Education Protection Advocacy

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April 1, 2010

VIA ELECTRONIC FILING
Dorothy Wideman
Commission Secretary
Public Service Commission
of the District of Columbia
1333 H Street, N.W.
Second Floor West Tower
Washington, D.C. 20005

Re: **Formal Case No. 1076, In the Matter of the Application of Potomac Electric Power Company For Authority To Increase Existing Retail Rates and Charges For Electric Distribution Service**

Dear Ms. Wideman:

Enclosed for filing in the above-referenced proceeding are an original and fifteen (15) copies of the Application of the Office of the People's Counsel for Reconsideration of Order No. 15710.

If there are any questions regarding this matter, please contact me at (202) 727-3071.

Sincerely,

Brian O. Edmonds

Brian O. Edmonds, Esq.
Assistant People's Counsel

Enclosure

cc: Parties of record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

In the Matter of	§		
	§		
The Application of the	§	**Formal Case No. 1076**	
Potomac Electric Power Company	§		
For Authority to Increase	§	**(Application for Reconsideration)**	
Existing Retail Rates and Charges	§		
For Electric Distribution Service	§		

APPLICATION OF THE OFFICE OF THE PEOPLE'S COUNSEL FOR RECONSIDERATION OF COMMISSON ORDER NO. 15710

Pursuant to D.C. Code § 34-604(b) (2007) and Rule 140.1 of the Public Service Commission of the District of Columbia's ("Commission" or "PSC") Rules of Practice and Procedure, 15 D.C.M.R. § 140.1 (2006), the Office of the People's Counsel for the District of Columbia ("OPC" or "Office"), the statutory representative of District of Columbia ratepayers and consumers,[1] respectfully files this application requesting that the Commission reconsider Order No. 15710.[2] As more fully discussed in its application, the Office has identified five errors for which it seeks Commission reconsideration and requests the Commission clarify whether one ratemaking adjustment has been appropriately implemented.

The Commission in reaching its decision must show fully and clearly why it has taken the particular ratemaking action.[3] In doing so, the Commission must furnish detailed findings of fact and conclusions of law sufficient to demonstrate that the overall

[1] D.C. Code § 34-804 (2007).

[2] *Formal Case No. 1076, In the Matter of the Application of the Potomac Electric Power Company For Authority to Increase Existing Retail Rates and Charges For the Electric Distribution Service*, Order No. 15710, rel. Mar. 2, 2010 ("Order No. 15710").

[3] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d 71, 75 (D.C. 1978).

rate determination is "in accordance with the reliable, probative, and substantial evidence."[4] Order No. 15710 falls short of satisfying the Commission's obligation in the areas addressed in this OPC application for reconsideration.

I. INTRODUCTION

In Order No. 15710, the Commission rejected numerous proposals by Potomac Electric Power Company ("Pepco") to implement rate mechanisms that would constitute single-issue ratemaking, would be inconsistent with Commission precedent, and that would unfairly shift risk to ratepayers. In so doing, the Commission materially reduced Pepco's authorized revenue requirement from its requested $44.5 million to approximately $19.83 million, which will help mitigate the impact of this rate increase on District consumers. The Office commends the Commission for those decisions.

The Commission has also rejected several of the issues raised and positions advanced by OPC on behalf of District consumers. The Office does not seek reconsideration of the Commission's decision on each such issue. The Office here seeks reconsideration of a limited number of issues which it believes the Commission has erred and which may have significant adverse consequences for District consumers.

Principal among the issues for which reconsideration is sought is the Commission's refusal in this distribution service rate case to consider the poor quality of Pepco's distribution service. The Office respectfully submits the Commission cannot meet its statutory obligation to ensure Pepco's distribution rates are just and reasonable without considering and making findings with respect to the well-documented poor quality of Pepco's distribution service. Nor has the Commission met its obligation to provide a reasoned explanation as to why it will not consider Pepco's distribution system

[4] *Id.* at 77 (citations omitted).

reliability in this distribution rate case. There is almost no issue that affects the daily lives of District consumers more directly than distribution service reliability. District consumers are entitled to know what they are paying for in these higher rates and that Pepco is being held accountable for its poor service. The Office submits that the law requires no less.[5]

The Commission also has erred in rejecting OPC's proposal that Pepco be required to share the savings it enjoys from its participation in the PHI group's consolidated income tax returns.[6] In so doing the Commission made several findings that are unsupported or unexplained and, for those reasons, the Office seeks reconsideration.

OPC seeks reconsideration of certain aspects of the Commission's decision with respect to Pepco's uncollectible expense. While the Office agrees with the Commission's determination that some level of uncollectible expense normalization is necessary to properly reflect annual fluctuations,[7] the Office submits the Commission erroneously ignored OPC's concerns with the methodology used by Pepco to calculate the overall level of uncollectible expense, which has the effect of significantly inflating Pepco's uncollectible expense level.

OPC seeks reconsideration of the Commission's decision on Pepco's health and welfare costs.[8] In accepting Pepco's proposed adjustment, the Commission ignored the Office's argument that Pepco had made changes to its medical, dental and vision plans, and that those changes had impacts on going forward plan costs.[9] OPC seeks reconsideration of the Commission's failure to consider and address this argument and

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[5] D.C. Code § 1-204.93.
[6] Order No. 15710 at ¶¶ 275-77.
[7] *Id.* at ¶¶ 132-33.
[8] *Id.* at ¶ 168.
[9] *Id.* at ¶ 163.

evidence.

OPC seeks reconsideration of the Commission's decision to exclude $635,000 in facilities that were "physically removed" and "retired" from the Pepco system. At trial, a Pepco expert witness testified that the value of the "removed" and "retired" facilities was $1 million. The Commission's Order does not explain why an exclusion of less than $1 million was either just or reasonable.

Finally, the Office seeks clarification of one decision by the Commission. While the Commission characterizes Ratemaking Adjustment 6 (Exclusion of Industry Contributions and Membership Dues) as "uncontested,"[10] OPC identified an error in this adjustment, which the Company agreed to and implemented in its rebuttal testimony.[11] After removing this amount from the cost of service and applying the distribution labor ratio and D.C. allocation factor, OPC recommended a reduction to O&M expense of $20,044 to correct the error. The correction, however, is not noted in the Order, and the Commission's workpapers do not provide a breakdown of O&M costs that would enable the Office to confirm that the corrected adjustment was used. The Office requests clarification that this adjustment has in fact been included in the authorized rates.

II. SUMMARY OF ERRORS

OPC seeks reconsideration of Order No. 15710 because of the following errors:

1. The Commission erred by refusing to consider the poor reliability and quality of Pepco's distribution service in setting Pepco's distribution rates in this case;

2. The Commission erred in rejecting OPC's proposal that Pepco be

[10] *Id.* at ¶ 112.

