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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C. 20005

ORDER DENYING RECONSIDERATION

February 2, 2015

FORMAL CASE NO. 1121, IN THE MATTER OF THE APPLICATION OF THE POTOMAC ELECTRIC POWER COMPANY FOR A FINANCING ORDER, Order No. 17797

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") denies the Application for Reconsideration ("Application") of Order No. 17714 filed by the Apartment and Office Building Association of Metropolitan Washington ("AOBA").[1]

II. BACKGROUND

2. Pursuant to Mayor's Order 2012-130 (August 16, 2012),[2] Mayor Vincent Gray established the Mayor's Power Line Undergrounding Task Force ("Task Force"), which was given specific directives for analyzing "the technical feasibility, infrastructure options and reliability implications of undergrounding new or existing overhead electrical distribution facilities in the District of Columbia."[3] The Task Force carefully studied the issue of undergrounding the power lines to improve electric system reliability and public safety in the District of Columbia during a variety of weather conditions.[4] In October 2013, the Task Force issued the Final Report which recommended that the Mayor accept the Task Force's recommendations and further recommended immediate development of an implementation plan for expedited legislative and regulatory processes that would allow design and construction

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[1] *Formal Case No. 1121, In the Matter of Application of Potomac Electric Power Company for Issuance of a Financing Order Under the Electric Company Infrastructure Improvement Financing Act* ("*Formal Case No. 1121*"), Application for Reconsideration of the Apartment and Office Building Association of Metropolitan Washington ("AOBA's Application"), filed December 23. 2014.

[2] Mayor's Order 2012-130 was amended by Mayor's Order 2012-182 (October 19, 2012).

[3] Mayor's Power Line Undergrounding Task Force Findings and Recommendations Final Report (October 2013) (the "Final Report") at 8.

[4] Final Report at 10.

activities for undergrounding facilities to begin.[5]

3. Legislation governing the public-private partnership between the Potomac Electric Power Company ("Pepco") and the District of Columbia Department of Transportation ("DDOT") to bury certain overhead power lines to improve electric service reliability in the District of Columbia, the Electric Company Infrastructure Improvement Financing Act of 2013 (the "Act" or "ECIIFA"), D.C. Bill 20-387 was introduced in the Council of the District of Columbia (the "Council") on July 9, 2013. The legislation was approved by the Council on February 4, 2014, and signed by the Mayor on March 3, 2014. The legislation became law, effective May 3, 2014.[6]

4. The Act provides for a joint DDOT and Pepco application for the Commission's approval of triennial plans for undergrounding certain electrical facilities identified therein. On April 29, 2014, the Commission issued Order No. 17473, which, *inter alia*, opened *Formal Case No. 1116* to consider applications for approval of triennial plans.

5. On June 17, 2014, in accordance with Section 307(a) of the Act, Pepco and DDOT filed with the Commission the first Triennial Plan Application in *Formal Case No. 1116*, seeking the Commission's approval of their Triennial Underground Infrastructure Improvement Projects Plan (the "Joint Application" and "Triennial Plan").[7]

6. The Act also authorizes the District to issue the Bonds to fund the DDOT Improvement Activities that DDOT will undertake in connection with the Undergrounding Project. Prior to any such issuance, however, the Act requires the Commission to review a financing order application and issue a financing order authorizing the issuance of the Bonds.

7. On August 1, 2014, in accordance with Section 302(b) of the Act, Pepco, on behalf of itself and DDOT, submitted an application for issuance of a financing order (the "Financing Order Application").[8] The Financing Order Application sought approval, *inter alia*, for the District's issuance of Bonds in a total aggregate par amount of up to $375 million, the maximum amount permitted pursuant to Section 202(a) of the Act.

8. On November 12, 2014, the Commission issued Order No. 17697 in *Formal Case No. 1116*, which approved the Joint Application of Pepco and DDOT for the first Triennial Plan and the Underground Project Charge to be charged by Pepco with respect to Electric Company

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5 Final Report at 9.

6 D.C. Law 20-102 (May 3, 2014).

7 *See Formal Case No. 1116, In the Matter of the Application for Approval of Triennial Underground Infrastructure Improvement Projects Plan* ("*Formal Case No. 1116*"), Joint Application of Pepco and DDOT for Approval of the Triennial Underground Infrastructure Improvement Projects Plan, filed June 17, 2014 ("Joint Application").

8 *Formal Case No. 1121,* Pepco's Application for Issuance of a Financing Order filed August 1, 2014.

Infrastructure Improvement Costs incurred for the Undergrounding Project.[9] On November 24, 2014, the Commission issued Order No. 17714 in *Formal Case No. 1121*, which approved Pepco and DDOT's Financing Order Application.[10] On December 23, 2014, AOBA filed an Application for Reconsideration of the Commission Order No. 17714. On January 5, 2015, Pepco submitted a response to AOBA's Reconsideration Application.[11] On that same date, OPC filed a Reply to AOBA's Application for Reconsideration.[12]

III. DISCUSSION

A. AOBA's Petition for Reconsideration

9. AOBA submits that Order No. 17714 is "arbitrary, capricious, and an abuse of discretion and is also contrary to law and inconsistent with the facts in the record of this proceeding."[13] AOBA seeks reconsideration of four (4) elements of Order No. 17714 including: (1) "the Commission's determination regarding the allocation of DDOT Improvement Charge revenue requirements among rate classes;" (2) the Commission's determinations regarding the classes to which DDOT Improvement Charge revenue requirements are allocated," (3) "the Commission's determination that the DDOT Improvement Charge is non-bypassable;" and (4) the Commission's determination with respect to the use of Pepco's estimates of forecasted sales in the computation of DDOT Improvement Charges."[14]

i. The Commission's Allocation of Revenue Requirements Among Rate Classes

10. AOBA incorporates the same arguments in opposition to Order No. 17714 as it raised in its December 12, 2014, Application for Reconsideration of Order No. 17697 in *Formal Case No. 1116* which AOBA provided as Attachment 1 to its Application.[15] According to AOBA, the Commission has determined, like in *Formal Case No. 1116*, class revenue requirements in a manner that is not supported by either the ECIIFA or the facts presented in this

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9 *Formal Case No. 1116*, Order No. 17697, rel. November 12, 2014.

10 *Formal Case No. 1121*, Order No. 17714, rel. November 24, 2014.

11 *See Formal Case No. 1121*, Response of Potomac Electric Power Company in Opposition to the Application of the Apartment and Office Building Association of Metropolitan Washington for Reconsideration of Order No. 17714 ("Pepco's Response"), filed January 5, 2015.

12 *See Formal Case No. 1121*, Reply of the Office of the People's Counsel for the District of Columbia to the Application of the Apartment and Office Building Association of Metropolitan Washington for Reconsideration of Order No. 17714, filed January 5, 2015.

13 AOBA's Application at 1.

14 AOBA's Application at 1-2.

15 AOBA's Application at 3-4, 11.

case. In AOBA's view, Order No. 17714 "arbitrarily and inconsistently" applies the requirements of the ECIIFA, Section 34-1313.01(a)(4), to generate a result that is unsupported by either the requirements of the ECIIFA or its legislative history.[16] As a result, AOBA asserts that "Order No. 17714 unjustly and unreasonably imposes the vast majority of DDOT Improvement Charge revenue requirements on non-residential customer classes with predominantly adverse impacts on Rate Schedule GT Low Voltage customers."[17]

11. AOBA asserts that, in Order No. 17714, the Commission erroneously found that "Pepco's cost allocation methodology based on non-customer charge revenue allocates costs in a manner that is similar to the allocation used in Formal Case No. 1103 and is consistent with the legislative intent discussed in the committee Report."[18] AOBA argues that the methodology proposed by Pepco, and accepted by the Commission, "is not 'in accordance with' any 'distribution service customer class cost allocations approved by the Commission" in *Formal Case No. 1103*.[19] AOBA further argues that "the allocation methodology based on 'non-customer charge revenue' does NOT produce results by class which can reasonably be characterized as 'similar' to any allocation or revenue requirements and or distribution service costs by customer class that this Commission approved in Formal Case No. 1103."[20] AOBA asserts that, based on Pepco's proposed cost allocation in this proceeding, the non-customer based allocation of costs "assigns only **11.15%** of DDOT Improvement Charge costs to residential customers (excluding RAD customers), [while] the Commission's determinations in Formal Case No. 1103 assigned 47% of the approved revenue increase in that proceeding to residential customers (including RAD customers)."[21] AOBA contends that, when RAD customers are excluded, "the residential class still received over **45.55%** of the approved revenue increase in Formal Case No. 1103."[22] AOBA asserts that, by comparison, "[a]n 11.15% allocation to non-RAD residential customers is NOT similar to the **45.55%** to non-RAD residential customers determined by this Commission to be appropriate in Formal Case No. 1103."[23] AOBA argues that Pepco's proposed methodology does not reflect the Commission's approved allocations in Formal Case No. 1103, instead, AOBA asserts, "it is a methodology that

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16 AOBA's Application at 3.

17 AOBA's Application at 3.

18 AOBA's Application at 11-12 (citing Order No. 17714, ¶ 78).

19 AOBA's Application at 12.

20 AOBA's Application at 13.

21 AOBA's Application at 13 (emphasis in original).

22 AOBA's Application at 13 (emphasis in original) (referencing Attachment A to AOBA's Request for Reconsideration and *Formal Case No. 1103, 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. 1103*"), Order No. 17424, at 175, rel. March 26, 2014 ("Customer Class RORs" Table)).

23 AOBA's Application at 13 (emphasis in original).

Pepco has created for the sole purpose of limiting residential responsibilities for Pepco's undergrounding program costs, including the portion of those costs that is to be recovered through the DDOT Improvement Charge;" and therefore, cannot comport with the requirements of the Act.[24]

12. Further, AOBA asserts that the allocation of DDOT revenue requirements among rate classes approved in Order No. 17714 cannot be justified even when considering the Commission's interpretation of the ECIIFA.[25] AOBA also asserts that "Order No. 17714 incorrectly premises its determination regarding the allocation of revenue requirements on an assertion that: 'In this instance, AOBA's surcharge estimate for the residential class is inconsistent with the costs estimates referred to in the legislative history of the Act.'"[26] Yet, AOBA asserts, the "Commission's conclusion lacks citation to either any supporting document in the record of this proceeding or any document that the Commission claims to be representative of the 'legislative history of the Act."[27] Furthermore, AOBA argues, "it is not reasonable to presume that either the Council or the Task Force could have produced reliable estimates" of the rate impacts of *Formal Case No. 1103* since the Commission did not issue a final decision in *Formal Case No. 1103* until after the passage of the Act.[28]

13. In addition, AOBA asserts that comparisons to estimates of charges developed prior to Order No. 17424 in *Formal Case No. 1103* are irrelevant to the Commission's ruling in the current proceeding not only because the referenced calculations were "simply illustrative" and non-binding on the Commission's determinations in this proceeding, but also because if the Council intended to cap the Underground Project Charge ("UPC") at $1.50, then it could have explicitly done so.[29] AOBA reasons that the "Commission places reliance on a self-serving analysis prepared by Pepco for the Task Force with the intent of garnering support for an undergrounding program that would provide the Company with substantial assured rate base and earnings growth for at least the next five to seven years without regard to the equitable treatment of non-residential ratepayers."[30] However, AOBA adds that no party to *Formal Case No. 1116* argued either that: (1) AOBA's proposed cost allocation, as presented by AOBA Witness Oliver, was improper, or (2) that Pepco's proposed methodology for "allocating the DDOT Improvement Charge revenue requirements in this proceeding and [the UPC] in Formal Case No. 1116 is consistent with the manner in which Pepco would allocate the same <u>costs</u> among rate

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24 AOBA's Application at 13-14.

