



**Office of the People's Counsel
District of Columbia**

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February 9, 2011

VIA ELECTRONIC FILING

Ms. Dorothy Wideman
Commission Secretary
Public Service Commission of the
District of Columbia
1333 H Street, N.W., 7th Floor East
Washington, D.C. 20005

Re: Formal Case Nos. 982, 766 & 991

Dear Ms. Wideman:

Enclosed for filing are an original and three (3) copies of "Expedited Petition of the Office of the People's Counsel For an Investigation of the Provision of Reliable Distribution Service by Potomac Electric Power Company and the Conducting of a Management Audit" in the above referenced proceedings.

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

Sincerely,

Sandra Mattavous-Frye
Deputy People's Counsel

Enclosure

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

In the Matter of the)	
Investigation into the Electric Distribution)	Formal Case No. 982
System Reliability Performance of the)	Expedited Consideration
Potomac Electric Power Company)	
In the District of Columbia)	

In the Matter of the)	
Fuel Adjustment Clause Audit and)	Formal Case No. 766
Review Program)	

and

In the Matter of the)	
Investigation into PEPCO's)	Formal Case No. 991
Underground Distribution System)	

**EXPEDITED PETITION OF THE OFFICE OF THE PEOPLE'S COUNSEL
FOR AN INVESTIGATION OF THE PROVISION OF RELIABLE DISTRIBUTION
SERVICE BY POTOMAC ELECTRIC POWER COMPANY AND THE CONDUCTING
OF A MANAGEMENT AUDIT**

I. INTRODUCTION

Pursuant to Rule 101.2 of the Rules of Practice and Procedure of the Public Service Commission of the District of Columbia ("PSC" or "Commission"), 15 D.C.M.R. § 101.2 and 15 D.C.M.R. § 522.1 (2010), and D.C. Code § 34-604(b), the Office of the People's Counsel ("OPC" or "Office"), the statutory representative of District of Columbia ratepayers,¹ petitions the Commission to fulfill its statutory responsibilities by initiating on an expedited basis a formal, on-the-record investigation and audit of the performance of the Potomac Electric Power Company ("PEPCO" or "Company"). Given the likelihood of additional winter storms and

¹ D.C. Code § 34-804 (2010).

related outages, the Office urges the investigation and audit commence immediately, and should include:

- evidentiary hearing procedures that will allow for the creation of a record sufficient to assess PEPCO's provision of reliable electric distribution services, including PEPCO's preparation for the brief winter storm experienced in the District on January 26, 2011 and the emergency outage restoration services provided following that storm;
- a management audit, conducted in a manner consistent with Commission regulations and the Office's recent request in Formal Case No. 766 (though OPC will present *infra* a proposal to expedite the auditing process); and
- the identification of corrective actions to be undertaken by PEPCO or the Commission to address identified issues, including development by the Commission of standards that include financial penalties to be imposed on the Company absent performance improvements.

The Office details *infra* the bases for each of these requests.²

II. SUMMARY OF OPC'S PETITION

The Commission's decision to convene a single "legislative-style" hearing to address PEPCO's performance during the recent snowstorm is an insufficient response to the situation

² OPC is filing its request in Formal Case No. 982 because it is an ongoing investigation docket initiated by the Commission in January 1999. This proceeding was originally opened to investigate the circumstances surrounding the interruptions and shortages of PEPCO's electric energy service during and following a severe winter ice storm, Formal Case No. 982, *In the Matter of the Investigation of Potomac Electric Power Company Regarding Interruption to Electric Energy Service*, Order No. 11314 (Jan. 19, 1999). Since then, the Commission has used this docket to investigate similar events, such as, the major storms in August of 2003 and Hurricane Isabel. Historically, the investigations of these events have been limited to notice and comments, i.e., "paper proceedings." Unfortunately, this process has not resulted in tangible improvements in the reliability of PEPCO's distribution system.

facing DC ratepayers, whose interests the Commission is bound to protect.³ Despite extraordinary rate support from this Commission, and notwithstanding years of working groups, petitions for investigations,⁴ City Council testimony, and pleadings commenting on PEPCO's "Consolidated Reports," "Undergrounding Reports," and the recently announced "Comprehensive Reliability Plan," the Company's record on service reliability remains demonstrably inadequate.