[11] As explained by OPC, Pepco is required to remove industry contributions and membership dues from its cost of service, but failed to remove the full amount. After removing the $60,083 that erroneously remained in cost of service and applying the distribution labor ratio and D.C. allocation factor, OPC recommended a reduction to O&M expense of $20,044 to correct the error.

required to share the savings it enjoys from participation in the PHI group consolidated tax returns;

3. The Commission erred in failing to require that Pepco exclude $1 million from rate base to reflect the cost of the "physically removed" and "retired" segment of the 69 kV overhead lines;

4. The Commission erred in failing to consider OPC's arguments with respect to the impact of changes in Pepco's employee health and welfare costs;

5. The Commission erred in failing to address issues associated with Pepco's calculation of uncollectible expenses; and

6. The Commission should clarify its order to ensure that ratemaking adjustment 6 has been implemented appropriately.

III. PROCEDURAL BACKGROUND

On May 22, 2009, Pepco filed an application seeking authorization from the PSC to increase its existing revenue requirement for distribution service provided to District of Columbia ratepayers by approximately $51.7 million[12] (Pepco subsequently reduced this request to $44.5 million[13]). On July 10, 2009, the PSC issued Order No. 15322, in which it designated 15 issues for hearing.[14] The Commission held evidentiary hearings on November 9, 10, 12 and 13, 2009 and issued its Opinion and Order No. 15710 on March 2, 2010.[15]

IV. COMMISSION'S OBLIGATION IN MAKING A DETERMINATION BASED ON SUBSTANTIAL RECORD EVIDENCE IN A RATEMAKING PROCEEDING

Pepco bears the sole burden of proof in establishing that the Company's proposed

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[12] *Formal Case No. 1076, In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rates and Charges for Electric Distribution Service,* ("Formal Case No. 1076"), Application of Potomac Electric Power Company, filed May, 22, 2009.
[13] Order No. 15710 at ¶1.
[14] Order No. 15322 at ¶ 8.
[15] Order No. 15710, rel. Mar.2, 2010.

rates are just and reasonable.[16] The D.C. Court of Appeals has indicated that, "[i]ncluded in that burden is a responsibility to develop a record sufficiently complete to support a Commission order in their favor on any contested issue."[17]

The Commission has the responsibility of ensuring that utility service in the District of Columbia is safe, adequate, and reliable and that the rates and charges for utility service are reasonable, just, and nondiscriminatory.[18] The D.C. Court of Appeals has indicated, "A utility rate cannot be deemed 'reasonable' simply because an expert agency says it is . . . the Commission . . . has the burden of showing fully and clearly why it has taken the particular ratemaking action. Absent such comprehensive explanation, judicial review of the Commission's substantive decisions cannot be completed and the rate order finally approved – or set aside."[19] As the D.C. Court of Appeals held in deciding how to allocate the financial gain from the sale of land by a public utility:

> The Commission, as decision-maker, must evaluate all the presentations and then fashion the most just and reasonable order, including a determination of the land-gains issue. The Commission, however, cannot validly do so without furnishing detailed findings of fact and conclusions of law sufficient to demonstrate that the overall rate determination is "in accordance with the reliable, probative, and substantial evidence."[20]

The law requires the Commission's factual findings be based upon substantial

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[16] D.C. Code § 2-509(b); *see also*, *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 77.

[17] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 77.

[18] D.C. Code § 1-204.93.

[19] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 75; *accord, e.g., D.C. Telephone Answering Serv. Comm. v. Public Serv. Comm'n,* 476 A.2d 1113, 1119 (D.C. 1984); *see* D.C. Code § 2-509 (e).

[20] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 77 (internal citations omitted); *accord* D.C. Code § 2-509(e); *Chesapeake & Potomac Tel. Co. v. Pub. Serv. Comm'n,* 339 A.2d 710, 714.

record evidence.[21] The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact.[22] As the Court has held, "This 'substantial evidence' test is not directed solely at the quantity of evidentiary support for an administrative determination. Equally important is the preceding language of [D.C. Code § 2-509(e)], '*in accordance with* . . .' [Emphasis added.] There 'must be a *demonstration* in the findings of a 'rational connection between facts found and the choice made'.' Thus, as applied to ratemaking, there must be enough evidence, rationally related to the rate order (through clearly articulated criteria), to justify the Commission's decision."[23] When describing the quantity of evidentiary support requirement, the Court has held that "'substantial evidence' is 'more than a mere scintilla'; it is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'"[24]

In addition, "the Commission must indicate 'fully and carefully the methods by which, and the purposes for which, it has chosen to act. . . .'"[25] To satisfy this requirement, the Commission must state on the record the criteria governing its decision and must explain how its particular decision applies these criteria to the facts of the case.[26] In describing the criteria governing a rate determination, the Commission must balance both consumer and shareholder interests. The D.C. Court of Appeals has stated, "'[the] consumer interest cannot be disregarded in determining what a 'just and reasonable' rate . . . is and the rate itself cannot be 'exorbitant.' Equitable factors from the

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[21] *See, e.g., Office of People's Counsel v. Pub. Serv. Comm'n*, 571 A.2d 206, 209 (D.C. 1990) (quoting *Atlantic Tel. Co. v. Public Service Comm'n*, 390 A.2d 439, 441 (D.C. 1978)).

[22] D.C. Code § 2-509(e).

[23] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 77 (citations omitted).

[24] *Id.* at n. 6 (internal citations omitted).

[25] *Washington Gas Light Co. v. Pub. Serv. Comm'n*, 450 A.2d 1187, 1193 (D.C. 1982) (quoting *In Re Permian Basin Area Rate Cases*, 390 U.S. 747, 792 (1968)).

[26] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 75, supplemental opinion and dissent, 404 A.2d 541 (D.C. 1979), cert. denied, sub nom *Potomac Electric Power Co. v. Pub. Serv. Comm'n*, 444 U.S. 926 (1979).

ratepayer perspective, therefore, are equally a part of the just and reasonable rate calculus. "[27] Moreover, the Commission must "fully and clearly explain its decision" and demonstrate "a rational connection between the facts found and the choices made;"[28] and is not permitted to rely on "factual misstatements that lack evidentiary support in the record."[29]

Regarding the Commission's duty to explain clearly how its criteria are satisfied by the rate order – how it arrived at the particular result, the Supreme Court has noted, "Judicial review of the Commission's orders will . . . function accurately and efficaciously only if the Commission indicates fully and carefully the methods by which, and the purposes for which, it has chosen to act . . ."[30] "The methodology must be disclosed for the bearing it may have on that overall judgment. Absent precise explanation of methodology as applied to the facts of the case, there is no way for a court to tell whether the Commission, however expert, has been arbitrary or unreasonable."[31] The Commission's findings of fact cannot be upheld on appellate review if they are "unreasonable, arbitrary, or capricious."[32]

As the Court indicated in *Washington Public Interest Org.*, the Supreme Court's requirement that the Commission create reasonably precise ratemaking criteria and explain with clarity how the facts relate to each in support of the overall rate order, "is inherent in the Commission's responsibilities under the District of Columbia

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[27] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 76 (citations omitted).
[28] *Office of the People's Counsel*, 979 A.2d at 726 (*citing Potomac Elec. Power Co. v. Pub. Serv. Comm'n*, 661 A.2d 131, 135 (D.C. 1995)).
[29] *Id* at 727.
[30] *Permian Basin Area Rate Cases*, 390 U.S. 747, 792 (1968).
[31] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 76-77.
[32] D.C. Code § 34-606.