25 AOBA's Application at 3.

26 AOBA's Application at 3, 14 (citing Order No. 17714, ¶ 77).

27 AOBA's Application at 14.

28 AOBA's Application at 14.

29 AOBA's Application at 4, 14 (emphasis added).

30 AOBA's Application at 4.

classes in a base rate proceeding."[31]

14. AOBA further argues that despite the Act's requirement that the revenue allocations among classes be done in accordance with *Formal Case No. 1103*, the Commission failed to consider its "explicitly espoused [ ] policy" of moving toward the elimination of negative rates of return.[32] AOBA contends that the Commission "approved an allocation methodology in this case that runs directly counter to its determinations in Formal Case Nos. 1087 and 1103," a problem which AOBA argues was precipitated by the fact that Pepco presented a cost allocation methodology to the Mayor's Task Force that was based on "allocation methods that were inconsistent with the Commission's clearly enunciated policy" regarding the elimination of negative rates of return.[33]

15. AOBA asserts that, as a result of the Commission's failure to comport with the requirements of the Act, "Pepco's non-residential ratepayers, particularly customers served under Rate Schedules GT-LV and GS-LV who constitute the vast majority of Pepco's non-residential customers in the District," will be negatively impacted to a significant degree.[34] AOBA argues that the Commission clearly did not allocate the revenue requirement in accordance with the Act, as evidenced by the "substantial and undeniable" difference between the Commission's allocations in this proceeding (*i.e.*, 11.15% on residential non-RAD customers) and those set forth in *Formal Case No. 1103* (*i.e.*, 45.55% on residential non-RAD customers).[35] AOBA asserts that this failure to allocate cost in accordance with the Act, as well as the Commission's approval of Pepco's use of non-customer distribution revenue, constitute reversible errors of law and result in a DDOT Improvement Charge that is neither just nor reasonable as required by the Act. [36]

ii. The Commission's Deviation from the Rate Classes to which Both Costs and Revenue Requirements were Allocated in Formal Case No. 1103 and the Commission's Failure to Provide Separate Treatment of MMA Customers

16. According to AOBA, the Commission's allocation of revenue requirements among rate classes in Order No. 17714 involves the use of a set of customer classes that is "inconsistent with the customer classes to which costs were allocated by Pepco in its filed class cost of service study ('CCOSS') in *Formal Case No. 1103* and inconsistent with the classes to

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31 AOBA Application at 15 (emphasis in original).

32 AOBA Application at 15-16.

33 AOBA Application at 16.

34 AOBA Application at 17.

35 AOBA Application at 17-18 (referencing Table 1 on page 18 of AOBA's Application).

36 AOBA Application at 18-19.

which the Commission allocated or assigned revenue requirements in Order No. 17424 in *Formal Case No. 1103*."[37] Specifically, AOBA questions the Commission's failure to treat the MMA class distinctly from the Residential and Residential All-Electric ("AE") classes, while at the same time allocating costs to other customer groups (*i.e.*, GS ND and GS-D-LV) that were not served under separate rate schedules in *Formal Case No. 1103*.

17. AOBA argues that while "both Pepco's CCOSS in *Formal Case No. 1103* and in Order No. 17424 costs and/or revenue requirements were allocated to MMA customers apart from the Residential (Rate R) class," Order No. 17714 failed to differentiate MMA customers, like the Commission did in Order No. 17424, but rather included "MMA customers within the Residential (Rate R) class for the purposes of allocating DDOT Improvement Charge revenue requirements and computing DDOT Improvement Charges by rate class."[38] AOBA asserts that "[a]lthough the Commission elected not to implement a separate rate class for MMA customers in Formal Case No. 1103, Order No. 17424 leaves little question that the Commission . . . provided a revenue allocation for MMA customers that is distinct from that for the Residential R and AE service classification."[39] As support for this contention, AOBA cites to page 175 of Order No. 17424 where it asserts that the Commission provided table showing the authorized revenue increase for each rate class – separately treating the MMA class from the Residential classes, authorizing a 5.6% revenue increase for the MMA class, while authorizing a 21.1% and 19.7% increase for the Residential and Residential AE classes, respectively.[40]

18. AOBA asserts that the Commission's isolated handling of the MMA customers in Order No. 17424 is pertinent because the "Commission explicitly recognized in Order No. 17424 that separate treatment of the MMA customers was necessary and appropriate to account for the much higher rate of return provided to Pepco by MMA customers."[41] While the rate of return at the then current rates for the MMA class was 12.21%, according to AOBA, the rate of return for Residential customers cited by the Commission was negative. AOBA asserts that like in *Formal Case No. 1103*, acknowledgment of the "differences between MMA and Residential (Rate R) rates of return is an important element of the Commission's revenue requirements determinations by customer class," and should be utilized to meet the requirements of the ECIIFA in the current proceedings.[42]

19. Furthermore, according to AOBA, the "Commission cannot arbitrarily introduce other rate class distinctions in its allocation of revenue requirements among rate classes in this

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37 AOBA's Application at 4.

38 AOBA's Application at 4.

39 AOBA's Application at 20.

40 AOBA's Application at 20-21.

41 AOBA's Application at 5.

42 AOBA's Application at 5.

proceeding that were not used in its determinations in *Formal Case No. 1103*, as it has done in its assignment of DDOT Improvement Charge revenue requirements to General Service Non-Demand (GS-ND) customers and General Service Demand Low Voltage (GS-D-LV) customers."[43] AOBA asserts that the Commission has failed to justify its use of rate classes other than those to which it specifically allocated revenue requirements in Order No. 17424, "nor do the allocations of revenue requirements in Order No. 17714 conform with the requirement of the ECIIFA that such allocations be '*in accordance with the distribution service customer class cost allocations approved by the Commission in the electric company's last base rate case*.'"[44] AOBA asserts that "Pepco's allocation methodology[,] which Order No. 17714 approves in this proceeding[,] provides separate allocations of revenue requirements to [GS ND] customers and [GS-D-LV] customers;" however, there are no "allocations of revenue requirements or calculated rates of return for those two customer groups" reflected in *Formal Case No. 1103*, Order No. 17424.[45] Instead, AOBA points out, the GS ND and GS-D-LV customer groups were treated as "part of the broader GS-LV rate classification." AOBA argues that this inconsistent treatment of the MMA versus the GS ND and GS-D-LV customer groups "depicts an arbitrary and capricious determination which constitutes an abuse of discretion" on the Commission's part.[46] Therefore, AOBA submits, in order to conform with the requirements of Section 34-1313.01(a)(4) of the Act, the Commission must reverse its decision on the treatment of the MMA class and eliminate the separate treatment of the GS ND and GS-D-LV customer groups.[47]

iii. Pepco's use of Forecasted Sales and Its Proposed Compression Adjustment to kWh Sales

20. AOBA points out three (3) errors in the Commission's determinations regarding the Company's use of forecasted kWh in the computation of DDOT Improvement Charges: (1) "the use of forecasted kWh is not in accord with the Commission rate determinations in *Formal Case No. 1103*;" (2) the Commission fails to address the Company's use of a surcharge calculation methodology which builds "compression" adjustments into rate determinations for years subsequent to the initial year when such adjustments are not necessary or appropriate;" and (3) "the Commission incorrectly shifts the burden of proof for the Company's proposed use of forecasted kWh from Pepco to AOBA."[48]

21. AOBA argues that the Commission's decisions regarding the use of forecasted sales data in this proceeding relies on its determinations in *Formal Case No. 1116* and on

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43 AOBA's Application at 5 (emphasis added).

44 AOBA's Application at 5 (emphasis in original).

45 AOBA's Application at 21.

46 AOBA's Application at 21.

47 *See* AOBA's Application at 21-22.

48 AOBA's Application at 6.

"untested Pepco assertions in this case regarding the merits of its proposals."[49] However, AOBA contends that the compression adjustment issue is unique to *Formal Case No. 1121* and was not addressed in *Formal Case No. 1116.* AOBA asserts "the only support from this proceeding that the Commission cites for the Company's compression adjustment is Pepco's untested assertion that its billing lag adjustment methodology '*is necessitated by Section 303(e) of the Act which precludes the DDOT improvement charge from being billed to customers until after the issuance of Bonds.*'"[50] However, AOBA asserts that the bonds have not been presented in this case and the timing of the issuance remains uncertain; therefore, "there is no basis in the record of this proceeding for assessing when initial debt service payments on the bonds ultimately issued will be due or what the magnitude of [the] payments will be;" leaving the Commission with "no legitimate basis on which to render findings regarding the adequacy of revenue collections or the need for a compression adjustment."[51]

22. AOBA asserts that even if a billing lag adjustment was needed, the Commission never addressed: (1) the concern raised by AOBA Witness Oliver, who asserts that adjustments for billing and payment lags should be made to the DDOT revenue requirement and not to measures of kWh use by rate class; and (2) the inconsistencies in the testimony of Witness Janocha, who, according to AOBA, proposed to address "lag through an undocumented and unexplained adjustment to Pepco's forecasted kWh," and that of Witness Barnette, who "suggests an adjustment to the DDOT revenue requirement for the initial 10-month period."[52] AOBA asserts that "[i]f the Commission is to rely on Pepco's forecasted sales, contrary to the recommendation of AOBA witness Oliver, then it must also explicitly determine that use of the Company's proposed kWh adjustment would only be appropriate for the initial 10-month period and that adjustment should not be applied to any estimates of sales beyond the referenced initial period."[53] AOBA further asserts that the Commission should explicitly direct that any adjustments made by Pepco for "billing and revenue collection lags in the initial 10-month period" will be made either through a kWh adjustment or to the DDOT Improvement Charge revenue requirement, "but in no event should adjustments for billing and revenue collection lags" be reflected in both.[54]

23. Additionally, AOBA argues that the Commission "fails to address the discrepancy in Pepco's adjusted kWh for the residential AE class that AOBA witness Oliver documented in

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[49] AOBA's Application at 22-23.

[50] AOBA's Application at 23 (emphasis in original).

[51] AOBA's Application at 23.

[52] AOBA's Application at 23 (referencing AOBA (A) at pages 33-35 and Applicants' response to Staff Data Request 2-2, a copy of which is included in Attachment A to the Direct Testimony of AOBA witness Oliver, AOBA (A)).

[53] AOBA's Application at 24-25.

[54] AOBA's Application at 25.

his Direct Testimony which represents an unsupported reduction of roughly [ ] 20% in the estimated annual sales for the Residential AE class."[55] Further, AOBA asserts that "with respect to forecasted sales, Order No. 17714: (1) inappropriately relies on precedents found in the Bill Stabilization Adjustment ('BSA') and RAD surcharge calculations to support Pepco's use of forecasted sales . . . and (2) accepts without question Pepco's unsupported assertion that '*the use of forecasted kWh will more closely approximate sales during 2015 when the surcharge is effective* . . .'"[56] AOBA argues that there is no evidence in the record to support the finding that Pepco's forecasted kWh will provide a more accurate approximation of future kWh use by customer classes during 2015 than the use of historic test year kWh in *Formal Case No. 1103*.[57] AOBA argues that the Commission "inappropriately shifts the burden of proof on this matter from Pepco to AOBA," and that the Commission's analysis "is an error of law, fails to address a material issue, and is not supported by substantial evidence."[58]

24. AOBA concludes by asserting that the Commission, in making its determinations on this issue, failed to recognize that "the procedures for calculating the current BSA surcharges were developed by the Commission without a legislative mandate;" however, here, "the ECIIFA does not provide the Commission the same discretion in determining the appropriate kWh for use in surcharge calculations that [the Commission] has in the context of a non-legislatively established surcharge mechanism, such as the BSA."[59]

iv. Order No. 17714 Incorrectly Concludes that the DDOT Improvement Charge is Non-Bypassable

25. AOBA asserts that the ECIIFA requires that the Commission find the DDOT Improvement Charges constitute non-bypassable charges, which is "critical for the assurance of revenue to meet debt service requirements on securitized bonds."[60] However, AOBA asserts that the charges Pepco has proposed, which were accepted by the Commission in Order No. 17714, "are bypassable by any customer who engages in net metering or self-generation."[61] AOBA asserts that this places the long-term sustainability of bond securitization at risk as bond investors will recognize the bypassable nature of the charges.[62] Further, AOBA argues that while "the Commission recognizes that customers can reduce usage to avoid the payment of DDOT

55 AOBA's Application at 25.

56 AOBA's Application at 25 (emphasis in original) (citing Order No. 17714, ¶ 80).

57 AOBA's Application at 26.

58 AOBA's Application at 26.

59 AOBA's Application at 26.

60 AOBA's Application at 6.

61 AOBA's Application at 6.

62 AOBA's Application at 6.

Improvement Charges[,] . . . the Commission incorrectly reasons that reductions in usage by customers with net metering or self-generation are no different than reductions in usage by any other Pepco customers who conserve."[63] To this point, AOBA argues that as more customers deploy self-generation and/or energy efficiency measures, "the units of service against which DDOT Improvement Charges are billed will shrink," but the charges DDOT must recover will remain "relatively stable," resulting in higher charges for those customers who are not self-generating.[64] AOBA argues that despite the fact that the Act allows the adjustment of the DDOT Improvement Charge "to offset revenue lost through declining service volumes, such upward ratcheting of the DDOT Improvement Charges will not ensure the District's recovery of DDOT Improvement Costs" because higher charges on non-self-generating customers will, according to AOBA, only incentivize those customers to deploy self-generation, further shrinking the pool of customers paying the DDOT Improvement Charges and causing the charge to continually be "ratcheted" up to compensate.[65] AOBA contends that the Commission should not "approve a mechanism for the recovery of costs for bonds that could require a secure revenue stream for **thirty years** or longer without addressing the significant changes occurring in electric energy use within the District of Columbia and the potential impacts those changes can be expected to have on the adequacy and reliability of revenue to meet debt service obligations on securitized bonds."[66]

26. Additionally, AOBA asserts "the Commission overlooks the fact that net metering and self-generation differ from conservation in terms of the portion of a customer's service volume that can be affected (i.e., reduced or eliminated)."[67] AOBA argues that a customer who utilizes net metering or self-generation may eliminate a large portion, if not all, of their Pepco delivery service requirements, in comparison to customers who conserve who generally eliminate a must smaller percentage of a customer's total billed service, but rarely result in the elimination "as much as half of a customer's electricity usage."[68]

27. According to AOBA, the Commission "mistakenly" depends on the "true-up" process to compensate for any lost sales volumes because it assumes that by increasing changes in subsequent periods, revenue losses can be avoided; but in actuality, increasing "Pepco's already comparatively high charges for commercial service in the District will not ensure that lost revenues are recaptured," but only cause usage reductions.[69] Further, AOBA asserts that the

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63 AOBA's Application at 6-7.