The assertion that PEPCO's service reliability is inadequate is not in dispute. Indeed, the Commission itself so concluded, stating in 2009:

in addition to PEPCO's evident declining reliability since 1998, PEPCO's reliability when more recently compared to other utilities indicates that the Company's reliability as measured by SAIDI and CAIDI is at or near the bottom.[⁵]

Similarly, in the more recent Order No. 16188, the Commission found (at ¶ 5) that it is necessary to further consider whether Pepco is providing consistently safe and reliable service" The Company fares poorly against industry reliability indices, including those that measure outage frequency, duration, and impacts. In 2009, DC consumers were subject to 2,587 sustained outages; in 2010, there were 3,601 sustained outages.⁶ Despite the formulation of corrective

³ The announcement of the hearing was contained in Order No. 16188, issued on January 31, 2011. The hearing is to be held on February 10, 2011.

⁴ During the period 2005- 2011, OPC alone has filed at least 5 petitions or requests urging the Commission to investigate PEPCO's storm restoration efforts following outages, which have either been denied or are pending before the Commission.

⁵ Formal Case No. 766, *In the Matter of the Commission's Fuel Adjustment Clause Audit and Review Program and Formal Case No. 991, In the Matter of the Investigation into Explosions Occurring In or Around the Underground Distribution Systems of Potomac Electric Power Company*, Order No. 15152 at ¶ 60, rel. Jan. 6, 2009.

⁶ Formal Case 982, *Report of Potomac Electric Power Company Regarding Interruption to Electric Energy Service*, Commission Order No. 15131 (Dec. 2, 2008); Commission Order No. 15155 (Jan. 12, 2009) and Commission Order No. 15360 (Aug. 19, 2009).

Formal Case 1002, *In the Matter of the Joint Application of PEPCO and the New RC, Inc. for Authorization and Approval of Merger Transaction*, Commission Order No. 15131 (Dec. 2, 2008) and Commission Order No. 15155 (Jan. 12, 2009).

recommendations and the implementation of an expensive Outage Management System, PEPCO does not communicate effectively with its customers during extreme weather incidents. There is also concern the Company's communication with its own restoration services personnel is inefficient: the Office's understanding is that PEPCO may have suffered a computer "crash" during the most recent outage, and that for a period of time repair trucks were being given work order addresses on slips of paper. Order No. 16188 highlights (at ¶ 4) issues with vegetation management.⁷ While the subject is worthy of investigation, its resolution (assuming one can be accomplished through a single legislative hearing) will not solve the underlying reliability problem because **70 percent** of PEPCO's system in DC is already underground and only indirectly affected by weather. Therefore, PEPCO's infrastructure is in such dire need of repair and upgrade it cannot maintain safe and adequate service on 30 percent of its distribution system. Given PEPCO's consistently inadequate performance over such a sustained period of time, the conclusion is inescapable: service reliability is simply not a priority for PEPCO management.

Enough is enough. Before another storm hits and District consumers again find themselves in the dark (if not the cold) for extended periods of time, OPC calls on the Commission to fulfill its statutory responsibility to engage in meaningful *regulation* of the Company.⁸ The Office asks the Commission to initiate and conduct a formal and thorough

⁷ See, OPC Data Request No.23 in Formal Case No. 982.