Administrative Procedure Act, by which a rate order also must be tested."[33]

OPC submits that the Commission has not met these legal requirements and Order No. 15710, therefore, must be reconsidered and modified consistent with the discussion below.

V. DISCUSSION

A. THE COMMISSION ERRED BY REFUSING TO CONSIDER THE POOR RELIABILITY AND QUALITY OF PEPCO'S DISTRIBUTION SERVICE IN SETTING PEPCO'S DISTRIBUTION RATES IN THIS CASE AND IN SO DOING ABORGATED ITS STATUTORY OBLIGATION.

1. Summary

Pepco has the burden, at the Commission level, of establishing that its proposed rate orders are just and reasonable.[34] Included in that burden is a responsibility to develop a record sufficiently complete to support a Commission order in their favor on any contested issue.[35] The Commission, *inter alia,* is obligated to evaluate all of the evidentiary presentations before it and make detailed findings of fact and conclusions of law sufficient to demonstrate that the overall rate determination is "in accordance with the reliable, probative, and substantial evidence."[36] In this proceeding, there is substantial evidence of record that suggests that Pepco's distribution service is less than adequate, therefore, raising a concern as to whether the Commission should grant the amount requested in the form of its requested return on equity ("ROE"). The Office proffered evidence that Pepco's ROE should be reduced by 25 basis points to reflect Pepco's less than adequate distribution service as an approach to the Commission's ratemaking

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[33] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 77 (citations omitted).
[34] D.C. Code § 2-509(b).
[35] *Washington Public Interest Org. v. Public Service Comm'n*, 393 A.2d at 77.
[36] *Id.*

determination. As demonstrated below, such an adjustment to a utility's authorized ROE is entirely consistent with the precedent in this and other jurisdictions.

The Commission's refusal to consider Pepco's well-documented poor distribution service reliability as part of its evaluation of Pepco's requested rate increase cuts to the heart of the Commission's statutory obligations. The Commission's sole explanation for its refusal to consider the poor quality of Pepco's service in this case - that it is considering Pepco's reliability in other cases - confuses matters within the Commission's discretion, such as how to manage its own docket, with its non-discretionary statutory obligations. The Commission is obligated:

> to insure that every public utility doing business within the District of Columbia is required to furnish ***service and facilities*** reasonably safe and ***adequate and in all respects just and reasonable***. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory.[[37]]

It is difficult to fathom how the Commission can insure that Pepco's rates are just and reasonable if it blinds itself to the fact that the facilities and services for which those rates will be charged may not be "adequate and in all respects just and reasonable." This suggests that Pepco should be rewarded for having poor inadequate service.

The Commission's conclusion that it need not consider the quality of Pepco's service in this rate case because it is dealing with this issue elsewhere misses the obvious. Other cases may address in one way or another issues such as how to remediate or improve Pepco's service quality, but this case, and only this case, concerns Pepco's **rates.** The quality of Pepco's distribution service is directly relevant to the justness and reasonableness of those rates, and the Commission's refusal to consider the quality of

[37] D.C. Code § 1-204.93 (Emphasis supplied).

Pepco's service is directly contrary to its statutory obligation. Moreover, the Commission compounded this error by failing to provide a reasoned basis for its decision.

2. Background

On June 19, 2009, OPC submitted its list of proposed issues in Formal Case No. 1076. OPC proposed two issues related to quality of service which the Commission, in Order No. 15322, referred to as non-consensus issues 1 and 4:

> Issue 1: Are Pepco's proposed additions to rate base sufficient to improve the reliability of any facilities, e.g., feeders that have been most problematic in recent years?
>
> Issue 4: Are the reliability and quality of distribution service provided by Pepco safe, adequate and in all respects just and reasonable?

On July 10, 2009, the PSC issued Order No. 15322, in which it designated 15 issues for hearing. The two issues quoted above were not among the fifteen. The Commission explained its determination in this regard as follows:

> The Commission agrees with Pepco that non-consensus issues 1 and 4 address general reliability issues and electric quality of service standards ("EQSS") that the Commission is assessing in Formal Case Nos. 766, 982 and 1002, among others. Accordingly, the Commission declines to designate non-consensus issues 1 and 4 for consideration in this proceeding. [38]

Following the issuance of Order No. 15322, the Office filed testimony of a number of witnesses, among them Kevin J. Mara, addressing the quality of distribution service provided by Pepco, and Dr. J. Randall Woolridge, addressing Pepco's cost of capital. Mr. Mara's testimony, which concluded that Pepco's reliability performance could be classified as "poor,"[39] was cited by Dr. Woolridge as justification for choosing

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[38] Order No. 15322 at ¶ 8 (footnote omitted).

[39] Exhibit OPC (G) at 5:16-17. More specifically, Mr. Mara noted that Pepco's performance on accepted reliability indices lagged below that of most other electric distribution utilities, despite that fact that Pepco operates an urban system with considerable network underground facilities, which would

the lower bound of his calculated range for return on equity ("ROE") (9.50%), rather than employing his usual practice of choosing the midpoint of the range (9.75%).[40]

Pepco moved to strike portions of the testimonies of OPC witnesses Mara and Woolridge, claiming that the testimony in question addressed issues that Order No. 15322 had excluded from the case. On November 12, 2009, the PSC issued Order No. 15596, denying Pepco's motion to strike. The Commission did not discuss at length the relationship of the challenged testimony to the issues that had been set for hearing, but simply noted that motions to strike are disfavored and stated that it would "consider the proffered testimony for whatever weight (or lack of weight) it may have."[41]

Following the November 2009 evidentiary hearing, the Commission issued Order No. 15710. The Commission declined to consider OPC's recommendation that the bottom of the range be chosen due to Pepco's poor service quality, stating, "[i]n that the Commission has deferred the issue of the reliability of service to another docket, it would be inappropriate to adjust the Company's ROE for reasons of poor performance when reliability is not an issue for determination in this proceeding."[42] Later in the order, following a discussion of public testimony, much of which focused on customer complaints regarding quality of service, the PSC stated, "[G]iven these widespread complaints from the public about the quality of Pepco's service, service quality issues could be ripe for consideration in Pepco's next rate case."[43] Notably, the Commission made no effort to explain why service quality issues, in its view, were not ripe for

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normally lead to superior reliability, *id.* at 5: 5-16; that Pepco's capital spending budget was not targeted toward expenditures that would improve reliability, *id.* at 9:13-10:21; and that Pepco's planning criteria fail to focus on system reliability as a core value, *id.* at 13:3-12.