64 AOBA's Application at 27.

65 AOBA's Application at 27-28.

66 AOBA's Application at 27 (emphasis in original).

67 AOBA's Application at 28.

68 AOBA's Application at 7, 28-29.

69 AOBA's Application at 7, 29.

"cause of the usage reductions is immaterial since over the roughly 30-year expected maturities for the securitized bonds, the risk of substantial erosion of Pepco's non-residential sales [ ]is significant."[70] AOBA notes that the risk of substantial erosion of Pepco's non-residential sales "places the entire concept of financing DDOT undergrounding work through securitized bonds in jeopardy."[71] Thus, AOBA submits that, though it is "possible to establish DDOT Improvement Charges on a dollars per kWh basis that do not introduce substantial cost recovery risk, the DDOT Improvement Charges approved by this Commission do not accomplish that objective."[72] AOBA also submits that "the DDOT Improvement Charges and true-up mechanism approved in Order No. 17714 will ultimately undermine the viability of both the District's undergrounding program and the reliability and affordability of Pepco's distribution service in the District."[73] AOBA states that the "Commission has a fiduciary responsibility to ensure the reasonableness, appropriateness, and on-going viability of the funding mechanism that will be employed for DDOT costs," and AOBA asserts that the Commission's determinations in Order No. 17714 fell short of meeting this responsibility under the Act.[74]

v. AOBA's Requested Relief

28. AOBA requests that Order No. 17714 be modified consistent with the requirements of Sections 34-1313.01(a)(4) and 34-1313.03(c) of the ECIIFA, the evidence presented in the record of this proceeding. Specifically, AOBA seeks the following:

(1) Revision of the allocation of DDOT Improvement Charge revenue requirement by customer class to conform to the percentages of revenue by rate class that the Commission Ordered for the approved revenue increase in *Formal Case No. 1103*.

(2) Establishment of a separate DDOT Improvement Charge revenue requirement for MMA customers consistent with the Commission's determinations in *Formal Case No. 1103*, elimination of separate DDOT Improvement Charge revenue requirements of GS ND and GS-D-LV customer groups and replacement of the GS ND and GS- D-LV revenue requirements and charges with a revenue requirement and DDOT Improvement Charge for the GS-LV class which includes GS ND and GS-D-LV customers.

(3) Findings that: (a) Pepco's use of forecasted kWh sales in the computation of

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70 AOBA's Application at 7, 29.

71 AOBA's Application at 7, 29.

72 AOBA's Application at 7, 29.

73 AOBA's Application at 8, 29.

74 AOBA's Application at 8.

DDOT Improvement Charges is not consistent with the requirements of the ECllFA; (b) the BSA precedent upon which the Commission relies to accept Pepco's use of forecasted sales is not relevant in the context of the requirements of the ECllFA; and (c) the record of this proceeding does not support a finding that Pepco's forecasted sales can be relied upon to more accurately represent the sales levels that will actually be experienced in 2015 or future years.

(4) A finding that Pepco's application of an adjustment to kWh sales to account for a one and a half month billing lag in the first year that the DDOT Improvement Charge is applied does not justify the Company's application of the same adjustment in its determination of DDOT Improvement Charges for periods subsequent to the first year.[75]

29. AOBA also requests that the Commission explicitly recognize:

(1) The fact that through self-generation individual customers in all rate classes can, and have, effectively by-passed Pepco's distribution system in the District of Columbia including the installation of facilities as co-generation and roof top solar systems.

(2) The evolving nature of the electric industry, the movement toward more sustainable energy systems (including greater reliance on customer-owned electric generation such as cogeneration and roof top solar systems), and the reasonably anticipated impacts of customer-based generation and energy efficiency improvements on the viability of securitized bonds over the anticipated 30 or more years that a revenue stream for the payment of debt service on securitized bonds will need to be maintained.

(3) That Pepco is totally dependent on its non-residential customers to meet its current return requirements on invested capital, and that the distribution of DDOT Improvement Charge revenue requirement by customer class approved by the Commission in Order No. 17714 will serve to further erode the already negative rates of return for Pepco's residential service in the District of Columbia and further exacerbate the subsidies of residential service in the District in a manner that is inconsistent with Commission's announced rate policies as set forth in the Commission's determinations in each of Pepco's last two base rate proceedings.

(4) The already comparatively high costs of non-residential electric distribution service in the District of Columbia and the impact of further increases in the costs of electric distribution service on economic activity in the District

[75] AOBA's Application at 29-30.

(particularly with the availability of competitive priced office space and lower electric service costs in near-by portions of Northern Virginia).

(5) The fact that the DDOT Improvement Charges, as presently structured, **are by-passable** by individual customers who currently purchase distribution services from Pepco in the District of Columbia, and accordingly recognition of the fact that the DDOT Improvement Charges approved by the Commission are not truly non-by-passable.

(6) That the true-up mechanism approved by the Commission will at best serve as a "band-aid" in efforts to address DDOT Improvement Charge revenue shortfalls and that further upward ratcheting of DDOT Improvement Charges will only serve to increase the already substantial impacts anticipated for commercial customer bills and stimulate greater numbers of customers to substantially reduce or eliminate their dependence on Pepco's distribution services.

(7) That over the 30 years or longer that a revenue stream will need to be maintained to support debt service on securitized bonds the District's efforts through the SEU to encourage deployment of sustainable energy systems and use of renewable energy alternatives will jeopardize the District's ability to maintain the revenue stream necessary to support the issuance of securitized bonds.[76]

B. Pepco's Response to AOBA's Application for Reconsideration

30. On January 5, 2015, Pepco submitted a response to AOBA's Application for Reconsideration. Pepco asserts that AOBA's Application for Reconsideration fails to present any "error(s) of law or fact," as required in Commission Rule 141.2, in the determinations set forth in Order Nos. 17714 and 17697 in *Formal Case No. 1116*, the basis for the Commission's determinations on several issues in Order No. 17714. Further, Pepco asserts that the conclusions the Commission reached in Order Nos. 17714 and 17697 that AOBA challenges through its *Formal Case No. 1121* Application for Reconsideration should not be disturbed, and the *Formal Case No. 1121* Application should be denied.[77]

i. The Commission's Approval of the Proposed Cost Allocation Methodology was Reasoned, Rational and Substantiated with Adequate Evidence

31. Pepco argues that because the record on the issue of cost allocation was developed fully in *Formal Case No. 1116* and Pepco used the same methodology in *Formal Case*

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[76] AOBA's Application at 30-31 (emphasis in original).

[77] *See generally*, Pepco's Response.

No. 1121, Order No. 17714, the Commission properly relied on its determinations in Order No. 17697 in rejecting AOBA's protests and approving Pepco's proposed cost allocation methodology.[78] Pepco avers that in Order No. 17697, the Commission provided a reasoned and rational explanation, substantiated with adequate evidence for its approval of the proposed cost allocation methodology and rejection of AOBA's methodology and as such, under well-settled law, AOBA has a "heavy burden of demonstrating clearly and convincingly a fatal flaw in the action taken."[79] Pepco asserts none of AOBA's arguments on reconsideration require the Commission to alter its determination that Pepco's allocation of the DDOT Improvement Charge complies with the requirements of the Act, is based on the portion used in *Formal Case No. 1103*, and is consistent with the legislative history of the Act and the language of the Act.[80]

32. To meet the requirements of Section 301(a)(4) of the EIIFCA, Pepco contends that it allocated the cost associated with the DDOT Improvement Charge to customers in the same manner as the Commission allocated the cost of Pepco's electric distribution service in *Formal Case No. 1103*, the Company's most recent distribution service base rate case specifically by allocating the total revenue requirement for the DDOT Improvement Charge to each rate class on the basis of the rate class-specific levels of non-customer-related distribution revenue the Commission approved in Order No. 17424.[81] Pepco argues that AOBA's contentions that the Commission's decision violated Section 310(c)(1) of the Act and that the Commission should not have excluded the customer charge revenue from the allocation of customer costs and also should have applied the Commission's policy of moving away from negative rates of return for residential customers are wrong.[82]

33. Thereafter, Pepco reiterates how the Commission, through its application of the rules of statutory construction, reached the determination that the Joint Applicants' allocation methodology based on non-customer charge revenue allocates cost in a manner that is similar to the allocation used in *Formal Case No. 1103* was consistent with the legislative intent.[83] Pepco explains that the Commission provided a thorough recitation of the various parties' positions regarding the proposed cost allocation methodology, in Order No. 17697; first discussing the proposed UPC and finding the estimated monthly bill impacts in 2015 were reasonable and consistent with the range of charges presented in the Act's legislative history. Pepco notes that, in Order No. 17714, the Commission came to the same conclusion regarding the proposed DDOT Improvement Charge based on the record in *Formal Case No. 1116*. In Order No. 17697, the Commission next considered the competing positions held on the one hand by AOBA, as

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78 Pepco's Response at 5.

79 Pepco's Response at 6.

80 Pepco's Response at 6.

81 Pepco's Response at 6-7.

82 Pepco's Response at 8.

83 Pepco's Response at 7.

supported by the General Services Administration ("GSA"), and on the other hand by the Joint Applicants and OPC of the meaning of the phrase "distribution service class cost allocations" as it is used in the Act. The Commission then described how customer costs were allocated in *Formal Case No. 1103* having set forth (1) the ambiguity of the operative phrase in the Act, (2) the position taken by AOBA, (3) the position taken by the Joint Applicants, and (4) the manner in which the Commission determined the proper allocation of the revenue requirement among the various customer classes. Pepco states that the Commission laid the proper foundation for its analysis of AOBA's position versus the Joint Applicants' position and its determination of the reasonableness of the allocation methodology used in both the UPC and the DDOT Improvement Charge.[84]

34. Pepco goes on to explain how after restating its position on the ambiguity of the language in the Act, the Commission, in Order No. 17697, undertook the appropriate application of the governing principles of statutory construction which lead to an examination of the legislative history. Pepco notes that the Commission found significant that the Council's Committee Report, the primary piece of legislative history underlying the Act, made it clear that: "(1) there was a concern about the financial impact of any UPC on residential consumers; (2) the bill impact in year one, based on the work of the Mayor's Undergrounding Task Force Report, was expected to be approximately $1.50 and in year seven was expected to be approximately $3.25; and (3) the undergrounding project would place a heavier financial burden on the commercial class than on the residential customers."[85] Comparing the two alternative methodologies to these three significant factors from the Act's legislative history, the Commission concluded that "the Joint Applicants' methodology more reasonably reflects the expressed intentions of the legislature.

35. Pepco asserts that the Commission relied on the record in *Formal Case No. 1116*, including AOBA Witness Oliver's testimony at the evidentiary hearing in reaching its determination in Order No. 17697. The Commission's decision in Order No. 17697 is supported further by Pepco Exhibit 3 (McGowan Affidavit) and the live testimony of Company Witness McGowan, a member of the Mayor's Task Force who also served on the drafting committee for the legislation itself. Company Witness McGowan's affidavit was admitted into the record, and he was cross-examined by AOBA at the evidentiary hearing. As set forth in Pepco Exhibit 3, the Mayor's Task Force Finance Committee "concluded that ratepayer contributions shall be through regulated distribution rates because '[t]his is the most equitable way to distribute the cost and will be allocated among customer classes consistent with the cost allocation methods as approved by the Public Service Commission.'" Pepco indicates that under the direction of Company Witness McGowan, Company Witness Janocha and others at Pepco developed a financial model for the Mayor's Task Force that was used to estimate the rates for and the impact on each customer class of placing the selected feeders underground as part of what became the DC Power Line Underground ("PLUG") initiative. The model submitted to the Mayor's Task Force was developed based on the distribution service customer class cost allocation, excluding

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[84] Pepco's Response at 8.