⁸ Prompt action is also essential given PEPCO's recently-announced intention to file for a rate increase this summer, and to address reliability improvements as part of the proposed rate hike. PEPCO Holdings, Inc., Presentation to Wells Fargo Utility Symposium, New York, N.Y. (Dec. 8, 2010) at 14. OPC notes the obvious in observing it is critical for the Commission and the parties to have timely, reliable, complete and accurate information on the reliability issues facing PEPCO. These data will ensure all parties are best positioned when the rate filing is made to evaluate effectively the actions proposed by the Company, the costs of those actions, and potential alternatives to them. Given there has been dispute as to the facts underlying the cause of PEPCO's reliability problems, formal hearing procedures, which would allow for a full ventilation of those claims, are particularly important in these circumstances. Joe Stephens & Mary Pat Flaherty, *Washington Post Analysis: Why PEPCO Can't Keep the Lights On*, Washington Post (Dec. 5, 2010), <http://www.washingtonpost.com/wp->

investigation aimed at identifying: (1) the root causes of PEPCO's poor performance with respect to service reliability; and (2) the actions that can and should be taken to improve it. At a minimum, this investigation should include formal hearing procedures (including discovery, testimony, and cross-examination), and community hearings in each of the City's Wards.⁹

Moreover, the investigation must include an examination of Company management. The conduct of a management audit of PEPCO is long overdue. As OPC noted in a recent pleading filed in on December 15, 2010, in Formal Case No. 766, under 15 D.C.M.R. § 522.1 (2010), the Commission

is required to "periodically (but not less often than every six (6) years) have a full-scale management and operations audit of the company to determine the quality of the performance of management and identify areas for productivity to improvement." There being no public record of any full-scale management and operations audit having been conducted within the past six years, the Office respectfully requests the Commission act in accordance with its statutory authority as the sole agency with plenary authority over public utilities operating in the District of Columbia and this regulation and conduct the legally required full-scale audit of the management and operations of the Potomac Electric Power Company.

"Motion of the Office of the People's Counsel Requesting the Public Service Commission of the District of Columbia Conduct a Full-Scale Management and Operations Audit of the Potomac Electric Power Company in Accordance with 15 D.C.M.R. § 522.1," in Formal Case No. 766 at 1-2, footnote omitted (December 15, 2010). This request remains pending.

dyn/content/article/2010/12/04/AR2010120403887_pf.html, (U.S. Forest Service officials dispute PEPCO's claims as to the extent of tree canopy-related problems).

⁹ The need for hearing is underscored by the strong and obvious public interest in the outcome of these proceedings. OPC has established an online petition calling on the Commission to conduct the investigation requested herein. The petition can be accessed at www.opc-dc.gov.

OPC suggests below areas of investigative inquiry, along with a proposal for the conduct of the management audit that should expedite the process of obtaining potentially important data, while minimizing the burden on both the Commission and PEPCO.

III. BASES FOR FORMAL INVESTIGATION AND AUDIT

A. Both the PSC and PEPCO have legal obligations to District ratepayers.

Both PEPCO and the Commission have legal obligations to District ratepayers. The Company is obligated by law to provide adequate, safe and reliable electric service at just and reasonable prices to its District customers.¹⁰ The Commission is obligated by law to ensure that PEPCO fulfills its responsibilities.¹¹ Failure to do so is an abrogation of its statutory responsibility. The primary objectives of Commission regulation include ensuring that PEPCO adheres to its statutory mandate to provide safe, just, adequate and reasonable electric service, and that required services and facilities are reasonably safe, adequate and in all respects just and reasonable. Reliability is a cornerstone of utility service. A company that fails to provide reliable service cannot meet any prong of the statutory criteria. While some interruption of service cannot be avoided, the distribution system must be designed, built, and maintained in anticipation of reasonable occurrences and the need to respond to service interruptions by promptly restoring service.

In return for providing electric distribution service, PEPCO is given an exclusive franchise, meaning the Company is a regulated monopoly free from competition with respect to

¹⁰ D.C. Code § 34-1101(a) (2001).