[40] Exhibit OPC (B) at 3:15-19.

[41] Order No. 15596 at ¶ 6.

[42] Order No. 15710 at ¶ 73.

[43] *Id.* at ¶ 448.

consideration in this case.

3. The Commission's Statutory Obligation to Ensure Just and Reasonable Rates Necessitates a Review of the Quality of Service Provided by Pepco.

The Commission is statutorily obligated to ensure that the rates and charges for all utility services provided in District of Columbia are reasonable, just, and nondiscriminatory and that the service provided is safe, adequate, and reliable.[44] D.C. Code § 1-204.93 commands that:

> There shall be a public service commission whose function shall be to insure that every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished, or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminating charge for such facility or service is prohibited and is hereby declared unlawful.[45]

In order for the Commission to fulfill this statutory obligation and ensure that the rates paid by District consumers for distribution service are just and reasonable, the Commission must analyze what District consumers are receiving for their money. In the instant proceeding, such an analysis necessarily entails consideration of the quality and reliability of the service provided by Pepco to District ratepayers. The Commission has failed to meet this obligation in Order No. 15710 by establishing rates for distribution service without considering the evidence presented by the Office demonstrating Pepco's substandard and declining quality of service.

It is a fundamental and enduring principle of ratemaking that the quality of

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[44] D.C. Code § 1-204.93.

[45] *Id.*

service provided by a utility is a factor to be considered in determining the reasonable rate for the services provided by the utility.

> ... ratemaking appropriately encompasses an examination and evaluation of the economy and efficiency of a public utility's operations and the adequacy of its service. 102/
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> ....It has long been recognized that the caliber of a utility's service need not remain a neutral factor in determinations as to its allowable return. The cases have consistently said that superior service commands a higher rate of return as a reward for management efficiency; more importantly for present purposes, they have also maintained that inefficiency and inferior service deserve less return than normally would be forthcoming. [citations omitted]
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> 102/ ("Riverside Grove Water Co., Inc., 20 P.U.R.3d 117, 120 (Calif. Pub. Util. Comm'n 1957) (minimum system improvements required before increase would be put in effect); Parker, 19 P.U.R.3d 400, 403 (Ga. Pub. Serv. Comm'n 1957) (fares, reduced because quality of service was poor, could be restored 60 days thereafter if substantial improvement was demonstrated or could be reduced again if service deteriorated further); Midwest Tel. Co., Inc., 23 P.U.R.3d 26, 31 (Ind. Pub. Serv. Comm'n 1958) (general rate increase authorized, withheld as to one region until service was upgraded and inspected and certified to be adequate); Northern Mo. Tel. Co., Inc., 49 P.U.R.3d 313, 317 (Mo. Pub. Serv. Comm'n 1963) (rate increase denied until rehabilitation of system and modern, adequate facilities were installed); Western Light & Tel. Co., Inc., 10 P.U.R.3d 70, 76 (Mo. Pub. Serv. Comm'n 1955) (increase denied until company could show that substandard service had been improved); Blair Tel. Co., 51 P.U.R.3d 262, 264 (Neb. St. Ry. Comm'n 1963) (increase permitted only after equipment was replaced); New York Tel. Co., 84 P.U.R.3d 321, 356-57 (N.Y. Pub. Serv. Comm'n 1970) (quality of service included in determination of reasonable rates); Western Light & Tel. Co., 17 P.U.R.3d 422, 428-29 (Okla. Corp. Comm'n 1957) (quality of service included in rate determination)").

D. C. Transit System, Inc. v. Washington Metropolitan Area Transit Comm'n., 466 F.2d 394, 408, 419-420 (D.C. Cir. 1972). Public service commissions routinely review the quality of service as an issue directly tied to the rate of return that should be earned by a utility. *See e.g., Entergy Gulf States, Inc. Service Quality Issues*, Public Utility Commission of Texas, Docket No. 18249 (1998) (reducing Entergy Gulf States allowed ROE by 60 basis points and ordering refunds to distribution customers upon a finding of a "lack of effective and prudent maintenance policies, uneven spending in the area of operations and maintenance (O&M), cuts in experienced personnel, and consequent deterioration in the quality of service.")

The Commission defends its decision to ignore reliability issues when establishing rates in this proceeding by citing its intention to address reliability issues in other Commission proceedings. Undoubtedly, the Commission has discretion to manage its dockets. But even where a Commission is granted discretion, that discretion is not unfettered and cannot be exercised in a manner that conflicts with statutory commands. *See e.g., Security Services, Inc. v. Kmart Corp.*, 511 U.S. 431, 451 (1994), *quoting Maislin Indus., U.S. v. Primary Steel*, 497 U.S. 116, 133 (1990) ("Although . . . the [Interstate Commerce] Commission may have discretion to craft appropriate remedies for violations of the statute' -- and, possibly, violations of its regulations -- the remedy may not 'effectively render nugatory the requirements of §§ 10761 and 10762' and thereby 'conflict directly with the core purposes of the Act.")

4. The Commission's Refusal To Consider The Poor Reliability Of The Pepco Distribution System In Determining The Appropriate ROE Is Inconsistent With Its Statutory Obligations.

The Commission's cursory and inconsistent treatment of the issue of Pepco's service reliability for ratemaking purposes constitutes a failure to meet the Commission's statutory obligations, compounded by a corresponding failure to provide a reasoned explanation for its decision. Although it declined to strike OPC's quality of service testimony, and Dr. Woolridge's related testimony recommending a reduced ROE, the Commission made clear in Order No. 15710 that it had not considered the issues raised in that testimony at all. The Commission did not find that the record did not warrant reducing Pepco's ROE due to the quality of its service. Rather, the Commission in effect stated that it would not consider whether such a reduction was warranted, because it had stated in Order No. 15322 that it would not designate the quality of service issues proposed by OPC. Significantly, the Commission did not find that the evidence was insufficient to warrant an adjustment to Pepco's ROE, that measures it is considering in other dockets obviate the need for an ROE adjustment, or that service quality is simply irrelevant to setting an appropriate ROE for a regulated utility. Nor did the Commission attempt to reconcile its position with its statutory obligations under D.C. Code § 1-204.93.

Indeed, the admission that "service quality issues could be ripe for consideration in Pepco's next rate case" can only be viewed as an admission that service quality issues are indeed relevant to rate case issues. Given that fact, the Commission, if it chooses not to consider service quality in a particular rate case, must, at a minimum, explain fully and clearly why, in contravention of the evidence presented, it has taken that particular ratemaking action.[46] "Where the PSC has accompanied its ruling with the required full and careful explanation, *that ruling* is entitled to great deference."[47] Here, the Commission failed to consider how it could set a just and reasonable rate for Pepco's service without determining whether Pepco is meeting its statutory obligation to "furnish service and facilities reasonably safe and adequate and in all respects just and reasonable,"[48] and the Commission's ruling in that regard, therefore, is entitled to no deference. This is particularly true given that OPC presented substantial evidence, in the form of Mr. Mara's testimony, demonstrating that Pepco's service fails to comply with

[46] *Washington Public Interest Org. v. Public Service Comm'n*, 393 A.2d 71, 75 (D.C. 1978).