[85] Pepco's Response at 9.

customer charge revenue, in *Formal Case No. 1087*— which at that time was the most recent distribution base rate case approved by the Commission. The distribution service customer class cost allocations that Company Witness Janocha prepared for the Mayor's Task Force, under Company Witness McGowan's direction, are the same distribution service customer class cost allocations, with updated inputs, that Company Witness Janocha filed with his testimony in *Formal Case No. 1116* as part of the Triennial Plan—Exhibit PEPCO (C)-l — and the same as those filed in Appendices J and K of the Triennial Plan and in Company Witness Janocha's testimony in *Formal Case No. 1121* (Exhibit PEPCO (B)-l). The Mayor's Task Force's model was developed to "allocate[ ] the cost of the investments similar to the method used to recover costs in a typical utility rate case."[86]

36. In Order No. 17697, having rejected the alternative methodology AOBA proposed, because it was not consistent with the legislative history, Pepco notes that the Commission then turned to the task of determining whether the proposed methodology—the exact same methodology at issue in Order No. 17714—comported with the Act. The Commission held that the exclusion of customer charge revenues was reasonable and appropriate. The Commission noted the testimony of Company Witness Janocha on the issue, who testified:

> [T]he total DDOT Improvement Revenue Requirement is allocated to each rate class on the basis of the rate class specific levels of non-customer-related distribution revenue, as approved in Order No. 17424 in Formal Case No. 1103, which is the Company's most recent distribution [base] rate [ ] case. This method aligns the revenue derived from the DDOT Improvement Charge with the level of base distribution revenue derived from each rate class.[87]

37. Pepco asserts that customer charges recover costs associated with customer-related assets (*e.g.*, customer meters and service lines) and services (*e.g.*, billing) that are recurring or ongoing downstream and are associated primarily with the delivery and servicing of the delivery of power at the customer interconnection point. The purpose of both the DDOT Improvement Charge and the UPC is to recover certain costs associated with the DC PLUG initiative "in a manner that's as close as possible to how comparable assets are recovered in base distribution rates."[88] Thus, Company Witness Janocha testified "[c]ustomer charge revenues were excluded from the allocation on the basis that the undergrounding project does not include infrastructure such as meters and services that would normally be recovered through a customer charge."[89] As the Commission noted in Order No. 17697, in Formal Case No. 1103, as with

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86 Pepco's Response at 10-11.

87 Pepco's Response at 11.

88 Pepco's Response at 11.

89 Pepco's Response at 11.

typical rate case proceedings, Pepco would not include in rates unrelated charges, making it appropriate to remove the customer charge revenues that are unrelated to the DC PLUG initiative from the cost allocation.

38. By aligning recovery in the DC PLUG initiative with recovery in distribution base rate cases, Pepco will be able to incorporate the assets into base rates without rate shock or misalignment of costs. This outcome is consistent with *Formal Case No. 1116*, Pepco Exhibit 3, in which Company Witness McGowan testified that:

> [d]uring the meetings held to draft the legislation to implement the [Mayor's] Task Force's recommendations, it was discussed that the rationale for using the distribution service customer class cost allocation from Pepco's most recently approved rate case would ensure that (1) a similar asset, whether recovered as part of a distribution base rate case or as part of the Triennial Plan's UPC, is allocated to the customer classes the same way, (2) there is no rate shock when the DC PLUG assets are added to rate base once the project is completed and (3) the allocation is not an issue each time a true-up request is filed with the Commission. The allocation proposed by Pepco meets each of these objectives while the alternative allocations do not.[90]

39. Pepco concludes that the Commission provided a rational explanation to the allocation of customer costs that's substantiated with adequate evidence and legislative history of the Act in Order No. 17697. According to Pepco, AOBA's Application does not identify any clear and convincing fatal flaws in the Commission's actions, providing no basis for altering the Commission's determination in Order Nos. 17697 and 17714 regarding the allocation of customer costs. Thus, Pepco recommends that AOBA's Application for Reconsideration be denied.[91]

ii. The Commission used the First Year Rate Impact of $1.50 as a Point of Comparison for the Proposed Methodology and AOBA's Alternative Methodology

40. Pepco contends that AOBA, in both its *Formal Case No. 1116* and *Formal Case No. 1121* Applications for Reconsideration primarily argued that the Commission found the Act's "legislative history mandated a $1.50 first year UPC [and DDOT Improvement Charge] for residential classes," thus creating a "cap" of $1.50 for the UPC's and the DDOT Improvement Charge's first year bill impact; however, Pepco notes that AOBA provided no citation to Order No. 17697, Order No. 17714, or to the record where the Commission or any party argued that the

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90 Pepco's Response at 11.

91 Pepco's Response at 13.

legislative history imposed a cap.[92] Pepco argues that "AOBA's assertions mischaracterize the Commission's determinations in Order Nos. 17697 and 17714, as the orders neither imposed a cap on the UPC and the DDOT Improvement Charge nor found a legislative mandate to limit the UPC's and the DDOT Improvement Charge's first year bill impact." Pepco asserts that what occurred instead is "the $1.50 served as a point of comparison for Pepco's proposed methodology and AOBA's alternative methodology in order to 'determine whether an alternative construction should be ascribed to the statutory language to help resolve the ambiguity of the phrase.'"[93]

41. Pepco alleges that AOBA's claim is unsupported by the language of Order No. 17697. Pepco refers to the Commission's statements that it found relevant that the Council's Committee Report showed:

> (1) there was concern about the financial impact of any UPC on residential customers; (2) the bill impact in year one, based on the work of the Mayor's Undergrounding Task Force Report, was expected to be approximately $1.50 and in year seven was expected to be approximately $3.25; and (3) the undergrounding project would place a heavier burden on the commercial class than on the residential customers.

Pepco contends that the language in point 2 directly contradicts AOBA's argument that the Commission was imposing a cap or finding a legislative mandate and does not provide the type of mandate and certainty that AOBA's claim requires.[94]

42. In addition, Pepco notes that the Commission used the $1.50 figure in Order No. 17697 as one of many reference points that it found important in the legislative history. The Commission analyzed the two allocation methodologies against all of these important factors. In addition to the first year bill impact, the Commission analyzed against the peak bill impact. The Commission also examined the percent of the DC PLUG costs that would be allocated to residential customers. The Commission used as its reference point for this analysis AOBA's own testimony from the Council's Committee Report on the Act. The AOBA Council Testimony provides evidence contemporaneous with the consideration of the Act of the percentage of the costs that would be allocated under the methodology used as part of the legislative history. As the AOBA Council Testimony makes clear, "over 82% of the costs of the proposed undergrounding program will be borne by commercial and master metered apartment building consumers." Pepco avers that in all analyses that the Commission took in Order No. 17697, it found that it could not reconcile the outcomes of AOBA's methodology proposed in

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92 Pepco's Response at 14.

93 Pepco's Response at 14.

94 Pepco's Response at 15.

Formal Case Nos. 1116 and *1121* with the Act's legislative history.[95]

43. Pepco further contends that AOBA's claim that the Mayor's Task Force and the Council could not have known about the outcome of *Formal Case No. 1103* when the report was prepared is not plausible because as the Commission observed the same methodology "that formed the basis of the Mayor's Task Force Report recommendations was considered in the Council mark-up of the ECIIFA legislation."[96] Pepco avers that methodology was then used in calculating the DDOT Improvement Charge and the UPC and that this finding is supported by the record and the Act's legislative history.[97] Further Pepco indicates that as new rate case determinations were known, the inputs to the methodology were updated Not surprisingly, because the same methodology repeatedly used in the Mayor's Task Force Report, the legislative history of the Act, the UPC cost allocation, and the DDOT Improvement Charge all produced a first year bill impact around the $1.50 figure for residential customers.[98] Moreover, as Pepco pointed out and as noted by the Commission in Order No. 17697, AOBA's own witness stated that under AOBA's proposed allocation it was not possible to end up with a monthly charge that was similar to the estimates in the Mayor's Task Force Report of the Council's Committee Reports on the Act.[99]

44. Pepco further argues that the purpose and policy of the Act with respect to cost allocation, articulated in the first instance by the Mayor's Task Force, is faithfully effectuated by the Commission's acceptance of the proposed cost allocation methodology in both Formal Case Nos. 1116 and 1121. With respect to the purpose of the cost allocation, the Mayor's Task Force Report provided that "[t]he infrastructure recovery charge allocates the cost of the investments similar to the method used to recover costs in a typical utility rate case."[100] In a similar vein, the Mayor's Task Force Report stated that "[c]urrent expectations are that the cost will be allocated in the same manner approved in the last Pepco base rate case. Pepco emphasizes that these allocations have historically assigned more of the cost recovery to commercial customers a fact that was confirmed by AOBA's testimony at the Council's joint hearing on the Act, that "[t]he proposed undergrounding plan will result in all District ratepayers bearing $87 million annually in additional costs . . . If passed, commercial, multifamily and institutional properties will have to pass on over $70 million annually in increased electric costs to their tenants, customers, students, and patients."[101]

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95 Pepco's Response at 16.

96 Pepco's Response at 16.

97 Pepco's Response at 16.

98 Pepco's Response at 16. Pepco cites OPC Exhibit 5 and Pepco Exhibit 1 at 84 in support of its proposition.

99 Pepco's Response at 16-17.

100 Pepco's Response at 17.

101 Pepco's Response at 17.

45. Pepco argues that AOBA's claim that the methodology's sole purpose is "limiting residential responsibilities for Pepco's undergrounding program costs, including the portion of those costs that is to be recovered through the DDOT Improvement Charge" is "misguided" because the DDOT Improvement Charge will be used by the District to pay financing costs on the bonds the District will issue to fund a portion of the DC PLUG costs that DDOT will incur, rather than be used to pay Pepco's costs for the DC PLUG initiative.[102] Moreover, as the Commission has determined, the cost allocation methodology approved in Order Nos. 17697 and 17714 appropriately uses the allocations from Pepco's most recent base rate case - *Formal Case No. 1103*, after the removal of customer charges that are unrelated to the DC PLUG initiative. Pepco avers that the allocation is generally consistent on a percentage basis with the allocation estimates that were before the DC Council when the Act was approved and against which AOBA testified at the time claiming the percentage allocated to commercial customers was too high - a position the DC Council clearly rejected when it enacted the Act without responding to AOBA's concerns.[103]

46. Pepco concludes by stating that the arguments presented in AOBA's Application for Reconsideration and *Formal Case No. 1116* Application are not supported by the language of Order Nos. 17697 and 17714, the record in this current proceeding, the Act's legislative history, or the Act itself and should be rejected by the Commission. Pepco reasserts that the cost allocation methodology approved by the Commission in Order Nos. 17697 and 17714 is consistent with the Act and the record.[104]

iii. There is No Inconsistency Between the Commission's Acceptance of the Exclusion of Customer Charge Revenues and its Statement that it Cannot Depart from the Language of the Act to Achieve Policy Goals

47. Pepco argues that AOBA "erroneously" challenges Order No. 17714 on the basis that the Commission abused its discretion by inconsistently excluding the customer charge revenues while concurrently claiming that the Act bars the Commission from implementing policy goals like reducing the negative rate of return for the residential customer class.[105] Pepco asserts that AOBA's arguments are "misplaced" and should be rejected by the Commission. Specifically, Pepco points to the statements by the Commission in Paragraphs 187 and 189 of Order No. 17697 which when considered in proper context support Pepco's contention that the Commission's arguments are consistent and do not constitute an "abuse of discretion," contrary to AOBA's argument.[106]

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[102] Pepco's Response at 17-18.

[103] Pepco's Response at 18.

[104] Pepco's Response at 18.

[105] Pepco's Response at 18-19

[106] Pepco's Response at 18-19.

48. Pepco explains that base rate cases are the appropriate place for making a policy decision such as the class rate of return where, in recent Pepco base rate cases, the Commission has an "expressed policy of addressing the negative rate of return being recovered from the residential class."[107] But here the Commission's actions are circumscribed by the language of the Act, thus Pepco contends that the Commission must implement the UPC and the DDOT Improvement Charge in a manner that meets the requirements of the Act—*i.e.*, in a manner consistent with its determination in *Formal Case No. 1103*, Pepco's most recent base distribution rate case. According to Pepco the statement in Paragraph 187 regarding setting just and reasonable rates directly follows the Commission's explanations that the Act requires costs to be allocated in accordance with the decision in Formal Case No. 1103 and that the "UPC-related costs do not involve what is customarily considered customer charge related costs." Because the DDOT Improvement Charge costs and the UPC costs are not related to the assets and activities that are normally recovered in the customer charge, the proper matching requires exclusion of the customer charges. Pepco avers in this way, when the assets from the UPC are placed into rate base, the costs will have been recovered in the same manner for both the rate cases and the DC PLUG assets.[108]

49. Pepco contends that the statement in Paragraph 189 regarding the Commission not having discretion, by contrast, was made in the context of the discussion of the policy of taking steps to reduce residential customers' negative rate of return. Pepco argues that the "Commission was clear that taking active steps to reduce negative rates of return was a policy decision that it was making in base rate cases." Pepco concludes that in "proceedings such as *Formal Case Nos. 1116 and 1121* in which the allocation methodology was grounded in statute, the Commission appropriately held that it was not free to make policy decisions about the steps that should be taken to move away from a negative rate of return for residential customers."[109]

iv. The Commission's Conclusion that MMA Customers Should be Included in the Residential Rate Class was Reasoned, Rational and Substantiated with Adequate Evidence

50. Pepco asserts that the Commission's reasoning for including MMA customers in the residential rate class was firmly based on and consistent with *Formal Case No. 1103* and that AOBA is "mistaken" that the language of Order No. 17424 supports its contention the MMA customers should have been broken out as a separate rate class for the purposes of the DDOT Improvement Charge.[110] Pepco argues that the "operative language appears in Paragraph 484 of Order No. 17424 where the Commission rejected Pepco's proposal for a separate MMA rate and

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107 Pepco's Response at 20.

