs consistent with the Energy

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[141] AOBA Br. at 56-60.
[142] Pepco Ex. 25, McKenzie Rebuttal at 20:11-16.
[143] *Id.* at 114:4-10. AOBA cites "gradualism" in support of its argument for a 9.40% ROE; but as Pepco Witness McKenzie showed, applying principles of gradualism supports an upward ROE shift, not a downward one.
[144] AOBA Br. at 57-58.
[145] *E.g.*, Pepco Ex. 25, McKenzie Rebuttal at 5:1-5.

Efficiency and Conservation Plans Act of 2024 (House Bill 864).[146] Pepco's capital structure has been calculated here in the same manner accepted by the Commission in prior rate cases, including Case No. 9702, with the only difference being the exclusion of EmPOWER-related debt now funded entirely by debt.[147] Moreover, Pepco's proposed equity ratio is consistent with the capitalization maintained by comparable utility operating companies and supports the credit ratings that inform the ROE analysis.[148]

G. The Commission Should Reject Staff's ROE And Capital Structure Recommendations.

Staff's recommendation to hold Pepco at a 9.50% ROE should be rejected because it ignores the significant increase in long-term capital costs and would leave Pepco's authorized return inconsistent with current investor requirements. While Pepco appreciates Staff's recognition of the need for a reasonable return, Staff's 9.50% ROE recommendation is simply too low given current utility bond yields, capital market conditions, and Pepco's regulatory risk. Ultimately, Staff urges an end result that gives inadequate weight to the current capital market evidence Mr. McKenzie presented.[149]

Staff characterizes its ROE recommendation as "balanced, market-based, and analytically sound." But adopting this recommendation would leave Pepco at its currently authorized ROE even though the record shows a material increase in long-term capital costs since Pepco's current ROE was established.[150] Moreover, Staff's reliance on historical allowed ROEs and gradualism[151]

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[146] *See* AOBA Br. at 60-63. In contrast, Pepco's proposed capital structure properly excludes debt associated with EmPOWER program costs because House Bill 864 allows only a debt return on unamortized EmPOWER program costs, and including that debt in the distribution capital structure would artificially inflate the debt ratio by including debt statutorily dedicated to EmPOWER rather than distribution system assets. *See* Pepco Ex. 41, O'Donnell Rebuttal at 52:16 – 53:13.

[147] Pepco Ex. 41, O'Donnell Rebuttal at 54:17 – 55:4.

[148] Pepco Ex. 25, McKenzie Rebuttal at 93:1-7, 99:1-12.

[149] *See* Staff Br. at 25-26; Pepco Ex. 25, McKenzie Rebuttal at 20:1 – 23:6.

[150] Staff Br. at 24; Pepco Ex. 25, McKenzie Rebuttal at 12:6 – 13:6, 19:10-25.

[151] *See* Staff Br. at 32-33, 36-37.

does not cure the fundamental defects in its recommendation. As an initial matter and as noted in Pepco's Initial Brief, it is unclear how or to what level gradualism affected Staff's recommendation. Staff's own reliance on national authorized ROEs confirms that Staff views allowed ROEs as relevant, but Mr. McKenzie's adjustment to those same national authorized ROEs to reflect current capital-market conditions produces ROEs of 10.30% for all electric utilities and 9.93% for distribution-only electric utilities, both above Staff's 9.50% recommendation.[152]

Finally, Pepco Witness McKenzie demonstrated that authorized ROEs for electric utilities have historically increased approximately 56 basis points for each 100 basis point increase in Baa utility bond yields.[153] Pepco's allowed ROE, however, has not followed that relationship because Baa utility yields have increased by more than 260 basis points since 2021 while Pepco's allowed ROE has decreased by seven basis points.[154] Staff's 9.50% ROE recommendation therefore fails to reflect the higher capital costs that investors observe in the market.[155]

Moreover, Staff Witness McAuliffe's underlying methodology and analysis fails to actually support Staff's ROE recommendation. Staff argues on brief that its DCF inputs are superior to the Company's because Staff used a 180-day stock-price period, a broader proxy group, and rejected Zacks and IBES growth rates.[156] However, as Pepco Witness McKenzie explained, Staff's DCF results were 9.86% using Value Line, 9.59% using Argus, and 10.71% using Zacks. Despite acknowledging that "including multiple sources of growth rates limits the impact of any upward or downward bias,"[157] Staff subjectively discarded the 10.71% Zacks result, lowering the

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[152] Staff Br. at 32-33; Pepco Ex. 25, McKenzie Rebuttal at 20:1 – 21:13.
[153] Pepco Ex. 25, McKenzie Rebuttal at 8:6-12, 9:1-5.
[154] *Id.* at 12:6-13, 13:1-6.
[155] Staff Br. at 24, 36-37; Pepco Ex. 25, McKenzie Rebuttal at 19:10-25.
[156] Staff Br. at 27-30.
[157] Staff Ex. 9, Direct Testimony of Drew McAuliffe at 20.

average DCF result by 32 basis points from 10.05% to 9.73%.[158] Mr. McAuliffe provided no meaningful explanation for this decision, and it is especially confusing because his analysis already applied a screen to remove unrealistic DCF results. As such, Staff's DCF analysis actually supports an ROE materially above Staff's 9.50% recommendation when applied consistently with current capital-market conditions. Staff's CAPM analysis fares no better to justify a 9.50% ROE recommendation. Staff produce CAPM results of 10.02% using Blume-adjusted betas and 8.65% using Vasicek-adjusted betas.[159] Staff's CAPM result is downward-biased by 20 basis points due to Mr. McAuliffe's use of a projected risk-free rate in his CAPM.[160] In contrast to Staff's assertions, the Commission has previously rejected use of projected interest rates in favor of the "current reality."[161] These two easily understood corrections to Staff's ROE analysis alone suggest that an upward shift of at least 20 basis points is appropriate.

Furthermore, for the reasons stated in Pepco's initial brief, Staff's capital structure and cost of debt recommendations should be rejected. Staff fails to align the ratemaking capital structure with the capital available to fund distribution investments and erroneously contests Pepco's adjustment related to debt financing associated with the EmPOWER program capital structure.[162]

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[158] Pepco Ex. 25, McKenzie Rebuttal at 30:11-19. Mr. McKenzie also explained that Staff's 7.0% and 14.0% threshold tests are inconsistent with Staff's prior practice after accounting for the increase in Baa utility bond yields, and that correcting Staff's threshold approach to reflect the increase in capital costs raises Staff's average DCF cost-of-equity result from 10.00% to 10.23%. *See id.* at 33:3 – 34:2.

[159] Staff Br. at 31-32. Staff's CAPM analysis used a 4.58% risk-free rate, a 7.17% historical equity risk premium, Value Line Blume-adjusted betas, and Staff-calculated Vasicek-adjusted betas.

[160] Pepco Ex. 25, McKenzie Rebuttal at 34:11-35:3. As Mr. McKenzie explained, Staff's projected 4.58% risk-free rate understates current market conditions because 30-year Treasury yields averaged 4.80% in December 2025 and 4.84% in January 2026, causing a downward bias in Staff's CAPM results. *See id.*

[161] *See* Case No. 9406, Order No. 87591 at 155, n.684 (citing Case No. 9299, Order No. 85374 at 78).

[162] *See* Pepco Initial Br. at 51, n.229. Pepco Witness O'Donnell explained that Staff's position is inconsistent with House Bill 864, which allows only a debt return on the unamortized EmPOWER program, and that excluding EmPOWER debt aligns Pepco's proposed capital structure with the debt and equity available to fund distribution investments. *See* Pepco Ex. 41, O'Donnell Rebuttal at 52:16-21. Pepco's adjustment therefore properly removes debt solely tied to EmPOWER while maintaining the equity available for distribution investments. *Id.* at 53:4-10. Failing to make that adjustment would artificially inflate the debt ratio by including debt statutorily dedicated to EmPOWER program costs rather than distribution system assets. *See id.* at 53:11-13.