[47] *Washington Gas Light Co. v. Pub. Serv. Comm'n,* 452 A.2d 375, 379 (D.C. 1982) (emphasis supplied).

[48] D.C. Code § 34-1101(a).

that statutory requirement.[49]

The Commission's reliance in Order No. 15710 on its prior decision in Order No. 15322 incorporates the rationale of that order that its refusal to designate reliability-related issues proposed by OPC was justified because it was considering reliability-related issues in other pending proceedings.[50] In none of those other dockets, however, is the Commission considering, nor could it consider, the effect of Pepco's failure to meet its statutory obligation to furnish facilities and service that are safe and adequate, and in all respects just and reasonable, on the rates which Pepco charges its captive District of Columbia customers for distribution service. The Commission obviously agrees that whether the quality of service being provided meets the statutory standard is a legitimate consideration in ratesetting – otherwise reliability could not be "ripe for consideration" in Pepco's next rate case, or any rate case – yet it refused, without explanation, to consider those effects here. In so doing, the Commission failed to fulfill its statutory duty.

In Order No. 15322, in addition to the reference cited above to other dockets in which issues related to reliability are being considered, the Commission also made general reference to its discretion to accept some proposed issues while rejecting others:

> Traditionally, the Commission has designated issues by receiving list of proposed issues from the parties, accepting some proposed issues while rejecting others on grounds of law or policy, or on other grounds including whether it would be more appropriate to consider an issue in another docket.[51]

As noted in Section V.A.3, *supra*, however, the PSC's discretion cannot

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[49] *See* note 3, *supra*. Although Pepco attempted to refute Mr. Mara's conclusions through the rebuttal testimony of its witness William Gausman, Exhibit Pepco (3D), the Commission made no findings regarding the reliability-related issues addressed by Mr. Mara and Mr. Gausman.

[50] Similarly, in Order No. 15710, the Commission stated that it "has deferred the issue of the reliability of service to another docket." Order No. 15710 at ¶ 73. However, the rate effects of reliability of service in fact have not been deferred to any other docket.

[51] Order No. 15322 at ¶ 5.

supersede or negate its statutory obligations. Moreover, none of the three cases cited by the Commission supports the supposed discretion it here asserts to refuse to make findings regarding the quality of Pepco's distribution service and facilities. In two of the three cases cited, district courts had improperly directed administrative agencies to follow specific procedures that were not mandated by statute, but which the district court judge determined would be appropriate for the agency to use.[52] In the third case, the District of Columbia Court of Appeals rejected an argument raised by the District Government that the Commission had improperly failed to consider equitable considerations, finding that the Commission had in fact taken equitable considerations into effect, but had concluded that equity was only one consideration that must be balanced against other ratemaking goals.[53] That provides no support for the Commission here, however, where the Commission explicitly refused to consider quality of service issues at all, and thus denied itself, and District consumers, any opportunity to have reliability concerns considered along with other ratemaking goals.

The Commission also failed to explain its remark that reliability issues may be ripe for consideration in the next case. In making that statement, the Commission referred to the public testimony offered in this case, which, the Commission acknowledged, consisted largely of "widespread complaints from the public about the quality of Pepco's service."[54] However, as OPC noted in its briefs in Pepco's previous rate case, Formal Case No. 1053, there were widespread complaints from the public about Pepco's quality of service in that case as well. Moreover, the Commission itself

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[52] *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543-545 (1978); *FCC v. Schreiber*, 381 U.S. 279, 290 (1965).

[53] *D.C. Telephone Answering Service Committee v. PSC*, 476 A.2d 1113, 1124 (D.C. 1984).

[54] Order No. 15710 at ¶ 448.

has acknowledged the existence of longstanding problems with the quality of Pepco's service, and Pepco's failure over time to satisfactorily address those problems.

In an order issued in January, 2009 – barely four months before Pepco filed its application for an increase in rates in this docket – the Commission issued Order No. 15152. Therein, the Commission stated the following:

> [T]he Commission noted in Order No. 14643 that the reliability performance indices provided by PEPCO, including SAIDI and CAIDI, indicated that the Company's reliability performance in 2006 was the worst in nine (9) years. Moreover, the overall trend for SAIDI and CAIDI from 1998 through 2007 has illustrated a general and significant decline in reliability during this period. . . .[I]n addition to PEPCO's evident declining reliability since 1998, PEPCO's reliability when more recently compared to other utilities indicates that the Company's reliability as measured by SAIDI and CAIDI is at or near the bottom.[55]

Thus the "widespread complaints" heard from the public in this case are simply a continuation of what the public has said about Pepco's service reliability in previous cases, and simply reinforce the existence of problems which, the Commission itself has acknowledged, have been worsening since at least 1998. Under theses circumstances, and particularly in light of the presentation of substantial evidence on Pepco's poor performance by the Office, the Commission was obligated, at the very least, to produce a "full and careful explanation" for its apparent belief that consideration of Pepco's performance was not at issue when considering the reasonableness of Pepco's requested ROE in this case. That explanation has yet to be offered.

Absent a comprehensive explanation as discussed above, "judicial review of the Commission's substantive decisions cannot be completed and the rate order finally

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[55] *Formal Case No. 766, In the Matter of the Commission's Fuel Adjustment Clause Audit and Review Program*, Order No. 15152 at ¶ 60 (January 6, 2009); *Formal Case No. 991, In the Matter of the Investigation into Explosions Occurring in or Around the Underground Distribution Systems of the Potomac Electric Power Company*, Order No. 15152 at ¶ 60 (January, 2009).

approved – or set aside."[56] Therefore, for the reasons set forth above, the Office seeks reconsideration.

B. THE COMMISSION ERRED IN REJECTING OPC's PROPOSAL THAT PEPCO BE REQUIRED TO SHARE THE SAVINGS IT ENJOYS FROM PARTICIPATION IN THE PHI GROUP CONSOLIDATED TAX RETURNS.

The Commission rejected OPC's proposal that Pepco be required to share the savings it enjoys from its participation in the PHI group's consolidated income tax returns.[57] In so doing the Commission made several findings that are unsupported or unexplained and, for those reasons, the Office seeks reconsideration.

The Commission found that OPC's consolidated tax adjustment "undercuts common tax practice for affiliated companies."[58] The Commission, however, failed to explain what is meant by "undercuts common tax practice" or how that observation is relevant to or justifies rejection of OPC's recommendation. In addition, while the practice of viewing affiliates for ratemaking purposes on a stand-alone tax basis may be common, it is by no means universal. OPC demonstrated, and the Commission acknowledged,[59] that several jurisdictions employ forms of consolidated income tax adjustments. This vague and unexplained "finding" provides no legal justification for rejecting OPC's recommendation.