¹¹ The Commission's statutory obligations with respect to service reliability are mandatory. *See e.g.*, D.C. Code § 34-301(2) (Commission "*shall*, within its jurisdiction ... (2) Investigate and ascertain, from time to time ... the methods employed by persons or corporations in ... distributing electricity for light, heat, or power ... and have the power to order such... as will reasonably promote the public interest...") D.C. Code § 34-402 ("The Commission *shall* inquire into any neglect or violation of the laws or regulations in force in the District of Columbia by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it *shall be its duty*, to enforce the provisions of this subtitle as well as all other laws relating to public utilities") (emphases added).

the provision of distribution services. PEPCO is required by statute to maintain a safe and reliable distribution system in accordance with applicable orders, tariffs and regulations of the Commission.¹² To carry out this statutory mandate, PEPCO must use its expertise and technology to undertake appropriate engineering system planning in light of forecasted needs and growth trends of the District of Columbia, its residents, consumers and ratepayers.

B. PEPCO has failed to fulfill its statutory obligations.

PEPCO, to put it mildly, is well paid for its services. In the past three years alone, PEPCO has received more than \$47 million in distribution rate increases and, with Commission approval, has implemented a “decoupled” rate design that requires ratepayers to essentially *guarantee* the Company will recover its authorized revenue requirement, thus insulating PEPCO from virtually all risk of revenue loss.¹³ Given the extraordinary regulatory support afforded PEPCO and its shareholders, District ratepayers have every reason to expect and to receive electric distribution services the quality of which is on a par with the best utilities in the Nation.

Nonetheless, that has not been the case. For almost a decade, District of Columbia electric distribution service customers have endured poor and degrading electric distribution service quality.¹⁴ PEPCO’s 2009 Consolidated Report provides conclusive evidence of exactly

¹² D.C. Code § 34-1506(2)(b).

¹³ 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 Electricity Distribution Service, Phase II*, Order No. 15556, at ¶ 30 (Sept. 28, 2009) (footnotes omitted):

We find that implementation of the BSA insulates Pepco from losing revenues which, in turn, lowers the Company’s business risk and results in a lower cost of capital. This benefit to the Company and its shareholders requires a concomitant benefit to the ratepayers who are essentially guaranteeing that the Company will collect its revenue requirement as determined in its last base rate case.

¹⁴ Formal Case No. 766, *In the Matter of the Commission’s Fuel Adjustment Clause Audit and Review Program and Formal Case No. 991, In the Matter of the Investigation into Explosions Occurring In or Around the Underground Distribution Systems of Potomac Electric Power Company*, Order No. 15152 at ¶ 60, rel. Jan. 6, 2009.

how poorly PEPCO’s performance, as measured by three reliability indices, SAIFI, SAIDI, and CAIDI,¹⁵ compared to the performance of its peer utilities in four industry studies. In each of the four studies, PEPCO ranks near the bottom with respect to each reliability index. In three out of the four studies, PEPCO ranked dead last among its peer utilities for SAIDI and in two out of the four studies PEPCO ranked dead last among its peer utilities for CAIDI. PEPCO never ranked in the top half for any of the reliability indices in any of the studies. The results of the four studies, showing PEPCO’s placement among its peer utilities, are summarized in the table below.¹⁶

2009 System Performance Comparison

(lower position or numbers reflect better performance - 1st is best)

	<u>IEEE</u> DC + MD	<u>Public Service Electric & Gas</u> DC + MD	<u>Southern Electric Exchange</u> DC + MD	<u>Salt River Project</u> DC only
SAIFI	62nd of 74	17th of 18	19th of 24	9th of 13
SAIDI	67th of 75	17th of 18	21st of 24	9th of 13
CAIDI	66th of 75	15th of 18	20th of 24	13th of 13

The almost ten-year decline in PEPCO distribution system reliability was highlighted by the events of April through August 2010.¹⁷ During that five-month period, DC ratepayers faced an extraordinary number of service interruptions, coupled with two major storm-related outages

¹⁵ System Average Interruption Frequency Index (“SAIFI”), System Average Interruption Duration Index (“SAIDI”), and Customer Average Interruption Duration Index (“CAIDI”).

¹⁶ PEPCO 2010 Consolidated Report, pp. 92-110 (Feb. 25, 2010).