Regarding cost of debt, Staff argues that Pepco's prospective 2026 debt issuance should be excluded as uncertain and speculative; but that is not an issue in this case.[163] Pepco Witness O'Donnell's Supplemental Rebuttal documents the final pricing of Pepco's March 2026 $300 million long-term debt issuance and confirmed that the final transaction pricing did not change Pepco's proposed cost of debt or rate of return.[164] Staff's removal of the 2026 debt issuance therefore understates Pepco's cost of debt for the rate-effective period.

The Commission should instead approve Pepco's proposed cost of capital because Pepco's proposal reflects current capital market conditions, provides a reasonable opportunity to attract capital on reasonable terms, aligns capital structure with the financing of distribution investments, and incorporates the updated 5.02% cost of debt and 7.83% overall rate of return supported by the record.

IV. REVENUE REQUIREMENT

Pepco recognizes the parties' and the Commission's interest in clear, consistent, and easily traceable rate case documentation. Staff argues on brief that aspects of Pepco's filing and subsequent updates created confusion, including the presentation of RMA 2, RMAs 3 and 4, project naming conventions, and the need to reconcile certain data after the hearing.[165] AOBA similarly criticizes what it characterizes as a lack of transparency in Pepco's rate-base presentation, the timing of certain RMA updates, and the supporting documentation for post-test-year plant additions.[166]

Pepco submits that it has provided a record of traceable and well-supported evidence as part of its TTY submission in the case. To the extent there are documentation concerns, they must

[163] Staff Br. at 37-38.
[164] *See* Pepco Ex. 41, O'Donnell Rebuttal at 55:10 – 56:16; Pepco Ex. 42, O'Donnell Supp. Rebuttal at 1:7 – 2:3.
[165] Staff Br. at 12-16.
[166] AOBA Br. at 9-14, 20-22.

be evaluated in the context of the unusual procedural posture of this case and the final evidentiary record that is now before the Commission. Pepco filed this case with a fully forecasted test year ("FFTY") proposal and, consistent with Order No. 91181, included a TTY compliance presentation containing the information necessary to calculate a historical test-year revenue requirement.[167] Shortly before the evidentiary hearing was set to begin, legislative developments under the Utility RELIEF Act required the case to proceed on a TTY basis rather than the FFTY proposal originally filed, which necessarily required the Company, Staff, and the intervenors to focus the record on the TTY presentation.[168] Pepco then, in response to the Commission's April 17, 2026 Letter Order,[169] filed clean and redline copies of the relevant testimony that are impacted by the necessary removal of the fully forecasted test year, and continued to provide updated information through bench data requests, discovery, and hearing testimony.[170]

The final record is sufficient for decision. Staff's own brief confirms that, after Pepco revised RMA 2 to include actual plant closings, Staff allowed that adjustment in its post-hearing revenue requirement; Staff also increased its post-hearing RMA 10 recommendation after Pepco provided invoices supporting actual rate case expenses.[171] Staff further acknowledges that, following the hearing, Pepco provided the information Staff needed to reconcile the data in the revenue requirement comparison charts.[172] And with respect to capital-project documentation, Staff's engineering and IT witnesses performed extensive discovery and project review, and Staff ultimately revised certain positions when Pepco provided additional support.[173] That is the ratemaking process working as intended: parties identified questions, Pepco provided additional

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[167] Pepco Ex. 27, Supplemental Direct Testimony of Conor Nelson ("Nelson Supplemental Direct") at 1:11-16, 2:6-8.
[168] Staff Br. at 1-8; Tr. at 5:14 – 6:2 (Chair Barve).
[169] ML No. 329298.
[170] *See* ML Nos. 329426, 329427, 329535, 329673, 329674, 329675, 329880, 329889, 329901, 329914, and 329915.
[171] Staff Br. at 12-14.
[172] *Id.* at 13.
[173] *Id.* at 16-18.

support or corrections where appropriate, and the final record now permits the Commission to decide each contested adjustment on its merits.

For that reason, Staff's documentation concerns do not support a generalized revenue requirement reduction, and they certainly do not support a civil penalty warning. Staff asks the Commission to remind Pepco of its future documentation obligations and "consider imposing a civil penalty in the next case if Pepco does not comply."[174] The Commission should reject that request. There is no record finding of bad faith, intentional misconduct, refusal to respond to discovery, or inability of the Commission to determine the final TTY revenue requirement. Nor has Staff shown that any documentation issue prevented the parties from identifying disputed items, proposing adjustments, cross-examining witnesses, or filing post-hearing briefs. While the timing of the legislature's action was unfortunate in terms of its impact on these proceedings, prospective civil-penalty warning tied to unspecified future documentation concerns would be unnecessary and disproportionate on this record. The better course is to decide the contested RMAs and plant additions based on the evidence and provide any prospective guidance the Commission believes would improve future rate case filings.

A. The Commission Should Accept Pepco's Ratemaking Adjustments and Reject Opposing Parties' Disallowances.

As discussed in Pepco's Initial Brief, other parties to this proceeding have proposed a number of their own adjustments and disallowances to the Company's rate base and operating expense. The Company's ratemaking adjustments ("RMAs") all reflect reasonably known and measurable costs that have been prudently incurred by the Company and are necessary to ensure the test period reflects conditions that will exist during the rate-effective period. Pepco's RMAs should be accepted, and the other parties' proposals rejected as unreasonable and contrary to

[174] Staff Br. at 16.

proper ratemaking principles and Commission precedent.

1. RMAs 1 through 4: Reliability Plant Closings

None of the opposing parties dispute the appropriateness of RMA 1, nor does any party dispute that the investments comprising RMA 1 were known and measurable reliability investments made to serve customers during the test period.[175] RMA 1 should thus be approved as proposed. Regarding RMA 2 (reliability investments closed to EPIS between October 1, 2025 and March 31, 2026, updated with actual data prior to the evidentiary hearing in this case), neither Staff, OPC, nor MEA contest this RMA's inclusion in rate base.[176] While Staff initially recommended disallowance of this RMA, after reviewing Pepco's updated actuals, Staff now fully supports RMA 2, having confirmed that RMA 2 "only include[s] actual plant closings."[177] Only AOBA challenges RMA 2, alleging that it contains forecasted amounts that are not known and measurable. AOBA is incorrect. As noted above, these adjustments are known, measurable, and based on actual data provided well in advance of the hearings, consistent with the timing that Pepco has provided such updates to actuals in prior TTY cases.[178] AOBA also misstates the Commission's standard for accepting limited post-test year adjustments, erroneously arguing that it was a limited approval based on a case-specific rationale[179] and thus ignoring the fact that RMA 2 has been approved in scores of prior rate cases.[180] As Company Witness Nelson explained, all of the projects listed in RMA 2 were necessary to maintain safe and reliable operation of the

[175] *See* Pepco Initial Br. at 14.
[176] *See id.* at 15.
[177] Staff Br. at 12-13. Pepco notes that Staff included a discussion of the record support for Pepco's RMA 2 and Pepco's RMAs and revenue requirement generally. This discussion is addressed in Section V, *supra*.
[178] Pepco Initial Br. at 14-15.
[179] *See* AOBA Br. at 22.
[180] *See* Pepco Initial Br. at 14 & n.59 (citing Case Nos. 9443, 9418, 9336, 9311, 9286, and 9602 (Pepco); Case Nos. 9192, 9285, 9424, 9630 (Delmarva Power); Case No. 9484 (BGE)). In each of these cases, the Commission's final rate order permitted the utility to recover known and measurable expenses for actual, prudently incurred costs, for non-revenue producing safety and reliability investments through the hearing date. This is identical to what the Company proposes here for RMA 2.

distribution system. The Commission should reject AOBA's argument and approve RMA 2 in full as OPC and Staff recommend.