The Commission also found that the consolidated income tax adjustment "violates the 'cost responsibility' principle," *i.e.*, the party that incurs a cost is entitled to the tax benefit, and "threatens to create inequities for other PHI affiliates companies . . . that

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[56] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 75; *accord, e.g., D.C. Telephone Answering Serv. Comm. v. Public Serv. Comm'n,* 476 A.2d 1113, 1119 (D.C. 1984); *see* D.C. Code § 2-509 (e).

[57] Order No. 15710 at ¶ 275.

[58] *Id* at ¶ 276.

[59] *Id.* at ¶¶ 260-61.

'earned' the tax benefits.[60] The Commission failed to explain the significance of the supposed violation of the "cost responsibility principle" or how it is balanced, if at all, against the fundamental ratemaking principle that ratepayers should be charged rates based upon the ***actual*** cost of service. The Commission expressed its concern for ostensible inequities to other PHI affiliates, but the Commission completely failed to identify any benefit District consumers receive in return for paying rates based upon taxes that will never be paid by Pepco.

Finally, the Commission noted that the OPC proposal would result in a $172.9 million rate base reduction that "might well destabilize Pepco's financial condition," but it cites no evidence to support this speculation.[61] One would expect that a genuine threat to the financial stability of the Company would have been featured in Pepco's evidentiary presentation and explicitly relied upon by the Commission. The only Pepco argument concerning the magnitude of the OPC proposed adjustment that the Commission cited (in summarizing Pepco's arguments) was Pepco's argument that the $172.9 million adjustment would constitute retroactive ratemaking. [62]

Absent a comprehensive explanation as discussed above, "judicial review of the Commission's substantive decisions cannot be completed and the rate order finally approved – or set aside."[63] Therefore, for the reasons set forth above, the Office seeks reconsideration.

C. THE COMMISSION ERRED IN FAILING TO REQUIRE THAT PEPCO EXCLUDE $1 MILLION FROM RATE BASE TO

[60] *Id.* at ¶ 276.
[61] *Id* at ¶ 276.
[62] *Id.* at ¶ 271.
[63] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 75; *accord, e.g., D.C. Telephone Answering Serv. Comm. v. Public Serv. Comm'n,* 476 A.2d 1113, 1119 (D.C. 1984); *see* D.C. Code § 2-509 (e).

REFLECT THE COST OF THE "PHYSICALLY REMOVED" AND "RETIRED" SEGMENT OF THE 69 KV OVERHEAD LINES.

As explained in Order No. 15710, Pepco's proposed "Electric Plant in Service" includes the D.C.-allocated share of the Company's investment in two "temporary" overhead, 69 kV sub transmission facilities.[64] OPC urged that Pepco's investment in these facilities be excluded from rate base because the Company admitted that the two lines: (a) are not "used and useful;" (b) currently provide no service whatsoever to any District customers; and (c) were constructed to provide service to a single Pepco customer, the District of Columbia Water and Sewer Authority ("WASA").[65] Moreover, and as noted in Order No. 15710, Pepco has acknowledged that a significant segment of the facilities was "physically removed," and has been "retired" in the Company's financial records.[66] Pepco witness William Gausman, serving as Senior Vice President, Asset Manager & Planning, PHI admitted that the dollar value of the portion removed from service is $1 million and not $61, 529 as proffered by Pepco witness Linda Hook. The Commission has concluded that 25 percent of the 69kV lines have been removed from service thus denying Pepco 25 percent of the jurisdictional amount of $2.54 million included in Electric Plant in Service or $635,000.[67]

To be clear, OPC did not contend that Pepco should be unable under any circumstances to recover the investment cost associated of these facilities. Instead, the Office's maintains Pepco should not do so in the manner that had been proposed here. In other words, Pepco could not include in "plant in service" facilities that, plainly, were no longer "in service." As explained in OPC's Reply Brief:

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[64] Order No. 15710 at ¶ 18.
[65] OPC Initial Brief at pp. 24-24.
[66] Order No. 15710 at ¶¶ 18-19.
[67] *Id.* at ¶ 26.

> This does not mean that Pepco is precluded from seeking recovery of these costs through other routes. OPC has also suggested, based in part on Pepco's testimony in this proceeding, that it may be appropriate for Pepco to directly assign its investment in these facilities to the District of Columbia Water and Sewer Authority ("WASA"), as Pepco stated in response to a WASA data request that the two 69 kV lines "were put in place to provide service to WASA's Blue Plains facilities." OPC Cross Examination Exhibit 101. Alternatively, Pepco counsel posited at hearing that the facilities are akin to "abandoned plant," Tr. 880: 16 – 881: 1, or that following the implementation of undefined changes to the Company's system, these "dead" facilities can be brought back to life and serve a compensable "backup" function. Pepco has not requested special recovery of these costs as abandoned plant in this case, or through any other venue. In fact, Pepco did not even disclose in its filing that these lines were not being used to provide service to customers.[68]

These arguments notwithstanding, the Commission ruled that "cost recovery is warranted here."[69] As stated in the Order[70], although the lines no longer provide service to customers, failure to permit cost recovery could have a "chilling effect" on the "cooperation necessary when emergencies arise."[71] However, the Commission also concluded that 25 percent of the jurisdictional amount ($2.54 million) that was included in plant in service, or $635,000, should be excluded from rate base to "reflect the full

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[68] OPC Reply Brief at pp. 8-9, footnote omitted.

[69] Order No. 15710 at ¶ 24.

[70] *Id.* at ¶ 25.

[71] The Commission characterized its action as an "out of test year adjustment." Order No. at ¶ 25. To be clear, and as explained by the Court:

> An "out-of-test period" revenue adjustment refers to an adjustment to reflect developments that occurred after the "test period." The "test period" is a twelve-month period over which the utility's revenues are compared to its costs to determine whether the utility is earning a fair rate of return; if not, the utility has established a right to increase its rates to have an opportunity to earn a fair rate of return prospectively. *See generally Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d 71, 74 n.2 (D.C. 1978).

OPC v. Pub. Serv. Comm'n, No. 08-AA-947 at n. 5 (February 18, 2010). As shown, a decision to include the investment in facilities that were taken out of service *prior* to the test period is not properly characterized as an "out of test year adjustment."

value of the "physically removed" and "retired" segment of the lines."[72]

OPC urges that the Commission reconsider its determination to limit the excluded amount to $635,000. The evidence of record makes plain that the percentage of the "physically removed" and "retired" segment of the facilities is greater than 25 percent, and shows that the value of these facilities is well in excess of $635,000. Instead, the excluded investment amount should be at least $1 million, in accordance with the testimony of Pepco witness William Gausman.