108 Pepco's Response at 20.

109 Pepco's Response at 19-21.

110 Pepco's Response at 22.

required it to 'report back to the Commission with improved MMA rate design proposals in Pepco's next rate case.'"[111] Pepco asserts that AOBA was well aware of this result because AOBA's opposition to the proposed MMA rate design was one of the primary reasons that a separate MMA rate was rejected in *Formal Case No. 1103*. Contrary to AOBA's claim, the Commission's decision regarding the MMA customers is entirely consistent with Order No. 17424 and should not be altered.

51. Further, Pepco asserts that AOBA "attempts to further confuse the issue by incorporating into its MMA discussion the treatment of General Service Non-Demand (GS ND) customers and General Service Demand Low Voltage (GS-D-LV)." Pepco emphasizes that there ""are tariffs for GS ND and GS-D-LV, thus there are a DDOT Improvement Charge and a UPC for GS-D-LV rate classes. There is no MMA tariff, thus there are no separate surcharges applicable to MMA as a separate rate class.""[112]

v. The Commission Appropriately Approved Pepco's Use of Forecasted Sales in the Computation of the DDOT Improvement Charge

52. Pepco asserts excluding challenges to the billing lag adjustment, which is unique to *Formal Case No. 1121*, the Commission fully analyzed and rejected AOBA's challenges to the use of forecasted sales in Order No. 17697. Order No. 17714 relies on these findings in Order No. 17697. Pepco argues that AOBA failed to dispute the Commission's findings in regards to Pepco's use of forecasted sales in seeking reconsideration of Order No. 17697, thus waiving its right to present the issue in this proceeding.[113] According to Pepco, since AOBA raised common arguments in both *Formal Case Nos. 1116 and 1121* opposing the use of forecasted sales, "it is inappropriate for AOBA to accept the use of forecasted data in *Formal Case No. 1116* to determine the UPC while challenging the use of such forecasted sales to determine the DDOT Improvement Charge in this proceeding." Rather, Pepco states that these "surcharges should be determined on the basis of the same sales data to avoid incongruous results."[114] Pepco asserts that the Commission clearly intended that the UPC and the DDOT Improvement Charge to be calculated using the same sales data, finding "no reason to change our reasoning and conclusion on the issue of whether the use of forecasted sales data in the calculation of surcharge riders is appropriate."[115] Therefore, AOBA's argument against the use of forecasted sales should be rejected as having been waived for the sound policy reason above.

53. Arguably, even if AOBA did not waive its argument in regards to the use of forecasted sales, Pepco asserts that "AOBA fails to present any error of law or fact that would

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111 Pepco's Response at 22.

112 Pepco's Response at 22-23.

113 Pepco's Response at 23.

114 Pepco's Response at 23-24.

115 Pepco's Response at 24

require the Commission to alter its decision in Order No. 17714." Further, Pepco states that AOBA's claim that the Act "does not provide the Commission the same discretion in determining the appropriate kWh for use in surcharge calculations that it has in the context of a non-legislatively established surcharge mechanism, such as the BSA" is wrong because the Act "does not bar the use of forecasted data nor does it mandate the use of stale data from 2012, as AOBA has previously claimed."[116]

54. In addition, Pepco asserts that AOBA's argument that the difference in sales for the Residential AE class between the initial and corrected versions of *Formal Case No. 1116* Exhibit PEPCO (B)-1 was not explained, is not correct. Pepco argues that the "difference was explained in the cover letter to Pepco's August 25, 2014 errata filing which clearly stated: "Additionally, the sales for the AE rate class have been adjusted to reflect sales for the 12 months ending February 2016 in Exhibit PEPCO (B)-l and for the six months ending August 2016 in Exhibit PEPCO (B)-4." Thus, the Commission was correct in accepting Pepco's adjustments and rejecting AOBA's claims that the difference was not explained.[117]

55. Pepco addresses AOBA's argument relating to Pepco's billing lag adjustment to the sales data used in determining the DDOT Improvement Charge. AOBA now claims that because the exact details of the bonds are unknown, there was no basis for the Commission to conclude that a billing lag adjustment was appropriate, was inaccurate. Contrary to AOBA's contention, Pepco asserts that the Commission's approval of an adjustment to account for billing lag was reasonable and appropriate and fully supported by the record. Pepco relies on its *Formal Case No. 1121* Response to Protests as support:

> An adjustment is required to account for the proration of billing the DDOT Improvement Charge in the initial month and is required to make the District whole in the initial period where there is necessarily a lag in the collection of revenue. Reflecting this adjustment in forecasted sales rather than the revenue requirement is reasonable.[118]

Moreover, Pepco argues because Section 303(e) of the Act prohibit it from billing the DDOT Improvement Charge until after the bonds have been issued, the Commission accurately concluded that "there will be a lag in the collection of revenues during the initial period, and thus Pepco's adjustment to account for the lag was appropriate."[119]

56. Lastly, Pepco asserts that AOBA's argument that District Witness Barnette and Company Witness Janocha use two different approaches for addressing revenue lag is incorrect.

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116 Pepco's Response at 24.

117 Pepco's Response at 25.

118 Pepco's Response at 25; citing Pepco's *Formal Case No. 1121* Response to Protests at 33.

119 Pepco's Response at 25-26.

While the two witnesses may have described it differently, there was only one approach proposed by Pepco - that of Company Witness Janocha.[120] Moreover, Pepco asserts that AOBA's claim that the Commission failed to address this criticism is meritless, because in Order No. 17714, the Commission noted AOBA's claim that District Witness Barnette adjusted the revenue requirement and also addressed Pepco's position that "the adjustments the Company made to the initial DDOT Improvement Charge revenue requirement to account for billing lag based on forecasted sales is appropriate and reasonable."[121] In approving the DDOT Improvement Charge in Order No. 17714, the Commission found Pepco's adjustments to account for lag to be reasonable and appropriate, thereby rejecting AOBA's claim that Pepco and the District were using two different approaches. In conclusion, Pepco argues that AOBA presents no error of law or fact that would require the Commission to alter its decision in Order No. 17714 and asks that the Commission reject AOBA's arguments.[122]

vi. The Commission's Determination that the DDOT Improvement Charge is Non-Bypassable was Reasonable and Supported by the Record

57. Pepco argues that the Commission appropriately rejected AOBA's claim that the DDOT Improvement Charge is bypassable citing Paragraph 94 of Order No. 17714.[123] Although considered and rejected by the Commission in Order No. 17714, AOBA continues to assert that because some net metering or self-generation customers may be able to substantially reduce or even eliminate the DDOT Improvement Charge they pay, the DDOT Improvement Charge is bypassable. Pepco asserts that the Commission has already carefully reviewed and rejected AOBA's arguments on this issue. Thus Pepco argues that AOBA presents nothing new on Reconsideration that warrants a change in the Commission's decision regarding this issue. According to Pepco, for the Commission to apply AOBA's position would require Pepco to charge the DDOT Improvement Charge to people who leave the grid, which would be contrary to the express language of Section 305 of the Act which provides:

> For so long as the Bonds are outstanding and the related DDOT Underground Electric Company Infrastructure Improvement Costs and the related financing costs have not been paid in full, the DDOT Underground Electric Company Infrastructure Improvement Charge shall be non-bypassable and shall apply to all of the electric company's customers located within the District and receiving electric distribution service, other than members of the

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120 Pepco's Response at 26.

121 Pepco's Response at 26.

122 Pepco's Response at 26.

123 Pepco's Response at 27.

> electric company's residential aid discount customer class or any succeeding discount customer class.[124]

Pepco contends that the Commission was required by the Act to approve a DDOT Improvement Charge that was only assessed upon customers who were receiving distribution service.[125]

58. Pepco rejects AOBA's claim that the maturity of the bonds should be limited by arguing that it's contrary to the express language of the Act in Section 204(a)(4) which prescribes that the Mayor is authorized to establish the maturity date or dates of the bonds. Further, Pepco asserts that it is anticipated that the bonds will have an expected maturity of 2033 and a legal final maturity of 2035, contrary to AOBA's claim of the expected final maturity of the bonds not being 30 years or longer.[126] Pepco asserts that AOBA's arguments ignore acceptable market definitions of "non-bypassable" as used in securitized bond transactions reciting Pepco's argument fild in its *Formal Case No. 1121* Response to Protests.[127]

59. Pepco contends that the record shows that Pepco's position is consistent with the approach taken by Fitch Ratings, which, in a December 18, 2013 report entitled "Rating Criteria for U.S. Utility Tariff Bonds" ("Fitch Report") attached as Attachment A to Mr. McGowan's affidavit included in Pepco's *Formal Case No. 1121* Response to Protests, which indicated:

> The special tariff is usually assessed as a charge on electric or gas delivery, applicable to the monopoly retail utility service. Therefore, regardless of which gas or electricity provider supplies the energy delivered to the customer, the special tariff will be collected based on delivery service. This type of special tariff is frequently referred to as a network charge, since it applies to service over the utility's wire or pipeline system.
>
> When customers are able to choose an alternate gas or power provider, their need to be connected to the distribution system, whether for primary or backup service, tends to limit their ability to bypass the special tariff. Customers can avoid the special tariff by changing their consumption of energy so that they are not using the distribution system or by moving out of the service area.[128]

60. Pepco concludes that AOBA presents no credible argument rebutting Pepco's

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124 Pepco's Response at 28.

125 Pepco's Response at 27-28.

126 Pepco's Response at 28-29.

127 Pepco's Response at 29.

128 Pepco's Response at 30.

position and that AOBA's sole argument is that, as a result of net metering and the installation of self-generation facilities, customers will be able to "substantially, if not totally, eliminate their dependence on Pepco for delivery to energy to their facilities." AOBA alleges that this "does not support the establishment of the sustainable revenue stream over the life of the securitized bonds to be issued pursuant to the requirements of the Act." Pepco refutes this argument by referencing Company Witness Janocha's response to AOBA Data Request 3-3 that Pepco has no evidence that customers are likely to leave the distribution system in response to the DDOT Improvement Charge. In addition, Pepco cites to the Fitch Report that confirms that AOBA's contention that the DDOT Improvement Charge and the UPC Charge may cause customers to abandon Pepco's distribution system are unfounded due to the technology's current state.[129] In conclusion, Pepco asserts that AOBA's arguments in its Application for Reconsideration are meritless and should be rejected. Thus, the Commission should deny the Application.[130]

C. OPC's Response to AOBA's Application for Reconsideration

61. On January 5, 2015, OPC filed a Reply to AOBA's Application.[131] In its Reply, OPC asserts that "[m]any of the arguments raised by AOBA [in this proceeding] are already being addressed on reconsideration in *Formal Case No. 1116*;" therefore, instead of repeating its responses to those arguments, OPC incorporates by reference its Reply to AOBA's Petition for Reconsideration filed in *Formal Case No. 1116*, which it attached to its pleading, "and responds briefly to certain additional AOBA arguments concerning the allocation of the DDOT Improvement Charge in Order No. 17714 and AOBA's erroneous contention that the Commission erred by not establishing a separate class for Master Metered Apartment customers."[132]

i. The Commission Properly Concluded that the Financing Charge was Allocated in Accordance with the Act

62. AOBA asserts that the provisions of the ECIIFA that govern "the cost allocation underlying the DDOT Improvement Charge are, in all material respects, identical to the provisions governing the cost allocation underlying the UPC – which the Commission considered and approved in Order No. 17697 in *Formal Case No. 1116*."[133] OPC reiterates that it incorporates by reference its response regarding this issue from its Reply to AOBA's Petition for

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129 Pepco's Response at 30-31.

130 Pepco's Response at 32.

131 *See Formal Case No. 1121*, Reply of the Office of the People's Counsel for the District of Columbia to the Application of the Apartment and Office Building Association of Metropolitan Washington for Reconsideration of Order No. 17714 ("OPC's Reply"), filed January 5, 2015.