Staff, OPC, and AOBA also propose blanket rejections of RMAs 3 and 4, which are adjustments to reflect the known and measurable impact of reliability projects expected to be closed to plant in service from April 2026 to July 2026 (RMA 3), and August 2026 to July 2027 (RMA 4). They argue that these RMAs should be rejected because the Commission has consistently rejected similar requests in the past due to their constituting estimated or forecasted amounts that are not known and measurable.[181] Customers will realize the benefits from these improvements; the plant additions through July 2026 will be in effect prior to the rate-effective period and will provide service during the entire rate-effective period. The Commission has repeatedly approved other post-hearing adjustments as needed to align rates with conditions during the rate-effective period, such as annualized wage increases in Case No. 9418.[182] RMAs 3 and 4 function the same way and should be approved because they align with the fundamental ratemaking principles of cost causation and matching.[183]

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[181] *See* Staff Br. at 12-16; OPC Br. at 17-20; AOBA Br. at 16-25, 72-73. OPC argues that Pepco's proposal to "true up" the plant additions in RMAs 3 and 4 concedes that the investments in these RMAs are not known and measurable. That is untrue. RMA 3 and 4 projects are not speculative investments; they consist of capital projects that are underway, with spend already occurring (or in the case of RMA 3, having occurred).

[182] *See* Pepco Ex. 28, Nelson Rebuttal at 25:19 – 26:2 (citing *Re Potomac Elec. Power Co.*, Case No. 9418, Order No. 87884 at 48 ("Consistent with previous decisions, we accept annualization of wage increases, that occurred during the test period ending December 2015, and the post-test period proposed increase since they are known and measurable during the rate effective period.")). Notably, the Commission also approved post-test year known and measurable wage and salary adjustments in Case No. 9602, and in Delmarva Power rate cases (Case Nos. 9093, 9192, 9285, and 9424). Moreover, the Commission has previously explored such measures as reliability surcharges to mitigate the lag associated with recovery of post-test year infrastructure investment. *See, e.g.*, *Re Potomac Edison Co.*, Case No. 9490, Order No. 89072 (March 22, 2019) (approving Potomac Edison's request for a reliability investment surcharge).

[183] *Id.* at 14:12-19. Pepco provided a comprehensive list of the projects included in RMAs 1 through 4 as an attachment to Company Witness Alo's Direct Testimony, Schedule TTYCF (TOA)-1, and provided an additional consolidated list of these projects in response to Bench Data Request No. 6, *see* ML No. 329901 (May 8, 2026).

2. RMA 9: Major Storm Costs

RMA 9 amortizes over five years the incremental O&M storm preparation costs incurred for the major summer storm that occurred in July 2023.[184] Only AOBA contests this RMA. AOBA baselessly argues that Pepco's July 2023 Major Outage Event ("MOE") was actually two storm events, that neither event individually satisfied the MOE standard, that the threshold was met only if streetlights are excluded, and that the request resembles storm-cost treatment the Commission rejected in Case No. 9702.[185] Both Company Witness Alo's Rebuttal testimony and Pepco's September 2023 MOE Report filed with the Commission confirm that the July 2023 storm did in fact qualify as an MOE in accordance with COMAR because more than ten percent of Pepco's Maryland customer base experienced sustained interruptions as a direct result of the storm.[186] Importantly, AOBA does not challenge the actual prudency of these costs themselves. Moreover, the amortized recovery of these storm costs over five years—considering that the storm was an extraordinary event—mitigates rate impacts. The Commission should accept Pepco's RMA 9.

3. RMA 10: Rate Case Expense

The Commission should also approve Pepco's RMA 10, which reflects the Company's current rate case costs using a reasonable three-year amortization. Staff agrees rate case expenses are recoverable and supports a three-year amortization, but contests recovery of forecasted

[184] In total, the Company deferred approximately $8.2 million of storm-related incremental costs to a regulatory asset, which comprises RMA 9. As noted in Pepco's Initial Brief, in advance of the July 2023 storm, Pepco began storm preparedness activities, which included increased staffing of internal line, substation, and call center personnel, and securing mutual assistance and contractor crews. Following the storm, Pepco deployed these resources to restore service safely and efficiently. The Company's efforts yielded effective results for customers.
[185] *See* AOBA Br. at 31-34.
[186] *See* COMAR 20.50.03B(32) (defining a "Major outage event" as an event in which (i) More than 10 percent or 100,000, whichever is less, of the electric utility's Maryland customers experience a sustained interruption of electric service; and (ii) Restoration of electric service to any of these customers takes more than 24 hours). Pepco's MOE Report documents that more than 10% of Pepco's Maryland customer base experienced sustained interruptions during the July 2023 storm. *See* Pepco Ex. 28, Nelson Rebuttal at 26:14-21.

amounts and a return on the unamortized balance.[187] OPC asks the Commission to disallow all rate case expenses, or at most allow only actual, documented, reasonable costs necessary to prosecute the remaining TTY case, and argues Pepco should not earn a return on any unamortized balance.[188] And AOBA contests this RMA on the alleged ground that Pepco's two-track FFTY/TTY strategy and later FFTY withdrawal increased costs, that outside consultant costs warrant scrutiny, and that invoices alone do not justify recovery.[189] None of these challenges has merit and they should each be rejected.

Rate case expense is a routine and necessary cost of regulated utility service. Indeed, Staff agrees Pepco's rate case expenses are appropriate for recovery.[190] Pepco provided invoices, contracts, and evidentiary support for the actual costs incurred.[191] OPC's and AOBA's attempts to penalize Pepco for litigating under the procedural posture and substantive law that existed when the case was filed, and for complying with Order No. 91181 by providing a TTY calculation, are baselessly punitive and unavailing. The Company's rate case costs were reasonably incurred to prepare and develop this case, and the Commission's Order No. 91181 permitted Pepco's next case to be "of [the Company's] choosing" so long as it included the information needed to calculate a historical test year. Pepco complied with that directive.[192] Rate case expense recovery turns on the reasonableness and prudence of the costs incurred, not a hindsight ratio comparing the requested increase to the final award. Moreover, Pepco should not be punished for utilizing external consultants, which is a common practice in rate cases employed by all parties including

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[187] Staff Br. at 12-14.
[188] OPC Br. at 39-46.
[189] AOBA Br. at 34-40.
[190] *See* Staff Br. at 12-14.
[191] Pepco provided support for its actual current rate case expenses in response to Staff data requests. *See, e.g.*, Staff Ex. 6, Rielly Direct at 12:2-20; Staff Ex. 7, Rielly Surrebuttal at 5:7 – 6:3. The hearing record further confirms that Pepco supported RMA 10 with actual invoices and executed contracts. *See* Tr. at 680:7-15, 681:21 – 682:17 (Nelson); Pepco Exs. 30 & 30C.
[192] Tr. at 679:14 – 680:15 (Nelson).

Staff and OPC, particularly for highly technical rate design and class cost-of-service work.[193] Pepco should be permitted to amortize these expenses or earn a return on the unamortized balance consistent with Commission precedent.[194] Allowing Pepco to earn a return on this regulatory asset is necessary to make Pepco whole for costs incurred to satisfy its statutory rate case obligations. RMA 10 should be approved.

4. RMA 13: Recovery of Supplier Consolidated Billing

RMA 13 adjusts Pepco's cost of service to reflect the reclassification of capital expenditures associated with the Company's Supplier Consolidated Billing ("SCB") initiatives,[195] which the Company incurred at the Commission's direction. The Company simply seeks to recover these prudently incurred SCB costs through RMA 13, consistent with Commission precedent.[196] Only AOBA opposes RMA 13, and its opposition should not be given any weight here. The Company's SCB costs were incurred to comply with Commission-directed statewide billing mandates requirements; they were not discretionary. AOBA's request to defer these costs to a generic proceeding is unnecessary and would be inconsistent with foundational TTY principles because the costs were incurred, identifiable, and supported service obligations that benefited Maryland customers and competitive market processes. The Company's proposal to establish a regulatory asset and amortize SCB implementation costs over five years is consistent with Order No. 90696, in which the Commission specifically stated that discussions of prudency and issues regarding SCB costs would be appropriately addressed in a rate case.[197]

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[193] Tr. at 682:20 – 683:17 (Nelson). These consultants provided continuity, consistency, expertise, and timely preparation in this proceeding. *Id.*

[194] Witness Nelson testified that, when the Commission previously approved rate case cost regulatory asset treatment in Case Nos. 9443 and 9418, that treatment included a return, and he was not aware of Commission precedent approving a regulatory asset without a return. *See* Tr. at 678:9 – 679:13, 780:5-9 (Nelson).