As explained at trial and on brief, in June 2009, Pepco physically removed the segment of the lines traversing National Park Service ("NPS") land (specifically, Oxon Cove Park).[73] This action was pursuant to an agreement with the NPS, which had permitted Pepco to construct the lines over park land (rather than requiring underground construction) on condition that the presence of these lines was temporary, and that the facilities would be removed by a specified deadline.[74]

Pepco stated in response to a data request, the NPS segment of the lines was roughly 4,600 feet in length.[75] Pepco witness Gausman, likewise, testified at trial that the total length of the temporary 69 kV lines was less than 13,000 feet,[76] meaning that Pepco itself has testified that the physically removed portion of the facilities constitutes approximately 35% of the total footage of the lines.

As recited in the Order, Pepco had two thoughts with respect to the value of the removed and retired facilities.[77] According to Pepco witness Hook, the retirement of this

[72] Order No. 15710 at ¶ 26.
[73] Exhibit PEPCO (3D) at 17: 8-13.
[74] *Id.* at 16: 21 –17: 13.
[75] OPC Cross Examination Exhibit 100.
[76] Transcript ("Tr.") 1421: 18 – 1422: 3.
[77] Order No. 15710 at n. 51.

portion of the facilities resulted in a charge on the Company's books of only $61,529. At trial, she explained that, "It's my testimony that $61,529 is the dollar amount of assets that were retired pursuant to the work orders in this project that were retired."[78] Ms. Hook's assertion that roughly 35 percent of a $6.2 million facility has a value of $61,529 is contrary to other statements made by Pepco. OPC Cross Examination Exhibits 98 and 99, two data responses sponsored by Mr. Gausman, both state that the portion of the overhead facilities traversing the National Park Service land had a cost of approximately $1 million. During cross-examination Pepco witness Hook admitted that she had not made a "reconciliation" between her $61,529 figure and Mr. Gausman's estimate that attributes roughly $1 million (out of the overall $6.2 million) to the overhead portion of the project.[79] To date, no such reconciliation has been offered by Pepco.

The Commission's exclusion amount -- $635,000 -- properly rejects the $61,529 figure posed by Ms. Hook, and correctly concludes that facilities that have been physically removed do not belong in "electric plant in service." Nonetheless, the Commission offers no record basis for its determination that the $635,000 exclusion is more appropriate than the $1 million investment value testified to by Pepco's own witness Mr. Gausman. The Company should be held to the estimate of its own expert witness. In these circumstances, reconsideration should be granted and the Order should be revised to require a $1 million exclusion.

Absent a comprehensive explanation as discussed above, "judicial review of the Commission's substantive decisions cannot be completed and the rate order finally

[78] Tr. 1343: 16-19.
[79] Tr. 1345: 18 – 1346: 8.

approved – or set aside."[80] Therefore, for the reasons set forth above, the Office seeks reconsideration.

D. THE COMMISSION ERRED IN FAILING TO CONSIDER OPC'S ARGUMENTS WITH RESPECT TO THE IMPACT OF CHANGES IN PEPCO'S EMPLOYEE HEALTH AND WELFARE COSTS.

OPC recommended that the Commission deny Pepco's proposed $315,000 adjustment for employee benefit costs, but the Commission accepted the adjustment.[81] In support of its position, the Office asserted through testimony that Pepco had made changes to its medical, dental and vision plans, such changes would be implemented during 2009, the changes would have impacts on going forward plan costs, and such impacts should, therefore, be taken in account in considering the appropriateness of the Company's proposed adjustment. Specifically, OPC witness Ramas testified Pepco had failed to address numerous changes and/or revisions to its medical, dental and vision plans going into effect in 2009, and such changes would impact overall plan costs. These changes include increasing employee co-pay amounts, increasing employee deductibles and increasing out-of-pocket maximum employee contributions in the plans, each of which will mitigate cost increases.[82]

While the Commission referred to OPC's argument on this point, there is no indication in the decisional section of the Order that this argument regarding the impact on a going forward basis of changes and/or revisions to its medical, dental and vision plans going into effect in 2009 and the downward pressure of those changes on future

[80] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 75; *accord, e.g., D.C. Telephone Answering Serv. Comm. v. Public Serv. Comm'n*, 476 A.2d 1113, 1119 (D.C. 1984); *see* D.C. Code § 2-509 (e).

[81] Order No. 15710 at ¶¶ 163, 168.

[82] Exhibit OPC (A) at 66: 11 – 70: 2.

cost increases was addressed or otherwise considered.[83] In these circumstances, OPC asks that the Commission reconsider the impact of these known and measurable changes on Pepco's employee benefit costs and reconsider whether permitting the adjustment (or the full amount of the adjustment) is just and reasonable under the circumstances.

Absent a comprehensive explanation as discussed above, "judicial review of the Commission's substantive decisions cannot be completed and the rate order finally approved – or set aside."[84] Therefore, for the reasons set forth above, the Office seeks reconsideration.

E. THE COMMISSION ERRED IN FAILING TO ADDRESS ISSUES ASSOCIATED WITH PEPCO'S CALCULATION OF UNCOLLECTIBLE EXPENSES.

The Company's proposed uncollectible expense adjustment contains several significant methodological flaws that were identified in OPC's presentation at trial. While the Commission's Order addresses – in part – one of these flaws, the Order fails to remedy significant remaining issues which the Office would like the Commission in order to give guidance for future rate proceedings.

As explained in testimony by OPC witness Ramas, the Company's methodology for calculating the uncollectible expense for its D.C. distribution rates (1) is based on unsupported allocations of bad debt expense that penalize D.C. distribution customers for the higher bad debt rate of Pepco's other operations; (2) incorporates the Company's adjustments to its bad debt reserve (which are not specific to distribution services), rather than basing the expense on net write-offs of uncollectible accounts (which is specific to

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[83] Order No. 15710 at ¶ 163.

[84] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 75; *accord, e.g., D.C. Telephone Answering Serv. Comm. v. Public Serv. Comm'n,* 476 A.2d 1113, 1119 (D.C. 1984); *see* D.C. Code § 2-509 (e).

distribution services); and (3) fails to normalize the Company's uncollectible expense to account for the impact of demonstrated annual fluctuations in uncollectible expense.[85]

While Order No. 15710 requires the Company to set the level of uncollectible expenses based on a two-year average, thus rejecting Pepco's proposed use of 2009 data alone[86], the decision does not address that Pepco's allocation of uncollectible expense between D.C. distribution and other operations was both unsupported and inaccurate.[87] Rather than defend itself against this charge, Company witness Hook stated on cross-examination that she did not know the basis on which the split was made.[88] She later stated that she had been faced with "an allocation problem" because the Company did not collect the information necessary to allow her to perform an accurate allocation of bad debt expense both between Pepco's Maryland and D.C. operations and between its distribution and SOS operations.[89] As a result, Ms. Hook indicated that she relied upon an allocation of the total bad debt amount between Pepco's SOS and distribution provided by the Power Finance Delivery Group, an organization within PHI. Ms. Hook testified that she had no knowledge of the basis of the Power Finance Delivery Group's allocation, and that no discussion of the basis of this allocation was ever conducted prior to her utilization of it to assign uncollectible expense to Pepco's distribution operations.[90] Despite such testimony, Order No. 15710 nowhere addresses this issue.