¹⁷ In response to the 2010 events, the Office sought the initiation of a formal investigation. In Order No. 16002, the Commission denied this request, finding that the opening of a separate investigation proceeding would be duplicative of ongoing activities in other dockets. However, the Commission stated that it would address in Formal Case No. 982 outage restoration efforts in response to the July/August 2010 storms. *Id.* at ¶ 6.

that featured multiple consecutive days without power, protracted restoration times, power surges, and inadequate responses to customer inquiries about service status. The worst of the service interruptions occurred at times of oppressive summer heat, threatening the health and welfare of District residents, particularly at-risk residents such as the elderly.¹⁸

Given this history, Yogi Berra's famous line, "it's déjà vu all over again," seems to capture precisely where OPC and the consumers it represents find themselves following the latest round of post-storm service restoration by the Company. In the wake of the late January winter storm, which included just a few inches of snow in the District, reports of nearly 23,000 DC customers lost power, some for extended periods of time. It was not supposed to be this way. On January 25, PEPCO posted a news release on its website highlighting its preparation for the storm, and noting that "[e]xtra crews and customer service personnel are prepared to work throughout the storm." Unfortunately, PEPCO's preparations once again appear to have been woefully inadequate.

C. The Commission must enforce its regulatory authority.

Commission Order No. 16188, announces the upcoming "legislative-style public hearing" (Order at ¶ 5) into "matters involving Pepco reliability and restoration and the electric service outages of January 2011." *Id.* at ¶ 1. While it is a step in the right direction, requiring PEPCO executives to appear before the Commissioners for a single day question-and-answer session (*Id.* at ¶ 5) is simply not enough to complete the substantial job before the Commission. In the instant circumstances, which build on the frustrating lack of performance over the past decade, a single legislative hearing is inadequate. The Commission should convene a formal,

¹⁸ The conditions prompted Ward 5 Councilmember Harry Thomas to request the initiation of an investigation into the citywide outages, and Councilmember Muriel Bowser to hold a roundtable to address them--even before additional major storm-related outages in July and August of last year.

on-the-record evidentiary investigation, augment its efforts with a management audit, and conduct community hearings.

An evidentiary hearing in which PEPCO provides the sworn testimony of expert witnesses and both intervenors and the Commission are permitted to conduct cross-examination would assist in the assessment by the Commission and the Office of the root causes of the outages, surges, and delayed response times, and create an evidentiary basis from which the Commission can make reasoned and informed decisions about the corrective actions that can and should be implemented to minimize the likelihood of recurrence. The Commission's ability to issue an order requiring effective corrective action, *inter alia*, is necessarily dependent upon the Commission's establishment of a complete evidentiary record that allows for the compilation of accurate factual findings. The additional step of holding community hearings will provide a forum for PEPCO's customers to voice—and PEPCO executives and the Commission to hear—the depth of the “outage outrage” being experienced across our City as a consequence of the Company's inadequate performance.

At a minimum, the investigation should examine the following subjects:

(1) *Infrastructure investment*: Following divestiture, PEPCO voluntarily agreed to an eight (8)-year rate freeze, during which PEPCO was obligated to refrain from seeking rate relief from the Commission. OPC's understanding is during this time PEPCO failed to make necessary infrastructure investments or to commit adequate resources to identifying and fixing infrastructure problems on a systematic basis. And, while technologies such as smart meters may detect outages, they will not solve the central problem of a deteriorating infrastructure or faulty restoration procedures. The Commission should use the investigation to get a handle on the status of the Company's investments in needed infrastructure, including whether its

investment activities during the rate freeze were consistent with statutory requirements or whether PEPCO deliberately deferred investment.

(2) *Outage Management System*: As noted above, OPC is concerned that PEPCO's computer-based communication system may have crashed during the recent outage. The Commission should inquire as to whether this was in fact the case. If so, the Commission should require the Company to provide an evaluation of why this occurred and what corrective action has been or will be taken in response. More broadly, the Commission should also assess the quality of PEPCO's communications with ratepayers concerning outage/service restoration issues.