[195] Pepco Ex. 26, Nelson Direct at 18:14-16.

[196] *Id*. at 34:11-16.

[197] *See Re Petition of NRG Energy, Inc.*, Case No. 9461, Order No. 90696 at 20 (June 27, 2023) ("Regarding the time period for recovery, there appears to be general consensus that five years is the appropriate period to recover the

5. RMA 20: Annualization of Wage Increases

RMA 20 adjusts O&M expenses to annualize employee salary and wage increases which occurred in the test period and that will occur prior to the rate effective period.[198] Commission precedent long supports this type of RMA, which was first approved in Case No. 8315.[199] Pepco's RMA 20 is sound and appropriate, and should be approved. OPC challenges Pepco's labor costs in this RMA, arguing they should reflect actual headcount and a lower two-percent management wage escalation rate.[200] The Commission should reject OPC's proposal as one-sided and unsupported. RMA 20 reflects known wage obligations and a reasonable annualization of labor costs needed to provide safe, reliable customer service during the rate-effective period. OPC's proposal would improperly substitute a lower escalation assumption without a concurrent showing that Pepco can safely and reliably operate under OPC's proposed resulting labor allowance. Moreover, OPC's proposal improperly disregards Pepco's adjustments to PHI Service Company and Exelon Business Service Company employee wage expense billed to Pepco, which the Commission has historically accepted. OPC provides no basis for deviating from the Commission's approved methodology, including as recently as in Case No. 9602,[201] and OPC's proposed adjustments to this RMA should be rejected.

investments made by the utilities. The Commission agrees that time period is appropriate."). Furthermore, AOBA's alternative proposal to extend the SCB cost amortization period to ten years is inconsistent with Order No. 90696 and would improperly forestall Pepco's timely cost recovery, contrary to core ratemaking principles and Commission precedent. *See* Pepco Ex. 28, Nelson Rebuttal at 34:16-19.

[198] During the test period, there was a 3% increase for management employees effective March 1, 2025 and a 4% increase for bargaining unit employees effective June 1, 2025. This also includes a 3% management salary increase effective March 2026 and a 3% contractually obligated wage increase for union employees effective June 6, 2026. *See* Pepco Ex. 26, Nelson Direct at 21:7-15.

[199] *Id.* at 21:15-16.

[200] *See* OPC Br. at 49-52. Consistent with Commission precedent, Pepco calculated RMA 20 based on actual unadjusted distribution related O&M wage and overtime expense for the 12 months ending in September 30, 2025 and then applied four adjustments. *See* Pepco Initial Br. at 22. In contrast, OPC Witness Madsen used base payroll expense for calendar year 2024 rather than the Commission-approved methodology used by Pepco for this RMA.

[201] *Id.* at 37:17-19.

6. RMA 24: Auto and General Claim Costs

AOBA did not previously oppose RMA 24, but challenges RMA 24 for the first time on brief and asks the Commission to find Pepco failed to justify the level of Auto and General Claims payments included in rates.[202] Putting aside the inappropriateness of AOBA's raising this claim for the first time in its post-hearing brief, AOBA's argument should be rejected because it ignores the fact that claim costs are volatile and outside the Company's control, and are thus appropriately normalized rather than set based on an unusually low or unrepresentative single test year amount. AOBA has not identified any evidence supporting imprudence in the underlying claims and offers no superior normalization methodology. The Commission should reject AOBA's belated challenge and accept this RMA as proposed.

7. RMA 25: Reflecting 5-Year Average Inflation on Non-Labor O&M Expenses

RMA 25 adjusts the test period non-labor O&M expense for the impacts of price inflation based on the Commission's established five-year average methodology using the regional Consumer Price Index ("CPI") for the years of 2020-2025.[203] This approach is consistent with Commission Order No. 89227 in Case No. 9602. Staff agrees that the adjustment comprising RMA 25 is known and measurable and should be approved.[204] While AOBA and OPC continue to recommend additional adjustments to this RMA—OPC argues non-labor O&M should reflect recent actual inflation rather than a higher historic average, and AOBA argues Pepco's inflation adjustment factor is overstated and should be limited[205]—these recommendations are unavailing and should be rejected. RMA 25 is a narrow, objective adjustment that updates non-labor O&M

[202] AOBA Br. at 43-45.
[203] Pepco Ex. 26, Nelson Direct at 24:5-9.
[204] *See* Staff Br. at 12.
[205] OPC Br. at 53-54; AOBA Br. at 45-47, 74.

for inflationary conditions expected during the rate-effective period, consistent with Commission precedent and practice. The Commission should maintain its practice of using a five-year average to calculate inflation. In Order No. 88975, the Commission established that a five-year average inflation rate addresses actual trends in inflation in a verifiable and measurable manner while accounting for variances.[206] RMA 25 complies with the Commission's established five-year average methodology, and therefore Pepco's inflation rate for this RMA should not be adjusted.[207]

8. RMA 26: Annualization of Test Year Property Tax Increase

Consistent with Commission precedent, RMA 26 reflects the annualization of test period property taxes, which is determined by assessments based on fair market value of the given property conducted by the Maryland Department of Assessments and Taxation, and the property tax rate for each jurisdiction. RMA 26 represents known and measurable costs based on actual property tax invoices.[208] With this RMA, Pepco seeks to annualize the difference between the property tax assessed during the test period in this proceeding and the tax assessment increase issued in July 2025. In its Initial Brief, AOBA argues that RMA 26 should be reduced in proportion to the post-test year plant disallowances AOBA recommends as adjustments to Pepco's RMAs 1 through 4.[209] AOBA misunderstands and thus misstates what is being adjusted in this RMA. The FY 2026 property tax assessment, which is known and measurable, is based on the assessable plant balance as of December 2024. In other words, RMA 26 adjusts the actual test year property tax expense to align with the FY 2026 assessment that will be in effect during the

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[206] Pepco Ex. 28, Nelson Rebuttal at 39:20 – 40:4 (quoting Case No. 9484, Order No. 88975 at 25).

[207] Both AOBA and OPC also propose using a different CPI bundle to calculate RMA 25. Pepco does oppose not oppose using a different CPI bundle, since the CPI is a common inflation measure that is reasoned, verifiable, and measurable. *See* Pepco Ex. 28, Nelson Rebuttal at 39:14-18.

[208] *Id.* at 44:4-6.

[209] AOBA Br. at 47-49. While Staff Witness Rielly appeared to propose disallowance of this RMA entirely in his Surrebuttal Testimony, *see* Staff Ex. 7, Rielly Surrebuttal at Exhibit MR-TTYCF-9, Staff did not address RMA 26 in its Initial Brief.

rate period. In contrast, RMAs 1 through 4 reflect post-test-year adjustments (from September 2025 onward), which are tied to different time periods. Therefore, RMA 26 should not be reduced based on changes to RMAs 1–4, as those RMAs address separate and distinct adjustments. Moreover, the Commission approved a similar proposal for Pepco in Case No. 9602, indicating precedential support for this adjustment.[210] The Commission should likewise approve RMA 26 in this case.