132 OPC's Reply at 3-4.

133 OPC's Reply at 4.

Reconsideration filed in *Formal Case No. 1116*.[134] Specifically, OPC asserts that in its *Formal Case No. 1116* Reply it "demonstrated that AOBA's arguments for reconsideration were based on a fundamental misreading of the requirements of the Act and a mischaracterization of both the Commission's decision-making process and the factual record in that proceeding, which unequivocally demonstrates that the allocation of the UPC on the basis of non-customer distribution revenue was consistent with the requirements of the Act and the legislative intent of the DC Council."[135]

ii. AOBA's Application Speculatively Implies that the Task Force Process was Manipulated by Pepco

63. OPC rebuts the "allegation" made by AOBA in its Application that the cost allocation model used by the Mayor's Task Force was "a self-serving analysis prepared by Pepco . . .with the intent of garnering support for an undergrounding program that would provide the Company with substantial assured rate base and earnings growth for at least the next five to seven years without regard to the equitable treatment of non-residential ratepayers," noting that AOBA "conspicuously" fails to cite any record evidence to support its contention, because, OPC asserts, "there is none."[136]

64. OPC further asserts that there is no evidence to support AOBA's assertion that Pepco "either sought the creation of an undergrounding program in the District or confected the allocation method used by the Task Force and presented to the District Council with the intent to increase support for the undergrounding legislation."[137] OPC argues that it was Mayor Gray who established the Task Force and that "Pepco was one of many public and private entities that agreed to participate in the Task Force."[138] OPC asserts that, theoretically, Pepco was "indifferent to which rate classes provide its revenue requirement," but that the Task Force as a whole "was concerned about the costs of any undergrounding legislation on Residential class customers; as evidenced by details from the legislative history of the Act, specifically the Council's Committee Report, which the Commission cited to in its decisional Order No. 17697 in *Formal Case No. 1116*.[139] OPC argues that the Commission found it particularly important that the Council Committee Report made it clear that:

> (1) there was a concern about the financial impact of any UPC on residential consumers; (2) the bill impact in year one, based on the

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134 OPC's Reply at 4.

135 OPC's Reply at 4-5.

136 OPC's Reply at 5.

137 OPC's Reply at 5.

138 OPC's Reply at 5.

139 OPC's Reply at 5.

> work of the Mayor's Undergrounding Task Force Report, was expected to be approximately $1.50 and in year seven was expected to be approximately $3.25; and (3) the undergrounding project would place a heavier financial burden on the commercial class than on the residential customers.[140]

Thus, OPC argues, "the Commission did not err by relying on the legislative history – including the model that was used by the Task Force, which formed the basis for the rate impact analysis presented to the District Council with the Act." Which OPC asserts was the same model "that was used by Pepco in the formulation of its filing in this case to help determine that the proposed allocation of the DDOT Improvement Charge on the basis of non-customer charge revenues was consistent with the Act."[141]

iii. The Commission Properly Concluded that Allocating the DDOT Improvement Charge on the Basis of Non-Customer Distribution Revenues was Consistent with Formal Case No. 1103

65. OPC refutes AOBA's claim that the Commission made an error in the allocation of the DDOT Improvement Charge because it "allocated 45.55% of the approved revenue increase to the Residential class in *Formal Case No. 1103*, while the allocation method approved in Order No. 17714 allocates only 11.15% of the DDOT Improvement Charge to residential class customers."[142] OPC reasons that AOBA's revenue allocation analysis is "inapposite because it erroneously compares total distribution revenues allocated in *Formal Case No. 1103* to the non-customer charge based allocation approved in Order No. 17714."[143] Further, OPC argues that the Commission's explanation of its decision to exclude customer charge related revenue when allocating the UPC in Order No. 17697 "applies with equal force" to the allocation of DDOT Improvement Charge in this proceeding.[144] According to OPC, AOBA presents no basis for the Commission to revisit its determination that Pepco properly excluded customer charge revenue from the allocation of the UPC because it would be inappropriate to include in rates charges not incurred in connection with the undergrounding project (i.e., billing and metering costs).[145]

66. In response to AOBA's claims that no party argued either that (1) the cost allocation presented by AOBA Witness Oliver was not in done in accordance with *Formal Case No. 1103* allocations, or (2) that Pepco allocated costs in *Formal Case No. 1116* in the same

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140 OPC's Reply at 5-6.

141 OPC's Reply at 6.

142 OPC's Reply at 6.

143 OPC's Reply at 6.

144 OPC's Reply at 6.

145 OPC's Reply at 7.

manner as costs were allocated among rate class in *Formal Case No. 1103*, OPC asserts that the "record is replete with arguments from both Pepco and OPC demonstrating that the allocation of the DDOT Improvement Charge and the UPC employed by Pepco and approved by the Commission is entirely consistent with the cost-allocation process the Company employed and the Commission approved in *Formal Case No. 1103*."[146] As an example of such record evidence, OPC references the affidavit of its Witness Robert C. Smith, a consultant in the electric utility industry, who "concluded that Pepco's proposal would apportion the DDOT Improvement Charge to each rate class on the basis of rate-class specific levels of non-customer related distribution revenue that were approved in Order No. 17424 [ ] and would align the revenues received by the Company through the DDOT Improvement Charge with the base revenues received from each rate class as approved in *Formal Case No. 1103*."[147] Thus, OPC asserts there was "ample" evidence for the Commission to rule that the approved allocation of the DDOT Improvement Charge was consistent with the allocations approved *Formal Case No. 1103*.[148] Given the Commission's reasoned analysis on this issue, OPC argues that AOBA's challenge should be rejected.[149]

iv. AOBA's Contention that the Commission Erred in Including the Master Metered Apartment Class in the Residential Class Revenue Requirement is Entirely Without Merit

67. OPC contends that AOBA's "strident contention that the CCOSS approved in *Formal Case No. 1103* and ***not the actual class cost allocations approved by the Commission in that case*** should control cost allocations in this case," is a "fundamental error."[150] OPC dismisses as baseless AOBA's contention that while "the Commission did not create a separate rate schedule for MMA customers in *Formal Case No. 1103*, it unquestionably provided a revenue allocation for MMA customers that was different from its revenue allocation for residential Rate R and residential AE customers."[151] However, in actuality OPC argues, the "Commission did not establish or provide a rate allocation for MMA customers in *Formal Case No. 1103*," instead, OPC asserts,"[t]he Commission calculated a separate MMA revenue requirement but explicitly declined to take any action with respect to that calculation, deferring action until the next base-rate case."[152] Thus, OPC concludes that AOBA's argument on this

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146 OPC's Reply at 7-8.

147 OPC's Reply at 8.

148 OPC's Reply at 8.

149 OPC's Reply at 8.

150 OPC's Reply at 9 (emphasis in original).

151 OPC's Reply at 9.

152 OPC's Reply at 9, citing Order No. 17714, ¶ 79 ("Instead, [the Commission] directed the Company to submit an improved MMA rate design in its next rate case . . . there is no basis for the Commission to approve a separate UPC for MMA customers. . . There is no basis for us to reach a different conclusion concerning the inclusion of MMA customers in the residential rate class for purposes of computing the proposed DDOT

issue should be rejected because it is "indisputable that this proceeding is not a base-rate case and the Commission is bound to apply the cost allocation methodology approved in *Formal Case No. 1103*."[153]

IV. DECISION

68. A Petition for Reconsideration by an administrative agency is addressed to that body's discretion.[154] The purpose of a Petition for Reconsideration is to identify with specificity errors of law or fact in the Commission's order so that they can be corrected.[155] It is not a vehicle for the losing party to rehash arguments previously considered and rejected. If there is substantial evidence in the record to support the decision of the Commission, that decision is not erroneous simply because there is substantial evidence that could support a contrary conclusion.[156] Commission decisions on questions of law are subject to an arbitrary and capricious standard of review which is the "the narrowest judicial review in the field of administrative law" and are limited to determining whether the overall impact of the order is just and reasonable, and "whether the Commission 'respected procedural requirements, has made findings based on substantial evidence, and has applied correct legal standards."[157] Finally, the Commission enjoys wide discretion on the issues that come before it, and on a Petition for Reconsideration or Clarification may clarify certain findings and conclusions set forth in its initial decision.[158]

69. Commission Order No. 17714, issued in this proceeding, approved Pepco and

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Improvement charge in this proceeding where the facts and circumstances are identical to the facts and circumstances in *Formal Case No. 1116*.").

[153] OPC's Reply at 10.

[154] *District of Columbia v. District of Columbia Pub. Serv. Comm'n*, 963 A.2d 1144, 1152 (D.C. 2009), citing *Duval Corp. v. Donovan*, 650 F.2d 1051, 1054 (9th Cir. 1981).

[155] *See Formal Case No. 1103*, Order No. 17539 ("Order No. 17539"), ¶ 4, rel. July 10, 2014 (citing D.C. Code § 34-604(b) (2001)). *See also*, 15 DCMR § 140.2 (June 25, 1982) (An Application for Reconsideration "shall set forth specifically the grounds on which the applicant considers the order or decision of the Commission to be unlawful or erroneous.").

[156] *See Formal Case No. 1053, In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rate and Charges for Electric Distribution Service*, Order No. 14832 at ¶ 5, rel. June 13, 2008, citing *State of New York v. United States*, 880 F. Supp. 37 (D.D.C. 1995) and *Washington Gas Light Co. v. District of Columbia Pub. Serv. Comm'n*, 856 A.2d 1098, 1104 (D.C. 2004).

[157] *Washington Gas Energy Services, Inc. v. District of Columbia Public Service Comm'n*, 893 A.2d 981, 986 (D.C. 2006) citing *Office of People's Counsel v. Public Service Comm'n*, 610 A.2d 240, 243 (D.C. 1992)(internal citations and quotations omitted); *People's Counsel v. Public Service Comm'n of Dist. Of Columbia*, 455 A.2d 402, 403-04 (D.C. 1982) (internal citations omitted).

[158] *See, e.g., Formal Case No. 1087, In the Matter of the Application of the Potomac Electric Power Company for Authority to Increase Existing Retail Rate and Charges for Electric Distribution Service*, Order No. 17027 at ¶ 3, rel. December 26, 2012.

DDOT's Financing Order Application. In the Order, the Commission, among other things, approved the imposition, charging, and collection on behalf of the District of the non-bypassable DDOT Improvement Charge authorized by the Act to be imposed on and collected from all existing and future electric distribution customers of Pepco or any successor within the District of Columbia, other than members of the RAD customer class or any succeeding discount program ("Customers"), to become effective upon the issuance of the Bonds. The Commission also determined that the cost allocation methodology used in this proceeding to determine the DDOT Improvement Charge is the same as the cost allocation methodology that was at issue in *Formal Case No 1116* that was used to determine the UPC. In *Formal Case No. 1116*, Order No. 17697, the Commission determined that Pepco's cost allocation complies with the requirements of the Act. Our conclusion specifically rejected AOBA's cost allocation proposal as being inconsistent with how the Commission allocated costs in the last base rate case (*Formal Case No. 1103*) and the intent of the legislature. We also determined that no party, including AOBA, had provided us with a reason to deviate from the cost allocation findings in the *Formal Case No. 1116* proceeding where the facts and circumstances are the same with respect to calculating the DDOT Improvement Charge in this proceeding.[159] The Commission recently affirmed our decision regarding the UPC cost allocation in Order No. 17769 which denied AOBA's request for reconsideration of *Formal Case No. 1116*, Order No. 17697.[160]

70. As in its *Formal Case No. 1116* reconsideration petition, AOBA reserves its initial argument that the DDOT Improvement Charge allocation should be based on Pepco's *Formal Case No. 1103* CCOSS, and now further asserts that: (1) the DDOT Improvement Charge allocation should be based on the revenue allocation costs approved by the Commission in *Formal Case No. 1103* and should address the negative rate of return of the residential class;[161] (2) that the Pepco inappropriately included the MMA class with the residential class in the revenue requirement allocation instead of creating a separate DDOT Improvement Charge for the MMA class; (3) Pepco inappropriately sets the DDOT Improvement Charge based on forecasted sales data and forecasted kWh usage adjusted for billing lag; and (4) the DDOT Improvement Charge is By-Passable. Accordingly, AOBA asserts that the Commission's approval of Pepco's use of non-customer distribution revenue, constitute reversible errors of law and result in a DDOT Improvement Charge that is neither just nor reasonable as required by the Act.[162]

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159 Order No. 17714, ¶¶ 77-99.

160 *Formal Case No. 1116*, Order No. 17769, ¶ 51, rel. Jan. 22, 2015.

161 We note here again that it appears to us that AOBA would be willing to accept either a cost allocation based on Pepco's *Formal Case No. 1103* CCOSS or one based on *Formal Case No. 1103*, Order No. 17424 revenue rate increase allocation, because both result in costs for its constituents that are lower than the cost allocation that we determined was appropriate in Order No. 17697. *See* Order No. 17769, ¶ 38.