(3) *Staffing*: OPC urges the Commission to investigate whether PEPCO has reduced field and maintenance staff levels to the point that it may be difficult—if not impossible—for the Company to conduct (1) service restoration activities absent significant “resource sharing” with neighboring utilities and (2) needed preventive maintenance (including vegetation management). PEPCO should be required to produce data showing hiring trends, and should be obliged to explain the bases for any staff reductions.¹⁹ PEPCO should provide annual data on overtime, as this will provide an indication of whether the Company is properly sized to complete all essential maintenance activities. The Company's “resource sharing” arrangements with other utilities should be produced for examination, along with data concerning the frequency with which these arrangements are employed, a detailed breakdown of the costs

¹⁹ The Commission should also inquire as to whether PEPCO has workforce “graying” issues and, if so, whether (and how) the Company is attempting to address them. Graying concerns have been the subject of national attention. For example, the Department of Labor reported in March 2007 that 500,000 energy industry workers are expected to retire over the next 5 to 10 years, a turnover rate of 50 percent. U.S. Dep't of Labor, Employment & Training Admin., *Identifying and Addressing Workforce Challenges in America's Energy Industry 4* (2007), available at www.doleta.gov/BRG/pdf/Energy%20Report_final.pdf. The possible retirement of significant portions of the PEPCO workforce in the next few years would add an alarming multiplier to the Company's service reliability issues. Assuming PEPCO has graying issues and has developed responsive actions plans, the Commission should investigate the extent to which PEPCO has initiatives aimed at providing training or other forms of employment opportunities for DC residents.

associated with their utilization, and any assessments conducted by or for PEPCO of the efficacy of relying in emergencies on the availability of utility crews from other companies, who presumably lack both any “institutional memory” with respect to the PEPCO system and site-specific training concerning the Company’s infrastructure. While OPC encourages PEPCO to reduce expenses where reasonable, it is not in the public interest for the Company to operate at staffing levels that do not permit the conduct of needed maintenance or timely restoration activities (or require overtime to facilitate the completion of routine activities). While the reduction in the number of employees may enhance PEPCO’s “bottom line” and attractiveness to shareholders, inadequate staffing is inconsistent with the requirement for safe, reliable service that is in all respects just and reasonable.

(4) *Maintenance Activities and Budgets*: The Commission has properly asked for data on tree trimming budgets (Order No. 16188 at ¶ 4). All aspects of PEPCO’s maintenance budgets should be subject to investigation and review. In addition, the Commission should require the Company to produce data on current maintenance backlogs, which tie directly into both budgeting and staffing issues. OPC is concerned that emergency restoration activities of necessity can involve the implementation of “temporary” fixes to get service back on-line quickly. While the need for such temporary solutions is perhaps understandable, subsequent and more “permanent” solutions will need to be implemented. PEPCO should be required to produce data on the extent to which “restoration activities” will still need to be undertaken, even if service to all customers has been “restored,” and the timeline/staffing requirements for such activities.

(5) *Management Audit*: OPC states the obvious in asserting that the service reliability/restoration issues have not been a management priority for PEPCO for at least a decade. This

problem initially should be addressed through the conduct of an independent audit of PEPCO management. However, in taking this step, there is no need for the Commission to re-invent the wheel. The reliability of the service provided by PEPCO is likewise of great concern to consumers and regulators in neighboring jurisdictions. The Maryland Public Service Commission has initiated an investigation, including an evidentiary hearing, into the reliability of PEPCO's electric distribution system and the quality of electric distribution service PEPCO is providing to Maryland customers.²⁰ In taking this action, the Maryland PSC stated:

Because of the frequency, number and duration of the power outages experienced by customers in the Pepco service area and the apparent breakdown of adequate communication between the company and its customers during these outage events, the Commission finds it necessary to conduct an immediate investigation into the reliability of the Pepco distribution system and the quality of distribution service Pepco is providing its customers, including but not limited to its performance during and following severe storms, and a comprehensive examination of Pepco's storm preparedness and reliability.[²¹]

In a subsequent order addressing the scope of its investigation, the Maryland PSC states that it:

also has received complaints of frequent and apparently inexplicable outages occurring outside of storm events. Additionally, customers have complained about PEPCO's failure to communicate effectively with its customers during outages – in part due to the apparent failure of [PEPCO's] automated communications system.[²²]

These complaints are virtually identical to those that the Office (and, we assume, this Commission) has heard from District ratepayers.