9. RMA 27: Rate-Effective Period Property Tax Increase

RMA 27 adjusts the property tax expense to account for expected property tax changes for the fiscal year starting July 1, 2026, and increases the 2027 fiscal year assessment based on the average 7.7% that Pepco's property assessments have increased over the last five years.[211] In its Initial Brief, AOBA challenges RMA 27 on the same flawed basis as its opposition to RMA 26, arguing that property taxes should be reduced if the Commission removes other plant additions with which AOBA disagrees.[212] The Commission should reject AOBA's proposed adjustment. RMA 27 reflects the property tax costs Pepco will incur during the rate-effective period and is an appropriate test-year adjustment to avoid understating ongoing tax expense. Property tax expense lags plant additions, so RMA 27, like RMA 26, adjusts property tax expense to reflect plant additions as of December 2025. Thus, none of the associated expense that AOBA purports to "remove" from the Company's revenue requirement is actually in the revenue requirement, as Pepco will not start incurring property tax expense on those assets until FY2028 (July '27-June '28), outside the rate-effective period.[213] Because RMA 27 adjusts property tax expense to reflect anticipated FY2027 levels, which will be based on assessable plant as of December 31, 2025, the

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[210] Tr. at 685:12-14 (Nelson).
[211] Pepco Ex. 26, Nelson Direct at 25:12-18.
[212] *See* AOBA Br. at 47-49. Neither Staff nor OPC address RMA 27 in their Initial Briefs.
[213] *See* Pepco Ex. 28, Nelson Rebuttal at 14:8 – 16:2.

property tax expense impact of this RMA not reflected in the Company's revenue requirement.

B. Rate Base Adjustments Proposed By Staff, AOBA, And OPC Should Be Rejected.

1. Recovery of Pepco's test period Smart Fault Sensors pilot program costs is not dependent on the pilot's outcomes and Pepco's request should be approved.

Pepco's Smart Sensors program installs intelligent fault indicators on distribution feeders to improve fault location accuracy and reduce protocol time during outage restoration. By providing real-time fault visibility, the devices provide customer benefits by improving operational efficiency and reducing the duration of customer outages.[214] Pepco received Commission approval to implement this pilot program.[215] Pepco seeks to recover the 2024 (test year) costs associated with this program in its revenue requirement because the Smart Fault Sensors costs incurred during the test year were incurred for the purpose of enabling communications for already-installed devices so that Pepco could move forward with its pilot. Importantly, Pepco seeks here to recover only the costs of its equipment investments and resources expenses that the Company incurred to enable the Smart Fault Sensors pilot program, and not the costs associated with any expansion of the program.[216] The Company is not seeking to recover program expansion costs until the results of the program are provided to the Commission for its review and approval.

Staff recognizes the potential operational and reliability benefits need of the pilot program and recognized at hearing that recovery could be justified if Pepco shows the 2024 amount was needed to complete the pilot and demonstrates benefits.[217] Nonetheless, Staff maintains a recommended disallowance of approximately $1.113 million of 2024 Smart Fault Sensor plant

[214] Pepco Ex. 12, Alo Rebuttal at 60:15-18.
[215] *See Re Potomac Elec. Power Co.*, Case No. 9702, Order No. 91181 at 105 (June 10, 2024).
[216] Pepco Initial Br. at 41; Pepco Ex. 12, Alo Rebuttal at 4:1-4 ("[The] pilot is meant to gather lessons and learnings and even the pilot failing means the pilot was successful because it tells us what we shouldn't do and we can take that learnings and apply it in a broader scope.").
[217] *See* Staff Br. at 21-22, Tr. at 1367:16-22 (Lo).

additions until the pilot has concluded and the Company has demonstrated measurable benefits of the program.[218]

The Commission should reject Staff's disallowance and approve Pepco's requested cost recovery. It is important to reiterate again that the 2024 costs Pepco seeks to recover are not costs associated with the expansion of the program. Rather, they are solely communications, integration, and enablement costs that were needed to place previously installed pilot devices into service so the Commission-approved pilot could be evaluated. Because these test period costs were necessary to facilitate Pepco's deployment of the pilot program, it does not make sense to bar Pepco from recovering them until the pilot is over and the program is proven beneficial. The recoverability of these specific program costs does not and should not hinge on final pilot outcomes; the very purpose of a pilot is to learn whether the technology yields benefits (in this case, whether the sensors improve fault location, restoration time, and outage duration). Put another way, the final pilot outcome is irrelevant to the recoverability of Pepco's 2024 costs included in this case because those costs were necessary to facilitate Pepco's evaluation of the pilot's outcomes in the first place. Pepco could not assess the pilot's benefits without first incurring these costs.

2. OPC's and AOBA's recommended removal of NOLC needlessly exposes Pepco's customers to significant risk of financial harm and should be rejected consistent with Commission Order No. 91768.

The Commission should reject OPC's and AOBA's proposal to depart from Commission precedent and remove Net Operating Loss Carryforwards ("NOLC") from Pepco's revenue requirement.[219] OPC's proposal would needlessly put Pepco at risk of being penalized by the IRS

[218] Staff Br. at 21-22.
[219] *See* OPC Br. at 23-32. AOBA similarly argues that the Commission should wait for Pepco to obtain its own PLR before the Commission approves the NOLC adjustment and that no harm would result if the adjustment is not implemented in this case. *See* AOBA Br. at 49-55.

for a normalization violation (which would ultimately harm customers). The Commission declined to adopt a similar OPC's argument in Order No. 91768 and should do the same now. In its Initial Brief, OPC argues that Pepco's NOLC adjustment is premature and increases rate base without customer benefits and can be excluded subject to future adjustment without risking normalization penalties.[220] Neither of these arguments holds water.

First, as noted above, OPC made the exact same arguments regarding BGE's and Delmarva Power's NOLC adjustments in those utilities' Annual Information Filing proceedings last year, which the Commission rightfully rejected because of the potential for harmful impacts of an IRS normalization violation on utility customers. The Commission explained that approving BGE's and Delmarva's NOLC adjustments, and rejecting OPC's proposal, would "ensure[] that any corrective action [by the IRS] aligns with applicable federal tax obligations and protects ratepayers from unintended financial consequences."[221] Despite OPC's claim otherwise, the Commission correctly recognized the significant risks to BGE and Delmarva Power customers of such a violation in Order No. 91768.[222] The Commission's reasons for adopting a similar NOLC adjustment for those utilities, apply equally in the instant case. OPC's and AOBA's proposal may result in a short-term revenue requirement reduction, but it would expose customers to the risk of greater long-term costs, forcing Pepco's customers to bear the burden of a normalization violation.

Second, OPC boldly claims that its proposal is "risk-free" for Pepco because the Company would have "safe harbor" treatment for any normalization violations and resulting penalties. This overstates the certainty of the safe harbor provision's applicability and fails to acknowledge the

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[220] *See* OPC Br. at 23-32.

[221] *See Re Delmarva Power Co.*, Case No. 9681, Order No. 91768 at 10 (Aug. 6, 2025).

[222] *Id.* (The Commission stating that "the potential risks associated with a premature decision on the accounting treatment, which could result in an IRS normalization violation, warrant caution over expedience. A normalization violation could lead to significant negative tax consequences, including disallowance of accelerated depreciation benefits, thereby ultimately harming ratepayers by increasing rates").

additional risk to Pepco of having to litigate a safe harbor dispute.[223] OPC's and AOBA's irresponsible recommendation substitutes prudent ratemaking principles for speculative reliance on either the future issuance of a PLR that, against all odds, orders normalization treatment for Pepco that is entirely at odds with the ruling that IRS recently ordered for similarly situated utilities, or Pepco's future success in a "safe harbor" dispute with the IRS. The Commission should reject the invitation to unnecessarily put customers at risk. In addition, the Commission's consistency on this issue among utilities is also important. The Commission has addressed the same issue for other Exelon utilities and should not create Pepco-specific risk by adopting OPC's and AOBA's approach here. OPC's and AOBA's recommendations would expose Pepco and its customers to unnecessary tax risk that is not in the public interest and therefore should be rejected. Importantly, the Company commits to refund any dollars collected through the adjustment if the IRS issues a PLR to Pepco that permits the Company to revert to its historic methodology, so that customers are held harmless.