162 AOBA Application at 18-19.

A. Appropriate Cost Allocation for the DDOT Improvement Charge

71. No party disputes that the cost allocation methodology Pepco used in this proceeding to determine the DDOT Improvement Charge is the same cost allocation methodology that was used to determine Pepco's UPC and was at issue in *Formal Case No 1116*.[163] In *Formal Case No. 1116*, the Commission determined that Pepco's UPC cost allocation methodology complies with the requirements of the Act. For the most part, the parties assert the same arguments here that they advanced in *Formal Case No. 1116*.

i. Removal of Customer Charge Revenues

72. As it did in its Petition for Reconsideration filed *Formal Case No. 1116*, AOBA argues that customer charge revenue should not have been excluded from the calculation of the DDOT Improvement Charge. However, once again AOBA has not provided us with any persuasive reason to deviate from our initial findings in this proceeding, where the facts and circumstances are the same with respect to allocating the DDOT Improvement Charge and the UPC allocation methodology we recently reaffirmed. We addressed each one of AOBA's argument in our initial decision in this proceeding (Order No. 17714) and in our recent order on AOBA's *Formal Case No. 1116* reconsideration petition (Order No. 17769). We concluded that the Act's requirement that the UPC and DDOT Improvement Charge be based on the distribution cost allocation approved by the Commission in its last rate case did not preclude Pepco from removing customer charge revenue because there are no customer-related costs associated with the Undergrounding project. We explained:

> In *Formal Case No. 1103* Customer Charge Revenues were appropriately included in the rate recovery for Pepco because the base rate distribution case involves costs related to all categories of distribution service, which includes customer-related costs. However, here recovering Customer Charge Revenues would be inappropriate because, as indicated by Pepco, there are no customer-related costs associated with the Undergrounding project. The Undergrounding project costs are generally demand-related costs, associated with increasing the capacity of producing electricity during peak demand hours. Therefore, in order to recover costs in this proceeding in the same manner as costs were recovered in *Formal Case No. 1103* (*i.e.*, "in accordance with"), it is necessary and appropriate to only include costs for recovery that were or would be incurred by the electric company in the undergrounding effort.[164]

This finding in *Formal Case No. 1116* is controlling here and we deny AOBA's request for

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163 *See* D.C. Code §§ 1313.10(c)(1) and 1313.01(a)(4).

164 Order No. 17769, ¶ 35.

reconsideration on this issue.

ii. Treatment of Negative Rates of Return

73. Despite AOBA's contention to the contrary the Commission continues to believe that the Act's requirement that the UPC and DDOT surcharges be based on the distribution cost allocation approved by the Commission in its last rate case does not require the Commission to address negative rates of returns in approving the DDOT surcharge particularly where there is no updated data on class rates of return in the record upon which to act. We fully addressed AOBA's arguments in our recent order on AOBA's *Formal Case No. 1116* petition for reconsideration, wherein we explained:

> In Order No. 17697, we acknowledge that AOBA was correct in its assertion that in recent *base rate cases* we have expressed a policy of addressing the negative rates of return being recovered from the residential rate class by making discretionary adjustments to a proposed rate design; however, we also indicated that *Formal Case No. 1116* "is not a base rate proceeding where the Commission has the discretion to modify a proposed rate design to achieve various regulatory goals and objectives." Contrary to AOBA's assertion that the Commission was statutorily required to make the identical percentage adjustment to the UPC that the Commission made to the rate design in *Formal Case No. 1103* to adjust for negative rates of return and that our failure to do so was an improper abuse of discretion, we concluded that we had neither the discretion to act nor any updated data (such as update class rates of return) upon which to act. Therefore, we did not further modify the UPC to address the negative rate of return issue as we would in a typical base rate case. Furthermore, the Commission anticipated a remaining negative class ROR for the residential class at the conclusion of *Formal Case No. 1103*, thus, we agree with OPC that "it is therefore entirely consistent with Formal Case No. 1103 for residential class rates of return to remain negative following the implementation of the UPC.
>
> Furthermore, as noted earlier, the Commission has, throughout this process, attempted to establish the UPC using a methodology that is consistent with the legislative intent. In Order No. 17697, we approved the Joint Applicants' decision to remove the unrelated Customer Charge Revenues from the cost allocation for the UPC because placing the lion's share of the cost on the commercial class was consistent with the discussions with the Councilmembers and AOBA's own Council testimony and consistent with the language of the Act that "indicates that the costs should be allocated '*in accordance with*' the most recent base rate case" – not *identical* to the most recent base rate case. In the same vein,

> we concluded that exercising our policy prerogative regarding negative rates of return to shift costs to residential customers would be inconsistent with legislative intent and inappropriate. Nothing AOBA argues persuades us to change our initial decision given that there is no evidentiary basis to make such a determination. Moreover, when the UPC costs are rolled into base rates in Pepco's next base rate proceeding the Commission will have an adequate record on which to address AOBA's contentions on negative rates of return among classes.[165]

This finding and analysis from *Formal Case No. 1116* applies with equal force here, and; therefore, we deny AOBA's request for reconsideration on this issue.

B. Inclusion of the MMA Class in the Residential Rate Class Revenue Requirement and the treatment of the GS-LV Rate Class

i. Treatment of the MMA Class

74. Consistent with its Petition for Reconsideration filed in *Formal Case No. 1116*, AOBA argues that in *Formal Case No. 1103* the Commission treated MMA customers as a separate category of customer, distinguished from the residential class and with a significantly lower percentage of the revenue increase and, therefore, the Commission erred when it declined to treat the MMA class in the same fashion when setting the DDOT Improvement Charge in this proceeding. AOBA asserts, that like in *Formal Case No. 1103*, the Commission should acknowledge the differences between MMA and Residential rates of return to meet the requirements of the ECIIFA. Our decision on AOBA's *Formal Case No. 1116* petition for reconsideration is applicable and controlling here. In response to AOBA's petition for reconsideration in *Formal Case No. 1116*, we issued Order No. 17769, wherein we held that despite AOBA's protestations to the contrary, we treated the MMA class as we did in *Formal Case No. 1103* because:

> there is no customer charge revenue resulting from this undergrounding initiative and we have, therefore, excluded customer charges from the allocations for the UPC. That exclusion includes the customer charges for the MMAs from *Formal Case No. 1103* which were increased at a different rate from other charges. Based on these facts, AOBA's representations about the Commission's treatment of the MMA class in this proceeding are clearly in error. Accordingly, based on the cost-causation principles we espoused in Paragraph 53, *supra*, the Commission treated the MMA class in the same manner as it was treated in *Formal Case No. 1103* and consistent with the exclusion of

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[165] *See* Order No. 17769, ¶¶ 56-57.

Customer Charge Revenues for all classes in this proceeding.[166]

The same rationale applies to the Commission's decision to exclude customer charge revenues from the allocations for the DDOT surcharge in this proceeding. Moreover as previously indicated there is nothing in this record currently showing the MMA class rate of return as compared to the Residential rates of return. Therefore, AOBA's request for reconsideration of this issue is denied.

ii. Treatment of the GS-LV Rate Class

75. As a related point, AOBA argues that while the Commission did not treat the MMA class separately, it did arbitrarily introduce other rate class distinctions in its allocation of revenue requirements among rate classes in this proceeding that were not used in its determinations in *Formal Case No. 1103*. Specifically, AOBA states that in *Formal Case No. 1103*, no revenue requirement allocation was made and the rates of return were not calculated for the GS-ND and GS-D-LV customer classes, but instead, those two group were treated as part of the broader GS-LV rate classification, as reflected in the Customer Class RORs chart on page 175 of Order No. 17424. However, AOBA argues that in this proceeding, the Commission treated the GS-ND and GS-D-LV classes separately as evidenced by the fact that both classes are represented in the UPC Surcharge Table presented at Table A to Order No. 17697.

76. AOBA has not correctly characterized the actions of the Commission. Table A in *Formal Case No. 1116* separates the GS-ND and GS-D-LV classes in order to demonstrate the per kWh rate for each subclass, because each of the subclasses has a separate underlying tariff. The chart cited by AOBA on page 175 in *Formal Case No. 1103*, Order No. 17424, shows the total rate of return by customer class. The Commission further notes that AOBA did not raise this argument regarding the combination of these two subclasses in *Formal Case No. 1103* wherein we adopted Pepco's proposed rate class classifications. However, regardless of the manner in which the information was presented in *Formal Case No. 1103* versus *Formal Case No. 1116*, the primary concern in this matter is whether the overall allocation of the DDOT Surcharge is accurate. When the customer class revenues approved for the two classes in *Formal Case No. 1116* (GS-ND and GS-D-LV) are compared to the class revenue used in this proceeding, including the approved revenue increase from *Formal Case No.1103*, the resultant total class revenue in both instances equals $47.07 million,[167] demonstrating that Pepco's cost allocation approach is based on the results of *Formal Case No. 1103* as the law requires.

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166 Order No. 17769, ¶ 60.

167 *See Formal Case No. 1116*, Alternative Rate Design, filed September 10, 2014. The chart shows that the authorized revenue from *Formal Case No. 1103* for the GS-ND class was $13,520,001 and the authorized revenue for the GS-D-LV class was $33,553,961, which when combined to make up the total GS-LV class equals $47,073,962. The combined GS-LV class revenue approved in *Formal Case No. 1103*, which is presented in the Customer Class RORs chart cited by AOBA on page 175 of Order No. 17424 is $47.073 million ($45.27 million current class revenue + $1.803 million approved class revenue increase).

C. Pepco's Use of Forecasted Sales Data and Forecasted kWh Adjusted for Billing Lag

i. Use of Forecasted Sales Data

77. As in *Formal Case No. 1116*, AOBA challenges Pepco's proposal to use forecasted kWh data to calculate the DDOT Improvement Charge. Pepco argues that the use of forecasted kWh will more closely approximate sales during 2015 when the surcharge is effective than would the use of 2012 historical data suggested by AOBA. In *Formal Case No. 1116*, in deciding this issue in the context of the Pepco's Underground Project Charge, the Commission found that:

> [t]he use of forecasted kWh for surcharge riders is not unprecedented as the Commission has allowed forecasted kWh data in the Bill Stabilization Adjustment ("BSA") and RAD surcharge calculations.[168] Moreover since the UPC is subject to a true up for actual costs, the level of sales used in the development of the rates has no impact on the final amount of revenue recovered in the revenue requirement. Given our prior use of forecasted sales data for other riders, AOBA has not provided any persuasive arguments why the use of forecasted sales data in this instance is unreasonable. Therefore, the Commission approves Pepco's use of forecasted sales rather than the 2012 test year stale data in calculating the UPC.[169]

For these same reasons, we approve Pepco's use of forecasted sales rather than the use of 2012 test year data when calculating the DDOT Improvement Charge in this proceeding which includes Pepco's adjustment for billing lag.

78. AOBA argues that the Commission inappropriately shifted the burden of proof on to AOBA to show that the Commission should not allow the use of forecasted numbers rather than making Pepco first show that the use of forecasted sales is more appropriate than the use of historic test year data. The Commission did not inappropriately shift the burden of proof to AOBA. The Joint Applicants as the proponents of the use of forecasted sales data, has the burden of proof to demonstrate that the use of forecasted sales data was reasonable.[170] In our

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[168] *See, e.g., Formal Case No 1053, 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, Phase II*, Order No. 15556, rel. September 28, 2009.

[169] Order No. 17697, ¶ 191.

[170] Overall, "the burden of persuasion falls on the utility as the proponent of its cost recovery." *Potomac Electric Power Co. v. Public Service Commission*, 661 A.2d 1331, 143 (D.C. 1995). Other parties challenging the utility's proposals have their own burden, however, which is the burden to present credible, concrete challenges to the utility's proposals, hopefully quantified as to what the impact would be on the utility's rates if those challenges were accepted by the Commission. *See, e.g., Formal Case No. 912*, Order No. 10044 § I.3 (1992) (Commission

discussion of this issue in Order No. 17697, we accepted the Joint Applicants' assertion that use of forecasted sales data "more closely represents the time period during which customers will be charged" and that "AOBA's proposed use of 2012 test-year data 'is stale data and, therefore, does not as closely align with the sales data for the years in which customers will be charged for the specific DC PLUG projects."[171] We further stated that "the use of forecasted kWh for surcharge riders is not unprecedented as the Commission has allowed forecasted kWh data in the Bill Stabilization Adjustment ('BSA') and RAD surcharge calculations" and; moreover, "since the UPC is subject to a true up for actual costs, [a fact that AOBA also points out,] the level of sales used in the development of the rates has no impact on the final amount of the revenue recovered in the revenue requirement."[172] It was based on this argument proffered by the Joint Applicants and the Commission's past acceptance of forecasted data that we concluded that the Joint Applicants' use of forecasted sales data in the calculation of the UPC was reasonable (*i.e.*, the Joint Applicants met their burden of proof on this issue). While the initial burden of proof was on the Joint Applicants to show that their proposed treatment of forecasted sales data was reasonable, once they did so, the burden shifted to AOBA to demonstrate why the use of forecasted sales data was unreasonable. While AOBA provided what it characterized as "several advantages" to the use of actual test year data,[173] the Commission determined that AOBA had not raised any "serious doubts" about the use of forecasted sales data causing the UPC to be improperly calculated, especially in light of AOBA's own recognition of the fact that "costs and revenues will be reconciled on an annual basis."[174] Therefore, AOBA's contention that the Commission inappropriately shifted the burden of proof on to it is incorrect.