²⁰ Case No. 9240, *In the Matter of an Investigation into the Reliability and Quality of the Electric Distribution Service of Potomac Electric Power Company*, Order No. 83526, p. 1 (Aug. 12, 2010).

²¹ *Id.*

²² *Id.*

The Maryland PSC convened an initial hearing to allow PEPCO the opportunity to respond to questions from the Commission and to assist the Commission in better understanding the issue;²³ it also convened an evening hearing to allow public comment on the quality of PEPCO's service.²⁴ The Maryland PSC directed requests for documents and information to PEPCO in order to better understand: (1) the number of customers affected by the outages; (2) the cause(s) of the scope, frequency, and duration of the outages; (3) the communication failures between PEPCO and customers; and (4) PEPCO's inability to communicate estimated times of restoration to customers.²⁵ The Maryland PSC further directed PEPCO to retain an independent consultant to evaluate the reliability of its electric distribution system.²⁶ In addition, the Maryland PSC set a procedural schedule in the investigatory proceeding, which includes deadlines for discovery, the report of the independent consultant, written testimony, and an evidentiary hearing.²⁷

That investigation has already included a requirement that PEPCO have conducted—at shareholder expense—a report by an independent consultant that is to contain formal findings and recommendations to “assist the Commission in its review and analysis of the Company’s distribution service reliability, outage preparedness, outage response efficiency and

²³ Case No. 9240, *In the Matter of an Investigation into the Reliability and Quality of the Electric Distribution Service of Potomac Electric Power Company*, Order No. 83552, pp. 1-2 (Aug. 26, 2010) (“Order No. 83552”).

²⁴ Order No. 83552, p. 2. To be clear, by way of formal hearing, the Office is requesting that the Commission allow, as the Maryland PSC has allowed, public notice of the investigation and hearing, opportunity for public comment, full discovery, written testimony, an evidentiary hearing, and post-hearing briefing.

²⁵ Order No. 83552. The Office has requested copies of PEPCO's responses to the Maryland PSC's August 26, 2010 data and information requests, as the information sought is the type of information necessary to critically assess the reliability of PEPCO's distribution service and PEPCO's protocols in response to outages.

²⁶ Order No. 83552, p. 2.

²⁷ Case No. 9240, *In the Matter of an Investigation into the Reliability and Quality of the Electric Distribution Service of Potomac Electric Power Company*, Order No. 83641, pp. 2-4 (Oct. 20, 2010). The Order also provides for an opportunity for post-hearing briefing on dates to be determined.

effectiveness, and customer communications effectiveness, by conducting a comprehensive assessment of the Company's systems, engineering, management, and communications protocols and performance.”²⁸ While ordered by the Maryland regulatory authority, there is every reason to believe that the consultant's findings will have relevance for PEPCO's operations in the District.

The Maryland audit is due to be filed with the Maryland PSC on March 4, 2011. As a first step, the Commission should direct the Company to file this audit (and any related testimony associated with it) with the Commission as part of the evidentiary record of the investigation in this proceeding. Following its receipt and analysis, the Commission and interested parties will be positioned to determine whether additional audit is necessary.

(6) *Corrective Actions*: The Office is participating in the working group process associated with the revamping of the Electricity Quality of Service Standards (“EQSS”). However, OPC is not sanguine about the prospects for reaching consensus. Given current circumstances, OPC anticipates that it will submit proposed EQSS changes directly to the Commission, and will ask that they be addressed in this proceeding and on an expedited basis. As part of these changes, the Office will be seeking, both before the Commission and the Council, a structure in which whatever conditions are imposed on PEPCO as a result of this process be accompanied by the possibility of financial penalties (*e.g.* return on equity reductions) in the event of inadequate performance as measured against the standards, consistent with the approach being pursued by the Maryland PSC.²⁹ The Office believes that performance-based

²⁸ *Id.*

²⁹ See Maryland Public Service Commission, RM 43, *Revisions to COMAR 20.50 – Service Supplied by Electric Companies – Proposed Reliability and Service Quality Standards*, Notice of Initiation of Rule making, Notice of Comment Period, and Notice of Rule Making Session (January 12, 2011).

penalties will be essential to ensuring that PEPCO management pays sufficient attention to service reliability in the District.