3. AOBA's proposed disallowance of Pepco's New Business Commercial expenditures is unsupported and should be denied.

Pepco seeks approval of its TTY New Business Commercial expenditures, which are known and measurable costs incurred during the test period based on actual new business that the Company is obligated to serve. Pepco is obligated to respond to all new service requests in its Maryland service territory, thus, New Business Commercial projects are not discretionary.[224] In

[223] Despite arguing that Pepco faces no risk because of the "safe harbor" provision, OPC acknowledged that, where a PLR request is pending at the conclusion of a rate proceeding, the safe harbor depends on rates being subject to later adjustment to conform to the IRS ruling. *See* OPC Ex. 41, Direct Testimony of Dustin Madsen at 40:6-14. This concession undermines OPC's argument regarding the certainty of the safe harbor, and support Pepco's proposed NOLC treatment instead. Pepco is not asking the Commission to make an irrevocable final determination on the IRS issue, but rather to adopt a rate treatment that addresses the normalization risk now while preserving a customer refund if the IRS later concludes that Pepco's historic NOLC methodology complies with the normalization rules. *See* Pepco Ex. 38, O'Donnell Rebuttal at 46:1-4.

[224] Pepco Ex. 22, Direct Testimony of Samuel Williams at 4-5, Table 1; Tr. at 633:7-16 (Williams).

its Initial Brief, AOBA argues that Pepco's Commercial New Business additions are speculative, may include facilities for potential high-demand customers such as data centers and EV charging, and improperly socialize costs that should be recovered through Costs in Aid of Construction ("CIAC").[225] The Commission should reject these arguments and AOBA's proposal. As Pepco noted, New Business costs are driven by customer requests and the Company's tariffed service obligations, not speculative system expansion. Put simply, Pepco's New Business investments are part of the Company's mandate and legal obligation to provide safe, reliable service to customers development support for new customers and are costs needed to support evolving customer demands and growth; AOBA's recommended disallowance inappropriately ignores these service obligations. Moreover, AOBA's arguments regarding CIAC are incorrect. CIAC is accounted for through Pepco's established tariff and accounting processes, and AOBA has not shown that Pepco double-counted CIAC or included customer-funded costs in rate base. As Staff agrees,[226] these expenditures should be approved and AOBA's disallowance should be rejected.

4. The Commission should approve Pepco's customer-protective request to defer specific categories of exogenous costs into regulatory assets.

To mitigate customer bill impacts, Pepco seeks authorization to defer (1) pension expenses, (2) storm costs, and (3) new legislative, regulatory, or policy requirements costs, into regulatory assets. As Pepco Witness Leming explained, the third category of costs refers to "the kind of things that we're often talking about in these proceedings with respect to new programs and new requirements that are placed on our utilities"[227] and is not a proposal to capture any cost change that could occur due to broad changes.

[225] AOBA Br. at 26-28.
[226] *See* Staff Ex. 17, Direct Testimony of Lytangia Bunch at 40:15 – 41:11.
[227] Tr. at 202:17 – 203:1 (Leming).

OPC supports Pepco's request to defer pension costs into a regulatory asset but opposes regulatory asset treatment for storm expenses and new legislative, regulatory, or policy requirements.[228] Pepco appreciates OPC's acknowledgement that pension expense is driven by factors outside the Company's control and may be subject to material volatility. However, the same is true for storm costs, and OPC does not explain the basis for its inconsistent recommendations regarding approval of regulatory asset treatment for these two categories. Like pension expense changes, weather events are entirely out of Pepco's control, and Pepco has no choice about whether to incur expenses related to storm response. Indeed, as Pepco explained in its Initial Brief, the Commission has recognized the value of deferral treatment for incremental minor storm costs and approved similar proposals where doing so protects customers and preserves Commission review, as the Company's proposal does in this case.[229]

Moreover, in the event these costs change materially over the rate effective period and prospectively, the exogenous cost regulatory asset proposal would allow a more gradual change to prospective rates in comparison to what might occur absent such risk mitigation mechanisms.[230] It is also important to emphasize the symmetrical nature of the Company's proposal: customers would benefit from costs coming in lower as they would experience those savings in future periods, and to the extent costs come in significantly higher, customers would benefit from these costs phasing into rates over multiple years rather than all at once.[231] Importantly, the Company would not earn a return on the deferred costs unless the Commission deemed them prudent in a later proceeding.[232] The Commission should approve Pepco's request.

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[228] OPC Br. at 33-39. OPC argues that the cost category of "new legislative, regulatory, or policy requirements" is too broad and shifts the risk of this cost volatility from shareholders to customers.
[229] *See* Pepco Initial Br. at 46 & n.210.
[230] Pepco Ex. 3, Direct Testimony of Robert T. Leming Part II at 12:10-13.
[231] *See id.* at 12:13-17.
[232] Tr. at 201:11-14 (Leming – OPC) ("Q. And would the Company be able to earn a return on those costs until they are reviewed for prudency in the next rate case? A. No, it would not.").

5. The Commission should reject AOBA's adjustment to Pepco's Cash Working Capital.

AOBA proposes an adjustment to the Company's Cash Working Capital ("CWC"), to reflect CIAC. AOBA proposes its recommendation via an adjustment to Pepco's RMA 36, which reflects adjustments to the Company's CWC allowance to reflect the use of fully adjusted cost-of-service amounts, including the proforma interest expense.[233] AOBA argues that CIAC receipts are a zero-cost source of working capital and should be included in Pepco's lead-lag analysis that informed Pepco's calculation for RMA 36.[234] AOBA's recommendation should be rejected because it is based on AOBA's misunderstanding that CIAC "can provide a transitional supplement" to Pepco's CWC.[235] This is simply not the case. Consistent with Commission precedent and fundamental ratemaking principles, Pepco does not include CIAC-funded plant in rate base. And while CIAC may be collected at different stages of a project lifecycle, this does not result in an improper benefit to the Company or a distortion of ratemaking outcomes, since CIAC receipts are offset by corresponding obligations to construct customer specific facilities and are ultimately netted against plant balances.[236] Thus, contrary to AOBA's assertion, Pepco's CIAC accounting and ratemaking treatment fully complies with longstanding regulatory accounting standards, is supported by auditable books and records, and is subject to both internal and external review. No adjustment is warranted.

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[233] *See* Pepco Initial Br. at 26-27. In its Initial Brief, Pepco described the ratemaking adjustments for RMA 35, 36, and 37, and noted that no party proposed the disallowance of these adjustments or contested their methodology; rather, each party proposes a different amount for these RMAs because each party is applying these RMAs to their underlying rate base proposals. But as discussed further herein, AOBA proposes an adjustment to the Company's CWC "to reflect CIAC," and AOBA proposes this recommendation via an adjustment to Pepco's RMA 36. *See* AOBA Br. at 29-31. Thus, Pepco addresses AOBA's argument—which should be rejected in full—in the context of RMA 36.

[234] AOBA Br. at 29-31.

[235] *See* AOBA Ex. 14, Direct Testimony of Bruce Oliver at 21:16 – 22:3.

[236] *See* Pepco Ex. 28, Nelson Rebuttal at 6:9-23.

V. COST OF SERVICE AND RATE DESIGN

A. Parties Fail To Demonstrate That Pepco's Cost Of Service Studies And Rate Design Are Not Reasonable.

The Company's jurisdictional cost of service study ("JCOSS") and its customer class cost of service study ("CCOSS") as presented in this case are both reasonable, and the Commission should approve them as proposed without modification. Indeed, no party disputes Pepco's JCOSS.[237] Opposing parties' contentions regarding the CCOSS should not be given any weight because they are based on factual inaccuracies or mischaracterizations of the Company's analysis or run contrary to Commission precedent and standard ratemaking practice. The Commission should also accept Pepco's proposed rate design without modification because it is reasonable and consistent with Commission precedent.

1. The Commission should accept Pepco's revenue allocation method and rate design and reject the alternatives proposed by Staff and AOBA.