OPC also showed that the allocations used by Pepco to calculate its uncollectible adjustment were improperly skewed because they included the significantly higher bad

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[85] Exhibit OPC (A) at 35: 12 – 42: 21.
[86] Order No. 15710 at ¶ 133.
[87] OPC Initial Brief at 76-82.
[88] Tr. at 1347: 11-14.
[89] Tr. at 1347: 1 – 1348: 19.
[90] *Id.*

debt rate of Pepco's Maryland operations. This methodology effectively requires D.C. ratepayers to pay for bad debt that they had not incurred. In her pre-filed testimony, OPC witness Ramas explains the mechanics of how Pepco calculated its projected uncollectible expense in this case:

> [Pepco's response to OPC Data Request 10-34] showed how PEPCO derived its 2009 Maryland, District of Columbia and total PEPCO uncollectible expense. The amounts include revenues beyond distribution revenues. In deriving the amounts, the Company utilized the total net write-offs and the total [bad debt] reserve adjustments for 2007 and 2008 for the District of Columbia, and separately for Maryland, and compared those adjustments to total District of Columbia and Maryland billed revenues. The resulting ratios for each year, by jurisdiction, were then weighted 75% for 2008 and 25% for 2007, resulting in a bad debt rate of 0.723% for the District of Columbia and 0.972% for Maryland. The bad debt rates were then applied to total budgeted District of Columbia revenues of $838,474,000 and total budgeted Maryland revenues of $1,430,557,000, respectively, to determine a total Company budgeted bad debt expense of $19,971,308. This amount was then somehow allocated by the Company between Distribution and SOS services, and subsequently to Maryland and the District of Columbia.[91]

Under the Company's methodology, the level of District of Columbia bad debt expense is impacted by the level of Maryland bad debt expense, notwithstanding that Maryland's bad debt rate (0.972%) is considerably higher than the corresponding District of Columbia rate (0.723%).[92]

OPC went on to show, by way of illustration, that only 9.16% of total Pepco write-offs pertained to D.C. distribution accounts actually written off during the test year.[93] Nevertheless, of the total budgeted 2009 bad debt expense of $19,971,308, the

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[91] Exhibit OPC (A) at 36:15-37:9.
[92] *Id.* at 37: 6-9.
[93] Exhibit OPC (A)-15 (Pepco Response to OPC Data Request 10-33, Attachment A).

Company allocated \$3,442,000 – or 17.2% – to D.C. distribution operations.[94] Similarly, for the twelve months ended September 30, 2009, the Company identifies total uncollectible expense on its books of \$22,174,000 in its rebuttal testimony, with \$3.5 million – or 15.8% percent – being recorded in expense on a D.C. distribution operations basis.[95] This concern was not refuted by Pepco, but is likewise unaddressed in the Commission's decision in Order No. 15710.

OPC also demonstrated that the uncollectible expense amount booked during the test year reflects not just the Company's net accounts written off, but also (unnecessarily) reflects significant adjustments made by the Company to its bad debt reserve.[96] Because Pepco's bad debt reserve is not specific to distribution, the Company's proposed test year distribution uncollectible amount is thus further skewed by its inclusion of the impact of amounts expensed to increase the bad debt reserve that are not specific to distribution-related accounts receivables being written off.[97] For this reason, Pepco's use of bad debt reserve adjustments in setting the uncollectibles expense is an additional and significant flaw in the Company's methodology.

Overall, the evidence presented by the Office demonstrated that, as a result of multiple errors, the Company's uncollectible expense amount was substantially overstated. Indeed, OPC proposed an uncollectible expense amount of \$1.28 million, \$2.16 million below the amount proposed by Pepco.[98] Notwithstanding the significant impact of these allocation errors and the Company's failure to refute them, the Commission made no mention of any of them in ruling on this issue.

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[94] Exhibit OPC (A) at 36: 8 – 37: 3; Exhibit PEPCO (C)-1, at 19 (of 33).
[95] Exhibit PEPCO (4C) at 14: 10-11.
[96] Exhibit OPC (A) at 38: 13-17.
[97] *Id.*
[98] Order No. 15710 at ¶ 129.

Absent a comprehensive explanation as discussed above, "judicial review of the Commission's substantive decisions cannot be completed and the rate order finally approved – or set aside."[99] Therefore, for the reasons set forth above, the Office urges that the Commission grant reconsideration of its Order, and asks that it address and remedy each of the above-described flaws in the Company's uncollectible expense methodology, and direct that the Company's rates reflect an uncollectible expense amount that is in accordance with OPC's proposal.

F. THE COMMISSION SHOULD CLARIFY ITS ORDER TO ENSURE THAT RATEMAKING ADJUSTMENT 6 HAS BEEN IMPLEMENTED APPROPRIATELY.

In its direct testimony, OPC identified an error in the Company's proposed "Industry Contribution and Membership Dues" adjustment.[100] Pepco agreed to and implemented this change in its rebuttal presentation.[101] However, this correction to Ratemaking Adjustment 6 is not mentioned in the Commission's Order, and OPC remains concerned as to whether it will in fact be implemented. In these circumstances, OPC asks the Commission to issue a clarification of Order No. 15710 stating that the corrected Industry Contribution and Membership Dues adjustment, rather than adjustment as originally filed by Pepco, has been adopted by the Commission and must be reflected in rates.

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[99] *Washington Pub. Interest Org. v. Pub. Serv. Comm'n*, 393 A.2d at 75; *accord, e.g., D.C. Telephone Answering Serv. Comm. v. Public Serv. Comm'n,* 476 A.2d 1113, 1119 (D.C. 1984); *see* D.C. Code § 2-509 (e).

[100] OPC (A) at 46:11-14. As explained by OPC, Pepco is required to remove industry contributions and membership dues from its cost of service, but failed to remove the full amount. After removing the $60,083 that erroneously remained in cost of service and applying the distribution labor ratio and D.C. allocation factor, OPC recommended a reduction to O&M expense of $20,044 to correct the error.

[101] Exhibit Pepco (4C) at 21:6-13.

VI. CONCLUSION

WHEREFORE, for the reasons stated above, the Commission should reconsider and clarify Order No. 15710 consistent with the discussion above.

Respectfully submitted,

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April 1, 2010

CERTIFICATE OF SERVICE

Formal Case No. 1076, In the Matter of the Application of Potomac Electric Power Company For Authority To Increase Existing Retail Rates and Charges For Electric Distribution Service

I hereby certify that on this 1st day of April, 2010, the Application of the Office of the People's Counsel for Reconsideration of Order No. 15710 was served on the following parties of record by electronic mail or first class mail:

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