79. Additionally, Pepco argues that AOBA's failure to oppose the use of forecasted sales data in the calculation of the UPC in *Formal Case No. 1116* causes it to effectively waive that argument in this proceeding in relation to the calculation of the DDOT Improvement Charge because both charges should be based on the same underlying data. While Pepco is correct that AOBA did not raise this argument in its Application for Reconsideration in *Formal Case No. 1116*, the Commission does not agree that AOBA is now precluded from raising its argument in this Application for Reconsideration. However, the Commission does find merit in Pepco's substantive argument that the UPC and DDOT Improvement Charge "should be determined on the basis of the same sales data to avoid incongruous results." To accept AOBA's argument that the DDOT Surcharge should be based on actual data, after approving an UPC based on

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rejects consolidated tax return proposals by OPC, the District Government and WMATA as "vague" and "highly speculative").

171 Order No. 17697, ¶ 105.

172 Order No. 17697, ¶ 190.

173 *See* Order No. 17697, ¶ 54.

174 Order No. 17697, ¶ 54. *See Potomac Electric Power Co. v. Public Service Commission*, 661 A.2d 131, 140-42 (D.C. 1995). When and if "serious doubts" are raised about a particular aspect of a utility's proposal, the burden of persuasion falls on the utility to dispel those doubts and to prove that the specifically-identified aspect of its proposal is reasonable and correct.

forecasted sales data as proposed by the Joint Applicants with no opposition from AOBA, in *Formal Case No. 1116* could produce the type of incongruous results that we think are inappropriate;[175] providing an additional reason to decline to accept AOBA's argument to use actual historical data for the DDOT Surcharge. In any event, it is established Commission policy that our regulatory determinations should be based on the most up-to-date data as appropriate. Clearly AOBA's recommendation to use 2012 test year data runs counter to this established policy. In this instance Pepco has calculated the surcharge based on June 2014 forecasted sale data, a time more approximate to the period when the surcharge will be collected.[176] Our decision to allow the use forecasted sales date is reasonable and consistent with other surcharge riders approved by this Commission.

80. AOBA argues that the Commission inappropriately relies on precedents found in the BSA and RAD surcharge calculations to support its decision to use Pepco's forecasted sales. Specifically, AOBA argues that "the ECIIFA does not provide the Commission the same discretion in determining the appropriate kWh for use in surcharge calculations that [the Commission] has in the context of a non-legislatively established surcharge mechanism, such as the BSA."[177] Pepco responds stating that AOBA's claim is wrong because the Act "does not bar the use of forecasted data nor does it mandate the use of stale data from 2012, as AOBA has previously claimed."[178] The Commission fails to see the relevance of the distinction AOBA is making on this issue. As Pepco notes, the ECIIFA is silent with respect to the type of data to be used by the Commission when we carry out our mandated duty to review and approve the proposed surcharge. D.C. Code § 34-1313.03(c) directs the Commission to determine a charge that is just and reasonable; and in this instance, the Commission was persuaded that the use of forecasted sales data was appropriate and would result in just and reasonable rates. The entire point of our reference to the BSA and RAD surcharge was to show that there was indeed precedent supporting the Commission's use of forecasted sales data for the calculation of Commission approved charges. For all of these reasons, we are not persuaded that we erred in our decision to all the use forecasted sales data here. Therefore, AOBA's request for reconsideration on this basis is denied.

81. Finally, AOBA argues that the Commission failed to address the discrepancy in Pepco's adjusted kWh for the Residential AE class that AOBA witness Oliver documented in his Direct Testimony and which he says represents an unsupported reduction of roughly 20% in the estimated annual sales for the Residential AE class.[179] Pepco argues that the "difference was explained in the cover letter to Pepco's August 25, 2014 errata filing which clearly stated: 'Additionally, the sales for the AE rate class have been adjusted to reflect sales for the 12 months

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175 Pepco's Response at 23-24.

176 *See Formal Case No. 1116*, Pepco's Response to Commission Staff DR 3 Questions 1-3, August 4, 2014.

177 AOBA's Application at 26.

178 Pepco's Response at 24.

179 AOBA's Application at 25.

ending February 2016 in Exhibit PEPCO (B)-l and for the six months ending August 2016 in Exhibit PEPCO (B)-4;'" Pepco asserts that this explained the difference, consequently the Commission was correct in accepting Pepco's adjustments and AOBA's Application on this issue should be denied[180] AOBA contends that because Pepco made a correction in its estimated annual sales for the Residential AE class that the Commission's confidence in Pepco's DDOT Improvement Charge calculations as presented in Exhibit Pepco (B)-1 should be eroded. Despite AOBA's trepidations, our independent review of Pepco's forecasted data reinforces our determination that Pepco's forecasted sales estimate are reasonable. Moreover, our confidence is bolstered by the fact that even if Pepco's estimates are not exact, the true-up process prescribed by the Act will address the differences in collections resulting from the difference between actual and forecasted sales.[181]

ii. Billing Lag (Compression) Adjustment

82. AOBA submits that the compression adjustment issue is unique to this proceeding; was not addressed in the Commission's decision in Order No. 17697; and in this proceeding is only supported by Pepco's untested assertion that its billing lag adjustment methodology "*is necessitated by Section 303(e) of the Act which precludes the DDOT improvement charge from being billed to customers until after the issuance of Bonds.*" AOBA maintains that the specific terms of the provisions of the bonds to be issued have not been presented in this proceeding, and the actual timing of bond issuances remains uncertain. Thus, AOBA contends that there is no basis in the record of this proceeding for assessing when initial debt service payments on the bonds ultimately issued will be due or what the magnitude of payments will be. Therefore, AOBA argues, the Commission has no legitimate basis on which to render findings regarding the adequacy of revenue collections or the need for a compression adjustment.[182]

83. Contrary to AOBA's contention, the Commission's decision on the adequacy of the revenue collections and the need for an adjustment to account for billing lag was reasonable and fully supported by the record. As we explained in Order No. 17714, Section 303(e) of the Act prohibits Pepco from billing the DDOT Improvement Charge until after the bonds are issued.[183] Thus it is clear no matter when the bonds issue, there will be a lag in the collection of revenues during the initial period. We affirm our decision that an adjustment for the unavoidable lag is appropriate and is typical in utility securitization cases.[184] AOBA's contention that the Commission has no legitimate basis on which to render a finding regarding the adequacy of the revenue collections or the need for the compression adjustment proposed in this case absent the

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180 Pepco's Response at 25.

181 *See* D.C. Code § 34-1313.14.

182 *See* AOBA's Application at 23.

183 Order No. 17714, ¶ 80; s*ee* D.C. Code § 34-1313.03(e).

184 *See* Order No. 17714, n.200.

"specific terms of the provisions of the bond issuances" is also without merit. The specific terms of the bond issuances can only be determined in the bond market after the Financing Order becomes final. Therefore, it is impossible to include "the specific terms of the bond issuances" in the Financing Order itself. However, in accordance with requirements of the Act, the Financing Order must include a description of the methodology for determining the surcharge that entails the compression adjustment. Moreover the revenue requirements in *Formal Case No. 1121* are, of necessity, estimates, with the actual amounts to be determined after the bonds are sold.

84. AOBA argues that the Commission did not address AOBA's discussion regarding Company Witness Janocha's and District Witness Barnette's different approaches for addressing the same revenue lag (compression) that resulted in witness Barnette making a revenue adjustment that is applied to the initial 10-month period while witness Janocha made a kWh adjustment that would apply until the lag adjustment is removed from the annual kWh. Witness Oliver complained that "due to the manner in which witness Janocha's kWh adjustment is embedded in cell calculations and not explicitly identified in either version of Exhibit Pepco (B)-1, that poorly identified kWh adjustment could either intentionally or unintentionally be continued well beyond the period for which such an adjustment would be appropriate."[185] AOBA argues that "[i]f the Commission is to rely on Pepco's forecasted sales, contrary to the recommendation of AOBA witness Oliver, then it must also explicitly determine that the use of the Company's proposed kWh adjustment would only be appropriate for the initial 10-month period and that adjustment should not be applied to any estimates of sales beyond the referenced initial period."[186] In its Response to AOBA's application, Pepco cites its previous Response to Protests where the Company stated: "An adjustment is required to account for the proration of billing the DDOT Improvement Charge in the initial month and is required to make the District whole in the initial period where there is necessarily a lag in the collection of revenue. Reflecting this adjustment in forecasted sales rather than the revenue requirement is reasonable."[187] Pepco's filings makes no reference to the application of the compression adjustment beyond the initial period and nor has Pepco expressed any intention to do so. Furthermore, there appears to be no apparent need for such a compression adjustment beyond the initial period. Therefore, while we do not believe AOBA's request that we add language to our order to explicitly prohibit a "double adjustment" is entirely necessary, we clarify that a "double adjustment" for billing and revenue collection lags reflected in both the kWh measures employed and the DDOT Improvement Charge revenues requirement would clearly be inappropriate and that the Commission expects, as Pepco represents, that the adjustment for billing lag will only be made by an adjustment for forecasted sales and it will not continue after the initial 10-month period.

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185 AOBA Application at 24 citing AOBA-(A) at page 35.

186 AOBA Application at 24.

187 Pepco's Response to Protests at 33 (October 20, 2014) (emphasis added).

D. Non-bypassablilty of the DDOT Improvement Charge

85. Finally, AOBA challenges whether the DDOT Improvement Charge as proposed by Pepco is truly non-bypassable. AOBA claims that the volumetric charge proposed by Pepco allows certain customers to reduce or totally bypass the DDOT Improvement Charge through the implementation of net-metering, self-generation, or conservation measures.[188] Pepco asserts that the Commission has already carefully reviewed and rejected AOBA's arguments on this issue and that AOBA presents nothing on Reconsideration that warrants a change in the Commission's decision regarding this issue.

86. The Act says that the DDOT Improvement Charge must be volumetric and non-bypassable.[189] The DDOT Improvement Charge meets the requirements of the Act because, as Pepco indicates, if a customer receives delivery service, then the customer will be assessed the charge based on the actual kWh delivered. Any customer, except for a RAD customer, who receives energy distribution service, whether in a large or a small amount, will be billed the DDOT Improvement Charge for their kWh usage in a line item on the bill. Because the DDOT Improvement Charge will be charged to all existing and future retail electric customers in the District, based on the kWh sales volume of the Pepco distribution service, we reaffirm our decision that proposed DDOT Improvement Charge is a non-bypassable charge on all non-RAD customers within the meaning of the Act.

87. AOBA again correctly notes that distribution customers who may reduce their amount of kWh sales volume and thereby reduce the amount of their DDOT Improvement Charge. This could happen through energy efficiency or conservation measures; or through their self-generation or net metering decisions as we noted in Order No. 17714.[190] All of these actions are both permissible under D.C. Law and in some instances encouraged by D.C. law or policy. The ECIIFA contemplated potential fluctuations in customer base and volume and provides for a true-up mechanism by which Pepco can recover any revenue short-fall that may occur throughout the term of the surcharges.

88. AOBA's final argument is that the by-passable nature of the surcharges places the viability of the Bonds at risk. In this instance, the Commission's role is to confirm that Pepco submitted an appropriate surcharge in compliance with the terms of the Act. The assessment of the viability of the Bonds is the responsibility of the credit rating agency. After the Financing Order becomes final, the rating agencies will review the proposed issuance and assess its riskiness, taking into account all appropriate factors. It is not the Commission's place, nor would it be appropriate, for the Commission to speculate on the credit worthiness of the bonds in the Financing Order. Based on these determinations and the fact that AOBA has failed to show any error of law or fact, AOBA's request for reconsideration of whether the DDOT Improvement Charge is non-bypassable is denied.

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188 *See* AOBA Protest, Witness Oliver Testimony at 42-43.

189 D.C. Code § 34-1313.01(a)(4).

190 Order No. 17714, ¶ 94.

THEREFORE, IT IS ORDERED THAT:

89. The Application for Reconsideration of the Apartment and Office Building Association of Metropolitan Washington is **DENIED**.

A TRUE COPY: **BY DIRECTION OF THE COMMISSION:**

CHIEF CLERK: **BRINDA WESTBROOK-SEDGWICK**
COMMISSION SECRETARY