Pepco's revenue allocation, which was conducted using an updated four-step methodology ("Updated Four-Step Method"), and rate design are grounded in fundamental ratemaking principles of cost causation and gradualism. Staff finds the Company's rate design proposals reasonable and does not oppose most of them, including the Company's proposal to consolidate Schedules R and R-TM with respect to the BSA and Pepco's proposed customer charge, volumetric charge, and demand charge rate designs. Nonetheless, Staff recommends that the Commission instead adopt Staff Witness Bowser's two-step revenue allocation method ("Two-Step Method") and proposed rate design primarily because the Company's proposal allocates too much to the over-earning Schedule MGT-LV and because Staff's method allocates more of the revenue requirement to under-earning classes.[238] As noted above, Staff continues to propose the

[237] *See* Pepco Initial Br. at 60.
[238] Staff Br. at 43-44.

use of its Two-Step Method to allocate revenue. The Company, however, continues to recommend the adoption of its Updated Four-Step Method over Staff's Two-Step Method for two reasons: (1) under Staff's Two-Step Method, the amount of revenue allocated to Schedules R and RTM, which are historically under-earning classes, may be too low; and (2) Staff's decision to allocate less to Schedules R and RTM results in additional revenue to be allocated to all other remaining rate classes, whether they are over-or-under-earning.[239] Pepco's proposed revenue allocation balances movement toward cost of service with gradualism. For example, Pepco's Updated Four-Step Method facilitates meaningful and gradual movement towards the system rate of return for significantly under-earning rate classes.[240] Pepco's proposal in the instant proceeding constitutes a reasonably balanced application of cost causation and gradualism.[241]

AOBA, too, challenges Pepco's revenue allocation and effective rate adjustments, arguing above-system-average-return classes should not receive above-system-average increases and that effective rate adjustments distort cost-based ratemaking.[242] AOBA asserts that the Company's Four-Step Method improperly takes into consideration Case No. 9472.[243] This is incorrect. As indicated in the Direct Testimony of Company Witness Blazunas, the Company's Four-Step Method only considers the "…the past five rate cases in which there has been a revenue requirement increase."[244] AOBA's arguments on brief against the Company's proposed revenue allocation also ignore the Company's rebuttal testimony, which addressed AOBA's purported

[239] *See* Pepco Ex. 38, Rebuttal Testimony of Peter R. Blazunas ("Blazunas Rebuttal") at 10:2 – 11:6.
[240] *See* Pepco Initial Br. at 64.
[241] *See* Pepco Ex. 38, Blazunas Rebuttal at 12:3-5.
[242] AOBA Br. at 63-67.
[243] *Id.* at 64.
[244] *See* Pepco Ex. 35, Direct Testimony of Peter R. Blazunas ("Blazunas Direct") at 14:5-11. Indeed, the schedule referenced by AOBA, Schedule (PRB)-2, clearly indicates that the cases used to calculate the average Multiplier to System Average Increase are Case Nos. 9702, 9655, 9602, 9443, and 9418—in other words, Case No. 9472 is not included in the calculation.

concerns with respect to Schedules MGT-LV and GT-LV.[245] In addition, AOBA continues to assert, incorrectly, that the Company's use of Effective Rate Adjustments is inappropriate because the adjustments are based on proxy measures of changes in class cost responsibilities and revenue requirements.[246] As Company Witness Blazunas and Staff Witness Bowser each explained, this is not true.[247] Both Staff Witness Bowser and Company Witness Blazunas disagree with AOBA's assertion and it should be rejected accordingly.[248]

2. The Company's proposal to gradually eliminate seasonally differentiated rates should be accepted.

Pepco's Seasonality Study shows that the distribution system's costs do not vary seasonally in the way legacy rates imply. Staff supports Pepco's gradual elimination proposal contained in the Direct Testimony of Company Witness Blazunas. OPC argues that the Company should retain seasonally differentiated distribution rates.[249] OPC contends that the Company's Seasonality Study provides information about seasonal cost relationships but does not explain how those relationships impact rate design outcomes. This is incorrect. In fact, the cost analysis contained in the Study does not support the use of seasonal base distribution rate designs.[250] OPC also erroneously bases its support for the continued use of seasonally differentiated rates in an appeal to the concept of long-run marginal cost.[251] However, this is unpersuasive. While the concept of

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[245] *See* Pepco Ex. 38, Blazunas Rebuttal at Schedule (PRB-R)-13, which shows that Rate Schedules MGT-LV and GT-LV receive lower than average increases as compared to the system average.
[246] *See* AOBA Br. at 67.
[247] *See* Tr. at 880:18-23 (Blazunas) ("In the context of the BSA, the BSA's the revenue decoupling mechanism. It's not meant to track cost responsibilities. Cost responsibilities are considered at the time of when the rates are established."); Staff Ex. 20, Rebuttal Testimony of Brandon Bowser at 17:19 – 18:2 ("The BSA returns excess revenues and recovers shortfalls in revenues that result from these circumstances. It is not meant to inform changes in class cost of service responsibilities.").
[248] *See id.*
[249] OPC Br. at 62-66.
[250] Tr. at 883:10-14 (Blazunas) ("Well, no, so as [Pepco Witness] Schafer discussed, the cost analysis does not support the idea that costs are differentiated by season. So with that in mind, it would be inappropriate to use that cost study to establish a seasonal rate design.").
[251] OPC Br. at 64.

marginal cost is a consideration in electric distribution ratemaking,[252] the flat annual kilowatt-hour charge remains the prevailing volumetric rate design in distribution ratemaking.[253]

OPC also argues that Pepco should adopt October as a winter month, and should make this change in its rate design by June 1, 2027.[254] As noted in the Company's Initial Brief, Pepco does not oppose intervenor recommendations to categorize October as a winter month.[255] However, unlike OPC, Pepco does not consider the case for doing so to be "clear cut," due to the required time and expense involved.[256] Indeed, OPC acknowledged in its Initial Brief that its proposed change would take approximately five months to implement,[257] but omitted the fact that the implementation of this change is expected to cost $300,000 to $500,000, and that the change itself would ultimately be rendered meaningless if the Commission accepts the Company's proposal to gradually eliminate seasonally differentiated rates.[258] If the Commission adopts OPC's October reclassification recommendation, Pepco respectfully requests that the implementation of this change be prospective, with sufficient operational lead time, and aligned with system and tariff changes.

VI. OTHER ISSUES

The remaining issues raised by MEA and OPC do not justify reducing Pepco's revenue requirement or conditioning cost recovery on future policy deliverables. MEA's brief largely

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[252] Tr. at 883:5-12 (Blazunas) ("What I would say about marginal cost is it's a consideration in rate design, especially when it comes to electric distribution rate making, there are other things we're considering. We're considering rate predictability, rate stability, revenue stability for the Company, gradualism.").
[253] *Id.* at 883:19-21 (Blazunas) ("The idea of marginal cost has been around a long time, yet the prevailing rate design has been a flat kilowatt hour charge.").
[254] *See* OPC Br. at 65.
[255] *See* Pepco Initial Br. at 65-66, n.303.
[256] Tr. at 878:13-16 (Blazunas).
[257] *See* OPC Br. at 65.
[258] *See* Tr. at 930:4-6 (O'Donnell) ("So I would say it would range between about 300 to $500,000 to make the change."); *id.* at 878:22 – 879:2 (Blazunas) ("We could be incurring some amount of time and expense for something that would ultimately no longer matter because that differentiation would have been removed.").

repeats the policy proposals already addressed in Pepco's Initial Brief: staged recovery for ADMS and customer-facing investments, a DER roadmap, an integrated data platform, and forward-looking NWS process requirements.[259] Pepco continues to share MEA's goals, but the Commission should not convert prospective statewide policy work into a new cost recovery condition in this base rate case.[260] The Commission's long-standing precedent is that policy decisions such as these "should not be made in isolation in a single utility's [rate proceeding]."[261] The Commission should follow that precedent here, as well.