Beyond the foregoing, the Office cannot specify additional measures that need to be taken at this time. The Commission and the Office need a comprehensive evidentiary record of what is wrong and what went wrong in order to determine the course ahead.

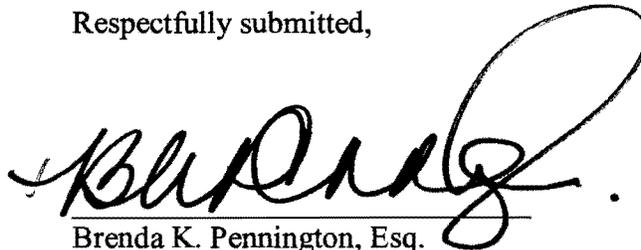
(7) *Community Hearings*: There is strong interest among DC consumers in voicing their perspectives and concerns about the reliability of the electric service provided by PEPCO. Some consumers have expressed their frustration through actions: the *Washington Post* reports that home generator sales are “booming.”³⁰ The significance of the referenced outages to District residents in and of itself demands a detailed and timely investigation of the causes of these outages and PEPCO’s response thereto.³¹ There is a strong public interest in ensuring that the causes of PEPCO’s performance are well understood, and that all reasonable actions are taken to address those causes. Lengthy and unexplained service outages create major and potentially dangerous and health threatening disruptions in the lives of District residents. District residents are entitled to know—in a timely fashion—what happened, why it happened and what will be done to ensure it does not happen again. They are likewise entitled to depend upon the Commission to pursue reliability issues vigorously. Given these concerns, OPC urges the Commission to include as part of this investigation the convening of separate public hearings in each of the City’s wards.

³⁰ “In Pepco Territory, Blackouts Mean More Home Generators, More Noise Complaints,” *Washington Post*, February 5, 2011, available at http://fwix.com/dc/share/01259d381d/in_pepco_territory_blackouts_mean_more_home_generators_more_noise_complaints

VI. CONCLUSION

WHEREFORE, for the foregoing reasons, OPC respectfully requests the Commission initiate on an expedited basis a formal, on the record investigation of PEPCO's provision of reliable electric distribution services, including the emergency outage restoration services provided following the brief winter storm experienced in the District on January 26, 2011. The investigation should be aimed at identifying: (1) the root causes of PEPCO's poor performance and (2) the actions that can and should be taken to improve it. At a minimum, the investigation should include formal hearing procedures (including discovery, testimony, and cross-examination), the conduct of a management audit, and the convening of community hearings in each of the City's eight Wards.

Respectfully submitted,



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OFFICE OF THE PEOPLE'S COUNSEL
FOR THE DISTRICT OF COLUMBIA
1133 15th Street, N.W., Suite 500
Washington, D.C. 20005-2710

Dated: February 9, 2011

CERTIFICATE OF SERVICE

Formal Case No. 982, In the Matter of the Investigation of Potomac Electric Power Company Regarding Interruption to Electric Energy Service;

Formal Case No. 766, In the Matter of the Commission's Fuel Adjustment Clause Audit and Review Program; and

Formal Case No. 991, In the Matter of the Investigation into Explosions Occurring in or Around the Underground Distribution Systems of the Potomac Electric Power Company

I hereby certify that on this 9th day of February, 2011, a copy of the "Expedited Petition of the Office of the People's Counsel For an Investigation of the Provision of Reliable Distribution Service by Potomac Electric Power Company and the Conducting of a Management Audit" was served on the following parties of record by hand delivery; first class mail, postage prepaid; or, electronic mail:

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