A. ADMS And GIS.

MEA has narrowed its initial request and now seeks staged cost recovery approval rather than disallowance, asking the Commission to condition recovery of the Company's ADMS costs on the development of a DER roadmap and acknowledges that Pepco is not seeking GIS plant additions in the test period.[262] This narrowed relief does not solve the core problem: ADMS and GIS are present operational systems, not speculative future DER investments.[263] There is no dispute that ADMS supports real-time monitoring, automated control, advanced analytics, outage detection and restoration, SCADA/OMS/AMI integration, and system control.[264] Witness Alo further explained that ADMS and GIS are foundational operational systems needed for reliability and outage management and that they provide customers with current benefits.[265] The Commission should approve recovery of the ADMS costs supported by the TTY record and

[259] MEA Br. at 52-64; Pepco Initial Br. at 67-74.
[260] Pepco Initial Br. at 67-68.
[261] *Re Baltimore Gas & Elec. Co.*, Case No. 9692, Order No. 90755 at 9-10 (Aug. 9, 2023); *see also* Case No. 9702, Order No. 91048 at 14–16 (Mar. 4, 2024) (striking most of Pepco's Climate Solutions Programs without prejudice because those issues were better suited to existing statewide dockets, including the EV and EmPOWER proceedings, or a generic policy docket).
[262] MEA Br. at 53-54 & n.252.
[263] Pepco Initial Br. at 68-70.
[264] Pepco Ex. 11, Alo Direct Part I at 147:20 – 150:8.
[265] Pepco Ex. 12, Alo Rebuttal at 117:11 – 119:21.

decline MEA's one-year recovery condition; if the Commission wishes to direct roadmap reporting, it should do so prospectively and in coordination with the statewide generic proceedings already addressing DERMS, interconnection, electric system planning, and data access.[266]

B. DER Integration.

MEA argues that Pepco should be directed to develop a DER Roadmap, including dynamic flexible interconnection and broader DER integration and utilization planning.[267] Pepco is already working on those issues in the Commission forums designed for them, including DRIVE, FERC Order No. 2222 implementation, storage proceedings, and electric system planning.[268] Nothing in MEA's brief demonstrates that Pepco's ADMS investment is imprudent, unused, or unsupported; rather, MEA asks the Commission to leverage a single utility's rate-case recovery condition to accelerate a broader generic policy roadmap.[269] That policy discussion can and should proceed, but it should not be tied to the recovery of assets and capabilities that are already supporting customer service and safe distribution operations.[270]

C. Customer Communications And Data Sharing.

MEA also asks the Commission to condition the Company's recovery of Community Solar Automation, EU Customer Flight Path, and Expanded GPC costs on Pepco's delivery of an Integrated Data Platform within one year of the final order.[271] Pepco's Initial Brief already addressed why this proposal should be rejected: customer communications and data-sharing tools provide near-term customer value and should not be placed at risk because a broader, statewide data-platform framework remains under development.[272] Pepco supports continued collaboration

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[266] MEA Br. at 53, 59-64; Pepco Initial Br. at 68-72.
[267] MEA Br. at 59-64.
[268] Pepco Initial Br. at 70-72; Tr. at 49:4-53:1 (Leming).
[269] MEA Br. at 59-64.
[270] Pepco Initial Br. at 67-72.
[271] MEA Br. at 53, 55-59.
[272] Pepco Initial Br. at 72-73.

on secure customer data access and related data-sharing improvements, but MEA's proposed recovery pause is disconnected from the prudence and used-and-useful status of the particular costs in this case.[273] The Commission should approve the supported costs in this proceeding and address integrated data platform design, scope, privacy, cybersecurity, and statewide consistency through the Commission's existing policy dockets and workgroups.[274]

D. Non-Wires Alternatives And Capacity Planning.

MEA's forward-looking NWS process recommendations should be separated from the White Flint prudence dispute addressed elsewhere in this Reply Brief.[275] Pepco supports continued development of clear, prospective NWS screening requirements, but MEA's proposed 8760 hourly constraint analyses, NWS-specific BCAs, and formal procurement screens were not established Maryland cost-recovery prerequisites when Pepco made the White Flint decisions.[276] As Pepco explained in its Initial Brief, capacity planning must address firm capacity, contingency risk, transfer capability, redundancy, reliability, and operational flexibility, not only hours of modeled overload or a battery cost comparison.[277] Any further Commission direction on NWS screening should be prospective, based on good engineering practices, applied consistently across Maryland electric utilities, and coordinated with RM89, DRIVE, UBCA, and other statewide proceedings rather than imposed as a Pepco-only recovery condition in this case.[278]

E. The Commission Should Reject OPC's Recommendation Regarding Supervisor Compensation.

OPC asks the Commission, for the first time on brief, to establish a Phase II proceeding to identify and remove any costs prohibited from recovery by the Utility RELIEF Act, while

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[273] *Id.* at 67-73; Tr. at 52:13-53:1 (Leming).
[274] MEA Br. at 57-59; Pepco Initial Br. at 72-73.
[275] MEA Br. at 38; *see also* MEA Br. at 10-38.
[276] Pepco Initial Br. at 34-38, 73-74.
[277] *Id.*
[278] MEA Br. at 53, 57-64; Pepco Initial Br. at 67-74.

acknowledging that the current record is not sufficient to identify those costs.[279] The Commission should soundly reject that request.

OPC concedes that the newly enacted provision addressing supervisor compensation is not yet in effect, however the evidentiary record in this case is already closed.[280] Long-standing Maryland legal doctrines presume that newly enacted laws will only apply prospectively to proceedings filed after the new law has already taken effect.[281] As a result, Pepco's next base rate case application will be subject to the new law and Pepco (and the parties) will address the same in the Company's next application.

Moreover, once the Commission determines Pepco's new rates based on the existing evidentiary record, a post-hearing Phase II focused on a single component of compensation expense would sever one issue from the complete cost-of-service record that the parties litigated in this case.[282] That approach would raise single-issue-ratemaking concerns. The rule against single-issue ratemaking protects the integrity of cost-of-service regulation by preventing rates from being adjusted based on one isolated cost item without considering offsetting changes elsewhere in the revenue requirement: cost-of-service regulation is designed to focus on the utility's "total net cost of service" and to avoid "piecemeal or single-issue ratemaking," because regulators generally must consider all cost increases, cost decreases, and productivity changes in determining the total revenue requirement.[283] The same concept is reflected in the NARUC Staff Subcommittee's *Rate Case and Audit Manual*, which instructs auditors reviewing proposed

[279] OPC Br. at 57-59.
[280] *Id.* at 58 (noting that the new provision does not become effective until July 1, 2026).
[281] *See Traore v. State*, 290 Md. 585, 593 (1981) (holding that "[t]here is a general presumption in the law that an enactment is intended to have purely prospective effect" and finding that a statute that contains general "shall take effect" language "favors a purely prospective application").
[282] OPC Br. at 57-59; Pepco Initial Br. at 6-9, 21-23.
[283] Karl McDermott, *Cost of Service Regulation in the Investor-Owned Electric Utility Industry: A History of Adaptation* at 9 (EEI 2012).

adjustments to apply the matching principle and consider the corresponding effects of any adjustment on related revenue requirement components.[284] Therefore, to the extent the Commission determines that implementation guidance is needed, it should address that issue prospectively through compliance guidance, a policy process applicable to all utilities, or future rate cases with a record designed for that purpose.

VII. CONCLUSION

For the reasons discussed herein and in the Company's Initial Brief, the Commission should authorize the Company's requested increase in electric distribution rates.

Date: July 1, 2026

Respectfully submitted,

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[284] NARUC Staff Subcommittee on Accounting and Finance, *Rate Case and Audit Manual* at 15 (2003).

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July 2026, I caused to be served via electronic mail the foregoing of Potomac Electric Power Company's reply brief to each counsel of record in Case Nos. 9820.

/s/ Kimberly A. Curry
Kimberly A. Curry